NOTICE AND REQUEST FOR COMMENT 44-401, 51-401

CONCEPT PROPOSAL FOR AN INTEGRATED DISCLOSURE SYSTEM

The Canadian Securities Administrators (the "CSA") are publishing for comment a concept proposal (the "Concept Proposal") for an integrated disclosure system (the "IDS") that accompanies this Notice and Request for Comment (the "Notice").

The proposed IDS would provide reporting issuers with an alternative offering system permitting faster and more flexible access to public markets. It would, however, also require participating reporting issuers to provide investors with more comprehensive and more timely continuous disclosure. The CSA are also considering extending some of these continuous disclosure enhancements and marketing restrictions to issuers that do not participate in the IDS.

This Notice provides background information on the proposed IDS. The Appendix to this Notice provides a summary of key differences between the proposed IDS and the current regulatory system. An overview of the proposed IDS is contained in the Executive Summary of the Concept Proposal.

The CSA invite comment on all aspects of the Concept Proposal. This Notice includes specific questions and discussion relating to elements of the IDS on which the CSA believe that public input would be particularly helpful. This Notice also includes specific questions regarding the possible extension of certain IDS continuous disclosure enhancements and marketing restrictions to all issuers and offerings.

I. Background

Development of the IDS

The CSA developed the proposed IDS to refocus securities regulation to reflect the evolution of the Canadian capital markets. With the vast majority of trading activity occurring in secondary rather than the primary markets, the traditional focus on primary market prospectus disclosure should be de-emphasized and increased focus should be placed on an issuer's continuous disclosure.

The proposed IDS is intended to provide investors in both the primary and secondary markets with timely prospectus-quality issuer disclosure by integrating the information required to be provided by issuers to investors in these markets using a common, upgraded disclosure base. An issuer's IDS disclosure base would provide comprehensive and timely information relating to the issuer and its business. Accordingly, participating issuers would be able to respond quickly to opportunities in the capital markets by using an abbreviated securities offering document that incorporates by reference the issuer's IDS disclosure base and undergoes streamlined regulatory screening.

The CSA have already taken important steps in this direction with the adoption of the short form prospectus and shelf distributions systems. The CSA believe that the proposed IDS would further enhance the efficiency and effectiveness of securities regulation in Canada by upgrading the quality and timeliness of corporate information available to investors while providing IDS issuers simpler and faster regulatory clearance for public offerings.

Significant Reforms under the IDS

The proposed IDS would change securities regulation in the following areas:

- the content, timing and standard of continuous disclosure reporting;
- the content and delivery of prospectuses;
- the form, content and timing of permissible marketing communications; and

- a shift of the regulatory review focus from prospectuses to continuous disclosure.

The CSA are considering extending to all issuers many of the continuous disclosure enhancements and marketing restrictions outlined in the proposed IDS. The CSA believe that the broad application of these elements of the IDS would further promote investor protection and the efficiency of capital markets.

II. Implementation of the IDS

To implement the proposed IDS, the CSA intend to develop a national instrument that would take into consideration the comments received on the Concept Proposal. The CSA expect that all aspects of the IDS could be implemented in most jurisdictions, without statutory amendment, by rule, regulation or policy. Consistent with past practice, the national instrument would be published for comment before it is finalized.

The CSA propose to implement the IDS on a pilot basis for a period of at least two years following adoption of a national instrument. This pilot introduction is intended to provide the CSA and market participants with an opportunity to evaluate the IDS and to identify any required modifications. During the pilot period, qualifying issuers would be able to participate in the IDS and offer securities under IDS procedures, under existing offering procedures such as the short form prospectus and shelf distribution systems, or under existing prospectus exemptions for which they are eligible.

The CSA will consider eliminating the short form prospectus and shelf distribution systems for IDS-eligible issuers if the pilot introduction demonstrates the IDS to be a successful substitute for these regimes. The CSA also anticipate that the implementation of the IDS will result in reduced reliance by issuers on prospectus exemptions, and the associated complexities of the resale restrictions under the closed system, given the streamlined offering procedures available under the proposed IDS.

III. Request for Comments

The Concept Proposal is being published for comment to obtain public input at an early stage in the development of the proposed IDS. The CSA encourage interested parties to comment on any aspect of the Concept Proposal.

During the development of the Concept Proposal, certain elements of the proposed IDS generated considerable discussion among the CSA. The CSA believe that seeking direct input on these specific areas will assist the CSA's further examination of these issues. The CSA invite responses to the specific questions identified below.

A. IDS Eligibility

The CSA believe that the proposed IDS should be broadly available to issuers who are able to provide the high quality continuous disclosure base that would form the foundation of the IDS. The IDS eligibility requirements are outlined and discussed in Part III.B of the Concept Proposal.

IDS eligibility would require that an issuer be a reporting issuer in all jurisdictions in Canada. The CSA are aware that this requirement could be burdensome to issuers and are seeking public comment to assess its impact on IDS participation. The CSA are also seeking comment on whether a "seasoning" requirement or a quantitative (size) requirement should be imposed as conditions of IDS eligibility.

1. Reporting Issuer in all Jurisdictions

The proposed IDS would require that an issuer be a reporting issuer or equivalent in all thirteen Canadian jurisdictions. Given that not all CSA jurisdictions apply the concept of reporting issuer status, the Concept Proposal would extend the term to include issuers that file continuous disclosure that is substantially equivalent to that which is required in jurisdictions that apply the concept.

The CSA believe that conditioning IDS eligibility on reporting issuer status in all jurisdictions would promote more uniform rules for distributions in Canada and would be consistent with the market reality that information, investor interest and market activity cannot be contained within geographic boundaries. In this regard, much of the complexity associated with the resale of privately placed securities would be minimized if the issuer is required to be a reporting issuer in all jurisdictions. All-jurisdiction reporting issuer status is consistent with ensuring that secondary market investors across Canada have access to relevant information upon which to base their investment decisions. Furthermore, with the advent of the System for Electronic Document Analysis and Retrieval ("SEDAR"), the CSA do not anticipate that requiring IDS issuers to make timely filings in all CSA jurisdictions would be a significant mechanical impediment.

The CSA recognize that all-jurisdiction reporting issuer status is not essential to ensure secondary market access to timely, high-quality information about an issuer. Secondary market investors throughout Canada would have access to such information via the SEDAR website provided that the issuer is a reporting issuer in at least one CSA jurisdiction. The CSA also recognize that requiring all-jurisdiction reporting issuer status as a condition of IDS eligibility could constitute a significant deterrent to IDS participation. In particular, the CSA considered three potentially adverse consequences of this eligibility criterion: filing fees; translation of IDS disclosure documents; and ongoing compliance with the reporting issuer requirements of the CSA jurisdictions.

(i) Filing fees

The requirement to acquire and maintain reporting issuer status in all jurisdictions may impose additional costs on IDS issuers. The CSA are currently considering the revision and rationalization of regulatory fees. The CSA believe, however, that the benefits of IDS participation may justify some incrementally higher costs.

(ii) Translation

The CSA recognize that requiring all-jurisdiction reporting issuer status as a condition of IDS eligibility may impose a translation burden on IDS issuers. The proposed IDS would not require any changes to the current requirement that a prospectus be written in the principal language or languages of the jurisdiction(s) in which it is filed. However, in order to encourage broad IDS participation, the IDS would provide certain accommodations to issuers regarding the translation of their continuous disclosure filings.

The proposed IDS adopts the approach to translation that has been applied to short form prospectuses in Québec. If an issuer files an IDS prospectus in a particular jurisdiction, that IDS prospectus, and any portion of the issuer's continuous disclosure record that is incorporated by reference in the IDS prospectus, must be filed in the language or languages in which a prospectus is required to be filed in that jurisdiction. The CSA consider this approach to be reasonable given that access to the primary market imposes an obligation on issuers to inform its target investors.

For purposes of IDS eligibility, an issuer's continuous disclosure that is not incorporated by reference in an IDS prospectus would be considered to comply with reporting issuer continuous disclosure requirements in all jurisdictions if it files its continuous disclosure in all jurisdictions in the language or languages required in the jurisdiction of the issuer's principal regulator as determined under the CSA's mutual reliance review system ("MRRS"). Accordingly, under the IDS, issuers would only be subject to additional translation requirements if they filed an IDS prospectus in a jurisdiction that required a prospectus to be filed in a language other than that required by the issuer's principal regulator. Moreover, the translation obligation would only apply to that IDS prospectus and continuous disclosure incorporated by reference.

The CSA recognize that the translation requirement adopted under the IDS represents somewhat of a departure from the IDS' emphasis on the accessibility of continuous disclosure. In principle, to maintain reporting issuer status, the IDS might imply that all of an issuer's IDS disclosure base should be filed in the principal language of the jurisdiction, irrespective of whether it is incorporated by reference in a prospectus filed in that jurisdiction. In this regard, the CSA considered requiring issuers to translate all continuous disclosure in the jurisdictions in which they have either filed a prospectus (IDS or otherwise) or have a

substantial investor base.

The CSA are concerned that the imposition of such a requirement may be unduly onerous and represent a disincentive to IDS participation. In addition, the CSA note that investor interest and market demands would encourage issuers to accommodate the language needs of investors voluntarily, particularly in jurisdictions where they have a significant investor base.

(iii) Compliance with the Reporting Issuer Requirements of the CSA Jurisdictions

If all-jurisdiction reporting issuer status is implemented as a condition of IDS eligibility, IDS issuers would be subject to all of the reporting issuer requirements in each jurisdiction of Canada. The CSA recognize that requiring IDS issuers to obtain reporting issuer status and comply with the varying reporting issuer requirements across Canada on an ongoing basis may be burdensome, particularly for smaller issuers that do not have sufficient resources to retain professional advisors. Although the IDS itself would provide issuers with a uniform regime governing continuous disclosure across Canada, and steps have been taken to harmonize other reporting issuer requirements, some differences would continue to exist among jurisdictions.

Questions

1. Should reporting issuer (or equivalent) status in all CSA jurisdictions be a condition of IDS eligibility? What are the advantages and disadvantages of this approach? Would requiring all-jurisdiction reporting issuer status be a deterrent to IDS participation? If so, why?
2. Do you agree with the CSA's approach to language requirements under the IDS? If not, why not? Should IDS issuers be obligated to translate all continuous disclosure filings in jurisdictions in which they have previously filed a prospectus (IDS or otherwise) or in which they have a substantial investor base? If so, how would you suggest the CSA define "substantial investor base" for this purpose? Would the imposition of such a requirement be a significant disincentive to IDS participation? Do issuers normally provide investors on a voluntary basis with translated continuous disclosure documents to accommodate their language preferences?
3. Although the proposed IDS would harmonize the continuous disclosure requirements for participating issuers across Canada, differences in other reporting issuer requirements would continue to exist. Would this pose a significant burden on issuers? If so, why?

2. "Seasoning" Requirement

In developing the proposed IDS, the CSA considered whether a "seasoning" requirement (i.e. a minimum period of time as a reporting issuer) should be included as a condition of IDS eligibility. The CSA believe that IDS eligibility requirements are sufficiently high that a prior seasoning requirement is not essential.

In other regulatory contexts, seasoning is sometimes required to allow information about an issuer to reach market participants and to be absorbed by the market. This premise, however, may be outdated given recent advances in technology such as SEDAR which facilitate instant, widespread and economical dissemination of information. The CSA also note that the quality of an issuer's disclosure does not necessarily improve with time. In this regard, an issuer's disclosure base may be as current and complete at the time of its initial public offering, as at any subsequent point in time, particularly with the assistance and involvement of its professional advisers. Similarly, there is no evidence to suggest that newly-public issuers are less able or likely to implement sound disclosure practices as compared with their more "seasoned" counterparts. The CSA also recognize that the existing framework of securities regulation in Canada does not always require seasoning as a means of protecting secondary market investors. Under the current regime, unrestricted secondary market trading may commence immediately after an issuer's initial public offering ("IPO") prospectus is receipted.

The CSA considered arguments in favour of imposing a seasoning period on issuers. A seasoning requirement would provide issuers and their advisers with the experience of complying with its continuous

disclosure obligations, and the opportunity to refine its disclosure practices and policies, before gaining access to the IDS. In addition, it would enable both regulators and the market to assess the issuer's ability to comply with its disclosure requirements. Proponents of a seasoning requirement often point out that it allows analysts and investors to become acquainted with the issuer. In addition, a seasoning period permits a comparison of the issuer's performance with the promises it made when it became a reporting issuer, for example, in the issuer's IPO prospectus.

The CSA recognize that a 12-month seasoning requirement is required under the short form prospectus and shelf distribution systems. However, the CSA believe that the IDS should be more widely available than these alternative offering procedures because the IDS requires issuers to provide an enhanced standard of disclosure to secondary market investors without compromising the disclosure available to investors in the primary market.

Questions

4. Should "seasoning" be included as a condition of IDS eligibility? If so, what would be an appropriate seasoning period? Should the imposition of a seasoning requirement be dependent upon an issuer's revenues, assets or market capitalization?
5. Are there any advantages or disadvantages of a seasoning requirement not discussed above?

