

Ontario Securities Commission

National Instrument 41-101

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Any forms referenced in this document are available separately on the Ontario Securities Commission website.

**NATIONAL INSTRUMENT 41-101
GENERAL PROSPECTUS REQUIREMENTS**

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PART 1 DEFINITIONS AND INTERPRETATIONS

Definitions

1.1 In this Instrument:

“accredited investor” has the same meaning as in section 1.1 of NI 45-106;

“acquisition” has the same meaning as in Part 8 of NI 51-102;

“acquisition date” has the same meaning as in section 1.1 of NI 51-102;

“acquisition of related businesses” has the same meaning as in Part 8 of NI 51-102;

“Aequitas personal information form” means a personal information form for an individual prepared pursuant to Aequitas NEO Exchange Inc. Form 3, as amended from time to time;

“alternative credit support” has the same meaning as in section 13.4 of NI 51-102;

“alternative mutual fund” has the same meaning as in section 1.1 of NI 81-102;

“asset-backed security” has the same meaning as in section 1.1 of NI 51-102;

“base offering” means the number or principal amount of the securities distributed under a prospectus by an issuer or selling securityholder, excluding

- (a) any over-allotment option granted in connection with the distribution, or the securities issuable on the exercise of any such over-allotment option, and
- (b) securities issued or paid as compensation to a person or company for acting as an underwriter in respect of securities that are distributed under the prospectus, on an “as-if-converted” basis if these securities include securities that are convertible or exchangeable securities;

“board of directors” has the same meaning as in section 1.1 of NI 51-102;

“business acquisition report” has the same meaning as in section 1.1 of NI 51-102;

“business day” means any day other than a Saturday, a Sunday or a statutory holiday;

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

“credit supporter” has the same meaning as in section 13.4 of NI 51-102;

“custodian” means the institution appointed by an investment fund to act as custodian of the portfolio assets of the investment fund;

“date of transition to IFRS” has the same meaning as in section 1.1 of NI 51-102;

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

“designated foreign jurisdiction” has the same meaning as in section 1.1 of NI 52-107;

“designated rating organization” has the same meaning as in National Instrument 44-101 *Short Form Prospectus Distributions*;

“DRO affiliate” has the same meaning as in section 1 of NI 25-101;

“equity investee” has the same meaning as in section 1.1 of NI 51-102;

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

“ETF” or “exchange-traded mutual fund” means a mutual fund in continuous distribution, the securities of which are

- (a) listed on an exchange, and
- (b) trading on an exchange or an alternative trading system;

“ETF facts document” means a completed Form 41-101F4;

“executive officer” means, for an issuer or an investment fund manager, an individual who is

- (a) a chair, vice-chair or president,
- (a.1) a chief executive officer or chief financial officer,
- (b) a vice-president in charge of a principal business unit, division or function including sales, finance or production, or
- (c) performing a policy-making function in respect of the issuer or investment fund manager;

“final prospectus notice” means,

- (a) in British Columbia, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario and Saskatchewan, a written communication relating to a final prospectus if that communication is permitted by a provision in securities legislation listed opposite the jurisdiction in Appendix E, or
- (b) in every other jurisdiction of Canada, a written communication relating to a final prospectus that only
 - (i) identifies the security proposed to be issued,
 - (ii) states the price of the security, and
 - (iii) states the name and address of a person or company from whom purchases of the security may be made and from whom a final prospectus may be obtained;

“financial statements” includes interim financial reports;

“first IFRS financial statements” has the same meaning as in section 1.1 of NI 51-102;

“foreign disclosure requirements” has the same meaning as in section 1.1 of NI 52-107;

“Form 41-101F1” means Form 41-101F1 *Information Required in a Prospectus* of this Instrument;

“Form 41-101F2” means Form 41-101F2 *Information Required in an Investment Fund Prospectus* of this Instrument;

“Form 41-101F3” means Form 41-101F3 *Information Required in a Scholarship Plan Prospectus* of this Instrument;

“Form 41-101F4” means Form 41-101F4 *Information Required in an ETF Facts Document* of this Instrument;

“Form 44-101F1” means Form 44-101F1 *Short Form Prospectus* of NI 44-101;

“Form 51-101F1” means Form 51-101F1 *Statement of Reserves Data and Other Oil and Gas Information* of NI 51-101;

“Form 51-101F2” means Form 51-101F2 *Report on Reserves Data by Independent Qualified Reserves Evaluator or Auditor* of NI 51-101;

“Form 51-101F3” means Form 51-101F3 *Report of Management and Directors on Oil and Gas Disclosure* of NI 51-101;

“Form 51-102F1” means Form 51-102F1 *Management’s Discussion & Analysis* of NI 51-102;

“Form 51-102F2” means Form 51-102F2 *Annual Information Form* of NI 51-102;

“Form 51-102F4” means Form 51-102F4 *Business Acquisition Report* of NI 51-102;

“Form 51-102F5” means Form 51-102F5 *Information Circular* of NI 51-102;

“Form 51-102F6” means Form 51-102F6 *Statement of Executive Compensation* of NI 51-102;

“Form 51-102F6V” means Form 51-102F6V *Statement of Executive Compensation – Venture Issuers* of NI 51-102;

“Form 52-110F1” means Form 52-110F1 *Audit Committee Information Required in an AIF* of NI 52-110;

“Form 52-110F2” means Form 52-110F2 *Disclosure by Venture Issuers* of NI 52-110;

“Form 58-101F1” means Form 58-101F1 *Corporate Governance Disclosure* of NI 58-101;

“Form 58-101F2” means Form 58-101F2 *Corporate Governance Disclosure (Venture Issuers)* of NI 58-101;

“full and unconditional credit support” means

- (a) alternative credit support that
 - (i) entitles the holder of the securities to receive payment from the credit supporter, or enables the holder to receive payment from the issuer, within 15 days of any failure by the issuer to make a payment, and
 - (ii) results in the securities receiving the same credit rating as, or a higher credit rating than, the credit rating they would have received if payment had been fully and unconditionally guaranteed by the credit supporter, or would result in the securities receiving such a rating if they were rated, or

- (b) a full and unconditional guarantee of the payments to be made, as interpreted in section 1.5, by the issuer of securities, as stipulated in the terms of the securities or in an agreement governing rights of holders of the securities, that results in the holder of such securities being entitled to receive payment from the credit supporter within 15 days of any failure by the issuer to make a payment;

“independent review committee” means an independent review committee under NI 81-107;

“information circular” has the same meaning as in section 1.1 of NI 51-102;

“interim period” has the same meaning as in

- (a) section 1.1 of NI 51-102 for an issuer other than an investment fund, or
- (b) section 1.1 of NI 81-106 for an investment fund;

“investment dealer” has the same meaning as in section 1.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

“IPO venture issuer” means an issuer that

- (a) files a long form prospectus,
- (b) is not a reporting issuer in any jurisdiction immediately before the date of the final long form prospectus, and
- (c) at the date of the long form prospectus, does not have any of its securities listed or quoted, has not applied to list or quote any of its securities, and does not intend to apply to list or quote any of its securities, on
 - (i) the Toronto Stock Exchange,
 - (i.1) Aequitas NEO Exchange Inc.,
 - (ii) a U.S. marketplace, or
 - (iii) a marketplace outside of Canada and the United States of America, other than the Alternative Investment Market of the London Stock Exchange or the PLUS markets operated by PLUS Markets Group plc;

“issuer’s GAAP” has the same meaning as in section 1.1 of NI 52-107; “junior issuer” means an issuer

- (a) that files a preliminary prospectus,
- (b) that is not a reporting issuer in any jurisdiction,
- (c) whose total consolidated assets as at the date of the most recent statement of financial position of the issuer included in the preliminary prospectus are less than \$10,000,000,
- (d) whose consolidated revenue as shown in the most recent annual statement of comprehensive income of the issuer included in the preliminary prospectus is less than \$10,000,000, and

- (e) whose equity as at the date of the most recent statement of financial position of the issuer included in the preliminary prospectus is less than \$10,000,000,

taking into account all adjustments to asset, revenue and equity calculations necessary to reflect each significant proposed acquisition of a business or related business by an issuer that has progressed to a state where a reasonable person would believe that the likelihood of the issuer completing the acquisition is high, and each completed significant acquisition of a business or related business that was completed,

- (f) for paragraphs (c) and (e), before the date of the preliminary prospectus and after the date of the issuer's most recent statement of financial position included in the preliminary prospectus as if each acquisition had taken place as at the date of the issuer's most recent statement of financial position included in the preliminary prospectus, and
- (g) for paragraph (d), after the last day of the most recent annual statement of comprehensive income of the issuer included in the preliminary prospectus as if each acquisition had taken place at the beginning of the issuer's most recently completed financial year for which a statement of comprehensive income is included in the preliminary prospectus;

"labour sponsored or venture capital fund" has the same meaning as in section 1.1 of NI 81-106;

"lead underwriter" means, in respect of a syndicate of underwriters,

- (a) the underwriter designated under the underwriting agreement to act as the manager of the syndicate, or
- (b) if more than one underwriter is designated under the underwriting agreement to act as a manager of the syndicate, the underwriter designated under the agreement to have primary decision-making authority;

"limited-use version" means a template version in which the spaces for information have been completed in accordance with any of the following:

- (a) subsection 13.7(2) or 13.8(2);
- (b) subsection 7.6(2) of NI 44-101;
- (c) subsection 9A.3(2) of NI 44-102;
- (d) subsection 4A.3(3) of NI 44-103;

"long form prospectus" means a prospectus filed in the form of Form 41-101F1, Form 41-101F2 or Form 41-101F3;

"marketing materials" means a written communication intended for potential investors regarding a distribution of securities under a prospectus that contains material facts relating to an issuer, securities or an offering but does not include the following:

- (a) a prospectus or any amendment;

- (b) a standard term sheet;
- (c) a preliminary prospectus notice;
- (d) a final prospectus notice;

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

“material contract” means any contract that an issuer or any of its subsidiaries is a party to, that is material to the issuer;

“mineral project” has the same meaning as in section 1.1 of NI 43-101;

“NI 14-101” means National Instrument 14-101 *Definitions*;

“NI 25-101” means National Instrument 25-101 *Designated Rating Organizations*;

“NI 33-105” means National Instrument 33-105 *Underwriting Conflicts*;

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

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

“NI 44-102” means National Instrument 44-102 *Shelf Distributions*;

“NI 44-103” means National Instrument 44-103 *Post-Receipt Pricing*;

“NI 45-106” means National Instrument 45-106 *Prospectus Exemptions*;

“NI 51-101” means National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*;

“NI 51-102” means National Instrument 51-102 *Continuous Disclosure Obligations*;

“NI 52-107” means National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*;

“NI 52-110” means National Instrument 52-110 *Audit Committees*;

“NI 58-101” means National Instrument 58-101 *Disclosure of Corporate Governance Practices*;

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

“NI 81-102” means National Instrument 81-102 *Investment Funds*;

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

“NI 81-107” means National Instrument 81-107 *Independent Review Committee for Investment Funds*;

“non-voting security” means a restricted security that does not carry the right to vote generally, except for a right to vote that is mandated, in special circumstances, by law;

“old financial year” means the financial year of an issuer that immediately precedes a transition year;

“over-allocation position” means the amount, determined as at the closing of a distribution, by which the aggregate number or principal amount of securities that are sold by one or more underwriters of the distribution exceeds the base offering;

“over-allotment option” means a right granted to one or more underwriters by an issuer or a selling securityholder of the issuer in connection with the distribution of securities under a prospectus to acquire, for the purposes of covering the underwriter’s over-allocation position, a security of an issuer that has the same designation and attributes as a security that is distributed under such prospectus, and which

- (a) expires not later than the 60th day after the date of the closing of the distribution, and
- (b) is exercisable for a number or principal amount of securities that is limited to the lesser of
 - (i) the over-allocation position, and
 - (ii) 15% of the base offering;

“personal information form” means,

- (a) a completed Schedule 1 of Appendix A,
- (b) a completed TSX/TSXV personal information form submitted by an individual to the Toronto Stock Exchange or to the TSX Venture Exchange to which is attached a completed certificate and consent in the form set out in Schedule 1 – Part B of Appendix A, or
- (c) a completed Aequitas personal information form submitted by an individual to Aequitas NEO Exchange Inc., to which is attached a completed certificate and consent in the form set out in Schedule 1 – Part B of Appendix A;

“plan summary” means a document prepared in accordance with the requirements of Part A of Form 41-101F3;

“predecessor personal information form” means,

- (a) a completed Schedule 1 of Appendix A in the form that was in effect from March 17, 2008 until May 14, 2013, or
- (b) a completed TSX/TSXV personal information form to which is attached a completed certificate and consent in the form that was in effect from March 17, 2008 until May 14, 2013;

“preliminary prospectus notice” means,

- (a) in a jurisdiction other than Québec, a communication relating to a preliminary prospectus if that communication is permitted by a provision in securities legislation listed opposite the jurisdiction in Appendix D, or
- (b) in Québec, a written communication relating to a preliminary prospectus that only
 - (i) identifies the security proposed to be issued,
 - (ii) states the price of the security, if determined, and
 - (iii) states the name and address of a person or company from whom purchases of the security may be made and from whom a preliminary prospectus may be obtained;

“principal securityholder” means a person or company who beneficially owns, or controls or directs, directly or indirectly, voting securities carrying 10% or more of the voting rights attached to any class of voting securities of the issuer;

“private issuer” has the same meaning as in section 2.4 of NI 45-106;

“profit or loss attributable to owners of the parent” has the same meaning as in Canadian GAAP applicable to publicly accountable enterprises;

“profit or loss from continuing operations attributable to owners of the parent” has the same meaning as in Canadian GAAP applicable to publicly accountable enterprises;

“publicly accountable enterprise” has the same meaning as in Part 3 of NI 52-107;

“related credit supporter” of an issuer means a credit supporter of the issuer that is an affiliate of the issuer;

“restricted security” means an equity security that is not a preferred security of an issuer if any of the following apply:

- (a) there is another class of securities of the issuer that carries a greater number of votes per security relative to the equity security,
- (b) the conditions attached to the class of equity securities, the conditions attached to another class of securities of the issuer, or the issuer’s constating documents have provisions that nullify or significantly restrict the voting rights of the equity securities,
- (c) the issuer has issued another class of equity securities that entitle the owners of securities of that other class to participate in the earnings or assets of the issuer to a greater extent, on a per security basis, than the owners of the first class of equity securities, or
- (d) except in Ontario and British Columbia, the regulator determines that the equity security is a restricted security;

“restricted security reorganization” means any event resulting in the creation of restricted securities, directly or through the creation of subject securities or securities that are, directly or indirectly, convertible, or exercisable or exchangeable for, restricted securities or subject securities or any change in the rights attaching to restricted securities, subject securities or securities that are, directly or indirectly, convertible into, or exercisable or exchangeable for, restricted securities or subject securities, including

- (a) any
 - (i) amendment to an issuer’s constating documents,
 - (ii) resolution of the board of directors of an issuer setting the terms of a series of securities of the issuer, or
 - (iii) restructuring, recapitalization, reclassification, arrangement, amalgamation or merger, or
- (b) if the issuer has one or more classes of restricted securities outstanding, an amendment to an issuer’s constating documents to increase

- (i) the per security voting rights attached to any class of securities without at the same time making a proportionate increase in the per security voting rights attached to any other securities of the issuer, or
- (ii) the number of a class of securities authorized, other than a restricted security;

“restricted security term” means each of the terms “non-voting security”, “subordinate voting security”, and “restricted voting security”;

“restricted voting security” means a restricted security that carries a right to vote subject to a restriction on the number or percentage of securities that may be voted or owned by one or more persons or companies, unless the restriction is

- (a) permitted or prescribed by statute or regulation, and
- (b) is applicable only to persons or companies that are not citizens or residents of Canada or that are otherwise considered as a result of any law applicable to the issuer to be non-Canadians;

“restructuring transaction” has the same meaning as in section 1.1 of NI 51-102;

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

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

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

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

“road show” means a presentation to potential investors, regarding a distribution of securities under a prospectus, conducted by one or more investment dealers on behalf of an issuer in which one or more executive officers, or other representatives, of the issuer participate;

“SEC issuer” has the same meaning as in section 1.1 of NI 52-107;

“short form prospectus” means a prospectus filed in the form of Form 44-101F1;

“special warrant” means a security that, by its terms or the terms of an accompanying contractual obligation,

- (a) entitles or requires the holder to acquire another security without payment of material additional consideration and obliges the issuer of either security to undertake efforts to file a prospectus to qualify the distribution of the other security, or
- (b) entitles or requires the holder to acquire another security without payment of material additional consideration and the issuer files a prospectus to qualify the distribution of the other security;

“standard term sheet” means a written communication intended for potential investors regarding a distribution of securities under a prospectus that contains no information other than that referred to in subsections 13.5(2) and (3), subsections 13.6(2) and (3), subsections 7.5(2) and (3) of NI 44-101, subsections 9A.2(2) and (3) of NI 44-102 or subsections 4A.2(2) and (3) of NI 44-103, relating to an issuer, securities or an offering, but does not include the following:

- (a) a preliminary prospectus notice;
- (b) a final prospectus notice;

“subject security” means a security that results, or would result if and when issued, in an existing class of securities being considered restricted securities;

“subordinate voting security” means a restricted security that carries a right to vote, if there are securities of another class outstanding that carry a greater right to vote on a per security basis;

“successor credit rating organization” has the same meaning as in National Instrument 44-101 *Short Form Prospectus Distributions*;

“template version” means a version of a document with spaces for information to be added in accordance with any of the following:

- (a) subsection 13.7(2) or 13.8(2);
- (b) subsection 7.6(2) of NI 44-101;
- (c) subsection 9A.3(2) of NI 44-102;
- (d) subsection 4A.3(3) of NI 44-103;

“transition year” means the financial year of an issuer or business in which the issuer or business changes its financial year-end;

“TSX/TSXV personal information form” means a personal information form for an individual pursuant to Toronto Stock Exchange Form 4 or TSX Venture Exchange Form 2A, each as amended from time to time;

“U.S. AICPA GAAS” has the same meaning as in section 1.1 of NI 52-107;

“U.S. GAAP” has the same meaning as in section 1.1 of NI 52-107;

“U.S. marketplace” has the same meaning as in section 1.1 of NI 51-102;

“U.S. PCAOB GAAS” has the same meaning as in section 1.1 of NI 52-107;

“venture issuer” has the same meaning as in section 1.1 of NI 51-102 except the “applicable time” is the date the prospectus is filed;

“waiting period” means the period of time between the issuance of a receipt by the regulator for a preliminary prospectus and the issuance of a receipt by the regulator for a final prospectus.

