

## Request for Comment

**Proposed Amendments to National Instrument 51-102 *Continuous Disclosure Obligations*,  
Form 51-102F1, Form 51-102F2, Form 51-102F3, Form 51-102F4, Form 51-102F5, Form  
51-102F6 and  
Companion Policy 51-102CP *Continuous Disclosure Obligations***

**Proposed Amendments to National Instrument 52-107 *Acceptable Accounting Principles,  
Auditing Standards and Reporting Currency***

**And**

**Proposed Amendments to National Instrument 71-102 *Continuous Disclosure and Other  
Exemptions relating to Foreign Issuers* and  
Companion Policy 71-102CP *Continuous Disclosure and Other Exemptions relating to  
Foreign Issuers***

### Background

We, the Canadian Securities Administrators (CSA), are publishing for comment proposed amendments to

- National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102), its related forms (the Forms) and companion policy (CP 51-102),
- National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (NI 52-107), and
- National Instrument 71-102 *Continuous Disclosure and Other Exemptions relating to Foreign Issuers* (NI 71-102) and its related companion policy (CP 71-102) (collectively, the Instruments).

### The Instruments

- harmonize continuous disclosure (CD) requirements among Canadian jurisdictions,
- replace most existing local CD requirements, and
- provide exemptions for certain foreign issuers from certain CD requirements.

NI 51-102 sets out the obligations of reporting issuers, other than investment funds, for financial statements, management's discussion and analysis (MD&A), annual information forms (AIFs), business acquisition reports (BARs), material change reporting, information circulars, proxies and proxy solicitation, restricted share disclosure, and certain other CD-related matters. NI 52-107 sets out the accounting principles and auditing standards that applies to financial statements filed in a jurisdiction. NI 71-102 provides exemptions from most CD requirements and certain other requirements for certain foreign issuers.

Since the CSA implemented the Instruments, we have monitored how they are working. We sent surveys to all issuers that filed BARs in the first year after we implemented NI 51-102, to

audit firms, and to investors, to find out the effect and usefulness of business acquisition reporting.

We are publishing the proposed amendments to the Instruments with this Notice. You can find them on websites of CSA members, including the following:

- [www.bcsc.bc.ca](http://www.bcsc.bc.ca)
- [www.albertasecurities.com](http://www.albertasecurities.com)
- [www.sfsc.gov.sk.ca](http://www.sfsc.gov.sk.ca)
- [www.msc.gov.mb.ca](http://www.msc.gov.mb.ca)
- [www.osc.gov.on.ca](http://www.osc.gov.on.ca)
- [www.lautorite.qc.ca](http://www.lautorite.qc.ca)

We are publishing

- amending instruments for
  - NI 51-102 (Appendix B)
  - the Forms (Appendix C)
  - NI 52-107 (Appendix D)
  - NI 71-102 (Appendix E)
- black-lined versions of CP 51-102 and CP 71-102 (Appendices F and G)

We are also publishing a black-lined version of NI 51-102 that integrates the proposed changes from the amending instrument (Appendix H).

### **Substance and purpose of the amendments**

The proposed amendments to the Instruments fall into the following three broad categories:

1. Amendments to clarify some provisions of the Instruments.
2. Amendments to address areas that a rule, form or companion policy does not address, including codifying discretionary exemptions that we have granted.
3. Amendments to streamline requirements in the Instruments.

### **Summary of proposed amendments**

We have summarized the significant proposed amendments in Appendix A. This is not a complete list of all the amendments.

For interim and annual financial statements relating to fiscal years beginning on or after October 1, 2006, Canadian generally accepted accounting principles will require a statement of comprehensive income. The amendments do not refer to this additional financial statement. However, we intend to amend the Instruments for this change before we adopt the amendments.

### **Alternatives considered**

As discussed above, many of the amendments are intended to clarify the Instruments or to streamline requirements. One alternative to amending the Instruments was to address these issues by granting discretionary relief on a case-by-case basis. We rejected this option because

issuers must pay to apply for discretionary relief and it is an inefficient means of dealing with the issues.

We also considered whether we could address these issues by blanket order. However, not all jurisdictions have the power to make blanket orders.

### **Anticipated costs and benefits**

We believe that the proposed amendments to the Instruments would reduce issuers' costs, as the amendments would address problems industry has had applying the Instruments and streamline some of the requirements. In particular, the changes we are proposing to the BAR requirement would reduce issuers' costs of filing a BAR.