3. Quantitative (Size) Requirement

In developing IDS eligibility criteria, the CSA rejected quantitative measures, such as an issuer's revenues, assets or market capitalization, as a condition of IDS eligibility. As discussed in Part III.B.5 of the Concept Proposal, the CSA considered a number of factors in reaching this conclusion.

The CSA are not aware of any empirical results demonstrating a correlation between an issuer's size and the quality of information it provides to investors. Moreover, any concerns regarding the quality of smaller issuers' disclosure may be addressed through the development of continuous disclosure review systems that provide more frequent reviews of these issuers. The CSA also note that a financial criterion may produce complexity and unpredictability for issuers because there may be a tendency for an issuer to arbitrarily gain and lose eligibility repeatedly as its income or market capitalization fluctuates.

The CSA recognize that quantitative (size) tests are currently employed as a basis for qualification to use certain distribution procedures, including the short form and shelf distribution procedures. Proponents of a size criterion, such as a public float test, often assert that a larger issuer would likely command greater investment analyst coverage, thereby promoting the market's absorption of corporate information and the quality of issuer disclosure. While the CSA do not necessarily question this assumption, the CSA do question whether the presence or absence of "analyst following" should form the basis of policy development in this area in view of recent developments in information technology, including SEDAR, that facilitate widespread and timely dissemination of information to investors, irrespective of an issuer's size.

More fundamentally, the CSA believe that excluding issuers on the grounds of size alone is inconsistent with its objective of broad IDS participation. Given the enhanced disclosure standards under the IDS, the CSA believe that investors will benefit though the inclusion of issuers of all sizes.

Questions

6. Should the IDS impose quantitative IDS eligibility criteria? If so, what should these criteria be, and why?
7. Do larger issuers provide a higher quality of disclosure than smaller ones? Please explain.
8. Do you believe that the "analyst following" argument is relevant in today's markets? Please explain.

B. IDS Continuous Disclosure

Fundamental to the IDS is the establishment by participating issuers of a comprehensive publicly-available disclosure base. The IDS proposes to enhance the quality and timeliness of information by upgrading an issuer's continuous disclosure base to the prospectus standard of certified "full, true and plain" disclosure and, in some cases, accelerating existing due dates for filing. As described in Part III.C.1 of the Concept Proposal, the cornerstone of an issuer's IDS disclosure base is the IDS annual information form (the "IDS AIF"), which would provide an annual consolidation of information about the issuer's business and affairs. The IDS AIF would be supplemented by a quarterly information form (a "QIF") filed for each of the issuer's first, second and third financial quarters, as well as a supplementary information form (an "SIF") that would provide timely prospectus-level disclosure of significant events affecting the issuer.

In conjunction with the new, upgraded IDS continuous disclosure documents, the CSA are proposing a number of IDS continuous disclosure enhancements that are intended to modify existing requirements so that they meet, or exceed, prospectus disclosure standards. As discussed in Part III.C.2 of the Concept Proposal, the proposed changes would significantly impact the current requirements governing financial statements, the scope of annual and quarterly reporting, and the certification of continuous disclosure documents.

Some of these continuous disclosure enhancements are consistent with existing requirements of certain CSA members. Certain other CSA members have undertaken separate policy initiatives which will propose the adoption of most of these continuous disclosure enhancements for all issuers regardless of whether an IDS is implemented. These proposals are expected to be published for comment shortly.

Questions

9. Are there any disclosure items that should, or should not be, included in the proposed IDS AIF or QIF?
10. Are there any other continuous disclosure enhancements that should be included as part of the IDS? If so, should these enhancements be extended to all issuers?
11. Are there any specified events that should, or should not, trigger the filing of an SIF?
12. As an alternative to requiring the filing of an SIF for changes in an IDS issuer's name and auditor as outlined in Part III.C.1(a)(iii) of the Concept Proposal, should an IDS issuer's SEDAR profile (which could include such information) be included in its IDS disclosure base? Given that an issuer's SEDAR profile is a changing document, an IDS issuer would disclose these changes by filing an amended copy of its SEDAR profile under cover of an SIF.
13. The CSA propose to require IDS issuers to file SIFs containing prospectus-level disclosure about all completed business combinations within 75 days. Is the 75 day deadline appropriate? Are there business combinations for which the 75 day deadline or the prospectus-level disclosure requirement cannot be met?
14. The CSA believe that IDS AIFs and QIFs should be delivered to investors in compliance with existing statutory requirements. As discussed in Part III.E of the Concept Proposal, the CSA would permit the delivery of all IDS disclosure documents by electronic means in accordance with the principles set out in National Policy 11-201 *Delivery of Documents by Electronic Means*. Should alternative methods of delivery of IDS AIFs and QIFs be permitted under the IDS? If so, which methods would you suggest?
15. The CSA propose to require that interim financial statements filed as part of an issuer's continuous disclosure record have been reviewed by the issuer's audit committee and approved by the issuer's board of directors or equivalent. The CSA are also considering requiring that interim financial statements have been reviewed by an auditor, as required in the United States. Would such a requirement be appropriate? If not, why not?

1. Certification

In order to promote the integrity of an IDS issuer's continuous disclosure, the proposed IDS would require senior officers and directors of an IDS issuer to certify IDS AIFs, QIFs and SIFs. The CSA are considering the reasonableness of applying a common disclosure standard for all IDS continuous disclosure filings.

The CSA believe that the prospectus standard of "full, true and plain disclosure of all material facts" would be appropriate for an IDS AIF given that it is to be an annual consolidation of information about an issuer's business and affairs. The CSA are seeking comment on whether this disclosure standard should also be applied to QIFs and SIFs given the nature of these continuous disclosure filings, and the timing constraints under which these documents must be filed.

Questions

16. Would the proposed certification requirements materially affect the extent to which signatories participate in the preparation of IDS continuous disclosure documents? Are there practical impediments to the certification of such documents?
17. Is the "full, true and plain disclosure of all material facts" standard of disclosure attainable on a timely basis in connection with IDS continuous disclosure filings? If not, why not? What alternative disclosure standard would be appropriate given the objectives of the integrated disclosure system? Would an alternative misrepresentation standard be more appropriate for some continuous disclosure documents (i.e. "The foregoing does not make a statement that, in a material respect and in the light of the circumstances is misleading or untrue and does not omit a fact that is required to be stated or that is necessary to make the foregoing not misleading")?

2. Involvement of Advisors in Continuous Disclosure

Part III.D.5 of the Concept Proposal suggests that underwriters, auditors, lawyers and other advisors may need to increase their involvement in an issuer's continuous disclosure in order to satisfy themselves as to the quality of the disclosure which may, on short notice, be incorporated by reference into an IDS prospectus. A similarly increased role for advisors was encouraged in connection with the implementation of the prompt offering qualification system. The CSA recognize that, for most issuers, participation in the prompt offering qualification system did not significantly alter the extent or timing of the involvement of their advisors in continuous disclosure.

Questions

18. Is it realistic to expect that advisors will become more involved in continuous disclosure in order to address increased time pressure at the time of an IDS prospectus? Alternatively, will the expedited offering process result in a deterioration of the due diligence conducted by advisors in respect of information incorporated by reference in a prospectus? If so, how would this affect the ability of underwriters to certify the prospectus?

C. IDS Prospectuses

Consistent with the existing statutory framework, the IDS would require both a preliminary and final form of IDS prospectus. However, under the IDS, greater emphasis would be placed on the preliminary IDS prospectus on the basis that prospective investors should have access to comprehensive information about an issuer prior to making an investment decision.

The CSA are seeking comment on the proposed preliminary IDS prospectus delivery requirement. In addition, as discussed below, the CSA invite comment on the proposed content of the preliminary and final IDS prospectus under the IDS.

1. Delivery of the Preliminary IDS Prospectus

The IDS is intended to refocus the prospectus delivery requirements to ensure that investors receive, or have access to, relevant disclosure about an issuer prior to making an investment decision. Under the IDS, the CSA are proposing that an agreement to purchase a security in an IDS offering would not be enforceable against the purchaser unless the purchaser had first received a copy of the preliminary IDS prospectus and any amendment. A prominent statement to this effect would be required to be included in both the

preliminary and final IDS prospectuses, any subscription agreement, and any confirmation of purchase.

The IDS, with its focus on enhanced continuous disclosure, would provide prospective investors with relevant information about IDS issuers well in advance of any investment decision. It has been suggested that the preliminary IDS prospectus should not be required to be delivered to investors. Proponents of this approach argue that, given the de-emphasis of prospectus disclosure under the IDS, and their contention that investors are not currently basing their investment decisions on the preliminary prospectus, a filing requirement would be sufficient given the widespread public access to the SEDAR website. It was also argued that any written marketing communications utilized in connection with an IDS offering would be required to include a prominent statement explaining where investors can obtain or receive electronically, without charge, a copy of the preliminary IDS prospectus.

Proponents of this alternative approach argue that IDS issuers would always have the option of delivering the preliminary IDS prospectus to investors on a voluntarily basis and that it may also provide an incentive to issuers to tailor their marketing documents to better suit the needs of investors, subject to the IDS marketing restrictions and the availability of the preliminary IDS prospectus. As is currently proposed in the Concept Proposal, the final IDS prospectus would be required to be delivered to investors no later than delivery of the confirmation of purchase to ensure that investors are provided with their statutory withdrawal rights.

Questions

19. Do preliminary and final prospectuses assist investors in making their investment decisions and is it relied upon for this purpose today? If not, on what basis are investors in the primary market currently making their investment decisions?
20. As discussed in Part III.D.4(a) of the Concept Proposal, the CSA considered specifying the timing of delivery of the preliminary IDS prospectus to ensure that a prescribed minimum period of time would be available to an investor before an investment decision becomes binding. Would a prescribed minimum preliminary IDS prospectus delivery period (for example, a specified number of days before pricing or the signing of a subscription agreement) be suitable for all investors and all situations? If so, what would be an appropriate period of time? If not, why not?
21. Should the IDS require filing and delivery of the preliminary IDS prospectus? Should alternative methods of delivering the preliminary IDS prospectus be permitted? If so, how?

2. Content of IDS Prospectuses

With its enhanced IDS disclosure base in place, IDS eligible issuers would be able to offer securities in the primary market more quickly and with greater certainty using an abbreviated offering document. As described in Part III.D.2 of the Concept Proposal, a preliminary IDS prospectus would only be required to contain disclosure relating to the offering, the offered securities and associated risk factors, and investors' statutory rights. Most issuer disclosure in the preliminary IDS prospectus could be incorporated from its IDS disclosure base.

The CSA considered two approaches to the content of the final IDS prospectus: (i) a traditional form of final prospectus that would repeat most of the text of the preliminary IDS prospectus; or (ii) a streamlined or "checklist" form of final prospectus which would enable issuers to incorporate by reference much of the information contained in the preliminary IDS prospectus. Under the IDS, the CSA are proposing for comment the streamlined version of the final IDS prospectus but are also providing issuers with the option of delivering to investors the more traditional form of final IDS prospectus.

Under the streamlined form of final IDS prospectus, most of the text of the preliminary IDS prospectus would not be required to be repeated in a final IDS prospectus, with the exception of certain mandated disclosure such as investors' statutory rights and prospectus certificates. In this regard, the final IDS prospectus would represent somewhat of a departure from the traditional form of final prospectus. The final IDS prospectus would primarily serve to update and complete the final disclosure in the preliminary IDS prospectus, and to

form the basis of investors' statutory rights of withdrawal and rights of action for damages and recission on grounds of misrepresentation.

The streamlined form of final IDS prospectus would be beneficial because it would enable investors to quickly identify the documents incorporated by reference and would more effectively highlight important information, including any new developments and the statement of investors' statutory rights, as compared with a restated version of the preliminary IDS prospectus. Proponents of the traditional form of final prospectus have argued that a streamlined version of the final IDS prospectus could confuse investors and cause investors to dismiss its importance. Accordingly, the CSA propose to permit IDS issuers to deliver to investors the more traditional form of final IDS prospectus which repeats the text of the preliminary IDS prospectus, except as varied by intervening new or final information.

Questions

22. Are the preliminary IDS prospectus disclosure items outlined in Part III.D.2(a) of the Concept Proposal appropriate to ensure than an investor can make an informed investment decision? Please explain.
23. What are the advantages and disadvantages of a streamlined form of final IDS prospectus? Which form of final IDS prospectus would issuers and investors prefer? Should the traditional form of final IDS prospectus be mandatory? If so, why?

D. IDS Marketing Regime

The current framework of securities regulation imposes significant restrictions on marketing communications during a distribution of securities. These restrictions are premised on the principle that investors should be making informed investment decisions based on the information contained in a prospectus, and not on the basis of potentially misleading marketing or promotional efforts made by, or on behalf of, issuers.

The IDS is intended to ensure that securities markets are informed on a continuous basis through an issuer's comprehensive IDS disclosure base of timely, prospectus-level disclosure. Given that most marketing activities would occur against the backdrop of this enhanced disclosure record under the IDS, many of the concerns underlying the existing marketing restrictions would be addressed. The IDS represents a movement away from the traditional regulatory focus of restricting investors access to non-prospectus disclosure by offering IDS issuers greater flexibility in the form, content and timing of their marketing communications subject to appropriate restrictions and prohibitions against misleading or improper marketing practices.