Interpretation of “prospectus”, “preliminary prospectus”, “final prospectus”, “long form prospectus”, and “short form prospectus”

1.2 (1) In this Instrument, a reference to a “prospectus” includes a preliminary long form prospectus, a final long form prospectus, a preliminary short form prospectus, and a final short form prospectus.

(2) In this Instrument, a reference to a “preliminary prospectus” includes a preliminary long form prospectus and a preliminary short form prospectus.

(3) In this Instrument, a reference to a “final prospectus” includes a final long form prospectus and a final short form prospectus.

- (4) In this Instrument, a reference to a “long form prospectus” includes a preliminary long form prospectus and a final long form prospectus.
- (5) In this Instrument, a reference to a “short form prospectus” includes a preliminary short form prospectus and a final short form prospectus.
- (6) Despite subsections (1), (2), and (3), in Form 41-101F1, Form 41-101F2, Form 41-101F3 and Form 41-101F4,
- (a) a reference to a “prospectus” only includes a preliminary long form prospectus and a final long form prospectus,
 - (b) a reference to a “preliminary prospectus” only includes a preliminary long form prospectus, and
 - (c) a reference to a “final prospectus” only includes a final long form prospectus.

Interpretation of “business”

1.3 In this Instrument, unless otherwise stated, a reference to a business includes an interest in an oil and gas property to which reserves, as defined in NI 51-101, have been specifically attributed.

Interpretation of “affiliate”

1.4 In this Instrument, an issuer is an affiliate of another issuer if the issuer would be an affiliate of the other issuer under subsection 1.1(2) of NI 51-102.

Interpretation of “payments to be made”

- 1.5 For the purposes of the definition of “full and unconditional credit support”, payments to be made by an issuer of securities as stipulated in the terms of the securities include
- (a) any amounts to be paid as dividends in accordance with, and on the dividend payment dates stipulated in, the provisions of the securities, whether or not the dividends have been declared, and
 - (b) any discretionary dividends, provided that the terms of the securities or an agreement governing rights of holders of the securities expressly provides that the holder of the securities will be entitled, once the discretionary dividend is declared, to receive payment from the credit supporter within 15 days of any failure by the issuer to pay the declared dividend.

PART 2 REQUIREMENTS FOR ALL PROSPECTUS DISTRIBUTIONS

Application of the Instrument

2.1 (1) Subject to subsection (2), this Instrument applies to a prospectus filed under securities legislation, a distribution of securities subject to the prospectus requirement and a purchase of securities of an ETF.

(2) This Instrument does not apply to a prospectus filed under NI 81-101 or a distribution of securities under such a prospectus.

Language

2.2 (1) An issuer must file a prospectus and any other document required to be filed under this Instrument or NI 44-101 in French or in English.

(2) In Québec, a prospectus and any document required to be incorporated by reference into a prospectus must be in French or in French and English.

(3) Despite subsection (1), if an issuer files a document only in French or only in English but delivers to an investor or prospective investor a version of the document in the other language, the issuer must file that other version not later than when it is first delivered to the investor or prospective investor.

(4) If an issuer files a document under this Instrument that is a translation of a document prepared in a language other than French or English, the issuer must

- (a) attach a certificate as to the accuracy of the translation to the filed document, and
- (b) make a copy of the document in the original language available on request.

General requirements

2.3 (1) An issuer must not file its first amendment to a preliminary prospectus more than 90 days after the date of the receipt for the preliminary prospectus.

(1.1) An issuer must not file a final prospectus more than 90 days after the date of the receipt for the preliminary prospectus or an amendment to the preliminary prospectus which relates to the final prospectus.

(1.2) If an issuer files an amendment to a preliminary prospectus, the final prospectus must be filed within 180 days from the date of the receipt of the preliminary prospectus.

(2) An issuer must not file

- (a) a prospectus more than three business days after the date of the prospectus, and

- (b) an amendment to a prospectus more than three business days after the date of the amendment to the prospectus.

Special warrants

2.4 (1) An issuer must not file a prospectus or an amendment to a prospectus to qualify the distribution of securities issued upon the exercise of special warrants or other securities acquired on a prospectus-exempt basis unless holders of the special warrants or other securities have been provided with a contractual right of rescission.

(2) A contractual right of rescission under subsection (1) must provide 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 prospectus or an amendment to the 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.

PART 3 FORM OF PROSPECTUS

Form of prospectus

3.1 (1) Subject to subsections (2), (2.1) and (3), an issuer filing a prospectus must file the prospectus in the form of Form 41-101F1.

(2) An issuer that is an investment fund, other than a scholarship plan, filing a prospectus must file the prospectus in the form of Form 41-101F2.

(2.1) An issuer that is a scholarship plan filing a prospectus must file the prospectus in the form of Form 41-101F3.

(3) An issuer that is qualified to file a short form prospectus may file a short form prospectus.

PART 3A SCHOLARSHIP PLAN PROSPECTUS REQUIREMENTS

Plain language and presentation

3A.1 (1) A scholarship plan prospectus must be prepared using plain language and in a format that assists in readability and comprehension.

- (2)** A scholarship plan prospectus must
- (a) present all information briefly and concisely,
 - (b) present the items listed in Parts A to D of Form 41-101F3 in the order set out in those parts,
 - (c) use only the headings and sub-headings prescribed by Form 41-101F3 unless stated otherwise,
 - (d) contain only information that is specifically mandated or permitted by Form 41-101F3, and
 - (e) not incorporate by reference into the scholarship plan prospectus, information that is required to be included in a scholarship plan prospectus.
- (3)** A plan summary must
- (a) be prepared for each scholarship plan offered under a scholarship plan prospectus or multiple scholarship plan prospectus, and
 - (b) not exceed 4 pages in length.

Combinations of documents

3A.2 (1) Subject to subsection (2), a scholarship plan prospectus may be consolidated with one or more scholarship plan prospectuses to form a multiple scholarship plan prospectus.

(2) A scholarship plan prospectus must not be consolidated with one or more scholarship plan prospectuses to form a multiple scholarship plan prospectus unless the portions of each scholarship plan prospectus prepared in accordance with the requirements of Parts B and D of Form 41-101F3 are substantially similar.

Order of contents of bound documents

3A.3 If documents are attached to, or bound with, a scholarship plan prospectus or multiple scholarship plan prospectus

- (a) the scholarship plan prospectus or multiple scholarship plan prospectus must be the first document contained in the package, and
- (b) no pages must come before the scholarship plan prospectus or multiple scholarship plan prospectus other than, at the option of the

scholarship plan, a general front cover and table of contents pertaining to the entire package.

Plan summary

3A.4 (1) Despite section 3A.3, a plan summary must not be attached to, or bound with, any other part of a scholarship plan prospectus, or to any other document, except as provided in this section.

(2) A plan summary of a scholarship plan may be attached to or bound with one or more plan summaries of other scholarship plans if the binding, to a reasonable person, would help present the information in a simple, accessible and comparable format.

Documents to be delivered or sent upon request

3A.5 (1) On request by a person or company, a scholarship plan must deliver or send a copy of one or more the following documents free of charge to the person or company:

- (a) the scholarship plan prospectus or multiple scholarship plan prospectus;
- (b) any document incorporated by reference into the scholarship plan prospectus;
- (c) any portion of a document described in paragraph (a) or (b).

(2) A document requested under subsection (1) must be delivered or sent within 3 business days of receipt of the request.

PART 3B ETF FACTS DOCUMENT REQUIREMENTS

Application

3B.1 This Part applies only to an ETF.

Plain language and presentation

3B.2 (1) An ETF facts document must be prepared using plain language and be in a format that assists in readability and comprehension.

- (2)** An ETF facts document must
- (a) be prepared for each class and each series of securities of an ETF in accordance with Form 41-101F4,

- (b) present the items listed in the Part I section of Form 41-101F4 and the items listed in the Part II section of Form 41-101F4 in the order stipulated in those parts,
- (c) use the headings and sub-headings stipulated in Form 41-101F4,
- (d) contain only the information that is specifically required or permitted to be in Form 41- 101F4,
- (e) not incorporate any information by reference, and
- (f) not exceed four pages in length.

Preparation in the required form

3B.3 Despite provisions in securities legislation relating to the presentation of the content of a prospectus, an ETF facts document for an ETF must be prepared in accordance with this Instrument.

Websites

3B.4 (1) If an ETF or the ETF's family has a website, the ETF must post to at least one of those websites an ETF facts document filed under this Part as soon as practicable and, in any event, within 10 days after the date that the document is filed.

(2) An ETF facts document posted to the website referred to in subsection (1) must

- (a) be displayed in a manner that would be considered prominent to a reasonable person; and
- (b) not be combined with another ETF facts document.

(3) Subsection (1) does not apply if the ETF facts document is posted to a website of the manager of the ETF in the manner required under subsection (2).

PART 3C DELIVERY OF ETF FACTS DOCUMENTS FOR INVESTMENT FUNDS

Application

3C.1 This Part applies only to an ETF.

Obligation to deliver ETF facts documents

3C.2 (1) The obligation to deliver or send a prospectus under securities legislation does not apply in respect of an ETF.

(2) A dealer acting as agent for a purchaser who receives an order for the purchase of a security of an ETF must, unless the dealer has previously done so, deliver or send to the purchaser the most recently filed ETF facts document for the

applicable class or series of securities of the ETF not later than midnight on the second business day after entering into the purchase of the security.

(3) In Nova Scotia, an ETF facts document is a prescribed disclosure document for the purposes of subsection 76(1A) of the *Securities Act* (Nova Scotia).

(4) In Nova Scotia, a security of an ETF is a prescribed investment fund security for the purposes of subsections 76(1B) and (1C) of the *Securities Act* (Nova Scotia).

(5) In Ontario, an ETF facts document is a disclosure document prescribed under subsection 71(1.1) of the *Securities Act* (Ontario).

(6) In Ontario, a security of an ETF is an investment fund security prescribed for the purposes of subsections 71(1.2) and (1.3) of the *Securities Act* (Ontario).

Combinations of ETF facts documents for delivery purposes

3C.3 (1) An ETF facts document delivered or sent under section 3C.2 must not be combined with any other materials or documents including, for greater certainty, another ETF facts document, except one or more of the following:

- (a) a general front cover pertaining to the package of combined materials and documents;
- (b) a trade confirmation which discloses the purchase of securities of the ETF;
- (c) an ETF facts document of another ETF if that ETF facts document is also being delivered or sent under section 3C.2;
- (d) the prospectus of the ETF;
- (e) any material or document incorporated by reference into the prospectus;
- (f) an account application document;
- (g) a registered tax plan application or related document.

(2) If a trade confirmation referred to in subsection (1)(b) is combined with an ETF facts document, any other disclosure documents required to be delivered or sent to satisfy a regulatory requirement for purchases listed in the trade confirmation may be combined with the ETF facts document.

(3) If an ETF facts document is combined with any of the materials or documents referred to in subsection (1), a table of contents specifying all documents must be combined with the ETF facts document, unless the only other documents combined with the ETF facts document are the general front cover permitted under paragraph (1)(a) or the trade confirmation permitted under paragraph (1)(b).

(4) If one or more ETF facts documents are combined with any of the materials or documents referred to in subsection (1), only the general front cover permitted under paragraph (1)(a), the table of contents required under subsection (3) and the trade confirmation permitted under paragraph (1)(b) may be placed in front of those ETF facts documents.

Combinations of ETF facts documents for filing purposes

3C.4 For the purposes of sections 6.2, 9.1 and 9.2, an ETF facts document may be combined with another ETF facts document in a prospectus.

Time of receipt

3C.5 (1) For the purpose of this Part, where the latest ETF facts document referred to in subsection 3C.2(2) is sent by prepaid mail, it shall be deemed conclusively to have been received in the ordinary course of mail by the person or company to whom it was addressed.

(2) Subsection (1) does not apply in Ontario.

(3) Subsection (1) does not apply in Québec.

Note: In Ontario, the same time of receipt is reflected in an amendment to s. 71(4) of the Securities Act (Ontario).

Dealer as agent

3C.6 (1) For the purpose of this Part, a dealer acts as agent of the purchaser if the dealer is acting solely as agent of the purchaser with respect to the purchase and sale in question and has not received and has no agreement to receive compensation from or on behalf of the vendor with respect to the purchase and sale.

(2) Subsection (1) does not apply in Ontario.

(3) Subsection (1) does not apply in Québec.

(4) Subsection (1) does not apply in British Columbia.

Note: In Ontario, the same agency rule is reflected in an amendment to s. 71(7) of the Securities Act (Ontario).

Purchaser's right of action for failure to deliver or send

3C.7 (1) A purchaser has a right of action if an ETF facts document is not delivered or sent as required by subsection 3C.2(2), as the purchaser would otherwise have when a prospectus is not delivered or sent as required under securities legislation and, for that purpose, an ETF facts document is a prescribed document under the statutory right of action.

(2) In Alberta, instead of subsection (1), section 206 of the *Securities Act* (Alberta) applies.

(3) In Manitoba, instead of subsection (1), section 141.2 of the *Securities Act* (Manitoba) applies and the ETF facts document is a prescribed document for the purposes of section 141.2.

(4) In Nova Scotia, instead of subsection (1), section 141 of the *Securities Act* (Nova Scotia) applies.

- (5) In Ontario, instead of subsection (1), section 133 of the *Securities Act* (Ontario) applies.
- (6) In Québec, instead of subsection (1), section 214.1 of the *Securities Act* (Québec) applies.
- (7) In British Columbia, for the purpose of subsection (1), “statutory right of action” means section 135 of the *Securities Act* (British Columbia).

PART 4 FINANCIAL STATEMENTS AND RELATED DOCUMENTS IN A LONG FORM PROSPECTUS

Application

4.1 (1) An issuer, other than an investment fund, that files a long form prospectus must include in the long form prospectus the financial statements and the management’s discussion and analysis required by this Instrument.

(2) Subject to Part 15, an investment fund that files a long form prospectus must include in the long form prospectus the financial statements and the management reports of fund performance required by this Instrument.

(3) For the purposes of this Part, “**financial statements**” do not include pro forma financial statements. **Audit of financial statements**

4.2 (1) Any financial statements included in a long form prospectus filed in the form of Form 41-101F1 must be audited in accordance with NI 52-107 unless an exception in section 32.5 or subsection 35.1(3) of Form 41-101F1 applies.

(2) Any financial statements, other than an interim financial report, included in or incorporated by reference into a long form prospectus of an investment fund filed in the form of Form 41-101F2 or Form 41-101F3 must meet the audit requirements of Part 2 of NI 81-106.

Review of unaudited financial statements

4.3 (1) Subject to subsection (2) and (3), any unaudited financial statements included in, or incorporated by reference into, a long 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 review of financial statements by a public accountant.

(2) Subsection (1) does not apply to an investment fund’s unaudited financial statements filed after the date of filing of the prospectus that are incorporated by reference into the prospectus under Part 15.

(3) 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 person or company 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 long form prospectus includes disclosure that the unaudited financial statements have not been reviewed.

Approval of financial statements and related documents

4.4 (1) An issuer must not file a long form prospectus unless each financial statement, each management's discussion and analysis, and each management report of fund performance, as applicable, of a person or company included in, or incorporated by reference into, the long form prospectus has been approved by the board of directors of the person or company.

(2) An investment fund that is a trust must not file a long form prospectus unless each financial statement and each management report of fund performance of the investment fund included in, or incorporated by reference into, the long form prospectus has been approved by the trustee or trustees of the investment fund or another person or company authorized to do so by the constating documents of the investment fund.

PART 5 CERTIFICATES

Interpretation

5.1 For the purposes of this Part,

- (a) **“issuer certificate form”** means a certificate in the form set out in
 - (i) section 37.2 of Form 41-101F1,
 - (ii) section 39.1 of Form 41-101F2,
 - (ii.1) section 9.1 of Part D of Form 41-101F3,
 - (iii) section 21.2 of Form 44-101F1,
 - (iv) NI 44-102 in
 - (A) section 1.1 of Appendix A,
 - (B) section 2.1 of Appendix A,
 - (C) section 1.1 of Appendix B, or
 - (D) section 2.1 of Appendix B, or
 - (v) NI 44-103 in
 - (A) paragraph 7 of subsection 3.2(1), or
 - (B) paragraph 3 of subsection 4.5(2), and
- (b) **“underwriter certificate form”** means a certificate in the form set out in
 - (i) section 37.3 of Form 41-101F1,
 - (ii) section 39.3 of Form 41-101F2,
 - (ii.1) section 9.3 of Part D of Form 41-101F3,
 - (iii) section 21.3 of Form 44-101F1,
 - (iv) NI 44-102 in
 - (A) section 1.2 of Appendix A,
 - (B) section 2.2 of Appendix A,
 - (C) section 1.2 of Appendix B, or
 - (D) section 2.2 of Appendix B, or
 - (v) NI 44-103 in
 - (A) paragraph 8 of subsection 3.2(1), or
 - (B) paragraph 4 of subsection 4.5(2).

Date of certificates

5.2 The date of the certificates in a prospectus or an amendment to a prospectus must be the same as the date of the prospectus or the amendment to the prospectus, as applicable.

Certificate of issuer

5.3 (1) Except in Ontario, a prospectus must contain a certificate signed by the issuer.

Note: In Ontario, section 58 of the Securities Act (Ontario) imposes a similar requirement that a prospectus contain a certificate of the issuer.¹

(2) A prospectus certificate that is required to be signed by the issuer under this Instrument or other securities legislation must be in the applicable issuer certificate form.

Corporate issuer

5.4 (1) Except in Ontario, if the issuer is a company, a prospectus certificate that is required to be signed by the issuer under this Instrument or other securities legislation must be signed

- (a) by the chief executive officer and the chief financial officer of the issuer, and
- (b) on behalf of the board of directors, by
 - (i) any two directors of the issuer, other than the persons referred to in paragraph (a) above, or
 - (ii) if the issuer has only three directors, two of whom are the persons referred to in paragraph (a), all of the directors of the issuer.

(2) Except in Ontario, if the regulator is satisfied that either or both of the chief executive officer or chief financial officer cannot sign a certificate in a prospectus, the regulator may accept a certificate signed by another officer.

Note: In Ontario, section 58 of the Securities Act (Ontario) imposes similar requirements regarding who must sign the issuer certificate.

¹ In Ontario, a number of prospectus related requirements in this Instrument are either set out in the *Securities Act* (Ontario) or Ontario does not have a similar requirement. We have identified carve-outs from the Instrument where a similar requirement is set out in the *Securities Act* (Ontario). Where no corresponding statutory provision has been identified for an Ontario carve-out, Ontario has generally not adopted a similar requirement. Notes included in this Instrument have been inserted for convenience of reference only and do not form part of this Instrument or have any force or effect as a rule or policy.

Trust issuer

5.5 (1) If the issuer is a trust, a prospectus certificate that is required to be signed by the issuer under this Instrument or other securities legislation must be signed by

- (a) the individuals who perform functions for the issuer similar to those performed by the chief executive officer and the chief financial officer of a company, and
- (b) two trustees of the issuer, on behalf of the trustees of the issuer.

(2) If a trustee that is signing the certificate of the issuer is

- (a) an individual, the individual must sign the certificate,
- (b) a company, the certificate must be signed
 - (i) by the chief executive officer and the chief financial officer of the trustee, and
 - (ii) on behalf of the board of directors of the trustee, by
 - (A) any two directors of the trustee, other than the persons referred to in subparagraph (i), or
 - (B) if the trustee has only three directors, two of whom are the persons referred to in subparagraph (i), all of the directors of the trustee,
- (c) a limited partnership, the certificate must be signed by each general partner of the limited partnership as described in subsection 5.6(2) in relation to an issuer that is a limited partnership, or
- (d) not referred to in paragraphs (a), (b) or (c), the certificate may be signed by any person or company with authority to bind the trustee.

(3) Despite subsections (1) and (2), if the issuer is an investment fund and the declaration of trust, trust indenture or trust agreement establishing the investment fund delegates the authority to do so, or otherwise authorizes an individual or company to do so, the certificate may be signed by the individual or company to whom the authority is delegated or that is authorized to sign the certificate.

(4) Despite subsections (1) and (2), if the trustees of an issuer, other than an investment fund, do not perform functions for the issuer similar to those performed by the directors of a company, the trustees are not required to sign the prospectus certificate of the issuer provided that at least two individuals who do perform functions for the issuer similar to those performed by the directors of a company sign the certificate.

(5) If the regulator is satisfied that an individual who performs functions for the issuer similar to those performed by either the chief executive officer or the chief financial officer of a company cannot sign a certificate in a prospectus, the regulator may accept a certificate signed by another individual.

Limited partnership issuer

5.6 (1) If the issuer is a limited partnership, a prospectus certificate that is required to be signed by the issuer under this Instrument or other securities legislation must be signed by

- (a) the individuals who perform functions for the issuer similar to those performed by the chief executive officer and the chief financial officer of a company, and
- (b) each general partner of the issuer.

(2) If a general partner of the issuer is

- (a) an individual, the individual must sign the certificate,
- (b) a company, the certificate must be signed
 - (i) by the chief executive officer and the chief financial officer of the general partner, and
 - (ii) on behalf of the board of directors of the general partner, by
 - (A) any two directors of the general partner, other than the persons referred to in subparagraph (i), or
 - (B) if the general partner has only three directors, two of whom are the persons referred to in subparagraph (i), all of the directors of the general partner,
- (c) a limited partnership, the certificate must be signed by each general partner of the limited partnership and, for greater certainty, this subsection applies to each general partner required to sign,
- (d) a trust, the certificate must be signed by the trustees of the general partner as described in subsection 5.5(2) in relation to an issuer that is a trust, or
- (e) not referred to in paragraphs (a) to (d), the certificate may be signed by any person or company with authority to bind the general partner.

(3) If the regulator is satisfied that an individual who performs functions for the issuer similar to those performed by either the chief executive officer or the chief financial officer of a company cannot sign a certificate in a prospectus, the regulator may accept a certificate signed by another individual.

Other issuer

5.7 If an issuer is not a company, trust or limited partnership, a prospectus certificate that is required to be signed by the issuer under this Instrument or other securities legislation must be signed by the persons or companies that, in relation to the issuer, are in a similar position or perform a similar function to the persons or companies required to sign under sections 5.4, 5.5 and 5.6.

Reverse takeovers

5.8 Except in Ontario, if an 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, a prospectus must contain a certificate, in the applicable issuer certificate form, signed

- (a) by the chief executive officer and the chief financial officer of the reverse takeover acquirer, and
- (b) on behalf of the board of directors of the reverse takeover acquirer, by
 - (i) any two directors of the reverse takeover acquirer, other than the persons referred to in paragraph (a) above, or
 - (ii) if the reverse takeover acquirer has only three directors, two of whom are the persons referred to in paragraph (a), all of the directors of the reverse takeover acquirer.

Certificate of underwriter

5.9 (1) Except in Ontario, a prospectus must contain a certificate signed by each underwriter who, with respect to the securities offered by the prospectus, is in a contractual relationship with the issuer or a securityholder whose securities are being offered by the prospectus.

Note: In Ontario, subsection 59(1) of the Securities Act (Ontario) imposes a similar requirement that a prospectus contain a certificate signed by each underwriter in a contractual relationship with the issuer.

(2) A prospectus certificate that is required to be signed by an underwriter under this Instrument or other securities legislation must be in the applicable underwriter certificate form.

(3) Except in Ontario, with the consent of the regulator, a certificate in a prospectus may be signed by the underwriter's agent duly authorized in writing by the underwriter.

Note: In Ontario, subsection 59(2) of the Securities Act (Ontario) provides a similar discretion to the Director to permit the certificate to be signed by an underwriter's agent.

Certificate of investment fund manager

5.10 (1) If the issuer has an investment fund manager, a prospectus must contain a certificate, in the applicable issuer certificate form, signed by the investment fund manager.

- (2)** If the investment fund manager is a company, the certificate must be signed
 - (a) by the chief executive officer and the chief financial officer of the investment fund manager, and

- (b) on behalf of the board of directors, by
 - (i) any two directors of the investment fund manager, other than the persons referred to in paragraph (a) above, or
 - (ii) if the investment fund manager has only three directors, two of whom are the persons referred to in paragraph (a), all of the directors of the investment fund manager.

(3) If the investment fund manager is a limited partnership, the certificate must be signed by the general partner of such limited partnership as described in subsection 5.6(2) in relation to an issuer that is a limited partnership.

Certificate of principal distributor

5.10.1 (1) If the issuer is an investment fund that has a principal distributor, a prospectus must contain a certificate, in the applicable underwriter certificate form, signed by the principal distributor.

(2) The certificate to be signed by the principal distributor must be signed by an officer or director of the principal distributor who is authorized to sign.

Certificate of promoter

5.11 (1) Except in Ontario, a prospectus must contain a certificate signed by each promoter of the issuer.

Note: In Ontario, subsection 58(1) of the Securities Act (Ontario) imposes a similar requirement that a prospectus shall contain a certificate signed by each promoter of the issuer.

(2) A prospectus certificate required to be signed by a promoter under this Instrument or other securities legislation must be in the applicable issuer certificate form.

(3) Except in Ontario, the regulator may require any person or company who was a promoter of the issuer within the two preceding years to sign a certificate to the prospectus, in the applicable issuer certificate form.

Note: In Ontario, subsection 58(6) of the Securities Act (Ontario) provides the Director with similar discretion to require a person or company who was a promoter of the issuer within the two preceding years to sign a prospectus certificate, subject to such conditions as the Director considers proper.

(4) Despite subsection (3), in British Columbia, the powers of the regulator with respect to the matters described in subsection (3) are set out in the *Securities Act* (British Columbia).

(5) Except in Ontario, with the consent of the regulator, a certificate of a promoter in a prospectus may be signed by an agent duly authorized in writing by the person or company required to sign the certificate.

Note: In Ontario, subsection 58(7) of the Securities Act (Ontario) provides the Director with similar discretion to permit a certificate in a prospectus to be signed by an agent of a promoter.

Certificate of credit supporter

5.12 (1) If there is a related credit supporter of the issuer or a subsidiary of the issuer, a prospectus must contain a certificate of the related credit supporter, in the applicable issuer certificate form, signed

- (a) by the chief executive officer and the chief financial officer of the credit supporter, and
- (b) on behalf of the board of directors of the credit supporter, by
 - (i) any two directors of the credit supporter, other than the persons referred to in paragraph (a) above, or
 - (ii) if the credit supporter has only three directors, two of whom are the persons referred to in paragraph (a), all of the directors of the credit supporter.

(2) With the consent of the regulator, a certificate in a prospectus may be signed by the credit supporter's agent duly authorized in writing by the credit supporter.

(3) Except in Ontario, the regulator may require any other person or company that is a credit supporter of either the issuer or a subsidiary of the issuer to sign a certificate to the prospectus, in the applicable issuer certificate form.

Note: In Ontario, subsection 58(6) of the Securities Act (Ontario) provides the Director with similar discretion to require a person or company who is a guarantor of the securities being distributed to sign a prospectus certificate, subject to such conditions as the Director considers proper.

(4) Despite subsection (3), in British Columbia, the powers of the regulator with respect to the matters described in subsection (3) are set out in the *Securities Act* (British Columbia).

Certificate of selling securityholders

5.13 (1) Except in Ontario, the regulator may require any person or company that is a selling securityholder to sign a certificate to the prospectus, in the applicable issuer certificate form.

(2) Despite subsection (1), in British Columbia, the powers of the regulator with respect to the matters described in subsection (1) are set out in the *Securities Act* (British Columbia).

Certificate of operating entity

5.14 (1) For the purposes of this section, the term "operating entity" means, in relation to an issuer, a person or company through which the business of the issuer, or a

material part of the business of the issuer, is conducted and for which the issuer is required under securities legislation, or has undertaken, to provide to its securityholders separate financial statements of the person or company if the issuer's financial statements do not include consolidated information concerning the person or company.

- (2)** A prospectus of an issuer that is a trust must contain a certificate, in the applicable issuer certificate form, signed
- (a) by the chief executive officer and the chief financial officer of the operating entity, and
 - (b) on behalf of the board of directors of the operating entity, by
 - (i) any two directors of the operating entity, other than the persons referred to in paragraph (a) above, or
 - (ii) if the operating entity has only three directors, two of whom are the persons referred to in paragraph (a), all of the directors of the operating entity.

Certificate of other persons

5.15 (1) Except in Ontario, the regulator may, in its discretion, require any person or company to sign a certificate to the prospectus, in the form that the regulator considers appropriate.

(2) Despite subsection (1), in British Columbia, the powers of the regulator with respect to the matters described in subsection (1) are set out in the *Securities Act* (British Columbia).

PART 6 AMENDMENTS

Form of amendment

- 6.1(1)** An amendment to a prospectus must be either
- (a) an amendment that does not fully restate the text of the prospectus, or
 - (b) an amended and restated prospectus.
- (2)** An amendment to a prospectus must be identified as follows:
- (a) for an amendment that does not restate the text of the prospectus:
“Amendment no. [insert amendment number] dated [insert date of amendment] to [identify prospectus] dated [insert date of prospectus being amended].”; or
 - (b) for an amended and restated prospectus:

“Amended and restated [identify prospectus] dated [insert date of amendment], amending and restating [identify prospectus] dated [insert date of prospectus being amended].”

(3) Despite subsections (1) and (2), an amendment to a plan summary must be prepared in accordance with Part A of Form 41-101F3 without any further identification, and dated as of the date the plan summary is being amended.

(4) An amendment to an ETF facts document must be prepared in accordance with Form 41-101F4 without any further identification, and dated as of the date the ETF facts document is being amended.

Required documents for filing an amendment

6.2 An issuer that files an amendment to a prospectus must

- (a) file a signed copy of the amendment,
- (b) deliver to the regulator a copy of the prospectus blacklined to show the changes made by the amendment, if the amendment is also a restatement of the prospectus,
- (c) file or deliver any supporting documents required under this Instrument or other securities legislation to be filed or delivered with a prospectus, unless the documents originally filed or delivered with the prospectus are correct as of the date the amendment is filed,
- (d) in case of an amendment to a final prospectus, file any consent letter required to be filed with a final prospectus, dated as of the date of the amendment, and
- (e) in the case of an ETF, if the amendment relates to information in the ETF facts document,
 - (i) file an amendment to the ETF facts document, and
 - (ii) deliver to the regulator a copy of the ETF facts document, blacklined to show changes, including text deletions, from the latest ETF facts document previously filed.

Required documents for filing an amendment to an ETF facts document

6.2.1 An ETF that files an amendment to an ETF facts document must, unless section 6.2 applies,

- (a) file an amendment to the corresponding prospectus, certified in accordance with Part 5,
- (b) deliver to the regulator a copy of the ETF facts document, blacklined to show changes, including text deletions, from the latest ETF facts document previously filed, and
- (c) file or deliver any other supporting documents required under this Instrument or other securities legislation, unless the documents

originally filed or delivered are correct as of the date the amendment is filed.

Auditor's comfort letter

- 6.3** An issuer must deliver a new auditor's comfort letter, if an amendment to
- (a) a preliminary long form prospectus materially affects, or relates to, an auditor's comfort letter delivered under subparagraph 9.1(b)(iii),
 - (b) a preliminary short form prospectus materially affects, or relates to, an auditor's comfort letter delivered under subparagraph 4.1(b)(ii) of NI 44-101.

Delivery of amendments

6.4 Except in Ontario, an issuer must deliver an amendment to a preliminary prospectus as soon as practicable to each recipient of the preliminary prospectus according to the record of recipients required to be maintained under securities legislation.

Note: In Ontario, subsection 57(3) of the Securities Act (Ontario) imposes a similar requirement regarding the delivery of amendments to a preliminary prospectus.

Amendment to a preliminary prospectus

6.5 (1) Except in Ontario, if, after a receipt for a preliminary prospectus is issued but before a receipt for the final prospectus is issued, a material adverse change occurs, an amendment to the preliminary prospectus must be filed as soon as practicable, but in any event within 10 days after the day the change occurs.

Note: In Ontario, subsection 57(1) of the Securities Act (Ontario) imposes a similar requirement to file an amendment to a preliminary prospectus where there has been a material adverse change.

(2) The regulator must issue a receipt for an amendment to a preliminary prospectus as soon as practicable after the amendment is filed.

Amendment to a final prospectus

6.6 (1) Except in Ontario, if, after a receipt for a final prospectus is issued but before the completion of the distribution under the final prospectus, a material change occurs, an issuer must file an amendment to the final prospectus as soon as practicable, but in any event within 10 days after the day the change occurs.

Note: In Ontario, subsection 57(1) of the Securities Act (Ontario) imposes a similar requirement to file an amendment to a final prospectus where there has been a material change.

(2) Except in Ontario, if, after a receipt for a final prospectus or an amendment to the final prospectus is issued but before the completion of the distribution under the final prospectus or the amendment to the final prospectus, securities in addition to the securities previously disclosed in the final prospectus or the amendment to the final prospectus are to be distributed, an amendment to the final prospectus disclosing the additional securities must be filed, as soon as practicable, but in any event within 10 days after the decision to increase the number of securities offered.

Note: In Ontario, subsection 57(2) of the Securities Act (Ontario) imposes a similar requirement to file an amendment to a prospectus any time there is a proposed distribution of securities in addition to that disclosed under the prospectus.

(3) Except in Ontario, the regulator must issue a receipt for an amendment to a final prospectus filed under this section unless the regulator considers that there are grounds set out in securities legislation that would cause the regulator not to issue the receipt for a prospectus.

Note: In Ontario, subsection 57(2.1) of the Securities Act (Ontario) imposes a similar obligation for the Director to issue a receipt for an amendment to a prospectus unless there are proper grounds for refusing the receipt.

(4) Except in Ontario, the regulator must not refuse to issue a receipt under subsection (3) without giving the issuer who filed the prospectus an opportunity to be heard.

Note: In Ontario, subsections 57(2.1) and 61(3) of the Securities Act (Ontario) impose a similar restriction on the Director to refuse to issue a receipt for a prospectus without first giving an issuer an opportunity to be heard.

(5) Except in Ontario, an issuer must not proceed with a distribution or additional distribution if an amendment to a final prospectus is required to be filed until a receipt for the amendment to the final prospectus is issued by the regulator.

Note: In Ontario, subsection 57(2.2) of the Securities Act (Ontario) imposes a similar restriction in respect of a distribution or additional distribution before a receipt is issued for an amendment to the final prospectus.

(6) Subsection (5) does not apply to an investment fund in continuous distribution.

Note: In Ontario, section 2.2 of OSC Rule 41-801 Implementing National Instrument 41-101 General Prospectus Requirements and Consequential Amendments provides a similar exemption for an investment fund in continuous distribution from the requirement to obtain a receipt prior to making a distribution or additional distribution under an amendment to a final prospectus.

PART 7

NON-FIXED PRICE OFFERINGS AND REDUCTION OF OFFERING PRICE UNDER A FINAL PROSPECTUS APPLICATION

7.1 This Part does not apply to an investment fund in continuous distribution.

Non-fixed price offerings and reduction of offering price

7.2 (1) A person or company distributing a security under a prospectus must do so at a fixed price.

(2) Despite subsection (1), and subject to subsection (2.1), securities may be distributed for cash at non-fixed prices under a prospectus if the securities have received a credit rating, on a provisional or final basis, from at least one designated rating organization or its DRO affiliate at the time of

- (a) the filing of the preliminary short form prospectus, if the issuer is filing a prospectus in the form of a short form prospectus under NI 44-101, or
- (b) the filing of the long form prospectus.

(2.1) If the only credit ratings of the securities referred to in subsection (2) are from Kroll Bond Rating Agency, Inc., its DRO affiliate, any successor credit rating organization of Kroll Bond Rating Agency, Inc. or any DRO affiliate of any successor credit rating organization of Kroll Bond Rating Agency, Inc., subsection (2) does not apply unless the distribution is of asset-backed securities.