To ensure that the integrity of these marketing communications is not compromised, the IDS contains new marketing restrictions and requirements, as described in Part III.D.6 of the Concept Proposal. The IDS marketing regime is intended to require issuers to assume greater responsibility for the reliability of their marketing communications and to deter misleading and improper securities marketing practices. Consistent with this approach, all written marketing communications that are disseminated by, or on behalf of, the issuer during a distribution of securities under the IDS would be required to be identified and incorporated by reference in the IDS prospectus that relates to such offering.

Questions

24. Is the proposed definition of "marketing communication" in the IDS appropriate? What types of communications should be excluded from the definition, and why?
25. What are your views concerning the proposed IDS marketing restrictions? Are others necessary for investor protection purposes? Would the proposed IDS marketing restrictions restrict valid corporate communications?
26. How should "distribution period" be defined for the purposes of determining which written marketing materials must be incorporated by reference in an IDS prospectus? Should it be defined as commencing a specified number of days (e.g. 15 days) before the first offer of the securities, upon

the filing of the preliminary IDS prospectus or some other event? When should the distribution period be considered terminated for this purpose?

E. Proposals for Changes Outside the IDS

The CSA believe that many of the issues addressed in the development of the IDS are applicable in a broader context to all issuers and investors, and that the general application of certain elements of the IDS would further advance securities regulatory objectives.

The CSA is contemplating changes to the continuous disclosure requirements for non-IDS issuers which parallel some of the changes proposed for IDS issuers. A number of the proposed IDS continuous disclosure enhancements are consistent with existing requirements of certain CSA members. Certain CSA members will soon publish for comment separate instruments which propose to adopt many of these changes regardless of whether an IDS is implemented.

The CSA believe that these changes would significantly enhance the disclosure available to secondary market investors in non-IDS issuers. In addition, it would minimize the inconsistencies between the IDS and non-IDS disclosure requirements which might serve as a deterrent to IDS participation. In general, the disclosure enhancements under consideration for broad application to all issuers include: (i) upgraded content of annual and interim reports; (ii) accelerated filing of annual and interim reports, including financial statements; (iii) upgraded material change reporting requirements; and (iv) certification of IDS continuous disclosure documents. Part IV.A of the Concept Proposal describes these disclosure enhancements in detail.

As is discussed in Part IV.B of the Concept Proposal, the CSA are considering extending the proposed IDS marketing restrictions to apply to all non-IDS offerings. These restrictions would supplement the existing marketing restrictions under current securities legislation and would enhance the integrity of corporate disclosure. In order to enhance the ability of regulators to halt or sanction misleading communications, the CSA are also considering extending to all issuers a general prohibition concerning misrepresentations that are made in furtherance of a trade.

Questions

27. Should the IDS disclosure enhancements be broadly applied to all issuers?
28. The CSA propose to extend to non-IDS issuers the IDS certification requirements discussed in Part III.B.1 of this Notice and Part III.C.2(c) of the Concept Proposal. Does this raise concerns unique to non-IDS issuers? If so, what are they?
29. Should the IDS marketing restrictions discussed in Part IV.B be broadly applied to non-IDS offerings?
30. Are there any other elements of the IDS that should be broadly applied to all issuers?

F. Pilot Introduction of the IDS

The CSA propose to implement the IDS on a two-year minimum pilot basis. The purpose of the pilot introduction is to enable issuers, investors, regulators and other market participants to assess the merits of the IDS, and to allow the CSA to respond to system modifications as required.

During the pilot period, IDS issuers would have continued access to the existing distribution procedures, including the long form prospectus procedures, the short form and shelf distribution procedures, as well as the prospectus exemptions for which they are eligible. If the IDS proves successful during its pilot introduction, the CSA will consider eliminating the short form prospectus and shelf distribution procedures for IDS-eligible issuers in the event that experience with the IDS demonstrates that it is an adequate

substitute for the short form prospectus and shelf distribution regimes. The CSA believe that the benefits of the IDS will prompt qualifying issuers to participate in the IDS.

Questions

31. Would issuers be interested in participating in the pilot introduction of the IDS? If not, why not?
32. Would issuers who are currently eligible to use the prompt offering qualification system be interested in participating in the pilot introduction of the IDS? If not, why not?
33. What do you perceive as the main benefits of the IDS, as compared with the existing distribution procedures?
34. If the IDS proves to be a successful alternative to the short form prospectus and shelf distribution systems, the CSA will consider eliminating the short form and shelf distribution procedures for IDS-eligible issuers. Is this appropriate? If not, why not?

Comments

Interested parties are invited to make written submissions with respect to the Concept Proposal and the specific questions contained in this Notice. Submissions received by June 1, 2000 will be considered.

Submissions should be addressed to all of the Canadian securities regulatory authorities listed below and sent, in duplicate, in care of the Ontario Securities Commission, as indicated below:

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Securities Commission
The Manitoba Securities Commission
Ontario Securities Commission
Office of the Administrator, New Brunswick
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Securities Division, Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Registrar of Securities, Nunavut

c/o John Stevenson, Secretary
Ontario Securities Commission
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Submissions should also be addressed to the Commission des valeurs mobilières du Québec as follows:

Claude St Pierre, Secrétaire
Commission des valeurs mobilières du Québec
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A diskette (or an e-mail attachment) containing the submissions (in DOS or Windows format, preferably WordPerfect) should also be submitted.

Comment letters submitted in response to requests for comments are placed on the public file in certain jurisdictions and form part of the public record, unless confidentiality is requested. Comment letters will be circulated among the securities regulatory authorities, whether or not confidentiality is requested. Although comment letters requesting confidentiality will not be placed on the public file, freedom of information legislation in certain jurisdictions may require the securities regulatory authorities in those jurisdictions to make comment letters available. Persons submitting comment letters should therefore be aware that the press and members of the public may be able to obtain access to any comment letters.

Questions may be referred to any of:

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January 28, 2000

APPENDIX

QUICKER AND MORE FLEXIBLE ACCESS TO PUBLIC MARKETS

Key Differences	Existing Regulatory System	Proposed IDS
Broad Access to a Streamlined Prospectus	# Eligibility to use short form prospectus limited to certain issuers	# Almost all classes of issuers listed on major exchanges may qualify # Term sheet style prospectus focuses on terms of securities and risk factors #
Shift Away From Historical Emphasis on Prospectus Reviews	# Prospectus filing may be subject to in-depth review # Could be extensive review and comments on all aspects of prospectus # Timing may be unpredictable	# Reviews limited in scope: focus on IDS ineligibility and grounds for receipt refusal # Timing faster and more predictable
Elimination of Pre-Marketing Prohibition	# Preliminary prospectus must be filed and delivered to prospective purchasers before soliciting expressions of interest or as soon as practicable thereafter (except for bought deals)	# Marketing communications permitted at any time # Market interest may be assessed without triggering a prospectus filing
More Issuer Control and Responsibility Over Timing and Content of Marketing Communications	# Prior to receipt for final prospectus, issuer may undertake only limited marketing communications # Written communications largely restricted to use of the preliminary prospectus in waiting period	# Greater flexibility would be permitted in format and timing of marketing communications # Misleading marketing would be prohibited under new marketing restrictions* # Issuer would have to incorporate marketing documents by reference into prospectus # IDS issuers would be subject to a general misrepresentation prohibition*

* CSA are considering extending also to issuers that do not participate in the IDS

MORE COMPREHENSIVE AND MORE TIMELY DISCLOSURE

Key Differences	Existing Regulatory System	Proposed IDS
New Continuous Disclosure Forms	# Annual information form (AIF) required for specific purposes # Quarterly filings generally consist of interim financial statements without MD&A (except exchange issuers in B.C.) # Disclosure of changes in business and affairs of an issuer required for "material changes"	# All IDS issuers must file an upgraded AIF, quarterly information forms (QIF) and supplemental information forms (SIF) # AIF would consolidate annually material information relating to the issuer's business and affairs # QIF would include quarterly MD&A* and summary of current SIF information # SIF would replace material change reports and would be required to be filed for certain events whether "material changes" or not*
Continuous Disclosure Enhancements	# Generally, continuous disclosure other than material change reports not certified # Reconciliation of foreign GAAP to Canadian GAAP and foreign GAAS to Canadian GAAS for financial statements generally not required in continuous disclosure filings (except in B.C.) # Interim financial statements generally include only income statement, statement of changes in financial position and minimal note disclosure	# AIF, QIF and SIF would require certification by senior officers and directors* # Reconciliation to Canadian GAAP and GAAS would be required for all annual financial statements* # Reconciliation to Canadian GAAP would be required for all interim financial statements* # Interim financial statements required to include a balance sheet and enhanced note disclosure*

	# Generally, neither audit committee nor board required to review or approve interim financial statements # Annual financial statements required to be filed within 140 days of year end # Interim financial statements required to be filed within 60 days of period end	# Audit committee (if issuer has one) would be required to review all financial statements* # Issuer's board of directors would be required to approve all financial statements* # Annual financial statements would be filed within 90 days of year end* # Interim financial statements would be filed within 45 days of period end*
Intensified Continuous Disclosure Reviews	# In many jurisdictions, detailed reviews of continuous disclosure typically limited to targetted review programs or investigations	# More frequent and extensive reviews of an issuer's disclosure base*

* CSA are considering extending also to issuers that do not participate in the IDS

Canadian Securities Administrators
Autorités canadiennes en valeurs mobilières

CONCEPT PROPOSAL FOR AN INTEGRATED DISCLOSURE SYSTEM

January 2000

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CONCEPT PROPOSAL
FOR AN
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GLOSSARY OF TERMS

The following are brief explanations of certain terms used in this Concept Proposal:

"Continuous disclosure" means all information, other than prospectuses and offering memoranda, concerning the business, operations or capital of an issuer that the issuer files with a Canadian securities regulatory authority.

An issuer's **"continuous disclosure record"** means all continuous disclosure filed by the issuer with a Canadian securities regulatory authority.

"CSA" means the Canadian Securities Administrators, comprised of the thirteen securities regulatory authorities in Canada.

"GAAP" means generally accepted accounting principles.

"GAAS" means generally accepted auditing standards.

"IDS" means the proposed integrated disclosure system.

"IDS AIF" means the annual information form prescribed for purposes of the IDS.

An issuer's **"IDS disclosure base"** means that part of the issuer's continuous disclosure record consisting of the issuer's current IDS AIF and all QIFs, and SIFs filed after the date of the current IDS AIF.

"Marketing communication" refers to any oral or written communication disseminated by or on behalf of an issuer to promote (or that can reasonably be considered to have been intended to promote) a purchase or sale of a security of the issuer or of an affiliate of the issuer.

"MD&A" means management's discussion and analysis of the financial condition and results of operations of an issuer, as prescribed by securities legislation.

"MRRS Policy" means National Policy 43-201 *Mutual Reliance Review System for Prospectuses and AIFs*.

"NI 44-101" means proposed National Instrument 44-101 *Short Form Prospectus Distributions* (republished for comment in the week ended December 17, 1999), the proposed reformulation of CSA National Policy Statement No. 47 *Prompt Offering Qualification System*.

"QIF" means the quarterly information form prescribed for purposes of the IDS.

"Reporting issuer" denotes an issuer that is obligated to file prescribed continuous disclosure; when the term is used:

- in respect of a jurisdiction that currently applies the concept, it has the meaning ascribed to the term under the securities legislation of the jurisdiction; and

- in respect of any other jurisdiction, it means an issuer that files in the jurisdiction continuous disclosure substantially equivalent to that required of a reporting issuer in a jurisdiction that currently applies the concept.

"SEDAR" means the system for electronic filing and retrieval of disclosure documents governed by National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*.

"SIF" means the supplementary information form prescribed for purposes of the IDS.

Many of the terms used in this Concept Proposal are defined in National Instrument 14-101 *Definitions* or in the securities legislation of individual jurisdictions.

CONCEPT PROPOSAL
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EXECUTIVE SUMMARY

1. Relationship to Existing Regulatory Systems

The proposed IDS would be a voluntary regime governing disclosure and distributions of securities by participating issuers. The IDS would coexist with existing alternative distribution procedures: the general long form prospectus procedures, variants such as the short form prospectus and shelf distribution procedures, and the "closed system" for prospectus-exempt distributions. The CSA will consider eliminating the short form prospectus and shelf distribution systems for IDS-eligible issuers if the pilot introduction demonstrates the IDS to be a successful substitute for these regimes. The IDS could also reduce issuers' recourse to prospectus exemptions for raising capital and the associated complexities of the closed system for resales of privately placed securities.

The CSA expect that the IDS could be implemented in most jurisdictions, without statutory amendment, by rule, regulation or policy.

2. Purposes and Focus

The IDS is intended to provide investors in both the primary and secondary markets with the same timely prospectus-quality issuer disclosure, while offering IDS issuers more timely and flexible access to primary market capital. To achieve these purposes the IDS would focus on the "IDS disclosure base" and de-emphasize the prospectus.

3. Eligibility

The CSA propose broad access to the IDS. IDS eligibility would be conditional on the issuer having reporting issuer status in all CSA jurisdictions.