(3) Despite subsection (1), if securities are distributed for cash under a prospectus, the price of the securities may be decreased from the initial offering price disclosed in the prospectus and, after such a decrease, changed from time to time to an amount not greater than the initial offering price, without filing an amendment to the prospectus to reflect the change, if

- (a) the securities are distributed through one or more underwriters that have agreed to purchase all of the securities at a specified price,
- (b) the proceeds to be received by the issuer or selling securityholders are disclosed in the prospectus as being fixed, and
- (c) the underwriters have made a reasonable effort to sell all of the securities distributed under the prospectus at the initial offering price disclosed in the final prospectus.

(4) Despite subsections (2) and (3), the price at which securities may be acquired on exercise of rights must be fixed.

PART 8 BEST EFFORTS DISTRIBUTIONS

Application

8.1 This Part does not apply to an investment fund in continuous distribution.

Distribution period

8.2 (1) Unless an amendment to the final prospectus is filed and the regulator has issued a receipt for the amendment, if securities are being distributed on a best efforts

basis, the distribution must cease within 90 days after the date of the receipt for the final prospectus.

(2) Unless a further amendment to the final prospectus is filed and the regulator has issued a receipt for the further amendment, if an amendment to a final prospectus is filed and the regulator has issued a receipt for the amendment under subsection (1), the distribution must cease within 90 days after the date of the receipt for the amendment to the final prospectus.

(3) The total period of the distribution under subsections (1) and (2) must not end more than 180 days from the date of receipt for the final prospectus.

Minimum amount of funds

8.3 If securities are being distributed on a best efforts basis, other than an offering of securities to be distributed continuously, and the prospectus discloses that a minimum amount of funds must be raised,

- (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 the minimum amount of funds stipulated in the final prospectus has been raised, and
- (b) if the minimum amount of funds is not raised within the appropriate period of the distribution prescribed by section 8.2, the person or company holding the funds in trust referred to in paragraph (a) must return the funds to the subscribers without any deductions.

PART 8A RIGHTS OFFERINGS

Application and definitions

8A.1 (1) This Part applies to an issuer that files a preliminary or final prospectus to distribute rights.

(2) In this Part,

“additional subscription privilege” means a privilege, granted to a holder of a right, to subscribe for a security not subscribed for by any holder under a basic subscription privilege;

“basic subscription privilege” means a privilege to subscribe for the number or amount of securities set out in a rights certificate held by the holder of the rights certificate;

“managing dealer” means a person or company that has entered into an agreement with an issuer under which the person or company has agreed to organize and participate in the solicitation of the exercise of the rights issued by the issuer;

“market price” means, for securities of a class for which there is a published market,

- (a) except as provided in paragraph (b),
 - (i) if the published market provides a closing price, the simple average of the closing price of securities of that class on the published market for each of the trading days on which there was a closing price falling not more than 20 trading days immediately before the day as of which the market price is being determined, or
 - (ii) if the published market does not provide a closing price, but provides only the highest and lowest prices of securities of the class traded, the average of the simple averages of the highest and lowest prices of securities of the class on the published market for each of the trading days on which there were highest and lowest prices falling not more than 20 trading days immediately before the day as of which the market price is being determined, or
- (b) if trading of securities of the class on the published market has occurred on fewer than 10 of the immediately preceding 20 trading days, the average of the following amounts established for each of the 20 trading days immediately before the day as of which the market price is being determined:
 - (i) the average of the closing bid and closing ask prices for each day on which there was no trading;
 - (ii) if the published market
 - (A) provides a closing price of securities of the class for each day that there was trading, the closing price, or
 - (B) provides only the highest and lowest prices, the average of the highest and lowest prices of securities of that class for each day that there was trading;

“published market” means, for a class of securities, a marketplace on which the securities are traded, if the prices at which they have been traded on that marketplace are regularly

- (a) disseminated electronically, or
- (b) published in a newspaper or business or financial publication of general and regular paid circulation;

“soliciting dealer” means a person or company whose interest in a distribution of rights is limited to soliciting the exercise of the rights by holders of those rights;

“stand-by commitment” means an agreement by a person or company to acquire the securities of an issuer not subscribed for under the basic subscription privilege or the additional subscription privilege.

(3) For the purpose of the definition of “market price”, if there is more than one published market for a security and

- (a) only one of the published markets is in Canada, the market price is determined solely by reference to that market,
- (b) more than one of the published markets is in Canada, the market price is determined solely by reference to the published market in Canada on which the greatest volume of trading in the particular class of securities occurred during the 20 trading days immediately before the date as of which the market price is being determined, and
- (c) none of the published markets are in Canada, the market price is determined solely by reference to the published market on which the greatest volume of trading in the particular class of securities occurred during the 20 trading days immediately before the date as of which the market price is being determined.

Filing of prospectus for a rights offering

8A.2 (1) An issuer must not file a prospectus for a distribution of rights unless all of the following apply:

- (a) in addition to qualifying the distribution of the rights, the prospectus qualifies the distribution of the securities issuable upon the exercise of the rights;
- (b) if there is a managing dealer, the managing dealer complies with section 5.9 as if the dealer were an underwriter;
- (c) the exercise period for the rights is at least 21 days after the date on which the prospectus is sent to security holders;
- (d) the subscription price for a security to be issued upon the exercise of a right is,
 - (i) if there is a published market for the security, lower than the market price of the security on the date of the final prospectus, or
 - (ii) if there is no published market for the security, lower than the fair value of the security on the date of the final prospectus unless the issuer restricts all of its insiders from increasing their proportionate interest in the issuer through the exercise of the rights distributed under the prospectus or through a stand-by commitment.

(2) If subparagraph (1)(d)(ii) applies, the issuer must deliver to the regulator or, in Québec, the securities regulatory authority independent evidence of fair value.

Additional subscription privilege

8A.3 An issuer must not grant an additional subscription privilege to a holder of a right unless all of the following apply:

- (a) the issuer grants the additional subscription privilege to all holders of a right;
- (b) each holder of a right is entitled to receive, upon the exercise of the additional subscription privilege, the number or amount of securities equal to the lesser of
 - (i) the number or amount of securities subscribed for by the holder under the additional subscription privilege, and
 - (ii) the number calculated in accordance with the following formula:
 $x(y/z)$ where
 x = the aggregate number or amount of securities available through unexercised rights after giving effect to the basic subscription privilege;
 y = the number of rights exercised by the holder under the basic subscription privilege;
 z = the aggregate number of rights exercised under the basic subscription privilege by holders of the rights that have subscribed for securities under the additional subscription privilege;
- (c) all unexercised rights have been allocated on a pro rata basis to holders who subscribed for additional securities under the additional subscription privilege;
- (d) the subscription price for the additional subscription privilege is the same as the subscription price for the basic subscription privilege.

Stand-by commitments

8A.4 If an issuer enters into a stand-by commitment for a distribution of rights, all of the following apply:

- (a) the issuer must grant an additional subscription privilege to all holders of a right;
- (b) the issuer must deliver to the regulator or, in Québec, the securities regulatory authority evidence that the person or company providing the stand-by commitment has the financial ability to carry out the stand-by commitment;
- (c) the subscription price under the stand-by commitment must be the same as the subscription price under the basic subscription privilege.

Appointment of depository

8A.5 If an issuer has stated in a prospectus that no security will be issued upon the exercise of a right unless a stand-by commitment is provided, or unless proceeds of no

less than the stated minimum amount are received by the issuer, all of the following apply:

- (a) the issuer must appoint a depository to hold all money received upon the exercise of the rights until either the stand-by commitment is provided or the stated minimum amount is received and the depository is one of the following:
 - (i) a Canadian financial institution;
 - (ii) a registrant in the jurisdiction in which the funds are proposed to be held that is acting as managing dealer for the distribution of the rights, or, if there is no managing dealer for the distribution of the rights, that is acting as a soliciting dealer;
- (b) the issuer and the depository must enter into an agreement, the terms of which require the depository to return the money referred to in paragraph (a) in full to the holders of rights that have subscribed for securities under the distribution of the rights if the stand-by commitment is not provided or if the stated minimum amount is not received by the depository during the exercise period for the rights.

Amendment

8A.6 If an issuer has filed a final prospectus for a distribution of rights, the issuer must not change the terms of the distribution.

PART 9 REQUIREMENTS FOR FILING A LONG FORM PROSPECTUS

Required documents for filing a preliminary or pro forma long form prospectus

- 9.1 (1)** An issuer that files a preliminary or pro forma long form prospectus must
- (a) file the following with the preliminary or pro forma long form prospectus
 - (i) **Signed Copy** – in the case of a preliminary long form prospectus, a signed copy of the preliminary long form prospectus;
 - (ii) **Documents Affecting the Rights of Securityholders** – a copy of the following documents, and any amendments to the following documents, that have not previously been filed:
 - (A) articles of incorporation, amalgamation, continuation or any other constating or establishing documents of the issuer, unless the constating or establishing document is a statutory or regulatory instrument,

- (B) by-laws or other corresponding instruments currently in effect,
 - (C) any securityholder or voting trust agreement that the issuer has access to and that can reasonably be regarded as material to an investor in securities of the issuer,
 - (D) any securityholders' rights plans or other similar plans, and
 - (E) any other contract of the issuer or a subsidiary of the issuer that creates or can reasonably be regarded as materially affecting the rights or obligations of the issuer's securityholders generally;
- (iii) **Material Contracts** – a copy of any material contract required to be filed under section 9.3;
- (iv) **Investment Fund Documents** – if the issuer is an investment fund, the documents filed under subparagraphs (ii) and (iii) must include a copy of
- (A) any declaration of trust or trust agreement of the investment fund, limited partnership agreement, or any other constating or establishing documents of the investment fund,
 - (B) any agreement of the investment fund or the trustee with the manager of the investment fund,
 - (C) any agreement of the investment fund, the manager or trustee with the portfolio advisers of the investment fund,
 - (D) any agreement of the investment fund, the manager or trustee with the custodian of the investment fund, and
 - (E) any agreement of the investment fund, the manager or trustee with the principal distributor of the investment fund;
- (iv.1) if the issuer is a scholarship plan, in addition to the documents filed under subparagraph (iv), a copy of the scholarship plan contract for the scholarship plan under the prospectus;
- (iv.2) if the issuer is an ETF, in addition to the documents filed under subparagraph (iv), an ETF facts document for each class or series of securities of the ETF;
- (v) **Mining Reports** – if the issuer has a mineral project, the technical reports required to be filed with a preliminary long form prospectus under NI 43-101;

- (vi) **Reports and Valuations** – a copy of each report or valuation referred to in the preliminary long form prospectus for which a consent is required to be filed under section 10.1 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 subparagraph (v); and
 - (vii) **Marketing Materials** – a copy of any template version of the marketing materials required to be filed under paragraph 13.7(1)(e); and
- (b) deliver to the regulator, concurrently with the filing of the preliminary or pro forma long form prospectus, the following:
- (i) **Blackline Copy of the Prospectus** – in the case of a pro forma prospectus, a copy of the pro forma prospectus blacklined to show changes and the text of deletions from the latest prospectus filed;
 - (i.1) **Blackline Copy of the ETF Facts Document** – in the case of a pro forma prospectus for an ETF, a copy of the pro forma ETF facts document for each class or series of securities of the ETF blacklined to show changes and the text of deletions from the latest ETF facts document previously filed;
 - (ii) **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]; and
 - (iii) **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 or pro forma long 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

- (iv) **Marketing Materials** – a copy of any template version of the marketing materials required to be delivered under paragraph 13.7(4)(c) or 13.12(2)(c).

(2) Despite subparagraph (1)(b)(ii), 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 or pro-forma long 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 or proforma long 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 or pro forma long 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)(ii) 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 or proforma long 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 or pro-forma long form prospectus.

Required documents for filing a final long form prospectus

9.2 An issuer that files a final long form prospectus must

- (a) file the following with the final long form prospectus:
 - (i) **Signed Copy** – a signed copy of the final long form prospectus;

- (ii) **Documents Affecting the Rights of Securityholders** – a copy of any document described under subparagraph 9.1(1)(a)(ii) that has not previously been filed;
- (iii) **Material Contracts** – a copy of each material contract required to be filed under section 9.3 that has not previously been filed under subparagraph 9.1(1)(a)(iii);
- (iv) **Investment Fund Documents** – a copy of any document described under subparagraph 9.1(1)(a)(iv), (iv.1) or (iv.2) that has not previously been filed;
- (v) **Other Reports and Valuations** – a copy of any report or valuation referred to in the final long form prospectus, for which a consent is required to be filed under section 10.1 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 9.1(1)(a)(v) or (vi);
- (vi) **Issuer’s Submission to Jurisdiction** – a submission to jurisdiction and appointment of agent for service of process of the issuer in the form set out in Appendix B, if an issuer is incorporated or organized in a foreign jurisdiction and does not have an office in Canada;
- (vii) **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 or other securities legislation, other than an issuer,in the form set out in Appendix C, if the person or company is incorporated or organized in a foreign jurisdiction and does not have an office in Canada or is an individual who resides outside of Canada;
- (viii) **Expert’s Consents** – the consents required to be filed under section 10.1;
- (ix) **Credit Supporter’s Consent** – the written consent of the credit supporter to the inclusion of its financial statements in the final long form prospectus, if financial statements of a credit supporter are required under Item 33 of Form 41-101F1 to be included in a final long form prospectus and a certificate of the credit supporter is not required under section 5.12 to be included in the final long form prospectus;

- (x) **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, so long as the securities being distributed are issued and outstanding;
- (xi) **Undertaking in Respect of Continuous Disclosure** – An undertaking of the issuer to provide to its securityholders separate financial statements for an operating entity that investors need to make an informed decision about investing in the issuer’s securities if
 - (A) the issuer is an income trust that is formed as a mutual fund trust as that term is used in the *Income Tax Act* (Canada), other than an “investment fund” as defined in section 1.1 of NI 81-106,
 - (B) the underlying business or income producing assets of the operating entity generate net cash flow available for distribution to the issuer’s securityholders, and
 - (C) the issuer’s performance and prospects depend primarily on the performance and operations of the operating entity;
- (xii) **Undertaking to File Agreements, Contracts and Material Contracts** – if an agreement, contract or declaration of trust under subparagraph (ii) or (iv) or a material contract under subparagraph (iii) has not been executed before the filing of the final long 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 long form prospectus, an undertaking of the issuer to the securities regulatory authority to file the agreement, contract, declaration of trust or material contract promptly and in any event no later than seven days after execution of the agreement, contract, declaration of trust or material contract;
- (xii.1) **Undertaking to File Unexecuted Documents** – if a document referred to in subparagraph (ii) does not need to be executed in order to become effective and has not become effective before the filing of the final long 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 long 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;
- (xiii) **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 a meeting is given to its registered holders of voting securities; and

- (xiv) **Marketing Materials** – a copy of any template version of the marketing materials required to be filed under paragraph 13.7(1)(e), 13.7(7)(a), 13.8(1)(e) or 13.8(7)(b) that has not previously been filed; and
- (b) deliver to the regulator, no later than the filing of the final long form prospectus
 - (i) **Blackline Copy of the Prospectus** – a copy of the final long form prospectus blacklined to show changes from the preliminary or pro forma long form prospectus;
 - (i.1) **Blackline Copy of the ETF Facts Document** – in the case of a final long form prospectus for an ETF, a copy of the ETF facts document for each class or series of securities of the ETF blacklined to show changes and the text of deletions from the preliminary or pro forma ETF facts document;
 - (ii) **Communication with Exchange** – 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;
 - (iii) **Marketing Materials** – a copy of any template version of the marketing materials required to be delivered under paragraph 13.7(4)(c), 13.8(4)(c) or 13.12(2)(c) that has not previously been delivered;
 - (iv) **Evidence of financial ability** – the evidence of financial ability required to be delivered under section 8A.4 if it has not previously been delivered; and
 - (v) **Evidence of fair value** – the evidence of fair value required to be delivered under subsection 8A.2(2) if it has not previously been delivered.

Material contracts

9.3(1) Unless previously filed, an issuer that files a long form prospectus must file a material contract entered into

- (a) since the beginning of the last financial year ending before the date of the prospectus, or
- (b) before the beginning of the last financial year ending before the date of the prospectus if that material contract is still in effect.

- (2)** Despite subsection (1), an issuer is not required to file a material contract entered into in the ordinary course of business unless the material contract is
- (a) a contract to which directors, officers, promoters, selling securityholders or underwriters are parties, other than a contract of employment,
 - (b) a continuing contract to sell the majority of the issuer's products or services or to purchase the majority of the issuer's requirements of goods, services, or raw materials,
 - (c) a franchise or licence or other agreement to use a patent, formula, trade secret, process or trade name,
 - (d) a financing or credit agreement with terms that have a direct correlation with anticipated cash distributions,
 - (e) an external management or external administration agreement, or
 - (f) a contract on which the issuer's business is substantially dependent.
- (3)** A provision in a material contract filed pursuant to subsections (1) or (2) may be omitted or marked to be unreadable if an executive officer of the issuer reasonably believes that disclosure of that provision would be seriously prejudicial to the interests of the issuer or would violate confidentiality provisions.
- (4)** Subsection (3) does not apply if the provision relates to
- (a) debt covenants and ratios in financing or credit agreements,
 - (b) events of default or other terms relating to the termination of the material contract, or
 - (c) other terms necessary for understanding the impact of the material contract on the business of the issuer.
- (5)** If a provision is omitted or marked to be unreadable under subsection (3), the issuer must include a description of the type of information that has been omitted or marked to be unreadable immediately after the provision in the copy of the material contract filed by the issuer.
- (6)** Despite subsections (1) and (2), an issuer is not required to file a material contract entered into before January 1, 2002 if the issuer is a reporting issuer in at least one jurisdiction immediately before filing the prospectus.

PART 10 CONSENTS AND LICENCES, REGISTRATIONS AND APPROVALS

Consents of experts

- 10.1 (1)** Subject to subsection (1.1), an issuer must file the written consent of
- (a) any solicitor, auditor, accountant, engineer, or appraiser,
 - (b) any notary in Québec, and

- (c) any person or company whose profession or business gives authority to a statement made by that person or company.

(1.1) Subsection (1) does not apply unless the person or company is named in a prospectus or an amendment to a prospectus directly or, if applicable, in a document incorporated by reference into the prospectus or amendment,

- (a) as having prepared or certified any part of the prospectus or the amendment,
- (b) as having opined on financial statements from which selected information included in the prospectus has been derived and which audit opinion is referred to in the prospectus directly or in a document incorporated by reference, or
- (c) as having prepared or certified a report, valuation, statement or opinion referred to in the prospectus or the amendment directly or in a document incorporated by reference.

(2) A consent referred to in subsection (1) must

- (a) be filed no later than the time the final prospectus or the amendment to the final prospectus is filed or, for the purposes of future financial statements that have been incorporated by reference in a prospectus under subsection 15.2(3), no later than the date that those financial statements are filed,
- (b) state that the person or company being named consents
 - (i) to being named, and
 - (ii) to the use of that person or company's report, valuation, statement or opinion,
- (c) refer to the report, valuation, statement or opinion stating the date of the report, valuation, statement or opinion, and
- (d) contain a statement that the person or company referred to in subsection (1)
 - (i) has read the prospectus, and
 - (ii) has no reason to believe that there are any misrepresentations in the information contained in it that are
 - (A) derived from the report, valuation, statement or opinion, or
 - (B) within the knowledge of the person or company as a result of the services performed by the person or company in connection with the report, financial statements, valuation, statement or opinion.

(3) In addition to any other requirement of this section, the consent of an auditor or accountant must also state

- (a) the dates of the financial statements on which the report of the person or company is made, and

- (b) that the person or company has no reason to believe that there are any misrepresentations in the information contained in the prospectus that are
 - (i) derived from the financial statements on which the person or company has reported, or
 - (ii) within the knowledge of the person or company as a result of the audit of the financial statements.

(4) Subsection (1) does not apply to a designated rating organization or its DRO affiliate that issues a rating to the securities being distributed under the prospectus.

Licences, registrations and approvals

10.2 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,

- (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 stated principal use of proceeds have not been obtained within 90 days from the date of receipt of the final prospectus, the trustee must return the funds to subscribers.

PART 11 OVER-ALLOCATION AND UNDERWRITERS

Over-allocation

11.1 Securities that are sold to create the over-allocation position in connection with a distribution under a prospectus must be distributed under the prospectus.

Distribution of securities under a prospectus to an underwriter

11.2 Except as required under section 11.3, no person or company may distribute securities under a prospectus to any person or company acting as an underwriter in connection with the distribution of securities under the prospectus, other than

- (a) an over-allotment option granted to one or more persons or companies for acting as an underwriter in connection with the

distribution or any security issuable or transferable on the exercise of such an over-allotment option; or

- (b) securities issued or paid as compensation to one or more persons or companies for acting as an underwriter in respect of other securities that are distributed under the prospectus, where the number or principal amount of the securities issued as compensation, on an as-if-converted basis, does not in the aggregate exceed 10% of the total of the base offering on an as-if converted basis plus any securities that would be acquired upon the exercise of an over-allotment option.

Take-up by underwriter

11.3 If an underwriter has agreed to purchase a specified number or principal amount of the securities at a specified price, the underwriter must take up the securities, if at all, within 42 days after the date of the receipt for the final prospectus.

PART 12 RESTRICTED SECURITIES

Application

12.1 This Part does not apply to

- (a) securities of mutual funds,
- (b) securities that carry a right to vote subject to a restriction on the number or percentage of securities that may be voted or owned by persons or companies that are not citizens or residents of Canada or that are otherwise considered as a result of any law applicable to the issuer to be non-Canadians, but only to the extent of the restriction, and
- (c) securities that are subject to a restriction, imposed by any law governing the issuer, on the level of ownership of the securities by a person, company or combination of persons or companies, but only to the extent of the restriction.

Use of restricted security term

12.2 (1) An issuer must not refer to a security in a prospectus by a term or a defined term that includes the word “common” unless the security is an equity security to which are attached voting rights exercisable in all circumstances, irrespective of the number or percentage of securities owned, that are not less, per security, than the voting rights attached to any other outstanding security of the issuer.

(2) An issuer must not refer in a prospectus to a term or defined term that includes the word “preference” or “preferred”, unless the security is a security, other

than an equity security, to which is attached a preference or right over any class of equity security of the issuer.

(3) If restricted securities are referred to in the constating documents of the issuer by a term that is different from the appropriate restricted security term, the restricted securities may be described, in one place only in the prospectus, by the term used in the constating documents of the issuer; provided that, the description is not on the front page of the prospectus and is in the same type face and type size as that used generally in the body of the prospectus.

(4) A class of securities that is or may become restricted securities must be referred to in a prospectus using a term or a defined term that includes the appropriate restricted security term.

Prospectus filing eligibility

12.3 (1) Subject to subsection (3), an issuer must not file a prospectus under which restricted securities, subject securities or securities that are, directly or indirectly, convertible into, or exercisable or exchangeable for, restricted securities or subject securities, are distributed unless

- (a) the distribution has received prior majority approval of the securityholders of the issuer in accordance with applicable law, including approval on a class basis if required and excluding any votes attaching at the time to securities held, directly or indirectly, by affiliates of the issuer or control persons of the issuer, or
- (b) at the time of any restricted security reorganization related to the securities to be distributed
 - (i) the restricted security reorganization received prior majority approval of the securityholders of the issuer in accordance with applicable law, including approval on a class basis if required and excluding any votes attaching at the time to securities held, directly or indirectly, by affiliates of the issuer or control persons of the issuer,
 - (ii) the issuer was a reporting issuer in at least one jurisdiction, and
 - (iii) no purposes or business reasons for the creation of restricted securities were disclosed that are inconsistent with the purpose of the distribution.

(2) Subject to subsection (3), for each approval referred to in subsection (1), the issuer must have provided prior written disclosure in an information circular or notice to its securityholders that included

- (a) the name of each affiliate of the issuer that was a beneficial owner of securities of the issuer and the number of securities beneficially owned, directly or indirectly, by the affiliate as of the date of the information circular or notice to the extent known to the issuer after reasonable inquiry,

- (b) the name of each control person and the number of securities beneficially owned, directly or indirectly, by the control person as of the date of the information circular or notice, to the extent known to the issuer after reasonable inquiry,
 - (c) a statement of the number of votes attaching to the securities that were excluded for the purpose of the approval to the extent known to the issuer after reasonable inquiry, and
 - (d) the purpose and business reasons for the creation of restricted securities.
- (3)** Subsections (1) and (2) do not apply if
- (a) the securities offered by the prospectus are of an existing class of restricted securities that were created before December 21, 1984,
 - (b) the issuer was a private issuer immediately before filing the prospectus,
 - (c) the securities offered by the prospectus are of the same class as securities distributed under a previous prospectus that was filed by an issuer that was, at the time of filing the previous prospectus, a private issuer,
 - (d) the securities offered by the prospectus are previously unissued restricted securities distributed by way of stock dividend in the ordinary course to securityholders instead of a cash dividend if at the time of distribution there is a published market for the restricted securities,
 - (e) the securities offered by the prospectus are distributed as a stock split that takes the form of a distribution of previously unissued restricted securities by way of stock dividend to holders of the same class of restricted securities if at the time of distribution there is a published market for the restricted securities and the distribution is part of a concurrent distribution by way of stock dividend to holders of all equity securities under which all outstanding equity securities of the issuer are increased in the same proportion, or
 - (f) as of a date not more than seven days before the date of the prospectus, the issuer expects that in each local jurisdiction in which the prospectus will be filed the number of securities of each class of equity securities held by registered holders whose last address as shown on the books of the issuer is in the local jurisdiction, or beneficially owned by persons or companies in the local jurisdiction, will be less than two percent of the outstanding number of securities of the class after giving effect to the proposed distribution.

PART 13
ADVERTISING AND MARKETING IN CONNECTION WITH PROSPECTUS
OFFERINGS OF ISSUERS OTHER THAN INVESTMENT FUNDS

Application

13.0 (1) This Part applies to issuers other than investment funds filing a prospectus in the form of Form 41-101F2 or Form 41-101F3.

(2) In this Part,

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

“convertible security” has the same meaning as in section 1.1 of National Instrument 45-102 Resale of Securities;

“exchangeable security” has the same meaning as in section 1.1 of National Instrument 45-102 Resale of Securities;

“underlying security” has the same meaning as in section 1.1 of National Instrument 45-102 Resale of Securities;

“U.S. cross-border initial public offering” means an initial public 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. 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, and includes a U.S. cross-border initial public offering;

“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.

(3) 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.

Legend for communications during the waiting period

13.1 (1) A preliminary prospectus notice or other communication used in connection with a prospectus offering during the waiting period must contain the following legend or words to the same effect:

“A preliminary prospectus containing important information relating to these securities has been filed with securities commissions or similar authorities in certain jurisdictions of Canada. The preliminary prospectus is still subject to completion or amendment. Copies of the preliminary prospectus may be obtained from [insert name and contact information for dealer or other relevant person or entity.] There will not be any sale or any acceptance of an offer to buy the securities until a receipt for the final prospectus has been issued.”

(2) If the preliminary prospectus notice or other communication is in writing, include the wording required under subsection (1) in bold type that is at least as large as that used generally in the body of the text.

(3) Subsection (1) does not apply to standard term sheets and marketing materials.

Legend for communications following receipt for the final prospectus

13.2 (1) A final prospectus notice or other communication used in connection with a prospectus offering following the issuance of a receipt for the final prospectus must contain the following legend or words to the same effect:

“This offering is only made by prospectus. The prospectus contains important detailed information about the securities being offered. Copies of the prospectus may be obtained from [insert name and contact information for dealer or other relevant person or entity.] Investors should read the prospectus before making an investment decision.”

(2) If the final prospectus notice or other communication is in writing, include the wording required under subsection (1) in bold type that is at least as large as that used generally in the body of the text.

(3) Subsection (1) does not apply to standard term sheets and marketing materials.

13.3 [Repealed]

Testing of the waters exemption – IPO issuers

13.4 (1) In this section, “public issuer” means an issuer that

- (a) is a reporting issuer in a jurisdiction of Canada;
- (b) is an SEC issuer;
- (c) has a class of securities that has been assigned a ticker symbol by the Financial Industry Regulatory Authority in the United States of America for use on any of the over-the-counter markets in the United States of America;
- (d) has a class of securities that have been traded on an over-the-counter market with respect to which trade data is publicly reported;
or
- (e) has any of its securities listed, quoted or traded on a marketplace outside of Canada or any other facility outside of Canada for bringing together buyers and sellers of securities and with respect to which trade data is publicly reported.

(2) Subject to subsections (3) to (7), the prospectus requirement does not apply to a solicitation of an expression of interest in order to ascertain if there would be sufficient interest in an initial public offering of securities by an issuer pursuant to a long form prospectus if

- (a) the issuer has a reasonable expectation of filing a preliminary long form prospectus in respect of an initial public offering in at least one jurisdiction of Canada;
- (b) the issuer is not a public issuer before the date of the preliminary long form prospectus;
- (c) an investment dealer makes the solicitation on behalf of the issuer;

- (d) the issuer provided written authorization to the investment dealer to act on its behalf before the investment dealer made the solicitation;
- (e) the solicitation is made to an accredited investor; and
- (f) subject to subsection (3), the issuer and the investment dealer keep all information about the proposed offering confidential until the earlier of
 - (i) the information being generally disclosed in a preliminary long form prospectus or otherwise, or
 - (ii) the issuer confirming in writing that it will not be pursuing the potential offering.

(3) An investment dealer must not solicit an expression of interest from an accredited investor pursuant to subsection (2) unless

- (a) all written material provided to the accredited investor
 - (i) is approved in writing by the issuer before it is provided,
 - (ii) is marked confidential, and
 - (iii) contains a legend stating that the material does not provide full disclosure of all material facts relating to the issuer, the securities or the offering and is not subject to liability for misrepresentations under applicable securities legislation; and
- (b) before providing the investor with any information about the issuer, the securities or the offering, the investment dealer obtains confirmation in writing from the investor that the investor will keep information about the proposed offering confidential, and will not use the information for any purpose other than assessing the investor's interest in the offering, until the earlier of
 - (i) the information being generally disclosed in a preliminary long form prospectus or otherwise, or
 - (ii) the issuer confirming in writing that it will not be pursuing the potential offering.

(4) If any investment dealer solicits an expression of interest pursuant to subsection (2), the issuer must not file a preliminary long form prospectus in respect of an initial public offering until the date which is at least 15 days after the date on which any investment dealer last solicited an expression of interest from an accredited investor pursuant to that subsection.

(5) An issuer relying on the exemption in subsection (2) must keep

- (a) a written record of any investment dealer that it authorized to act on its behalf in making solicitations in reliance on the exemption; and
- (b) a copy of any written authorizations referred to in paragraph (2)(d).

(6) If an investment dealer solicits an expression of interest pursuant to subsection (2), the investment dealer must keep

- (a) a written record of any accredited investor that it solicited in reliance on the exemption;
 - (b) a copy of any written material and written approval referred to in subparagraph (3)(a)(i); and
 - (c) any written confirmations referred to in paragraph (3)(b).
- (7)** Subsection (2) does not apply if
- (a) any of the issuer's securities are held by a control person that is a public issuer; and
 - (b) the initial public offering of the issuer would be a material fact or material change with respect to the control person.

Standard term sheets during the waiting period

13.5 (1) An investment dealer that provides a standard term sheet to a potential investor during the waiting period 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) 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 is disclosed in, or derived from, the preliminary prospectus or any amendment; and
- (c) a receipt for the preliminary prospectus has been issued 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 prospectus containing important information relating to the securities described in this document has been filed with the securities regulatory authorit[y/ies] in [each of/certain of the provinces/provinces and territories of Canada].

The preliminary prospectus is still subject to completion. Copies of the preliminary 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 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 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.

(3) A standard term sheet provided under subsection (1) may contain only the information referred to in subsection (2) and the following information in respect of the issuer, the securities or the offering:

- (a) the name of the issuer;

- (b) the jurisdiction or foreign jurisdiction in which the issuer's head office is located;
- (c) the statute under which the issuer is incorporated, continued or organized or, if the issuer is an unincorporated entity, the laws of the jurisdiction or foreign jurisdiction under which it is established and exists;
- (d) a brief description of the business of the issuer;
- (e) a brief description of the securities;
- (f) the price or price range of the securities;
- (g) the total number or dollar amount of the securities, or range of the total number or dollar amount of the securities;
- (h) the terms of any over-allotment option;
- (i) the names of the underwriters;
- (j) whether the offering is on a firm commitment or best efforts basis;
- (k) the amount of the underwriting commission, fee or discount;
- (l) the proposed or expected closing date of the offering;
- (m) a brief description of the use of proceeds;
- (n) the exchange on which the securities are proposed to be listed, provided that the standard term sheet complies with the requirements of securities legislation for listing representations;
- (o) in the case of debt securities, the maturity date of the debt securities and a brief description of any interest payable on the debt securities;
- (p) in the case of preferred shares, a brief description of any dividends payable on the securities;
- (q) in the case of convertible securities, a brief description of the underlying securities into which the convertible securities are convertible;
- (r) in the case of exchangeable securities, a brief description of the underlying securities into which the exchangeable securities are exchangeable;
- (s) in the case of restricted securities, a brief description of the restriction;
- (t) in the case of securities for which a credit supporter has provided a guarantee or alternative credit support, a brief description of the credit supporter and the guarantee or alternative credit support provided;
- (u) whether the securities are redeemable or retractable;
- (v) a statement that the securities are eligible, or are expected to be eligible, for investment in registered retirement savings plans, tax-free savings accounts or other registered plans, if the issuer has

received, or reasonably expects to receive, a legal opinion that the securities are so eligible;

(w) contact information for the investment dealer or underwriters.

(4) For the purposes of subsection (3), “brief description” means a description consisting of no more than three lines of text in type that is at least as large as that used generally in the body of the standard term sheet.

Standard term sheets after a receipt for a final prospectus

13.6 (1) An investment dealer must not provide a standard term sheet to a potential investor after a receipt for a final prospectus or any amendment is issued unless

- (a) the standard term sheet complies with subsections (2) and (3);
- (b) 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 is disclosed in, or derived from, the final prospectus or any amendment; and
- (c) a receipt for the final prospectus has been issued 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 final prospectus containing important information relating to the securities described in this document has been filed with the securities regulatory authority[ies] in [each of/certain of the provinces/provinces and territories of Canada].

Copies of the final prospectus may be obtained from *[insert contact information for the investment dealer or underwriters]*.

This document does not provide full disclosure of all material facts relating to the securities offered. Investors should read the final 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).

Marketing materials during the waiting period

13.7 (1) An investment dealer that provides marketing materials to a potential investor during the waiting period 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) 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 is

disclosed in, or derived from, the preliminary prospectus or any amendment;

- (c) other than prescribed language, the marketing materials contain the same cautionary language in bold type as contained on the cover page, and in the summary, of the preliminary prospectus;
- (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) a receipt for the preliminary prospectus has been issued in the local jurisdiction; and
- (g) the investment dealer provides a copy of the preliminary prospectus and any amendment with the marketing materials.

(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 prospectus is filed in the local jurisdiction, a complete template version of the marketing materials containing the comparables, and

any disclosure relating to the comparables, is delivered to the securities regulatory authority; and

- (d) the complete template version of the marketing materials contains disclosure proximate to the comparables which
- (i) explains what comparables are;
 - (ii) explains the basis on which the other issuers were included in the comparables and why the other issuers are considered to be an appropriate basis for comparison with the issuer;
 - (iii) explains the basis on which the compared attributes were included;
 - (iv) states that the information about the other issuers was obtained from public sources and has not been verified by the issuer or the underwriters;
 - (v) discloses any risks relating to the comparables, including risks in making an investment decision based on the comparables; and
 - (vi) states that if the comparables contain a misrepresentation, the investor does not have a remedy under securities legislation.

(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 prospectus containing important information relating to the securities described in this document has been filed with the securities regulatory authority[ies] in [each of/certain of the provinces/provinces and territories of Canada]. A copy of the preliminary prospectus, and any amendment, is required to be delivered with this document.

The preliminary prospectus is still subject to completion. There will not be any sale or any acceptance of an offer to buy the securities until a receipt for the final 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 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.