The other IDS eligibility criteria set out in the Concept Proposal are intended to screen out issuers whose continuous disclosure would not be expected to provide the comprehensive information base on which the IDS is premised. For example, information concerning the operations of a special purpose issuer of derivative securities or a blind pool would generally be of limited value and for that reason such issuers would not be eligible to offer securities under the IDS. Other criteria are modelled on the existing statutory bars to a prospectus receipt, targeting issuers whose history raises concerns about reliability.

4. IDS Disclosure Base

The IDS disclosure base would consist of publicly available continuous disclosure, upgraded to the prospectus standard of certified "full, true and plain disclosure" and in some cases provided earlier than prescribed under current requirements. Principal components would be:

- an annual information form (the "IDS AIF"), comparable to the AIF used for short form prospectus distributions but with added content;

- quarterly information forms ("QIFs") for the first three quarters of each year, consisting primarily of upgraded interim financial statements and MD&A; and

- supplementary information forms ("SIFs"), comparable to current material change reports but also triggered by additional specified events, whether or not technically "material", and containing

prospectus-quality disclosure concerning events such as significant acquisitions.

5. IDS Prospectuses

The IDS would apply existing statutory requirements for a prospectus but with streamlined documents and more emphasis on the preliminary IDS prospectus, with a view to providing prospective investors with useful offering information earlier in their decision-making process. A purchase would not be enforceable against an investor who did not receive the preliminary IDS.

An IDS prospectus would contain full disclosure concerning the offering, the offered securities, risk factors and investors' statutory rights. Most disclosure concerning the issuer could be incorporated by reference from the issuer's IDS disclosure base.

6. Regulatory Role

An issuer's IDS disclosure base would be subject to a continuous disclosure review system. With the great majority of non-offering-specific disclosure required in an IDS prospectus being incorporated by reference from the IDS disclosure base, the IDS prospectus itself would undergo streamlined regulatory screening to identify cases of IDS ineligibility, issues that could prompt a detailed review or statutory grounds for receipt refusal. Few delays or refusals of IDS prospectus receipts are anticipated.

7. Marketing

Securities marketing and "pre-marketing" (before the preliminary prospectus) activities and restrictions have long been a source of concern and some confusion. With a comprehensive IDS disclosure base in place to address concerns about unequal access to information, the CSA consider that a more flexible approach to marketing restrictions would be desirable under the IDS.

The IDS would therefore give IDS issuers wide latitude in the form, content and timing of their marketing communications, exempting them from current marketing restrictions and instead imposing more responsibility on the issuer to ensure the reliability of marketing communications by requiring the incorporation by reference of written marketing communications in the IDS prospectus.

The IDS would directly prohibit any misrepresentation in furtherance of a trade, mirroring a useful provision of current British Columbia legislation.

8. Changes Outside the IDS

The CSA are considering extending IDS disclosure enhancements, affecting content, quality and timing of continuous disclosure, and IDS marketing restrictions, to all issuers.

CONCEPT PROPOSAL
FOR AN
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PART I. INTRODUCTION

This Concept Proposal describes a system of information disclosure and securities offering procedures developed by the Canadian Securities Administrators (the "CSA") to enhance the quality and timeliness of information available to investors and facilitate access to Canadian capital markets by issuers of securities. Parts IV and V of this Concept Proposal identify other initiatives under consideration by the CSA, including a proposal for disclosure enhancements of general application.

The objective of the CSA is to foster fair and efficient capital markets in a changing market environment in a way that facilitates capital formation without compromising the protection of investors. More specifically, the CSA seek to:

- facilitate prompt and flexible access by business to capital;
- enhance the ability of investors to make informed investment decisions using more useful and reliable information from securities issuers; and.
- achieve a better match of regulatory effort to existing and prospective market conditions.

The key to achieving these objectives, in the view of the CSA, lies in integrating and upgrading the quality of information made available on a continuous basis to all market participants.

The proposed "integrated disclosure system" (the "IDS") would integrate the information required to be provided by reporting issuers to investors in both the primary and secondary securities markets in a common continuous disclosure base. The foundation of the IDS would be an upgraded "IDS disclosure base" that offers the public timely access to information relating to an issuer and its business, comparable to the information currently provided in a prospectus. The IDS disclosure base, with its comprehensive and timely information available to all investors, would represent an important advance in investor protection.

With its IDS disclosure base in place, a participating issuer would be able to respond immediately to opportunities in the primary market by using an abbreviated securities offering document that incorporates by reference the issuer's IDS disclosure base and undergoes streamlined regulatory screening.

The IDS would provide an alternative to existing procedures for distributions of securities under a prospectus, including the long form prospectus procedures, the short form prospectus procedures under NI 44-101, and the shelf distribution procedures under proposed National Instrument 44-102 *Shelf Distributions*[1], and for "closed system" distributions for which an exemption from prospectus requirements is available.

The CSA propose to develop an IDS national instrument that would be implemented on a pilot basis after consideration of public comment. During the pilot period, qualifying issuers would be able to participate in the IDS and offer securities using IDS procedures or use any of the other existing prospectus exemptions or offering procedures (subject to applicable restrictions, including current marketing restrictions) for which they are eligible.

Pilot introduction of the IDS will enable regulators, issuers and investors to assess the merits of the IDS. The CSA will consider modifications to the IDS to address problems or deficiencies that come to light during the pilot period. If the IDS proves successful during its pilot introduction, the CSA will consider eliminating

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[1] Published for comment in the week ended October 2, 1998.

use of the short form prospectus and shelf distribution procedures by issuers that are eligible to use the IDS.

PART II. BACKGROUND

A. Current Securities Offering Procedures

Securities regulation in Canada has traditionally focused primarily on new offerings of securities.

Securities legislation generally prescribes the use of a long form prospectus that provides primary market investors with comprehensive information concerning the securities offered, details of the offering and the business and affairs of the issuer.

An issuer that has issued securities to the public under a prospectus, or has otherwise become a reporting issuer under securities legislation, must make both periodic (annual and quarterly) public disclosure, primarily concerning financial results, and event-triggered public disclosure of material changes in its business or affairs.

Securities legislation exempts certain private placements and other distributions of securities from prospectus requirements. Securities distributed under a prospectus exemption generally enter a closed system designed to prevent the entry of securities into a public market that lacks relevant information about the issuer.[2] Resale restrictions may condition the release of securities from the closed system on the use of a prospectus, the issuer having built up a history as a reporting issuer in compliance with continuous disclosure obligations or the expiration of a prescribed period of time.

The CSA developed the short form prospectus and shelf distribution procedures in an effort to expedite primary market access for certain issuers while maintaining the substance of long form prospectus disclosure in modified disclosure documents. Under these alternative procedures, issuers provide additional continuous disclosure by way of an annual information form (an "AIF") that contains disclosure concerning the business and affairs of the issuer but not specific to a particular offering of securities. The reliance placed by these distribution systems on the AIF represents a shift away from the prospectus as the cornerstone disclosure document. A qualifying issuer can offer securities to the public under these systems using a simplified prospectus that discloses information pertaining to the particular offering and incorporates by reference the AIF and other elements of the issuer's continuous disclosure record. Because the AIF forms part of the issuer's continuous disclosure record, these alternative primary market offering procedures also provide enhanced information to investors in the secondary market.

B. Changes in the Market Environment

While securities legislation remains focused on the primary market and the prospectus, most investment activity occurs in the secondary market, which today is overwhelmingly larger -- on the order of 25 times larger[3] -- than the primary market.

Other developments, including advances in information technology and increasing globalization of capital markets, have profoundly affected Canada's capital markets. Issuers and investors alike need to be able to respond knowledgeably and promptly to new information and market opportunities.

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2 In some circumstances, securities legislation also requires that securities issued pursuant to certain private placement exemptions remain within the closed system for a specified period of time even if the issuer has been a reporting issuer subject to the continuous disclosure requirements in the particular jurisdiction.

3 Comparison of Canadian primary and secondary equity market activity for 1998 by the Investment Dealers Association of Canada.

The divergence is even more pronounced in the United States. The Toronto Stock Exchange Committee on Corporate Disclosure in its March 1997 report entitled *Responsible Corporate Disclosure* (the "Allen Report") cited, at page 3, the finding of the United States Securities and Exchange Commission, noted at page 2 of its July 24, 1996 *Report of the Advisory Committee on the Capital Formation and Regulatory Processes* (the "Wallman Report"), that secondary markets had become 35 times larger than primary markets.

The CSA believe that the traditional regulatory focus on primary market prospectus disclosure is no longer sufficient. Integration of the information that issuers disclose to investors in the primary and secondary markets was advocated in the Allen Report and, before that, as part of the system of "company registration" proposed in the Wallman Report. A similar concept underlies elements of the extensive, and considerably more complex, proposal for the modernization of the United States federal regulatory system for securities offerings released by the United States Securities and Exchange Commission (the "SEC") on November 3, 1998 under the title *The Regulation of Securities Offerings,* commonly referred to as the "Aircraft Carrier Release".

The CSA took important steps toward the integration of disclosure with the adoption of the short form prospectus and shelf distribution systems. Experience with these systems has demonstrated the feasibility of heightened reliance on enhanced continuous disclosure (the AIF) to facilitate issuer access to the primary market.

Further integration of disclosure is facilitated by advances in technology that allow broad, timely and economical dissemination of information. An important example is the CSA's *System for Electronic Document Analysis and Retrieval* ("SEDAR") under which reporting issuers file information with regulators electronically. SEDAR filings are available to the public on the Internet.

PART III. THE INTEGRATED DISCLOSURE SYSTEM

A. Development of the IDS

In developing the IDS, the CSA were guided by their objective of facilitating capital formation without compromising investor protection. Their goal is a system that offers streamlined and flexible access to markets, enhances the quality, timeliness and accessibility of corporate disclosure, and aligns regulatory effort with market needs.

The IDS would shift the reporting focus from transactional offering disclosure to continuous disclosure, to provide primary and secondary markets equal access to comprehensive and timely information concerning issuers and material developments affecting their business and operations.

As part of the CSA effort to better direct regulatory resources to meet market needs, CSA staff are increasing their scrutiny of continuous disclosure. The IDS would build on this new emphasis by shifting much corporate disclosure from prospectuses to continuous disclosure. With more information provided in continuous disclosure, which will be subject to its own regulatory review systems, the IDS would also result in streamlined regulatory screening of IDS prospectuses. The result, for participating issuers, should be more efficient, flexible and predictable access to capital.

B. Eligibility to Use the IDS

1. Purposes of IDS Eligibility Criteria

The IDS would be a broadly inclusive system. Because the IDS is designed to provide a much higher quality of disclosure to secondary market investors without compromising the disclosure available to investors in the primary market, the CSA believe that the IDS should be more widely available than the short form prospectus or shelf distribution procedures.

In developing the IDS, the CSA sought to ensure that only issuers that can provide the base of high quality continuous disclosure on which the IDS is built are eligible to use the IDS. The IDS eligibility criteria are also designed to:

- avoid arbitrary exclusions not consistent with broader IDS principles or overriding concerns of investor protection; and

- provide clarity, simplicity, transparency and predictability for issuers, investors and regulators.

2. Specific IDS Eligibility Criteria

The IDS would be open to an issuer that meets all of the following five criteria:

- **Reporting issuer status.** *It is a reporting issuer in all jurisdictions.*

- **Continuous disclosure compliance.** *It is in compliance with its continuous disclosure obligations.*

- **Current base disclosure document.** *Its disclosure record contains a current base disclosure document in the form of either a current IDS AIF or, for initial entry into the IDS, a long form prospectus that has not lapsed or a short form prospectus that has not lapsed accompanied by a copy of all material incorporated by reference.*

- **Listing.** *Equity securities of the issuer are listed on a market recognized for this purpose.*

- **Not in excluded class.** *It is none of the following:*

  - *a special purpose issuer of derivative or asset-backed securities;*

  - *an issuer that has no significant assets other than money, no business in operation and no specific business plan reasonably capable of implementation in the near future;*

  - *a blind pool, a capital pool company, a keystone company, or equivalent; or*

  - *a mutual fund.*

An IDS issuer will become ineligible if it ceases to satisfy any of these eligibility criteria, or if a securities regulator: (i) knows of material unresolved CSA staff comments on the issuer's disclosure filings; or (ii) is aware of circumstances that would, if an issuer filed a prospectus, obligate the regulator to refuse to issue a prospectus receipt.

3. Discussion of the IDS Eligibility Criteria

(a) Reporting Issuer Status

The issuer is a reporting issuer in all jurisdictions.

IDS eligibility would require that the issuer be a reporting issuer in all Canadian jurisdictions. No minimum period of reporting issuer status would be specified.

Under the securities legislation of most CSA jurisdictions, issuers of securities incur public disclosure and filing obligations as a consequence of becoming a reporting issuer. These obligations are consistent with the foundation of the IDS itself: a comprehensive publicly-available base of disclosure by participating issuers. As such, in the view of the CSA, reporting issuer status is an appropriate condition of IDS eligibility.

This IDS eligibility criterion also addresses a significant source of confusion and inefficiency in securities regulation in Canada: increasingly artificial trading restrictions premised on the containment of information within geographic boundaries.