(6) If marketing materials are provided during the waiting period under subsection (1), the issuer must include the template version of the marketing materials filed under paragraph 1(e) in its final prospectus, or incorporate by reference the template version of the marketing materials filed under paragraph 1(e) into its final prospectus, in the manner described in subsection 36A.1(1) of Form 41-101F1 or subsection 11.6(1) of Form 44-101F1, as applicable.

(7) If the final prospectus or any amendment modifies a statement of a material fact that appeared in marketing materials provided during the waiting period under subsection (1), the issuer must

- (a) prepare and file, at the time the issuer files the final 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 prospectus, or any amendment, the disclosure required by subsection 36A.1(3) of Form 41-101F1 or subsection 11.6(3) of Form 44-101F1, as applicable.

(8) A revised template version of the marketing materials filed under subsection (7) must comply with section 13.8.

(9) If marketing materials are provided during the waiting period 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 prospectus as of the date of the final prospectus to the extent not otherwise expressly modified or superseded by a statement contained in the final prospectus.

Marketing materials after a receipt for a final prospectus

13.8 (1) An investment dealer must not provide marketing materials to a potential investor after a receipt for a final prospectus or any amendment is issued unless

- (a) the marketing materials comply with subsections (2) to (8);
- (b) 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 is disclosed in, or derived from, the final prospectus and any amendment;
- (c) other than prescribed language, the marketing materials contain the same cautionary language in bold type as contained on the cover page, and in the summary, of the final prospectus;
- (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) a receipt for the final prospectus has been issued in the local jurisdiction; and
- (g) the investment dealer provides a copy of the final prospectus, and any amendment, with the marketing materials.

(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)(b) 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 prospectus is filed in the local jurisdiction, a complete template version of the marketing materials containing the comparables, and any disclosure relating to the comparables, 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).

(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 final prospectus containing important information relating to the securities described in this document has been filed with the securities regulatory authority[ies] in [each of/certain of the provinces/provinces and territories of Canada]. A copy of the final prospectus, and any amendment, is required to be delivered with this document.

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

(6) An investment dealer must not provide marketing materials under subsection (1) unless the issuer

- (a) has included the template version of the marketing materials filed under paragraph 1(e) in its final prospectus, and any amendment, or incorporated by reference the template version of the marketing materials filed under paragraph 1(e) into its final prospectus, and any

amendment, in the manner described in subsection 36A.1(1) of Form 41-101F1 or subsection 11.6(1) of Form 44-101F1, as applicable, or

- (b) has included in its final prospectus, and any amendment, the statement described in subsection 36A.1(4) of Form 41-101F1 or subsection 11.6(4) of Form 44-101F1, as applicable.

(7) If an amendment to a final prospectus modifies a statement of material fact that appeared in marketing materials provided under subsection (1), the issuer must

- (a) indicate in the amendment to the final prospectus that the marketing materials are not part of the final prospectus, as amended, to the extent that the contents of the marketing materials have been modified or superseded by a statement contained in the amendment;
- (b) prepare and file, at the time the issuer files the amendment to the final prospectus, a revised template version of the marketing materials that is blacklined to show the modified statement; and
- (c) include in the amendment to the final prospectus the disclosure required by subsection 36A.1(3) of Form 41-101F1 or subsection 11.6(3) of Form 44-101F1, as applicable.

(8) Any revised template version of the marketing materials filed under subsection (7) must comply with this section.

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

Road shows during the waiting period

13.9 (1) An investment dealer that conducts a road show for potential investors during the waiting period is exempt from the prospectus requirement with respect to that road show if

- (a) the road show complies with subsections (2) to (4); and
- (b) a receipt for the preliminary prospectus has been issued in the local jurisdiction.

(2) Subject to section 13.12, 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 13.7.

(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) 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.

Road shows after a receipt for a final prospectus

13.10 (1) An investment dealer must not conduct a road show for potential investors after a receipt for a final prospectus or any amendment is issued unless

- (a) the road show complies with subsections (2) to (4); and
- (b) a receipt for the final prospectus has been issued in the local jurisdiction.

(2) Subject to section 13.12, 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 13.8.

(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) provide the investor with a copy of the final 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 final prospectus and any amendment for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.

Exception from procedures for road shows for certain U.S. cross-border initial public offerings

13.11 (1) Subject to subsection (2), the following provisions do not apply to an investment dealer that conducts a road show in connection with a U.S. cross-border initial public offering:

- (a) paragraphs 13.9(3)(a) and (b);
 - (b) paragraphs 13.10(3)(a) and (b).
- (2)** Subsection (1) does not apply unless
- (a) the issuer is relying on the exemption from United States filing requirements in Rule 433(d)(8)(ii) under the 1933 Act in respect of the road show; and
 - (b) the investment dealer establishes and follows reasonable procedures to
 - (i) ask any investor attending the road show in person, by telephone conference call, on the internet or by other electronic means to voluntarily provide their name and contact information; and
 - (ii) keep a record of any information voluntarily provided by the investor.

Exception from filing and incorporation requirements for road shows for certain U.S. cross-border offerings

13.12 (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) paragraphs 13.7(1)(e) and 13.8(1)(e);
 - (b) subsections 13.7(6) to (9);
 - (c) subsections 13.8(6) to (9);
 - (d) paragraphs 36A.1(1)(b) and (c), paragraph 36A.1(3)(b), subsection 36A.1(4) and section 37.6 of Form 41-101F1;
 - (e) 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 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).

(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 13A ADVERTISING AND MARKETING IN CONNECTION WITH PROSPECTUS OFFERINGS OF INVESTMENT FUNDS

Application

13A.1 This Part applies to investment funds filing a prospectus in the form of Form 41-101F2 or Form 41-101F3.

Legend for communications during the waiting period

13A.2 (1) A preliminary prospectus notice or other communication used in connection with a prospectus offering during the waiting period must contain the following legend, or words to the same effect:

A preliminary prospectus containing important information relating to these securities has been filed with securities commissions or similar authorities in certain jurisdictions of Canada. The preliminary prospectus is still subject to completion or amendment. Copies of the preliminary prospectus may be obtained from *[insert name and contact information for dealer or other relevant person or company]*. There will not be any sale or acceptance of an offer to buy the securities until a receipt for the final prospectus has been issued.

(2) If the preliminary prospectus notice or other communication is in writing, include the wording required under subsection (1) in bold type that is at least as large as that used generally in the body of the text.

Legend for communications following receipt for the final prospectus

13A.3 (1) A final prospectus notice or other communication used in connection with a prospectus offering following the issuance of a receipt for the final prospectus must contain the following legend, or words to the same effect:

This offering is made only by prospectus. The prospectus contains important detailed information about the securities being offered. Copies of the prospectus may be obtained from *[insert name and contact information for dealer or other relevant person or company]*. Investors should read the prospectus before making an investment decision.

(2) If the final prospectus notice or other communication is in writing, include the wording required under subsection (1) in bold type that is at least as large as that used generally in the body of the text.

Advertising during the waiting period

13A.4 If the issuer is an investment fund, an advertisement used in connection with a prospectus offering during the waiting period may state only the following information:

- (a) whether the security represents a share in an incorporated entity or an interest in an unincorporated entity;
- (b) the name of the issuer;
- (c) the price of the security;
- (d) the fundamental investment objectives of the investment fund;
- (e) the name of the manager of the investment fund;
- (f) the name of the portfolio manager of the investment fund;
- (g) the name and address of a person or company from whom a preliminary prospectus may be obtained and purchases of securities may be made;
- (h) how many securities will be made available;
- (i) whether the security is or will be a qualified investment for a registered retirement savings plan, registered retirement income fund, registered education savings plan or tax free savings account or qualifies, or will qualify, the holder for special tax treatment.

PART 14 CUSTODIANSHIP OF PORTFOLIO ASSETS OF AN INVESTMENT FUND

General

14.1 (1) This Part applies to an investment fund that prepares a prospectus in accordance with this Instrument, other than an investment fund subject to NI 81-102.

(2) Subject to sections 14.8 and 14.9, all portfolio assets of an investment fund must be held under the custodianship of one custodian that satisfies the requirements of section 14.2.

(3) No manager of an investment fund may act as a custodian or sub-custodian of the investment fund.

Who may act as custodian or sub-custodian

14.2 (1) If portfolio assets are held in Canada by a custodian or sub-custodian, the custodian or sub-custodian must be one of the following:

- (a) a bank listed in Schedule I, II or III of the *Bank Act* (Canada);
- (b) a trust company that

- (i) is incorporated and licenced or registered under the laws of Canada or a jurisdiction, and
 - (ii) has equity, as reported in its most recent audited financial statement, of not less than \$10,000,000;
 - (c) a company that is incorporated under the laws of Canada or a jurisdiction and is an affiliate of a bank or trust company referred to in paragraph (a) or (b), if
 - (i) the company has equity, as reported in its most recent audited financial statements that have been made public, of not less than \$10,000,000, or
 - (ii) the bank or trust company has assumed responsibility for all of the custodial obligations of the company for that investment fund.
- (2)** If portfolio assets are held outside of Canada by a sub-custodian, the sub-custodian must be one of the following:
- (a) an entity referred to in subsection (1);
 - (b) an entity that
 - (i) is incorporated or organized under the law of a country, or a political subdivision of a country, other than Canada,
 - (ii) is regulated as a banking institution or trust company by the government, or an agency of the government of the country or political subdivision of the country under whose laws it is incorporated or organized, and
 - (iii) has equity, as reported in its most recent audited financial statements of not less than the equivalent of \$100,000,000;
 - (c) an affiliate of an entity referred to in paragraph (a) or (b) if
 - (i) the affiliate has equity, as reported in its most recent audited financial statements that have been made public, of not less than the equivalent of \$100,000,000, or
 - (ii) the entity referred to in paragraphs (a) or (b) has assumed responsibility for all of the custodial obligations of the affiliate for that investment fund.

Standard of care

14.3 (1) The custodian and each sub-custodian of an investment fund, in carrying out their duties concerning the safekeeping of, and dealing with, the portfolio assets of the investment fund, must exercise

- (a) the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances, or

- (b) at least the same degree of care as they exercise with respect to their own property of a similar kind, if this is a higher degree of care than the degree of care referred to in paragraph (a).

(2) No investment fund may relieve the custodian or a sub-custodian of the investment fund from liability to the investment fund or to a securityholder of the investment fund for loss that arises out of the failure of the custodian or sub-custodian to exercise the standard of care imposed by subsection (1).

(3) An investment fund may indemnify a custodian or sub-custodian against legal fees, judgments and amounts paid in settlement, actually and reasonably incurred by that entity in connection with custodial or sub-custodial services provided by that entity to the investment fund, if those fees, judgments and amounts were not incurred as a result of a breach of the standard of care described in subsection (1).

(4) No investment fund may incur the cost of any portion of liability insurance that insures a custodian or sub-custodian for a liability, except to the extent that the custodian or sub-custodian may be indemnified for that liability under this section.

Appointment of sub-custodian

14.4 (1) The custodian or a sub-custodian of an investment fund may appoint one or more sub-custodians to hold portfolio assets of the investment fund if,

- (a) in the case where the appointment is by the custodian, the investment fund gives written consent to each appointment,
- (b) in the case where the appointment is by a sub-custodian, the investment fund and the custodian of the investment fund give written consent to each appointment,
- (c) the sub-custodian is an entity described in subsection 14.2(1) or (2), as applicable,
- (d) the arrangements under which a sub-custodian is appointed are such that the investment fund may enforce rights directly, or require the custodian or a sub-custodian to enforce rights on behalf of the investment fund, to the portfolio assets held by the appointed sub-custodian, and
- (e) the appointment is otherwise in compliance with this Instrument.

(2) Despite paragraphs (1)(a) and (b), a general consent to the appointment of persons or companies that are part of an international network of sub-custodians within the organization of the custodian appointed by the investment fund or the sub-custodian appointed by the custodian is sufficient if that general consent is part of an agreement governing the relationship between the investment fund and the appointed custodian or the custodian and the appointed sub-custodian.

(3) A custodian or sub-custodian must provide to the investment fund a list of each person or company that is appointed sub-custodian under a general consent referred to in subsection (2).

Content of agreements

14.5 (1) All custodian agreements and sub-custodian agreements of an investment fund must provide for

- (a) the location of portfolio assets,
- (b) the appointment of a sub-custodian, if any,
- (c) the provision of lists of sub-custodians,
- (d) the method of holding portfolio assets,
- (e) the standard of care and responsibility for loss,
- (f) review and compliance reports, and
- (g) the safekeeping of portfolio assets on terms consistent with the agreement between the investment fund and the custodian, for an agreement between a custodian and a sub-custodian.

(2) The provisions of an agreement referred to under subsection (1) must comply with the requirements of this Part.

(3) A custodian agreement or sub-custodian agreement concerning the portfolio assets of an investment fund must not

- (a) provide for the creation of any security interest on the portfolio assets except for a good faith claim for payment of the fees and expenses of the custodian or sub-custodian for acting in that capacity or to secure the obligations of the investment fund to repay borrowings by the investment fund from a custodian or sub-custodian for the purpose of settling portfolio transactions, or
- (b) contain a provision that would require the payment of a fee to the custodian or sub-custodian for the transfer of the beneficial ownership of portfolio assets, other than for safekeeping and administrative services in connection with acting as custodian or sub-custodian.

Review and compliance reports

14.6 (1) The custodian of an investment fund must, on a periodic basis and at least annually,

- (a) review the agreements referred to in section 14.5 to determine if those agreements are in compliance with this Part,
- (b) make reasonable enquiries to ensure that each sub-custodian is an entity referred to in subsection 14.2(1) or (2), as applicable, and
- (c) make or cause to be made any changes that may be necessary to ensure that
 - (i) the agreements are in compliance with this Part, and
 - (ii) each sub-custodian is an entity referred to in subsection 14.2(1) or (2), as applicable.

- (2)** The custodian of an investment fund must, within 60 days after the end of each financial year of the investment fund, advise the investment fund in writing
- (a) of the names and addresses of all sub-custodians of the investment fund,
 - (b) if the agreements are in compliance with this Part, and
 - (c) if, to the best of the knowledge and belief of the custodian, each sub-custodian is an entity that satisfies the requirements of subsection 14.2(1) or (2), as applicable.
- (3)** A copy of the report referred to in subsection (2) must be delivered by or on behalf of the investment fund to the securities regulatory authority within 30 days after the filing of the annual financial statements of the investment fund.

Holding of portfolio assets and payment of fees

14.7 (1) Except as provided in subsections (2) and (3) and sections 14.8 and 14.9, portfolio assets not registered in the name of the investment fund must be registered in the name of the custodian or a sub-custodian of the investment fund or any of their respective nominees with an account number or other designation in the records of the custodian sufficient to show that the beneficial ownership of the portfolio assets is vested in the investment fund.

(2) The custodian or a sub-custodian of the investment fund or the applicable nominee must segregate portfolio assets issued in bearer form to show that the beneficial ownership of the property is vested in the investment fund.

(3) A custodian or sub-custodian of an investment fund may deposit portfolio assets with a depository or a clearing agency that operates a book-based system.

(4) The custodian or sub-custodian of an investment fund arranging for the deposit of portfolio assets with, and their delivery to, a depository, or clearing agency, that operates a book-based system must ensure that the records of any of the applicable participants in that book-based system or the custodian contain an account number or other designation sufficient to show that the beneficial ownership of the portfolio assets is vested in the investment fund.

(5) No investment fund may pay a fee to a custodian or sub-custodian for the transfer of beneficial ownership of portfolio assets other than for safekeeping and administrative services in connection with acting as custodian or sub-custodian.

Custodial provisions relating to derivatives and securities lending, repurchases and reverse repurchase agreements

14.8 (1) For the purposes of subsection (4), “specified derivative” has the same meaning as in NI 81-102.

(2) An investment fund may deposit portfolio assets as margin for transactions in Canada involving clearing corporation options, options on futures or standardized futures with a dealer that is a member of an SRO that is a participating member of CIPF if the amount of margin deposited does not, when aggregated with the amount of

margin already held by the dealer on behalf of the investment fund, exceed 10% of the net assets of the investment fund, taken at market value as at the time of deposit.

- (3)** An investment fund may deposit portfolio assets with a dealer as margin for transactions outside Canada involving clearing corporation options, options on futures or standardized futures if
- (a) in the case of standardized futures and options on futures, the dealer is a member of a futures exchange or, in the case of clearing corporation options, is a member of a stock exchange, and, as a result in either case, is subject to a regulatory audit,
 - (b) the dealer has a net worth, determined from its most recent audited financial statements that have been made public, in excess of the equivalent of \$50 million, and
 - (c) the amount of margin deposited does not, when aggregated with the amount of margin already held by the dealer on behalf of the investment fund, exceed 10% of the net assets of the investment fund, taken at market value as at the time of deposit.

(4) An investment fund may deposit with its counterparty portfolio assets over which it has granted a security interest in connection with a particular specified derivatives transaction.

(5) The agreement by which portfolio assets are deposited in accordance with subsection (2), (3) or (4) must require the person or company holding the portfolio assets to ensure that its records show that the investment fund is the beneficial owner of the portfolio assets.

(6) An investment fund may deliver portfolio assets to a person or company in satisfaction of its obligations under a securities lending, repurchase or reverse purchase agreement if the collateral, cash proceeds or purchased securities that are delivered to the investment fund in connection with the transaction are held under the custodianship of the custodian or a sub-custodian of the investment fund in compliance with this Part.

Custodial provisions relating to short sales

14.8.1 (1) For the purposes of subsection (2), “borrowing agent” has the same meaning as in NI 81-102.

(2) Except where the borrowing agent is the investment fund's custodian or sub-custodian, if an investment fund deposits portfolio assets with a borrowing agent as security in connection with a short sale of securities, the market value of portfolio assets deposited with the borrowing agent must not, when aggregated with the market value of portfolio assets already held by the borrowing agent as security for outstanding short sales of securities by the investment fund, exceed 10% of the net asset value of the investment fund at the time of deposit.

(3) An investment fund must not deposit portfolio assets as security in connection with a short sale of securities with a dealer in Canada unless that dealer is a registered dealer and is a member of the Investment Industry Regulatory Organization of Canada.

- (4) An investment fund must not deposit portfolio assets as security in connection with a short sale of securities with a dealer outside Canada unless that dealer
- (a) is a member of a stock exchange and is subject to a regulatory audit, and
 - (b) has a net worth, determined from its most recent audited financial statements that have been made public, in excess of the equivalent of \$50 million.

Separate account for paying expenses

14.9 An investment fund may deposit cash in Canada with an entity referred to in paragraph (a) or (b) of subsection 14.2(1) to facilitate the payment of regular operating expenses of the investment fund.

PART 15 DOCUMENTS INCORPORATED BY REFERENCE BY INVESTMENT FUNDS

Application

15.1 This Part applies only to an investment fund in continuous distribution.

Incorporation by reference

15.2 (1) An investment fund must incorporate by reference into its long form prospectus, by means of a statement to that effect, the filed documents listed in

- (a) section 37.1 of Form 41-101F2 for investment funds other than scholarship plans, and
- (b) subsection 4.1(1) of Part B of Form 41-101F3 for scholarship plans.

(2) If an investment fund does not incorporate by reference into its long form prospectus a document referred to in subsection (1), the document is deemed, for the purposes of securities legislation, to be incorporated by reference in the investment fund's long form prospectus as of the date of the long form prospectus.

(3) An investment fund must incorporate by reference in its long form prospectus, by means of a statement to that effect, the subsequently filed documents referred to in

- (a) section 37.2 of Form 41-101F2 for investment funds other than scholarship plans, and
- (b) subsection 4.1(2) of Part B of Form 41-101F3 for scholarship plans.

(4) If an investment fund does not incorporate by reference into its long form prospectus a document referred to in subsection (3), the document is deemed, for the purposes of securities legislation, to be incorporated by reference in the investment fund's long form prospectus as of the date the investment fund filed the document.

Documents to be delivered or sent upon request

15.3 (1) An ETF must deliver or send to any person or company that requests the prospectus of the ETF or any of the documents incorporated by reference into the prospectus, a copy of the prospectus or requested document.

(2) A document requested under subsection (1) must be delivered or sent within three business days of receipt of the request and free of charge.

PART 16 DISTRIBUTION OF PRELIMINARY PROSPECTUS AND DISTRIBUTION LIST

Distribution of preliminary prospectus and distribution list

16.1 Except in Ontario, any dealer distributing a security during the waiting period must

- (a) send a copy of the preliminary prospectus to each prospective purchaser who indicates an interest in purchasing the security and requests a copy of such preliminary prospectus, and
- (b) maintain a record of the names and addresses of all persons and companies to whom the preliminary prospectus has been forwarded.

Note: In Ontario, sections 66 and 67 of the Securities Act (Ontario) impose similar requirements regarding the distribution of a preliminary prospectus and maintaining a distribution list.

PART 17 LAPSE DATE

Pro forma prospectus

17.1 (1) In this Part, “**pro forma prospectus**” means a long form prospectus that complies with the requirements described in subsection (2).

(2) A pro forma prospectus must be prepared in the form of a long form prospectus in accordance with Form 41-101F1, Form 41-101F2 or Form 41-101F3, as applicable, and other securities legislation, except that a pro forma prospectus is not required to contain prospectus certificates or to comply with sections 4.2, 4.3 and 4.4 of this Instrument.

(3) This Part does not apply to a prospectus filed in accordance with NI 44-101, NI 44-102 or NI 44-103.

Refiling of prospectus

17.2 (1) This section does not apply in Ontario.

(2) In this section, “**lapse date**” means, with reference to the distribution of a security that has been qualified under a prospectus, the date that is 12 months after the date of the most recent final prospectus relating to the security.

(3) An issuer must not continue the distribution of a security to which the prospectus requirement applies after the lapse date unless the issuer files a new prospectus that complies with securities legislation and a receipt for that new prospectus is issued by the regulator.

(4) Despite subsection (3), a distribution may be continued for a further 12 months after a lapse date if,

- (a) the issuer delivers a pro forma prospectus not less than 30 days before the lapse date of the previous prospectus;
- (b) the issuer files a new final prospectus not later than 10 days after the lapse date of the previous prospectus; and
- (c) a receipt for the new final prospectus is issued by the regulator within 20 days after the lapse date of the previous prospectus.

(5) The continued distribution of securities after the lapse date does not contravene subsection (3) unless and until any of the conditions of subsection (4) are not complied with.

(6) Subject to any extension granted under subsection (7), if a condition in subsection (4) is not complied with, a purchaser may cancel a purchase made in a distribution after the lapse date in reliance on subsection (4) within 90 days after the purchaser first became aware of the failure to comply with the condition.

(7) The regulator may, on an application of a reporting issuer, extend, subject to such terms and conditions as it may impose, the times provided by subsection (4) where in its opinion it would not be prejudicial to the public interest to do so.

Note: In Ontario, section 62 of the Securities Act (Ontario) imposes similar requirements and procedures regarding refiling of prospectuses.

PART 18 STATEMENT OF RIGHTS

Statement of rights

18.1 Except in Ontario, a prospectus must contain a statement of the rights given to a purchaser under securities legislation in case of a failure to deliver the prospectus or in case of a misrepresentation in a prospectus.

Note: In Ontario, section 60 of the Securities Act (Ontario) imposes a similar requirement for the inclusion of a statement of rights in a prospectus.

PART 19 EXEMPTION

Exemption

19.1 (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) Except in Alberta and Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of NI 14-101 opposite the name of the local jurisdiction.

Application for exemption

19.2 An application made to the securities regulatory authority or regulator for an exemption from the provisions of this Instrument must 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.

Evidence of exemption

19.3 (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 from subsection 2.2(2), may be evidenced by the issuance of a receipt for a final prospectus or an amendment to a final prospectus.

(2) The issuance of a receipt for a final prospectus or an amendment to a final 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 section 19.2 on or before the date of the filing of the pro forma or preliminary prospectus, or
 - (ii) the letter or memorandum referred to in section 19.2 after the date of the filing of the pro forma or preliminary 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 20
TRANSITION, EFFECTIVE DATE, AND REPEAL

Transition

20.1 (1) [Repealed]

(2) [Repealed]

Effective Date

20.2 This Instrument comes into force on March 17, 2008.

Repeal

20.3 National Instrument 41-101 *Prospectus Disclosure Requirements*, which came into force on December 31, 2000, is repealed.

APPENDIX A

Schedule 1 Part A

Personal Information Form and Authorization of Indirect Collection, Use and Disclosure of Personal Information

This Personal Information Form and Authorization of Indirect Collection, Use and Disclosure of Personal Information (the "Form") is to be completed by every individual who, in connection with an issuer filing a prospectus (the "Issuer"), is required to do so under Part 9 of National Instrument 41-101 *General Prospectus Requirements* or Part 4 of National Instrument 44-101 *Short Form Prospectus Distributions* or Part 2 of National Instrument 81-101 *Mutual Fund Prospectus Disclosure*.

The securities regulatory authorities do not make any of the information provided in this Form public.

General Instructions:

- All Questions** **All questions must have a response.** The response of "N/A" or "Not Applicable" will not be accepted for any questions, except Questions 1(B), 2(iii) and (v) and 5. For the purposes of answering the questions in this Form, the term "issuer" includes an investment fund manager.
- Questions 6 to 10** Please place a checkmark (√) in the appropriate space provided. If your answer to any of questions 6 to 10 is "YES", you must, in an attachment, provide complete details, including the circumstances, relevant dates, names of the parties involved and final disposition, if known. **Any attachment must be initialed by the person completing this Form.** Responses must consider all time periods.
- Delivery** **The issuer should deliver completed Forms electronically via the System for Electronic Document Analysis and Retrieval (SEDAR) under the document type "Personal Information Form and Authorization". Access to this document type is not available to the public.**

CAUTION

An individual who makes a false statement commits an offence under securities legislation. Steps may be taken to verify the answers you have given in this Form, including verification of information relating to any previous criminal record.

DEFINITIONS

"Offence" An offence includes:

- (a) a summary conviction or indictable offence under the Criminal Code (Canada);
- (b) a quasi-criminal offence (for example under the Income Tax Act (Canada), the Immigration Act (Canada) or the tax, immigration, drugs, firearms, money laundering or securities legislation of any Canadian or foreign jurisdiction);

- (c) a misdemeanour or felony under the criminal legislation of the United States of America, or any state or territory therein; or
- (d) an offence under the criminal legislation of any other foreign jurisdiction;

GUIDANCE: If you have received a pardon under the *Criminal Records Act (Canada)* for an Offence that relates to fraud (including any type of fraudulent activity), misappropriation of money or other property, theft, forgery, falsification of books or documents or similar Offences, you must disclose the pardoned Offence in this Form. In such circumstances:

- (a) the appropriate written response would be “Yes, pardon granted on (date)”;** and
- (b) you must provide complete details in an attachment to this Form.**

“Proceedings” means:

- (a) a civil or criminal proceeding or inquiry which is currently before a court;
- (b) a proceeding before an arbitrator or umpire or a person or group of persons authorized by law to make an inquiry and take evidence under oath in the matter;
- (c) a proceeding before a tribunal in the exercise of a statutory power of decision making where the tribunal is required by law to hold or afford the parties to the proceeding an opportunity for a hearing before making a decision; or
- (d) a proceeding before a self-regulatory entity authorized by law to regulate the operations and the standards of practice and business conduct of its members (including where applicable, issuers listed on a stock exchange) and individuals associated with those members and issuers, in which the self-regulatory entity is required under its by-laws, rules or policies to hold or afford the parties the opportunity to be heard before making a decision, but does not apply to a proceeding in which one or more persons are required to make an investigation and to make a report, with or without recommendations, if the report is for the information or advice of the person to whom it is made and does not in any way bind or limit that person in any decision the person may have the power to make;

“securities regulatory authority” or “SRA” means a body created by statute in any Canadian or foreign jurisdiction to administer securities law, regulation and policy (e.g. securities commission), but does not include an exchange or other self regulatory entity;

“self regulatory entity” or “SRE” means:

- (a) a stock, derivatives, commodities, futures or options exchange;
- (b) an association of investment, securities, mutual fund, commodities, or future dealers;
- (c) an association of investment counsel or portfolio managers;
- (d) an association of other professionals (e.g. legal, accounting, engineering); and
- (e) any other group, institution or self-regulatory organization, recognized by a securities regulatory authority, that is responsible for the enforcement of rules, policies, disciplines or codes under any applicable legislation, or considered an SRE in another country.

1. A IDENTIFICATION OF INDIVIDUAL COMPLETING FORM

LAST NAME(S)		FIRST NAME(S)			FULL MIDDLE NAME(S) (No initials. If none, please state)		
NAME(S) MOST COMMONLY KNOWN BY:							
NAME OF ISSUER							
PRESENT or PROPOSED POSITION(S) WITH THE ISSUER – check (√) all positions below that are applicable.		IF DIRECTOR / OFFICER DISCLOSE THE DATE ELECTED / APPOINTED				IF OFFICER – PROVIDE TITLE IF OTHER – PROVIDE DETAILS	
Director							
Officer							
Other							

B. Other than the name given in Question 1A above, provide any legal names, assumed names or nicknames under which you have carried on business or have otherwise been known, including information regarding any name change(s) resulting from marriage, divorce, court order or any other process. Use an attachment if necessary.

	FROM		TO	
	MM	YY	MM	YY

C.

GENDER		DATE OF BIRTH			PLACE OF BIRTH		
		Month	Day	Year	City	Province/State	Country
Male							
Female							

D.

MARITAL STATUS	FULL NAME OF SPOUSE – include common- law	OCCUPATION OF SPOUSE

E. TELEPHONE AND FACSIMILE NUMBERS AND E-MAIL ADDRESS

RESIDENTIAL	()	FACSIMILE	()
BUSINESS	()	E-MAIL*	

*Provide an email address that the regulator may use to contact you regarding this personal information form. This email address may be used to exchange personal information relating to you.

F. RESIDENTIAL HISTORY – Provide all residential addresses for the past 10 YEARS starting with your current principal residential address. If you are unable to recall the complete residential address for a period, which is beyond five years from the date of completion of this Form, the municipality and province or state and country must be identified. The regulator reserves the right to require the full address.

STREET ADDRESS, CITY, PROVINCE/STATE, COUNTRY & POSTAL/ZIP CODE	FROM		TO	
	MM	YY	MM	YY

2. CITIZENSHIP

		YES	NO
(i)	Are you a Canadian citizen?		
(ii)	Are you a person lawfully in Canada as an immigrant but are not yet a Canadian citizen?		
(iii)	If “Yes” to Question 2(ii), the number of years of continuous residence in Canada:		
(iv)	Do you hold citizenship in any country other than Canada?		
(v)	If “Yes” to Question 2(iv), the name of the country(ies):		

3. EMPLOYMENT HISTORY

Provide your complete employment history for the **5 YEARS** immediately prior to the date of this Form starting with your current employment. Use an attachment if necessary. If you were unemployed during this period of time, state this and identify the period of unemployment.

EMPLOYER NAME	EMPLOYER ADDRESS	POSITION HELD	FROM		TO	
			MM	YY	MM	YY

4. INVOLVEMENT WITH ISSUERS

		YES	NO
A.	Are you or have you during the last 10 years ever been a director, officer, promoter, insider or control person for any reporting issuer?		

B. If "YES" to 4A above, provide the names of each reporting issuer. State the position(s) held and the period(s) during which you held the position(s). Use an attachment if necessary.

NAME OF REPORTING ISSUER	POSITION(S) HELD	MARKET TRADED ON	FROM		TO	
			MM	YY	MM	YY

C.	While you were a director, officer or insider of an issuer, did any exchange or other self-regulatory entity ever refuse approval for listing or quotation of the issuer, including (i) a listing resulting from a business combination, reverse takeover or similar transaction involving the issuer that is regulated by an SRE or SRA, (ii) a backdoor listing or qualifying acquisition involving the issuer (as those terms are defined in the TSX Company Manual as amended from time to time) or (iii) a qualifying transaction, reverse takeover or change of business involving the issuer (as those terms are defined in the TSX Venture Corporate Finance Manual as amended from time to time)? If yes, attach full particulars.		
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5. EDUCATIONAL HISTORY

A. PROFESSIONAL DESIGNATION(S) – Identify any professional designation held and professional associations to which you belong, for example, Barrister & Solicitor, C.A., C.M.A., C.G.A., P.Eng., P.Geol., CFA, etc. and indicate which organization and the date the designations were granted.

PROFESSIONAL DESIGNATION and MEMBERSHIP NUMBER	GRANTOR OF DESIGNATION and CANADIAN or FOREIGN JURISDICTION	DATE GRANTED	
		MM	YY

Describe the current status of any designation and/or association (e.g. active, retired, non-practicing, suspended)

B. Provide your post-secondary educational history starting with the most recent.

SCHOOL	LOCATION	DEGREE OR DIPLOMA	DATE OBTAINED		
			MM	DD	YY

6. OFFENCES – If you answer “YES” to any item in Question 6, you must provide complete details in an attachment. **If you have received a pardon under the Criminal Records Act (Canada) for an Offence that relates to fraud (including any type of fraudulent activity), misappropriation of money or other property, theft, forgery, falsification of books or documents or similar Offences, you must disclose the pardoned Offence in this Form.**

		YES	NO
A.	Have you ever, in any Canadian or foreign jurisdiction, pled guilty to or been found guilty of an Offence?		
B.	Are you the subject of any current charge, indictment or proceeding for an Offence, in any Canadian or foreign jurisdiction?		
C.	To the best of your knowledge, are you currently or have you <u>ever</u> been a director, officer, promoter, insider, or control person of an issuer, in any Canadian or foreign jurisdiction, at the time of events that resulted in the issuer:		
	(i) pleading guilty to or being found guilty of an Offence?		
	(ii) now being the subject of any charge, indictment or proceeding for an alleged Offence?		

7. BANKRUPTCY – If you answer “YES” to any item in Question 7, you must provide complete details in an attachment and attach a copy of any discharge, release or other applicable document. You must answer “YES” or “NO” for EACH of (A), (B) and (C) below

		YES	NO
A.	Have you, in any Canadian or foreign jurisdiction, within the past 10 years had a petition in bankruptcy issued against you, made a voluntary assignment in bankruptcy, made a proposal under any bankruptcy or insolvency legislation, been subject to any proceeding, arrangement or compromise with creditors, or had a receiver, receiver-manager or trustee appointed to manage your assets?		
B.	Are you now an undischarged bankrupt?		
C.	To the best of your knowledge, are you currently or have you <u>ever</u> been a director, officer, promoter, insider, or control person of an issuer, in any Canadian or foreign jurisdiction, at the time of events, or for a period of 12 months preceding the time of events, where the issuer:		
	(i) has made a petition in bankruptcy, a voluntary assignment in bankruptcy, a proposal under any bankruptcy or insolvency legislation, been subject to any proceeding, arrangement or compromise with creditors or had a receiver, receiver-manager or trustee appointed to manage the issuer’s assets?		
	(ii) is now an undischarged bankrupt?		

8. PROCEEDINGS – If you answer “YES” to any item in Question 8, you must provide complete details in an attachment.

		YES	NO
A.	CURRENT PROCEEDINGS BY SECURITIES REGULATORY AUTHORITY OR SELF REGULATORY ENTITY. Are you now, in any Canadian or foreign jurisdiction, the subject of:		
	(i) a notice of hearing or similar notice issued by an SRA or SRE?		
	(ii) a proceeding of or, to your knowledge, an investigation by, an SRA or SRE?		
	(iii) settlement discussions or negotiations for settlement of any nature or kind whatsoever with an SRA or SRE?		

		YES	NO
B.	PRIOR PROCEEDINGS BY SECURITIES REGULATORY AUTHORITY OR SELF REGULATORY ENTITY. Have you <u>ever</u>:		
	(i) been reprimanded, suspended, fined, been the subject of an administrative penalty, or been the subject of any proceedings of any kind whatsoever, in any Canadian or foreign jurisdiction, by an SRA or SRE?		
	(ii) had a registration or licence for the trading of securities, exchange or commodity futures contracts, real estate, insurance or mutual fund products cancelled, refused, restricted or suspended by an SRA or SRE?		
	(iii) been prohibited or disqualified by an SRA or SRE under securities, corporate or any other legislation from acting as a director or officer of a reporting issuer or been prohibited or restricted by an SRA or SRE from acting as a director, officer or employee of, or an agent or consultant to, a reporting issuer?		
	(iv) had a cease trading or similar order issued against you or an order issued against you by an SRA or SRE that denied you the right to use any statutory prospectus or registration exemption?		
	(v) had any other proceeding of any kind taken against you by an SRA or SRE?		