The closed system best illustrates the awkwardness of the traditional premise. As noted earlier, the closed system was designed to reduce the likelihood of securities entering a public market that lacks public disclosure about the issuer. Closed system resale restrictions defer many resales of privately placed securities to the public (without a prospectus or an available prospectus exemption) until the issuer has been

a reporting issuer and complied with the associated continuous disclosure requirements in the jurisdiction(s) in which the resale takes place for a prescribed period of time. A technological environment that continually simplifies the movement of information (and of securities) requires that issuers, regulators, exchanges, transfer agents and other market participants be more vigilant in ensuring compliance with closed system restrictions.

This IDS eligibility criterion raises three issues:

- *Mechanical feasibility*. In the view of the CSA, attainment and maintenance of reporting issuer status in multiple jurisdictions no longer presents the mechanical impediments that might have prevailed before recent developments in information processing technology and, most important, SEDAR. With SEDAR, filings are no more mechanically difficult in 13 jurisdictions than in one.

- *Filing Cost.* Gaining and maintaining reporting issuer status in additional jurisdictions would impose costs on an issuer. The CSA are confident that the benefits of the IDS to an issuer justify some additional cost. Regulatory fees are, moreover, already under consideration by individual CSA members and by the CSA as a whole.

- *Translation*. Accessibility of disclosure is an important foundation of the IDS and securities regulation generally. Maximum accessibility might be achieved by requiring that all disclosure be provided in at least two languages. The CSA recognize, however, that translation costs can be substantial. Investor interest and market demand would, moreover, encourage issuers to accommodate the language needs of their investors voluntarily, particularly in jurisdictions in which they have a significant investor base.

  For these reasons, the IDS reflects the approach that has been applied to short form prospectus distributions in Québec.

  If an issuer files an IDS prospectus in a particular jurisdiction, that IDS prospectus and any portion of the issuer's continuous disclosure record that is incorporated by reference in the IDS prospectus must be filed in the language or languages in which a prospectus is required to be filed in that jurisdiction. The IDS would not require any change to current requirements governing the language of a prospectus filed in a jurisdiction.

  In respect of continuous disclosure, other than when incorporated by reference in an IDS prospectus, an issuer would be considered to comply with reporting issuer continuous disclosure obligations in all jurisdictions for purposes of IDS eligibility if it files its continuous disclosure in all jurisdictions in the language or languages required in the jurisdiction of the issuer's principal regulator, as determined under the MRRS Policy.

  Participation in the IDS, and maintaining all-jurisdiction reporting issuer status as a condition of continued IDS eligibility, would not impose on an issuer any translation requirements beyond the requirements of its principal regulator. Additional translation requirements would be triggered only if the issuer files an IDS prospectus in a jurisdiction that requires a prospectus to be filed in a language other than that required by the issuer's principal regulator, and the translation obligation would apply only to that IDS prospectus and continuous disclosure incorporated by reference.

(b) Continuous Disclosure Compliance

The issuer is in compliance with its continuous disclosure obligations.

For initial entry into the IDS, this criterion would require that an issuer be in compliance with the continuous disclosure requirements applying to non-IDS issuers. To maintain or regain eligibility thereafter, the issuer would have to be in compliance with the IDS continuous disclosure requirements.

This criterion reflects the basic premise of the IDS that prospectus-quality information concerning participating issuers should be publicly available at all times. Any participating issuer that fails to maintain that standard would become ineligible to use the IDS.

(c) Current Base Disclosure Document

Its disclosure record contains a current base disclosure document in the form of either a current IDS AIF or, for initial entry into the IDS, a long form prospectus that has not lapsed or a short form prospectus that has not lapsed accompanied by a copy of all material incorporated by reference.

This criterion does not imply that IDS participants can substitute non-IDS disclosure documents for IDS documents. Rather, the criterion is designed to provide flexibility for entry into the IDS. Although an IDS AIF would serve as an obvious IDS entry document, the CSA see no reason to require preparation of such a document as a condition of entry into the IDS by an issuer that already has available a filed and current long form prospectus, or a short form prospectus accompanied by a copy of all material incorporated by reference, that provides information comparable in quality to an IDS AIF and addresses the subject matter of an IDS AIF. Consequently, an issuer's IPO prospectus could serve as the base disclosure document.

(d) Listing

Equity securities of the issuer are listed on a market recognized for this purpose.

The markets recognized[4] for this purpose would include the Canadian Venture Exchange, The Winnipeg Stock Exchange, the Montreal Exchange, The Toronto Stock Exchange, the New York Stock Exchange, the American Stock Exchange, the London Stock Exchange, the NASDAQ National Market and the NASDAQ SmallCap Market.

Additional regulatory supervision by recognized markets, through their assessment, monitoring or review of listed issuers, provides a useful enhancement of investor protection. Many of the proposed recognized markets, for example, review or regulate proposals to undertake related party transactions or to grant options to acquire securities, while others that undertake less transactional review impose rigorous initial listing and listing maintenance requirements.

(e) Issuer Not in Excluded Class

The issuer is none of the following:

- *an issuer organized and operating exclusively for the purpose of issuing derivative or asset-backed securities;*
- *an issuer that has:*
    - *no significant assets other than money;*
    - *no business in operation; and*
    - *no specific business plan reasonably capable of implementation in the near future, or a business plan that contemplates only a business combination with one or more other unidentified issuers;*

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4 The concept of "recognized markets" is currently used in determining eligibility to use the parallel "SHAIF" systems established under Alberta Securities Commission Rule 45-501 System for Shorter Hold Periods for Issuers Filing an AIF and British Columbia Securities Commission Blanket Order BOR 98/7.

- *a blind pool;*

- *a capital pool company as defined in Canadian Venture Exchange Policy 2.4* Capital Pool Companies*, or equivalent;*

- *a keystone company as defined in Manitoba Securities Commission Rule 44-501* Keystone Companies*, or equivalent; or*

- *a mutual fund*.

The CSA consider the IDS to be unsuitable for issuers of the types excluded by this proposed IDS eligibility criterion. Continuous disclosure concerning these ineligible issuers would not provide the desired information base for investors, either because there is little or no information to disclose or because information concerning issuers of these types is far less important to an investor than information concerning the securities they issue or the assets or other issuers standing behind those securities. The CSA are of the view that existing offering and disclosure systems would better serve investors in securities of these excluded issuers, and the issuers themselves.

4. Eligibility Certificate

As currently required in connection with participation in the short form prospectus distribution system, IDS participants will have to file eligibility certificates on the filing of each IDS prospectus. The eligibility certificate would be executed on behalf of the issuer by one of the senior officers of the issuer and would state that the issuer satisfies the IDS eligibility criteria.

5. Rejection of Quantitative IDS Eligibility Criteria

In developing eligibility criteria, the CSA rejected quantitative measures, such as an issuer's revenues, assets or market capitalization, as a basis for IDS eligibility.

The CSA considered a number of arguments before reaching its conclusion:

- It is sometimes assumed that larger issuers will provide a higher quality of public disclosure. The CSA, however, are not persuaded that there is any significant demonstrable linkage between an issuer's size and the quality of the information it provides to investors.

- A quantitative financial eligibility criterion could produce complexity and unpredictability: an issuer might achieve and lose eligibility repeatedly as its income or market capitalization fluctuates.

- The CSA were not persuaded by the "analyst following" argument that a larger issuer is likely to command a greater following among investment analysts, whose analysis in turn is assumed to educate investors and encourage issuers to maintain and improve their disclosure.

  Investors can benefit from ready access to balanced analysis from a wide variety of independent sources. The CSA, however, are not persuaded either that this outcome is essential to the functioning of the IDS, nor that ready access to varied and balanced analysis would necessarily follow from size restrictions on IDS eligibility.

  Proponents of the "analyst following" view often point to the United States as a model. Differences of scale, however, must be recognized. With fewer investors, fewer investment firms willing to sustain the costs of retail analysis, and fewer trained analysts available to perform the work, Canadian investors have not typically had available to them the array of independent analysis, even for large issuers, often seen in the United States. Much of the analysis that is undertaken, moreover, is not readily available to the general public because it has been commissioned by a single institutional investor or is available only by costly subscription.

Information technology makes possible ever faster and wider dissemination and processing of investment information concerning reporting issuers of all sizes. The SEDAR website, already familiar to many Internet users[5], provides public access to disclosure filed by reporting issuers across Canada. The CSA are hopeful that this and other technological developments, coupled with increasingly knowledgeable investors, will spur more informed analysis by investors themselves. Finally, the CSA believe that the significant improvement in the information available to investors as a result of IDS disclosure requirements justifies broad IDS eligibility.

6. IDS Disqualification

An issuer that participates in the IDS will become ineligible to participate further in the IDS if it ceases to satisfy one or more of the five IDS eligibility criteria enumerated above, or if a securities regulator: (i) knows of material unresolved CSA staff comments on the issuer's disclosure filings; or (ii) is aware of circumstances that would, if an issuer filed a prospectus, obligate the regulator to refuse to issue a prospectus receipt.

Statutory prohibitions on the issuance of a prospectus receipt may apply in circumstances such as the following:

- it is not in the public interest;
- an unconscionable consideration has been paid or given, or is intended to be paid or given, for promotional purposes or for the acquisition of the property;
- the issuer's proceeds from an offering of securities currently in the course of distribution will be insufficient to enable the issuer to accomplish its stated business purposes;
- having regard to the financial condition of the issuer, or of an officer, director, promoter or control person of the issuer, the issuer cannot reasonably be expected to be financially responsible in the conduct of its business;
- the past conduct of the issuer, or of an officer, director, promoter or control person of the issuer, affords reasonable grounds to believe that the business of the issuer will not be conducted with integrity and in the best interests of its securityholders; or
- a person or company that prepared or certified any part of the issuer's IDS disclosure base is not acceptable to the regulator.

A disqualified issuer will remain ineligible until such time, if any, as the issuer resolves the reason for disqualification. For example, if an IDS issuer does not comply with its IDS continuous disclosure requirements, it will be unable to file an IDS prospectus until the required continuous disclosure has been filed.

An issuer would not be able to use the offering procedures under the IDS to offer securities at a time when the issuer is ineligible to use the IDS. However, an issuer's ineligibility to participate in the IDS, whether or not the issuer had previously participated or been eligible to participate in the IDS, would not preclude the issuer from:

- preparing, filing or maintaining an IDS disclosure base; or
- subsequently achieving or regaining eligibility to use the IDS.

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[5] The SEDAR website averaged 1.5 million "hits" per week and has received up to 40 000 hits per hour and up to 1.8 million hits per week, as of February 1999.

C. IDS Continuous Disclosure

The IDS would entail significant changes in information disclosure by issuers, all intended to enhance the quality and timeliness of information available to investors. Core disclosure documents, some unique to the IDS and others modified from disclosure documents in use under existing disclosure systems, that together would comprise an issuer's IDS disclosure base are described immediately below under the heading "IDS Continuous Disclosure Documents". Other changes in disclosure standards and content that would be implemented as part of the IDS are described later under the heading "IDS Continuous Disclosure Enhancements".

1. IDS Continuous Disclosure Documents

The IDS disclosure base of a participating issuer would consist of an annual base disclosure document containing comprehensive prospectus-quality information about the issuer and its business, updated by both periodic (quarterly) disclosure and event-triggered disclosure of significant changes affecting the issuer or the value of its securities.

A more detailed description of the IDS disclosure documents follows.

(a) The IDS Disclosure Base

(i) IDS Annual Information Form

The cornerstone of the IDS disclosure base is the IDS annual information form (the "IDS AIF"), an annual consolidation of information about the business and affairs of an IDS issuer.

The form and content of the IDS AIF would be similar to those of the AIF already in use by participants in the short form prospectus distribution system. The IDS AIF would require certain additional disclosure not currently required in an AIF, including full financial statements with comparatives, information concerning legal proceedings affecting the issuer, material contracts to which the issuer is a party, escrow affecting securities of the issuer, risk factors relating to the issuer and its business and not specific to a particular offering of securities, a statement of the issuer's consolidated capitalization and identification of the issuer's auditors and transfer agents.

The IDS AIF would be prepared and filed annually. To the extent that information contained in other required disclosure filed during the immediately preceding fiscal year of the issuer continues to apply, that information would be restated and included in the IDS AIF.

The standard of disclosure required in the IDS AIF would be full, true and plain disclosure, as is currently the case with disclosure in a prospectus.

(ii) Quarterly Information Form

The IDS AIF would be supplemented by a quarterly information form (a "QIF") filed for each of the issuer's first, second and third financial quarters.

A QIF would include the issuer's interim financial statements for the relevant year-to-date period and management's discussion and analysis ("MD&A") similar to that required under NI 44-101. A QIF would also list each SIF (see below) filed by the issuer since the date of its current IDS AIF, to the extent that the information contained in an SIF has not been superseded. In each case, the QIF would provide the date of filing and a brief description of the subject matter of the SIF.

(iii) Supplementary Information Form

If a triggering event occurs during the year, the IDS would require an issuer to file an SIF disclosing the triggering event. A supplementary information form (an "SIF") would be very similar to, and for IDS issuers would take the place of, the material change report currently required to be filed under the securities legislation of many CSA jurisdictions.