C. SETTLEMENT AGREEMENT(S)			
	Have you ever entered into a settlement agreement with an SRA, SRE, attorney general or comparable official or body, in any Canadian or foreign jurisdiction, in a matter that involved actual or alleged fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading in securities or exchange or commodity futures contracts, illegal distributions, failure to disclose material facts or changes or similar conduct, or any other settlement agreement with respect to any other violation of securities legislation in a Canadian or foreign jurisdiction or the rules, by-laws or policies of any SRE?		

D.	To the best of your knowledge, are you now or have you ever been a director, officer, promoter, insider, or control person of an issuer at the time of such event, in any Canadian or foreign jurisdiction, for which a securities regulatory authority or self regulatory entity has:		
	(i) refused, restricted, suspended or cancelled the registration or licensing of an issuer to trade securities, exchange or commodity futures contracts, or to sell or trade real estate, insurance or mutual fund products?		
	(ii) issued a cease trade or similar order or imposed an administrative penalty of any nature or kind whatsoever against the issuer, other than an order for failure to file financial statements that was revoked within 30 days of its issuance?		
	(iii) refused a receipt for a prospectus or other offering document, denied any application for listing or quotation or any other similar application, or issued an order that denied the issuer the right to use any statutory prospectus or registration exemptions?		
	(iv) issued a notice of hearing, notice as to a proceeding or similar notice against the issuer?		
	(v) commenced any other proceeding of any kind against the issuer, including a trading halt, suspension or delisting of the issuer, in connection with an alleged or actual contravention of an SRA's or SRE's rules, regulations, policies or other requirements, but excluding halts imposed (i) in the normal course for proper dissemination of information, or (ii) pursuant to a business combination, reverse takeover or similar transaction involving the issuer that is regulated by an SRE or SRA, including a qualifying transaction, reverse takeover or change of business involving the issuer (as those terms are defined in the TSX Venture Corporate Finance Manual as amended from time to time)?		
	(vi) entered into a settlement agreement with the issuer in a matter that involved actual or alleged fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading in securities or exchange or commodity futures contracts, illegal distributions, failure to disclose material facts or changes or similar conduct by the issuer, or any other violation of securities legislation or the rules, by-laws or policies of an SRE?		

9. CIVIL PROCEEDINGS – If you answer “YES” to any item in Question 9, you must provide complete details in an attachment.

	YES	NO
A. JUDGMENT, GARNISHMENT AND INJUNCTIONS Has a court in any Canadian or foreign jurisdiction:		
(i) rendered a judgment, ordered garnishment or issued an injunction or similar ban (whether by consent or otherwise) against <u>you</u> in a claim based in whole or in part on fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading, illegal distributions, failure to disclose material facts or changes, or allegations of similar conduct?		
(ii) rendered a judgment, ordered garnishment or issued an injunction or similar ban (whether by consent or otherwise) against <u>an issuer</u> , of which you are currently or have ever been a director, officer, promoter, insider or control person in a claim based in whole or in part on fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading, illegal distributions, failure to disclose material facts or changes, or allegations of similar conduct?		

B. CURRENT CLAIMS		
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(i) Are <u>you</u> now subject, in any Canadian or foreign jurisdiction, to a claim that is based in whole or in part on actual or alleged fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading, illegal distributions, failure to disclose material facts or changes, or allegations of similar conduct?		
(ii) To the best of your knowledge, are you currently or have you ever been a director, officer, promoter, insider or control person of <u>an issuer</u> that is now subject, in any Canadian or foreign jurisdiction, to a claim that is based in whole or in part on actual or alleged fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading, illegal distributions, failure to disclose material facts or changes, or allegations of similar conduct?		

C. SETTLEMENT AGREEMENT

(i) Have <u>you</u> ever entered into a settlement agreement, in any Canadian or foreign jurisdiction, in a civil action that involved actual or alleged fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading, illegal distributions, failure to disclose material facts or changes, or allegations of similar conduct?		
(ii) To the best of your knowledge, are you currently or have you ever been a director, officer, promoter, insider or control person of <u>an issuer</u> that has entered into a settlement agreement, in any Canadian or foreign jurisdiction, in a civil action that involved actual or alleged fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading, illegal distributions, failure to disclose material facts or changes, or allegations of similar conduct?		

10. INVOLVEMENT WITH OTHER ENTITIES

	YES	NO
A. Has your employment in a sales, investment or advisory capacity with any employer engaged in the sale of real estate, insurance or mutual funds ever been suspended or terminated for cause? If yes, attach full particulars.		
B. Has your employment with a firm or company registered under the securities laws of any Canadian or foreign jurisdiction as a securities dealer, broker, investment advisor or underwriter, ever been suspended or terminated for cause? If yes, attach full particulars.		
C. Has your employment as an officer of an issuer ever been suspended or terminated for cause? If yes, attach full particulars.		

**Schedule 1
Part B**

CERTIFICATE AND CONSENT

I, _____ hereby certify that:
(Please Print – Name of Individual)

- (a) I have read and understand the questions, cautions, acknowledgement and consent in the personal information form to which this certificate and consent is attached or of which this certificate and consent forms a part (the “**Form**”), and the answers I have given to the questions in the Form and in any attachments to it are correct, except where stated to be answered to the best of my knowledge, in which case I believe the answers to be correct;
- (b) I have been provided with and have read and understand the Personal Information Collection Policy (the “**Personal Information Collection Policy**”) in Schedule 2 of Appendix A to National Instrument 41-101 *General Prospectus Requirements* (“**NI 41-101**”);
- (c) I consent to the collection, use and disclosure by a regulator or a securities regulatory authority listed in Schedule 3 of Appendix A to NI 41-101 (collectively the “**regulators**”) of the information in the Form and to the collection, use and disclosure by the regulators of further personal information in accordance with the Personal Information Collection Policy including the collection, use and disclosure by the regulators of the information in the Form in respect of the prospectus filings of the Issuer and the prospectus filings of any other issuer in a situation where I am or will be:
 - (i) a director, executive officer or promoter of the other issuer,
 - (ii) a director or executive officer of a promoter of the other issuer, if the promoter is not an individual, or
 - (iii) where the other issuer is an investment fund, a director or executive officer of the investment fund manager; and
- (d) I am aware that I am providing the Form to the regulators and I understand that I am under the jurisdiction of the regulators to which I submit the Form, and that it is a breach of securities legislation to provide false or misleading information to the regulators, whenever the Form is provided in respect of the prospectus filings of the Issuer or the prospectus filings of any other issuer of which I am or will be a director, executive officer or promoter.

Date [within 30 days of the date of the preliminary prospectus]

Signature of Person Completing this Form

**PERSONAL INFORMATION FORM
AND AUTHORIZATION OF INDIRECT COLLECTION,
USE AND DISCLOSURE OF PERSONAL INFORMATION**

**Schedule 2
Personal Information Collection Policy**

The regulators and securities regulatory authorities (the “**regulators**”) listed in Schedule 3 of Appendix A to National Instrument 41-101 *General Prospectus Requirements* (“**41-101**”) collect the personal information in the personal information form as this term is defined in NI 41-101 (the “**Personal Information Form**”), under the authority granted to them under provincial and territorial securities legislation. Under securities legislation, the regulators do not make any of the information provided in the Personal Information Form public.

The regulators collect the personal information in the Personal Information Form for the purpose of enabling the regulators to administer and enforce provincial and territorial securities legislation, including those provisions that require or permit the regulators to refuse to issue a receipt for a prospectus if it appears to the regulators that the past conduct of management or promoters of the Issuer affords reasonable grounds for belief that the business of the Issuer will not be conducted with integrity and in the best interests of its securityholders.

You understand that by signing the certificate and consent in the Personal Information Form, you are consenting to the Issuer submitting your personal information in the Personal Information Form (the “Information”) to the regulators and to the collection and use by the regulators of the Information, as well as any other information that may be necessary to administer and enforce provincial and territorial securities legislation. This may include the collection of information from law enforcement agencies, other government or non-governmental regulatory authorities, self-regulatory organizations, exchanges, and quotation and trade reporting systems in order to conduct background checks, verify the Information and perform investigations and conduct enforcement proceedings as required to ensure compliance with provincial and territorial securities legislation. Your consent also extends to the collection, use and disclosure of the Information as described above in respect of other prospectus filings of the Issuer and the prospectus filings of any other issuer in a situation where you are or will be:

- (a) a director, executive officer or promoter of the other issuer,
- (b) a director or executive officer of a promoter of the other issuer, if the promoter is not an individual, or
- (c) where the other issuer is an investment fund, a director or executive officer of the investment fund manager.

You understand that the Issuer is required to deliver the Information to the regulators because the Issuer has filed a prospectus under provincial and territorial securities legislation. You also understand that you have a right to be informed of the existence of personal information about you that is kept by regulators, that you have the right to request access to that information, and that you have the right to request that such information be corrected, subject to the applicable provisions of the freedom of information and protection of privacy legislation adopted by each province and territory.

You also understand and agree that the Information the regulators collect about you may also be disclosed, as permitted by law, where its use and disclosure is for the purposes described above. The regulators may also use a third party to process the Information, but when this happens, the third party will be carefully selected and obligated to comply with the limited use restrictions described above and with provincial and federal privacy legislation.

Warning: It is an offence to submit information that, in a material respect and at the time and in the light of the circumstances in which it is submitted, is misleading or untrue.

Questions

If you have any questions about the collection, use, and disclosure of the information you provide to the regulators, you may contact the regulator in the jurisdiction in which the required information is filed, at the address or telephone number listed in Schedule 3.

**PERSONAL INFORMATION FORM
AND AUTHORIZATION OF INDIRECT COLLECTION,
USE AND DISCLOSURE OF PERSONAL INFORMATION**

**Schedule 3
Regulators and Securities Regulatory Authorities**

Local Jurisdiction

Regulator

Alberta

Securities Review Officer
Alberta Securities Commission
Suite 600, 250 – 5th Street S.W.
Calgary, Alberta T2P 0R4
Telephone: (403) 297-6454
E-mail: inquiries@seccom.ab.ca
www.albertasecurities.com

British Columbia

Review Officer
British Columbia Securities Commission
P.O. Box 10142 Pacific Centre
701 West Georgia Street
Vancouver, British Columbia V7Y 1L2
Telephone: (604) 899-6854
Toll Free within British Columbia and Alberta: (800) 373-6393
E-mail: inquiries@bcsc.bc.ca
www.bcsc.bc.ca

Manitoba

Director, Corporate Finance
The Manitoba Securities Commission
500-400 St. Mary Avenue
Winnipeg, Manitoba R3C 4K5
Telephone: (204) 945-2548
E-mail: securities@gov.mb.ca
www.msc.gov.mb.ca

New Brunswick

Director Corporate Finance and Chief Financial Officer
New Brunswick Securities Commission
85 Charlotte Street, Suite 300
Saint John, New Brunswick E2L 2J2
Telephone: (506) 658-3060
Fax: (506) 658-3059
E-mail: information@nbsc-cvmnb.ca

Newfoundland and Labrador

Director of Securities
Department of Government Services and Lands
P.O. Box 8700
West Block, 2nd Floor, Confederation Building
St. John's, Newfoundland A1B 4J6
Telephone: (709) 729-4189
www.gov.nf.ca/gsl/ccas

Northwest Territories

Superintendent of Securities
Department of Justice
Government of the Northwest Territories
P.O. Box 1320,
Yellowknife, Northwest Territories X1A 2L9
Telephone: (867) 873- 7490
www.justice.gov.nt.ca/SecuritiesRegistry

Nova Scotia

Deputy Director
Compliance and Enforcement Division
Nova Scotia Securities Commission
Suite 400, 5251 Duke Street
Halifax, Nova Scotia
B3J 1P3
Telephone: (902) 424-5354
www.gov.ns.ca/nssc

Nunavut

Superintendent of Securities
Government of Nunavut
Legal Registries Division
P.O. Box 1000 – Station 570
Iqaluit, Nunavut X0A 0H0
Telephone: (867) 975-6590

Ontario

Administrative Assistant to the Director of Corporate Finance
Ontario Securities Commission
19th Floor, 20 Queen Street West
Toronto, Ontario M5H 2S8
Telephone: (416) 597-0681
E-mail: Inquiries@osc.gov.on.ca
www.osc.gov.on.ca

Prince Edward Island

Superintendent of Securities
Government of Prince Edward Island
95 Rochford Street, P.O. Box 2000, 4th Floor
Charlottetown, Prince Edward Island C1A 7N8
Telephone: (902) 368-4550
www.gov.pe.ca/securities

Québec

Autorité des marchés financiers
Stock Exchange Tower
P.O. Box 246, 22nd Floor
800 Victoria Square
Montréal, Québec H4Z 1G3
Attention: Responsable de l'accès à l'information
Telephone: (514) 395-0337
Toll Free in Québec: (877) 525-0337
www.lautorite.qc.ca

Saskatchewan

Director
Financial and Consumer Affairs Authority of Saskatchewan
Suite 601, 1919 Saskatchewan Drive
Regina, Saskatchewan S4P 4H2
Telephone: (306) 787-5842
www.fcaa.gov.sk.ca

Yukon

Office of the Yukon Superintendent of Securities
Government of Yukon
Department of Community Services
307 Black Street, 1st Floor
PO Box 2703 (C-6)
Whitehorse, Yukon Y1A 2C6
Telephone: 867-667-5466
Facsimile: 867-393-6251
http://www.community.gov.yk.ca/corp/securities_about.html

APPENDIX B
ISSUER FORM OF SUBMISSION TO JURISDICTION AND APPOINTMENT OF AGENT FOR SERVICE OF PROCESS

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

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

3. Address of principal place of business of Issuer:

4. Description of securities (the "Securities"):

5. Date of the prospectus (the "Prospectus") under which the Securities are offered:

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

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

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

Dated: _____

Signature of Issuer

Print name and title of signing officer of Issuer

AGENT

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

Dated: _____

Signature of Agent

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

APPENDIX C
NON-ISSUER FORM OF SUBMISSION TO JURISDICTION AND APPOINTMENT OF AGENT FOR SERVICE OF PROCESS

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

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

3. Address of principal place of business of Issuer:

4. Description of securities (the "Securities"):

5. Date of the prospectus (the "Prospectus") under which the Securities are offered:

6. Name of person filing this form (the "Filing Person"):

7. Filing Person's relationship to Issuer:

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

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

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

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

12. The Filing Person designates and appoints the Agent at the address of the Agent stated above as its agent upon whom may be served any notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding (the "Proceeding") arising out of, relating to or concerning the distribution of the Securities made or purported to be made under the Prospectus, and irrevocably waives any right to raise as a defence in any such Proceeding any alleged lack of jurisdiction to bring the Proceeding.
13. The Filing Person irrevocably and unconditionally submits to the non-exclusive jurisdiction of
 - (a) the judicial, quasi-judicial and administrative tribunals of each of the provinces [and territories] of Canada in which the securities are distributed under the Prospectus; and
 - (b) any administrative proceeding in any such province [or territory],in any Proceeding arising out of or related to or concerning the distribution of the Securities made or purported to be made under the Prospectus.
14. Until six years after completion of the distribution of the Securities made under the Prospectus, the Filing Person shall file a new submission to jurisdiction and appointment of agent for service of process in this form at least 30 days before termination of this submission to jurisdiction and appointment of agent for service of process.
15. Until six years after completion of the distribution of the Securities under the Prospectus, the Filing Person

shall file an amended submission to jurisdiction and appointment of agent for service of process at least 30 days before a change in the name or above address of the Agent.

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

Dated: _____

Signature of Filing Person

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

AGENT

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

Dated: _____

Signature of Agent

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

**APPENDIX D TO NATIONAL INSTRUMENT 41-101
GENERAL PROSPECTUS REQUIREMENTS**

PRELIMINARY PROSPECTUS NOTICE PROVISIONS

Jurisdiction	Securities Legislation Reference
Alberta	Paragraph 123(a) of the <i>Securities Act</i> (Alberta)
British Columbia	Paragraph 78(2)(a) of the <i>Securities Act</i> (British Columbia)
Manitoba	Paragraph 38(b) of the <i>Securities Act</i> (Manitoba)
New Brunswick	Paragraph 82(2)(a) of the <i>Securities Act</i> (New Brunswick)
Newfoundland and Labrador	Paragraph 66(2)(a) of the <i>Securities Act</i> (Newfoundland and Labrador)
Northwest Territories	Paragraph 97(a) of the <i>Securities Act</i> (Northwest Territories)
Nova Scotia	Paragraph 70(2)(a) of the <i>Securities Act</i> (Nova Scotia)
Nunavut	Paragraph 97(a) of the <i>Securities Act</i> (Nunavut)
Ontario	Paragraph 65(2)(a) of the <i>Securities Act</i> (Ontario)
Prince Edward Island	Paragraph 97(a) of the <i>Securities Act</i> (Prince Edward Island)
Saskatchewan	Paragraph 73(2)(a) of <i>The Securities Act, 1988</i> (Saskatchewan)
Yukon	Paragraph 97(a) of the <i>Securities Act</i> (Yukon)

**APPENDIX E TO NATIONAL INSTRUMENT 41-101
GENERAL PROSPECTUS REQUIREMENTS**

FINAL PROSPECTUS NOTICE PROVISIONS

Jurisdiction	Securities Legislation Reference
British Columbia	Paragraph 82(c) of the <i>Securities Act</i> (British Columbia)
New Brunswick	Section 86 of the <i>Securities Act</i> (New Brunswick), but only in respect of a communication described in paragraph 82(2)(a) of that Act
Newfoundland and Labrador	Section 70 of the <i>Securities Act</i> (Newfoundland and Labrador), but only in respect of a communication described in paragraph 66(2)(a) of that Act
Nova Scotia	Section 74 of the <i>Securities Act</i> (Nova Scotia), but only in respect of a communication described in paragraph 70(2)(a) of that Act
Ontario	Section 69 of the <i>Securities Act</i> (Ontario), but only in respect of a communication described in clause 65(2)(a) of that Act
Saskatchewan	Paragraph 77(c) of <i>The Securities Act, 1988</i> (Saskatchewan).