SIFs would be required to contain full, true and plain (that is, prospectus-quality) disclosure of the event and would form part of the issuer's IDS disclosure base. As is now the case with material change reports, confidential filing of the SIF would be permitted when, in the opinion of the reporting issuer, the required disclosure would be unduly detrimental to the interests of the reporting issuer or when the material change consists of a decision to implement a change made by senior management of the issuer who believe that confirmation of the decision by the board of directors is probable and senior management has no reason to believe that persons with knowledge of the material change have made use of such knowledge in purchasing or selling securities of the issuer. However, an issuer could not file a prospectus while a confidential SIF is pending.

As is currently the case in most CSA jurisdictions in respect of material changes, including those jurisdictions that do not prescribe material change reports, the events that trigger the obligation to file SIFs would also obligate the issuer to announce the event, forthwith after the occurrence, by issuing a news release. News releases would form part of the issuer's continuous disclosure record but would not form part of the IDS disclosure base.

The obligation to issue a news release and file an SIF would be triggered not only by the occurrence of a material change, but also by the occurrence of any of the following events, whether or not it constitutes a material change:

- a change in the issuer's name;
- a change of the issuer's auditor;
- a change of the issuer's chairperson, chief executive officer, chief financial officer, chief operating officer, president or any equivalent position;
- a change in dividend policy or practice;
- the occurrence of an event concerning the financial condition of the issuer that, if a distribution were in progress at the time, would render the issuer a "specified party" as the term is defined in proposed Multi-Jurisdictional Instrument 33-105 *Underwriting Conflicts*[6], except to the extent that, in the case of a breach of a financial covenant, there is a reasonable likelihood of the breach being waived or cured;
- the issuer forming, or becoming aware that a selling securityholder has formed, a reasonable expectation that a prospectus distribution of equity securities of the issuer by the issuer or the selling securityholder, respectively, will proceed;
- the completion of a private placement transaction or other private financing transaction, or, upon the issuance of a press release, a proposed private placement or private financing, the SIF to disclose the nature of the securities offered, the offering size (where offering completed) or estimated size (for proposed offerings which have been announced by way of press release), and

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[6] Published for comment in the week ended February 6, 1998. The definition of "specified party" in proposed Multi-Jurisdictional Instrument 33-105 *Underwriting Conflicts* identifies a number of situations that would indicate that the issuer has been, or may be, experiencing financial difficulty, including defaults in the payment of principal or interest due on loan obligations, certain downgradings of debt or preferred shares and bankruptcy or receivership.

names of selling securityholders (if applicable);

- the completion of any prospectus distribution, the SIF to disclose the aggregate number or value of securities distributed and the net proceeds to the issuer;

- the abandonment of any prospectus distribution, or of a proposed private placement transaction or other proposed private financing transaction in connection with which a SIF was required;

- in respect of a significant business combination, including a “significant acquisition” of a business or of assets that amount to a business, or a significant acquisition of significant influence (applying the definitions and significance tests in NI 44-101), three SIFs as follows:

    - upon a proposed business combination becoming “probable” (applying concepts from NI 44-101), an SIF disclosing that fact and known material terms, conditions and contingencies and reasons for the proposal; and

    - upon completion or abandonment of the proposed business combination:

        - an SIF disclosing that fact and, in the case of completion, material terms and conditions; and

        - a further SIF, to be filed within 75 days after completion of the business combination, containing financial and other disclosure concerning the business combination that conforms to short form prospectus disclosure requirements for significant business combinations under NI 44-101 (the corresponding news release need announce only the filing of the SIF with a brief description of its subject matter);

- in respect of a disposition of an asset or a business material to the issuer, two SIFs as follows:

    - upon the proposed disposition becoming "probable" (applying NI 44-101 concepts), the SIF to disclose that fact and known material terms, conditions and contingencies, proceeds to the issuer and reasons for the proposal; and

    - upon completion or abandonment of the proposed disposition, the SIF to disclose that fact and, in the case of completion, material terms and conditions and proceeds to the issuer and a narrative description of the anticipated effect on the issuer;

- the imposition on the issuer or, if known to the issuer, on a director, officer, promoter or significant shareholder of the issuer, of a penalty or sanction relating to Canadian securities legislation by a court or Canadian securities regulatory authority, or the execution by any of these parties, if known to the issuer, of a settlement agreement with a Canadian securities regulatory authority (whether or not the penalty or sanction is or may be the subject of an appeal); and

- the imposition on the issuer or, if known to the issuer, on a director, officer, promoter or significant shareholder of the issuer, of any other penalties or sanctions imposed by a court or regulatory body that would likely be considered important to a reasonable investor in making an investment decision.

To the extent that any of this disclosure is contained in another element of the issuer’s IDS disclosure base or in an IDS prospectus that has not lapsed, the issuer would not be required to file an SIF.

Like existing material change reports, SIFs would be required to be filed within a specified period after the occurrence of the triggering event. An issuer could use the text of the corresponding news release as the basis of an SIF provided that (i) its content and quality satisfy the SIF requirements; (ii) it is accompanied by a cover page or introduction that identifies it as an SIF, and (iii) it is certified (see "Certification", below). A news release must be issued promptly after the triggering event, but the SIF filing period balances needs

for quality and timeliness by allowing the issuer time to ensure that the SIF meets the higher prospectus-level quality of the IDS disclosure base. With the exception of the 75 day filing period for a post-acquisition SIF noted above, the filing period for an SIF would be ten days after the triggering event.

In a further effort to ensure that a full IDS disclosure base is in place to support an IDS offering, as discussed below in connection with IDS offering procedures, IDS offering procedures could not be used if an SIF-triggering event has occurred until the required SIF has been filed.

2. IDS Continuous Disclosure Enhancements

Securities regulation in Canada has, as noted above, focused primarily on offering disclosure rather than on continuous disclosure. The integration of primary and secondary market information would provide investors in both markets with the same high-quality information. The IDS disclosure documents described above are designed to ensure that significant elements of traditional prospectus disclosure are available earlier and continuously in the IDS disclosure base.

In the course of developing the IDS disclosure documents, the CSA have identified a number of changes in general disclosure content and timing necessary to ensure the desired quality of IDS disclosure and to address calls for general disclosure enhancements by, among others, the *Report of The Toronto Stock Exchange Committee on Corporate Governance in Canada*[7], the Wallman Report, Allen Report and the Aircraft Carrier Release. Some of the proposed disclosure enhancements bridge the gap between current continuous disclosure and prospectus disclosure standards, while others go beyond current disclosure standards.

A number of the proposed IDS continuous disclosure enhancements are consistent with existing requirements of certain CSA members. Further, concurrently with the publication of this Concept Proposal certain CSA members will be publishing for comment separate policy initiatives which will propose to implement many of these continuous disclosure enhancements regardless of whether an IDS is implemented.

(a) Annual Disclosure

(i) Financial Statements

Current requirements governing annual financial statements would be amended, in their application to the IDS, to require:

- filing within 90 days, rather than the current 140 days, after the issuer's financial year end;
- that financial statements prepared in accordance with foreign GAAP include in notes a reconciliation of the financial statement disclosure to Canadian GAAP and other disclosure consistent with Canadian GAAP;
- that, if financial statements are accompanied by a foreign auditor's report, the auditor's report be accompanied by a statement by the auditor (i) disclosing any material differences in the form and content of the foreign auditor's report, and (ii) confirming, in the case of foreign GAAS other than United States GAAS, that the auditing standards applied are substantially equivalent to Canadian GAAS;
- that financial statements prepared in accordance with foreign GAAP or accompanied by a foreign auditor's report be accompanied by a letter from the auditor that discusses the auditor's expertise (i) to audit the reconciliation of foreign GAAP to Canadian GAAP, and (ii) in the case of foreign

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[7] December 1994; sometimes referred to as the "Dey Report" after the Committee Chair.

GAAS other than United States GAAS, to make the determination that auditing standards applied are substantially equivalent to Canadian GAAS;

- review by the issuer's audit committee (if the issuer has or is required to have an audit committee) and approval by the issuer's board of directors or equivalent.

(ii) IDS AIF

Standards for annual disclosure would be upgraded, for purposes of the IDS, to render the IDS AIF more informative than the standard form of AIF currently in use. The standard of IDS AIF disclosure would be elevated to the full, true and plain disclosure standard required in a prospectus. The deadline for filing an IDS AIF would be 90 days after the issuer's year end, as compared to the current 140 day filing deadline for non-IDS AIFs.

IDS AIF content requirements would include:

- the content contemplated in NI 44-101 for a non-IDS AIF;

- MD&A that includes discussion of fourth-quarter financial results;

- disclosure of the issuer's corporate governance policies and practices as recommended in the Dey Report[8];

- disclosure, comparable to that mandated by the SEC[9], concerning the policies applied by the issuer to account for derivatives, including quantitative and qualitative disclosure and sensitivity analyses, and concerning material exposure to risks relating to market interest rates, foreign currency values, commodity prices, equity security prices and other market risks; and

- to the extent not already disclosed as a result of the above, all other disclosure required to meet current and proposed non-offering-specific content requirements for a long form prospectus, including full financial statements with comparatives, information concerning legal proceedings affecting the issuer, material contracts to which the issuer is a party, escrow affecting securities of the issuer, risk factors relating to the issuer and its business and not specific to a particular offering of securities, a statement of the issuer's consolidated capitalization and identification of the issuer's auditors and transfer agents.

(b) Quarterly Disclosure

The deadline for filing an IDS QIF would be 45 days after the relevant interim period, as compared to the current 60 day filing deadline for interim financial statements.

(i) Interim Financial Statements

Current requirements governing interim financial statements would be amended to require:

- inclusion of a balance sheet as of the last day of the interim financial period;

- inclusion of notes to the interim financial statements sufficient to ensure that the financial statement presentation is not misleading;

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[8] Op. cit., footnote 7.

[9] See the SEC's Securities Act Release No. 7386 (January 28, 1997) *Disclosure of Accounting Policies for Derivative Financial Instruments and Derivative Commodity Instruments and Disclosure of Quantitative and Qualitative Information about Market Risk Inherent in Derivative Financial Instruments, Other Financial Instruments, and Derivative Commodity Instruments*.

- for interim financial statements prepared in accordance with foreign GAAP, inclusion of a reconciliation to Canadian GAAP; and

- review by the issuer's audit committee (if the issuer has or is required to have an audit committee) and approval by the issuer's board of directors or equivalent.

(ii) Interim MD&A

Interim financial statements would be supplemented or accompanied by MD&A for the same interim financial period of the issuer.

(c) Certification

Fundamental to the IDS is the availability, to all investors (not only recipients of a prospectus), of the prospectus-quality IDS disclosure base. To ensure that the necessary standard of disclosure is met, the IDS would require that each IDS AIF, QIF and SIF be accompanied by certificates of senior management and directors of the issuer attesting that the document contains full, true and plain disclosure of the information presented or required to be presented in the document.

D. IDS Offerings

1. Principles

The enhancement of continuous disclosure under the IDS would give both primary market and secondary market investors access to comprehensive, timely and high-quality information concerning participating issuers. With this integrated disclosure base in place, the IDS would enable eligible issuers to offer securities in the primary market more quickly and with greater certainty than under existing offering procedures.

The securities offering procedures under the IDS would also reflect the following principles:

- A prospective investor should be provided with information, concerning both the issuer and a specific offering of securities, necessary to make an informed investment decision in advance of making (and being bound by) that decision.

- To the extent consistent with the other principles underlying the IDS and securities legislation generally:

    - issuers will be allowed wide flexibility in determining the form and content of information that they provide to prospective investors in connection with an offering of securities; and

    - regulatory procedures should facilitate efficiency and timeliness in IDS offerings of securities.

2. The IDS Prospectus

The comprehensive information about an issuer and its business contained in its IDS disclosure base would allow primary market offerings of securities under the IDS using an abbreviated offering document.

(a) IDS Prospectus Content

The IDS prospectus would be required to be certified by the issuer and underwriters and to contain full, true and plain disclosure of all material (or otherwise required) information relating to the issuer and the offering. The text of the IDS prospectus could be brief, largely focusing on disclosure concerning the offering and the offered securities, with prescribed content as follows:

- identification of the issuer;
- a detailed description of the securities offered;
- intended use of proceeds of the offering;
- plan of the distribution;
- market and trading history for the offered securities;
- earnings coverage;
- risk factors -- full disclosure of risk factors particular to the offered securities and a summary description of risk factors relating to the issuer and its business as set out in the issuer's IDS AIF;
- income tax considerations relevant to the offering;
- the relationship between the issuer and the underwriters of the offering; and
- investors' statutory rights of withdrawal, damages and rescission.

The IDS prospectus would also be required to incorporate by reference:

- the documents in the issuer's IDS disclosure base, except that, to the extent that more than one QIF has been filed since the last IDS AIF, only the most recently filed QIF need be incorporated by reference; and
- all written marketing communications (see "IDS Marketing Regime", below) pertaining to the offering or the securities offered under the IDS prospectus and disseminated by or on behalf of the issuer while the securities are in the course of distribution.

In addition, the IDS prospectus must guide readers to each document incorporated by reference, either by (i) explaining how they can obtain or retrieve electronically, without charge, a copy of the incorporated document, or (ii) attaching to the IDS prospectus a copy of the incorporated document.
Issuers would be free to include in an IDS prospectus, at their option, a full restatement or a summary of information incorporated by reference, provided that the presentation is fair and balanced and the reader is also directed to the source document.

An IDS prospectus would not be considered complete unless it identifies, and incorporates by reference, disclosure of each event that triggered an obligation on the part of the issuer to file an SIF if the event occurred subsequent to the date of the issuer's current IDS AIF or a more recent QIF, and prior to the date of the final IDS prospectus. See also the discussion below concerning IDS prospectus amendments.

(b) Preliminary and Final IDS Prospectuses

The objective of the CSA in developing securities offering procedures is to ensure that prospective investors have access to reliable and complete information before they make an investment decision. In common with existing statutory and alternative securities offering procedures, the IDS would require both a preliminary and a final form of IDS prospectus. The IDS, however, would place greater emphasis than current distribution systems on the *preliminary* version of the prospectus. The most important functions of the final IDS prospectus would be to (i) update and complete[10] the disclosure in the preliminary IDS prospectus and (ii) serve as the basis of investors' statutory rights of withdrawal and rights of action for damages or

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[10] Some offering information -- pricing, for example -- may be provided only in the final prospectus because it is not known to the issuer until after the preliminary prospectus has been filed.

rescission on grounds of misrepresentation.

The greater importance attached by the IDS to the preliminary IDS prospectus is primarily reflected in provisions relating to delivery, discussed below under the heading "IDS Prospectus Delivery". In general, the regulator would issue a receipt for a preliminary IDS prospectus on filing. Once receipted, the preliminary IDS prospectus would be delivered to prospective investors.

The CSA also considered the extent to which the preliminary and final IDS prospectuses should be distinguished by their content. Two approaches were considered.

The traditional form of a final prospectus, if applied to the IDS, would repeat most of the text of the preliminary IDS prospectus.

The CSA are not persuaded that the traditional approach to the form of a final prospectus is necessary under the IDS. Acknowledging incorporation by reference as an accepted principle of the IDS, and assuming early delivery of the preliminary IDS prospectus (with the content summarized above under the heading "IDS Prospectus Content"), the IDS contemplates a very streamlined final IDS prospectus that would serve largely as an information checklist.

The final IDS prospectus would (i) identify the issuer, (ii) identify and incorporate by reference each document in the issuer's IDS disclosure base and the preliminary IDS prospectus, and (iii) include prospectus certificates. The issuer would not be required to restate in the final IDS prospectus any of the incorporated disclosure with the exception of statements of investors' statutory rights and directions for obtaining copies of the incorporated disclosure. An IDS issuer could, however, at its option adopt a more traditional form of final IDS prospectus.

The final IDS prospectus would set out in full any material information (for example, pricing) concerning the offered securities that was not disclosed in the preliminary IDS prospectus, and it would not only incorporate by reference but also summarize (or, at the issuer's option, repeat or attach) any SIF filed after the date of the preliminary IDS prospectus.

The abbreviated text of the checklist form of IDS prospectus would not diminish the issuer's responsibility for ensuring that the document, together with all incorporated documents, provides full, true and plain disclosure of all required information, nor would it alter the role of the documents as the basis of investors' statutory rights concerning misrepresentations and withdrawal.

The CSA consider that the brevity of the final IDS prospectus would be advantageous to investors. The convenient list of incorporated disclosure documents would give readers a second opportunity to consider and, if desired, consult incorporated documents (including the preliminary IDS prospectus) of interest to them before they finalize their investment decision. New information, which should be the focus of attention for investors who had already given careful consideration to the preliminary IDS prospectus, would stand out more prominently in the shorter document than in a restated version of the preliminary IDS prospectus, as might the statements of investors' statutory rights.

The checklist approach to the final IDS prospectus could be seen as a culmination of the concept of incorporation by reference and an embodiment of IDS principles of streamlined documents and procedures centring on the IDS disclosure base.

3. IDS Prospectus Amendment

Amendment of an IDS prospectus would be governed by current provisions of securities legislation. An IDS prospectus must provide full, true and plain disclosure, verbatim or through incorporation by reference and summary, of all required information relating to the issuer and the offering, and contain certificates to that effect. Any amendment to an IDS prospectus would similarly be required to contain (i) full, true and plain disclosure and (ii) prospectus certificates, and to be clearly identified as an amendment to a specific IDS

prospectus.

As under existing offering procedures, an IDS prospectus could be amended either by a full restatement of the IDS prospectus being amended or by a briefer document limited to additional or substituted information. Under the IDS, an issuer choosing the latter alternative could make use of an SIF modified for this purpose by the addition of (i) an introduction or a cover page identifying it as an IDS prospectus amendment and (ii) prospectus certificates.

A discussion of differing procedures applicable to amendments to preliminary and final IDS prospectuses follows.

(a) Amendment of a Preliminary IDS Prospectus

Securities legislation requires the amendment of a preliminary prospectus, and delivery of the amendment to each recipient of the preliminary prospectus, in the event that an adverse material change occurs between the issuance of receipts for the preliminary and final prospectus. In most jurisdictions, the adverse material change would also trigger separate material change reporting requirements.

Similar requirements would apply under the IDS. Whether or not a preliminary IDS prospectus has been filed, an adverse material change would trigger the obligation to file an SIF. That SIF could, at the issuer's option, also be used to amend a preliminary IDS prospectus, provided that when used for that purpose it is clearly identified as an amendment and bears prospectus certificates. An issuer that does not wish to modify an SIF for this purpose would be able, as at present, to amend a preliminary IDS prospectus using either a fully restated preliminary IDS prospectus or a briefer amending supplement, in either case identified as an amendment and bearing prospectus certificates.

An event other than an adverse material change would not require amendment of an outstanding preliminary IDS prospectus, although the issuer would be free at its option to file and deliver an amendment in any of the three alternative forms described immediately above. If the issuer filed an SIF in respect of the event but no amendment of the preliminary IDS prospectus was required, that SIF would be incorporated by reference and summarized in (or repeated in or attached to) the final IDS prospectus.

(b) Amendment of a Final IDS Prospectus

If an SIF-triggering event occurs after the date of a final IDS prospectus receipt and before completion of the IDS offering or the lapse of the final IDS prospectus, a prospectus amendment would be required. Amendment in other circumstances would not be required but would be permitted at the issuer's option.

Delivery of the amendment would complete delivery of the final IDS prospectus. As at present, an investor's statutory right of withdrawal would run from receipt of the amendment, thus ensuring that investors have an opportunity to assess the effect of the information disclosed in the amendment before being bound by their investment decision.

An amendment to a final IDS prospectus must (i) be clearly identified as an amendment to the specific final IDS prospectus, (ii) restate investors' statutory rights, making clear that delivery of the amendment begins a new period in which the right of withdrawal can be exercised, and (iii) include prospectus certificates. As in the case of amendments to a preliminary IDS prospectus, the amendment could take the form of a modified version of the relevant SIF, a distinct supplement to the final IDS prospectus being amended or a full restatement of the final IDS prospectus being amended.

Current securities legislation would apply to require delivery of the amendment to each purchaser of a security under the distribution whose statutory right of withdrawal had not expired before the occurrence of the event (if any) that prompted the amendment. As at present, issuers might choose to deliver the amendment to other purchasers, the consequence in all cases being the recommencement of the statutory

withdrawal period.

4. IDS Prospectus Delivery

(a) Delivery of the Preliminary IDS Prospectus

As noted above, a key objective of the CSA in developing the IDS is to provide prospective investors with comprehensive information before they make an investment decision.

The CSA are of the view that traditional securities regulatory practice overemphasizes the value of the final prospectus in the investor's decision-making process. The problem is one of timing, as aptly described in the Aircraft Carrier Release:

> "In firm commitment underwritten offerings, the final prospectus invariably arrives after the investor has made its investment decision. While delivery of final prospectuses . . . may be useful to investors who are considering litigation or resale, it does little to fulfill the prophylactic goals of the Securities Act.
>
> The cost of delivery of a final prospectus, where it is otherwise readily available to the public, may exceed any marginal benefit to investors. To provide investors with the maximum benefit from the prospectus, our proposals would re-focus prospectus delivery requirements on a point in time before investors have made their investment decisions."[11]

The IDS would place greater emphasis on the preliminary IDS prospectus. An agreement to purchase a security in an IDS offering would not be enforceable against the purchaser unless the purchaser had first received a copy of the preliminary IDS prospectus and any amendment. A prominent statement to this effect would be required in both the preliminary and final IDS prospectus, in any IDS subscription agreement and in any confirmation of purchase.

The CSA considered whether the IDS should specify the timing of delivery of the preliminary IDS prospectus, to ensure that a prescribed minimum period of time is available to an investor before an investment decision becomes binding. This approach was rejected as both impractical and unnecessary. Identifying the moment in time at which an offering has commenced, is about to commence or has, after commencement, reached a particular stage, and identifying the time at which an investment decision is made, all involve complex and case-specific considerations. Specific timing requirements would almost certainly give rise to difficult issues of interpretation and diminish the predictability of the IDS procedures.

Determining an appropriate period for the investment decision process is, moreover, problematic. The CSA seek to ensure that appropriate information is available to investors, not to direct investors in the use of that information. Each offering and each investment decision involves different considerations and information requirements. No prescribed preliminary IDS prospectus delivery period would be likely to suit all investors and all situations.

The CSA are of the view that the existing framework of securities legislation, that mandates use of both a preliminary and a final version of a prospectus, and provides investors with a statutory right to withdraw from a primary market purchase of securities within two business days after receiving a final prospectus, will ensure that investors have a period of time after receiving an IDS prospectus in which to consider their investment decision. The IDS would build on these minimum requirements with the contractual condition requiring delivery of the preliminary IDS prospectus, which the CSA are confident would result in earlier and more widespread delivery of this important document than prevails under existing distribution systems. Finally, the IDS focus on the IDS disclosure base would give prospective investors access to comprehensive, high-quality information about IDS issuers well in advance of any investment decision.

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[11] Op. cit., pages 174-5.

(b) Delivery of the Final IDS Prospectus

Securities legislation requires an issuer to file, and deliver to the investor, the final prospectus. As noted above, investors' statutory withdrawal rights run from final prospectus delivery.

For many offerings of securities, where all material terms of the offering and the securities offered were known early in the offering process and disclosed in the preliminary IDS prospectus, and where no SIF reporting requirement was triggered during the course of the offering, the final IDS prospectus could be a very brief document that reminds investors of the identity and business of the issuer, sets out key terms of the offering, directs the investor to the issuer-centred and offering-centred information previously disclosed and incorporated by reference, advises investors of their statutory rights and bears the required certificates.

The IDS would require delivery of the final IDS prospectus to the investor not later than delivery of the confirmation of purchase. The final IDS prospectus could accompany the confirmation of purchase. In any case, the period in which an investor could exercise the statutory right of withdrawal would commence with delivery of the final IDS prospectus.

5. Role of the Underwriter and Other Advisors

Underwriters would retain an important role under the IDS, notwithstanding the accelerated IDS offering procedures.

Due diligence by underwriters provides an extra level of review that can enhance the quality and reliability of the issuer's disclosure. The IDS's shift in emphasis from the prospectus to the underlying continuous disclosure base would not diminish the benefit, to investors, of underwriter due diligence. Acceleration of the offering process, which to some extent is already evident under the short form prospectus and shelf distribution systems, should not preclude an underwriter from serving this useful investor protection function.

For these reasons, the IDS retains the existing requirement for underwriter certification of the IDS prospectus. The CSA are hopeful that the faster offering process made possible by the IDS would lead underwriters, as well as auditors and lawyers and other advisors, to increase their involvement in issuers' continuous disclosure in order to satisfy themselves as to the quality of the disclosure relied on by prospective investors.

6. Marketing Practices

(a) Existing Marketing Restrictions

Securities legislation currently:

- prohibits any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of a distribution of securities unless a preliminary prospectus and a (final) prospectus for the securities have been filed and receipted; and

- limits other marketing or promotional activities after the issuance of a final prospectus receipt.

These existing marketing restrictions were designed to prevent issuers from conditioning the market or stimulating interest in a proposed offering of securities before a prospectus is available, and to discourage high pressure securities sales practices.

(b) IDS Marketing Regime

(i) Objectives

To a large extent the existing marketing restrictions are a consequence of the traditional regulatory focus. With the prospectus as the basic source of information, the regulatory obligation to protect investors dictated measures to insulate them from marketing efforts not accompanied or preceded by at least a preliminary prospectus.

The IDS, with its emphasis on ensuring that securities markets are continuously informed by timely, prospectus-quality continuous disclosure whether or not an offering of securities is pending, would alleviate many of the concerns underlying the existing marketing restrictions. The CSA are of the view that marketing restrictions more clearly directed at deterring the dissemination of misleading information would be more beneficial to investors.

Accordingly, the CSA have developed new marketing restrictions and requirements, more consistent with the principles underlying the IDS. The proposed restrictions represent a move away from traditional efforts at limiting investor contact with securities-related information prior to or during the course of an offering, in favour of more issuer responsibility for marketing information coupled with deterrents to misleading and improper securities marketing and promotional tactics.

The CSA are of the view that the proposed marketing restrictions, together with IDS disclosure enhancements, would amply address investor protection needs. Accordingly, an offering of securities conducted by an eligible issuer using the IDS offering procedures would be subject to the *new* IDS marketing restrictions and requirements but would be exempt from the *existing* marketing restrictions.

(ii) IDS Marketing Restrictions

For the purposes of the IDS marketing restrictions, the term "marketing communication" refers to any oral or written communication disseminated by or on behalf of an issuer to promote (or that can reasonably be considered to have been intended to promote) a purchase or sale of a security of the issuer or of an affiliate of the issuer. Marketing communications would not ordinarily include either (i) business communications disseminated by an issuer in the ordinary course of its business to promote the sale of a product or service (other than a security) or to enhance the reputation or public awareness of the issuer, or (ii) a document available to investors only by virtue of having been filed with a public agency pursuant to a requirement unrelated to securities laws. A research report or media interview discussing an issuer's securities would not generally constitute a marketing communication unless it is disseminated by or on behalf of the issuer.

An IDS issuer, and any person or company with actual, implied or apparent authority to act on behalf of the issuer, would be prohibited from disseminating, directly or indirectly, a marketing communication that:

- contains an untrue or misleading statement;
- discloses a material fact that has not previously been disclosed in the issuer's IDS disclosure base;
- is inconsistent with information in the issuer's IDS disclosure base;
- distorts, by selective presentation or otherwise, information contained in the issuer's IDS disclosure base;
- includes a forecast, projection or other forward-looking information not contained in the issuer's IDS disclosure base[12];

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[12] Forecasts and projections in the IDS disclosure base would, of course, be subject to the requirements of proposed National Instrument 52-101 *Future Oriented Financial Information*.

- could reasonably be regarded as sensational or that forms part of conduct that could reasonably be regarded as high pressure[13]; or

- does not contain a prominent legend advising investors to read, before making an investment decision, the issuer's IDS disclosure base and the relevant IDS prospectus (if filed and not lapsed), and advising investors as to how they can view and obtain copies of such disclosure without charge.

The IDS would also incorporate (where not already provided in securities legislation) a prohibition of any statement made with a view to effecting a trade in a security if the maker of the statement knows, or ought reasonably to know, that the statement contains a misrepresentation. This prohibition is derived from existing paragraph 50(1)(d) of the *Securities Act* (British Columbia) and would enhance the ability of regulators to halt or sanction misleading communications that jeopardizes the investing public.

(iii) Incorporation by Reference

An IDS prospectus would be required to identify and incorporate by reference all written marketing communications that pertains to the offering or the securities offered under the IDS prospectus and that is disseminated by or on behalf of the issuer while the securities are in the course of distribution. Documents incorporated by reference in a prospectus must be filed and be available to investors.

This requirement would allow IDS issuers flexibility in the design and use of securities marketing material while ensuring that:

- all investors have access to the same information; and

- the information in the marketing material is of sufficient quality that the issuer and others will certify and bear responsibility for it as part of the IDS prospectus.

(iv) Intended Effect of IDS Marketing Regime

The exemption of IDS issuers from existing marketing restrictions and the substitution of the new IDS marketing prohibitions, coupled with incorporation by reference of written marketing communications in the IDS prospectus, are intended to offer IDS issuers much greater flexibility in obtaining new financing than is currently available. An IDS issuer could "test the waters" and solicit expressions of interest in a contemplated offering without fear of inadvertently contravening existing marketing restrictions and without incurring significant expense in commencing prospectus preparation. The issuer would also have wide discretion in tailoring marketing material for prospective investors, provided that investors are not misled and the issuer assumes responsibility for its marketing communications.

This flexibility can be offered to issuers without jeopardizing investor protection because the issuer's activities would take place against the backdrop of its comprehensive IDS disclosure base.

E. Electronic Delivery

To facilitate efficient and reliable dissemination of information, the IDS would permit the delivery of all IDS disclosure documents by electronic as well as traditional paper means, in accordance with the principles set out in National Policy 11-201 *Delivery of Documents by Electronic Means*[14].

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13 A companion policy to be adopted in connection with implementation of the IDS can be expected to provide guidance on the meaning and interpretation of these terms.

14 Published in the week ended December 17, 1999.

F. Regulatory Review of IDS Disclosure

The IDS would shift much of the regulatory focus from the prospectus to continuous disclosure and so facilitate a streamlined regulatory role in the IDS offering process.

A well-developed and appropriately staffed system of continuous disclosure review is necessary to ensure that enhanced disclosure standards are met. CSA members are devoting increased staff resources to monitoring and reviewing continuous disclosure filings. This trend would intensify with implementation of the IDS. At the same time, the CSA are developing procedures for more effective and efficient disclosure review, through selective and targeted review, coordinated among jurisdictions. Increased resources are also being devoted to enforcement measures.

With these measures in place to supplement the IDS requirements, a high-quality information base would underlie an IDS offering. The IDS prospectus itself, incorporating by reference the issuer's IDS disclosure base, can be a very simple document. Disclosure pertaining to the issuer would already be contained in the issuer's IDS disclosure base, which would have been subject to a system of periodic, selective or targeted regulatory review. Together, these factors would permit an effective yet very efficient regulatory role in an IDS offering. In addition, the filing and review procedures under the MRRS Policy would be available for multi-jurisdiction IDS offerings.

Filed IDS prospectuses would undergo regulatory screening but not, generally, detailed review. IDS prospectus screening would serve primarily to give regulators an opportunity to assess whether:

- there is a basis for believing that the issuer is ineligible to use the IDS;
- the offering presents issues that could prompt the regulator to conduct a detailed review; or
- the regulator is obliged under existing statutory provisions to decline to issue a prospectus receipt.

This screening process could also bring to light matters that would be brought to the attention of regulatory staff responsible for continuous disclosure review, who might intensify or revisit their review of the issuer's IDS disclosure base.

The CSA anticipate few instances of delay or refusal in the receipting of IDS prospectuses, and no unacceptable degree of uncertainty in the IDS offering process attributable to IDS prospectus screening. IDS eligibility would be within the knowledge of the issuer, and issues that could prompt a full prospectus review or denial of a receipt (under provisions that already apply to prospectuses filings) would generally be of a nature and magnitude known to the issuer. Finally, IDS issuers would retain their rights under securities legislation to be heard and, if dissatisfied with a resulting decision, to appeal.

G. Implementing the IDS

The IDS is expected to be capable of implementation by regulators in most jurisdictions without statutory amendment.

The CSA intend to develop a national instrument, taking into account comment on this Concept Proposal, that would implement the IDS. In accordance with past practice, the national instrument would itself be published and subject to revision in light of public comment, following which it could be adopted as a rule, regulation or policy in each CSA jurisdiction.

As noted in the Introduction, the CSA propose to implement the IDS on a pilot basis. During a pilot period of at least two years, regulators, issuers and investors will be able to assess the merits of the IDS. The CSA will consider modifications to the IDS to address problems or deficiencies that come to light during the pilot period.

The IDS would coexist during the pilot period with alternative offering procedures such as the short form prospectus and shelf distribution procedures. Qualifying issuers would be able to participate in the IDS and offer securities using IDS procedures, or use any existing prospectus exemption or alternative offering procedure (subject to applicable restrictions, including current marketing restrictions) for which they are eligible. The CSA are hopeful that many issuers will opt to use the IDS during the pilot period.

The CSA will consider eliminating use of the short form prospectus and shelf distribution procedures for IDS-eligible issuers in the event that experience with the IDS during its pilot introduction demonstrates that it is an adequate substitute for these regimes.

PART IV. CHANGES OUTSIDE THE IDS

In developing the proposed IDS, the CSA have undertaken a fundamental review and reassessment of securities regulatory objectives, principles and practices and the requirements of securities legislation.

Many issues addressed in the IDS are relevant to issuers and investors in general. In the view of the CSA, elements of the IDS could, if applied generally, enhance investor protection and the efficiency of capital markets. Unless and until the disclosure enhancements and marketing restrictions described below are extended to issuers generally, IDS participants would have to meet higher standards than non-IDS participants, an inconsistency that could serve as a significant disincentive to issuer participation in the IDS.

A. Non-IDS Disclosure Enhancements

The CSA are considering extending to all issuers many of the continuous disclosure enhancements incorporated in the proposed IDS as described in Part III under the heading "IDS Continuous Disclosure Enhancements". A number of the continuous disclosure enhancements proposed in the IDS are consistent with existing requirements of certain CSA members. In addition, certain CSA members will soon publish for comment separate instruments which propose to adopt many of these changes regardless of whether an IDS is implemented.

Disclosure enhancements currently under consideration for general application include:

- applying to non-IDS material change reporting the triggers and the content and quality requirements applicable to SIFs under the IDS (as well as the extended 75 day period for the filing of a report containing financial information for a completed significant acquisition);

- shortening the period for the filing of annual and interim financial statements to 90 and 45 days, respectively, after the end of the reporting period;

- requiring the reconciliation to Canadian GAAP of annual and interim financial statements prepared in accordance with foreign GAAP;

- requiring that, if financial statements are accompanied by a foreign auditor's report, the auditor's report be accompanied by a statement by the auditor (i) disclosing any material differences in the form and content of the foreign auditor's report, and (ii) confirming, in the case of foreign GAAS other than United States GAAS, that the auditing standards applied are substantially equivalent to Canadian GAAS;

- requiring that financial statements prepared in accordance with foreign GAAP or accompanied by a foreign auditor's report be accompanied by a letter from the auditor that discusses the auditor's expertise (i) to audit the reconciliation of foreign GAAP to Canadian GAAP, and (ii) in the case of foreign GAAS other than United States GAAS, to make the determination that auditing standards applied are substantially equivalent to Canadian GAAS;

- requiring audit committee review of annual and interim financial statements (for issuers that have

or are required to have an audit committee) and directors' approval of annual and interim financial statements;

- requiring a discussion of fourth quarter results in annual MD&A;
- requiring annual disclosure of the issuer's corporate governance policies and practices;
- requiring annual disclosure, comparable to that mandated by the SEC, of market risks and of the policies applied by the issuer to account for derivatives;
- requiring quarterly filings of:
- interim financial statements that include (i) a balance sheet, and (ii) notes sufficient to ensure that the financial statement presentation is not misleading; and
- MD&A;
- requiring that each material change report, quarterly filing and AIF be accompanied by certificates of senior management and directors of the issuer attesting that the document contains full, true and plain disclosure of the information presented or required to be presented in the document, the certificate serving both to encourage a prospectus standard of disclosure and to make clear the signatories' direct responsibility for the integrity of the disclosure.

B. Marketing Activities

CSA members are considering a general prohibition of misleading statements comparable to existing paragraph 50(1)(d) of the *Securities Act* (British Columbia) discussed in Part III in connection with the IDS under the heading "IDS Marketing Restrictions":

> "A person [or company], ... with the intention of effecting a trade in a security, must not ... make a statement that the person [or company] knows, or ought reasonable to know, is a misrepresentation".

As noted above in connection with a similar proposal under the IDS, this provision (contravention of which would constitute an offence) would enhance the ability of regulators to halt or sanction communications that can mislead the investing public.

The CSA are also considering supplementing existing marketing restrictions applicable to non-IDS offerings by new marketing restrictions parallel to the IDS marketing restrictions.

PART V. OTHER CSA INITIATIVES

Development of the IDS has not occurred in isolation. It represents one element of an array of initiatives undertaken by the CSA to protect investors and foster confidence in capital markets by providing effective and efficient securities regulation in a rapidly evolving environment.

Other CSA initiatives also respond to what CSA members consider an unwarranted disequilibrium in the regulation of the primary and secondary markets. Enhanced "public enforcement" -- regulatory review and enforcement -- of continuous disclosure requirements has begun and will continue. As noted in Part III, the CSA are also developing a system for the coordinated review of continuous disclosure.

CSA members have also developed and published, on May 29, 1998, a *Proposal for a Statutory Civil Remedy for Investors in the Secondary Market* that would extend to secondary market investors a statutory civil right of action, comparable to that already in place for prospectus investors, in respect of losses

attributable to misrepresentation in continuous disclosure. CSA staff are currently analyzing extensive public comment received on this proposal. The CSA believe that the proposed civil remedy and the IDS would complement one another, but at this time the implementation of neither proposal is contingent on implementation of the other.

PART VI. REQUEST FOR COMMENT

The CSA have developed the IDS to refocus securities regulation in Canada in a manner that more effectively and efficiently satisfies the dual regulatory objectives of protecting investors and fostering sound capital markets. Specific objectives of the CSA were to develop a system that offers streamlined and flexible access to markets, enhances the quality, timeliness and accessibility of corporate disclosure, and aligns regulatory effort with market needs.

The CSA believe that the IDS described in this Concept Proposal reflects an optimal balance of protection for investors and flexibility, predictability for issuers that would go far to achieving these objectives.

The CSA invite comment on the all aspects of the proposed IDS, and on the possible extension, to all issuers and offerings, of the disclosure enhancements and marketing restrictions discussed in Part IV. Details concerning the submission of comments will be found in Notices published by CSA member jurisdictions and may also be obtained by contacting your securities regulatory authority.