### **Related amendments**

We intend to eliminate the following national policy and staff notices relating to continuous disclosure, as they are no longer necessary:

- National Policy 3 *Unacceptable Auditors*
- CSA Staff Notice 11-305 *Withdrawal of CSA Staff Notice 42-301 and 52-301*
- CSA Staff Notice 51-307 *Status of proposed continuous disclosure rule*
- CSA Staff Notice 51-308 *Filing of Management's Discussion and Analysis and National Instrument 51-102 Continuous Disclosure Obligations*
- CSA Staff Notice 52-305 *Optional Use of US GAAP and US GAAS by SEC Issuers*
- CSA Staff Notice 52-307 *Auditor Oversight and Financial Statements Accompanied by an Audit Report Dated on or After March 30, 2004*

We are not proposing to amend any other rules, except in Quebec where National Policy 3, Unacceptable Auditors is a rule.

### **Unpublished materials**

In proposing amendments to the Instruments, we have not relied on any significant unpublished study, report, or other written materials, except the results of the BAR survey we referred to above.

### **Request for comments**

We welcome your comments on the proposed amendments to the Instruments. In addition to any general comments you may have, we also invite comments on the following specific amendments.

1. *Venture issuers and debt-only issuers* – NI 51-102 distinguishes between venture issuers and issuers that are not venture issuers for some requirements. For example, venture issuers do not have to file annual information forms and have longer to file their financial statements than issuers that are not venture issuers. We made this distinction because we recognized that some types of issuers and their investors may have different disclosure needs and constraints. We are considering whether issuers that issue only debt to the public merit similar accommodations and, if so, whether or how the listing of debt securities, either on a Canadian or foreign exchange, might alter that consideration. (At present, even a large unlisted reporting issuer of

debt is a venture issuer under NI 51-102, but a similar issuer with debt listed on a foreign exchange would not be.) Should debt-only issuers be treated as venture issuers? Should an exchange listing of debt only affect the treatment of the issuer under NI 51-102 and more specifically should a foreign exchange listing of debt only affect the treatment of a Canadian debt-only issuer?

2. *Request form* – We propose amending section 4.6 of NI 51-102 to remove the requirement for issuers to send a request form to their shareholders each year. We have not changed the requirement for issuers to mail their financial statements and MD&A to any shareholder that requests them, or to disclose in the information circular how the shareholders may request the financial statements and MD&A.

- a) Do you agree that we should remove the requirement to deliver an annual request form? Why?
- b) If we retain it, should we amend the requirement to specify
  - (i) when and how an issuer should send the request form, or
  - (ii) the content of the request form?
- c) Are there any other changes we should make to the request form, if we retain it?
- d) If we eliminate the request form, is there an alternative we could propose to replace the request form that would allow shareholders to request the financial statements and MD&A?

3. *Delivery of financial statements* – Under NI 51-102, an issuer must mail its financial statements to any securityholder that requests them. An issuer is exempt from this requirement if it mails its statements to all its securityholders. We propose to clarify in the exemption when the issuer has to deliver the financial statements to rely on the exemption.

We believe the delivery deadline should be the same if an issuer is sending the statements on request, or to all its securityholders under the exemption. We think it is important that securityholders that want paper copies of the financial statements have prompt access to them once they are filed. Their access should not be affected by the issuer relying on an exemption. As we recognize that an issuer may need time to copy the statements after filing them, we have extended the delivery deadline to no later than 10 days after the filing deadline. Do you agree with this change?

4. *Filing of certain documents* – Although we have not proposed specific amendments to Part 12 of NI 51-102, we are considering streamlining it. Under Part 12, an issuer must file

- its articles of incorporation, amalgamation, continuation, other constating document, or by-laws
- copies of securityholder or voting trust agreements, securityholder rights plans, or other documents affecting the rights of securityholders generally

- copies of material contracts entered into outside the ordinary course of business

For each of the above requirements,

- a) Is the filed information useful to investors?
- b) Do the benefits to investors outweigh the costs to issuers complying with the requirement?
- c) Should we eliminate the requirement? Why?

5. *Guidance on Executive Compensation* –NI 51-102 defines “executive officer” to include any person who performed a policy-making function in respect of the issuer. If a reporting issuer’s executive management is provided through an external management company, we would generally consider the executive officers of the external management company to be persons performing policy-making functions in respect of the issuer. Consequently, the requirements in NI 51-102, including the disclosure in Form 51-102 F6 *Statement of Executive Compensation*, that apply to executive officers would generally apply to the executive officers of the external management company.

National Policy 41-201 *Income Trust and Other Indirect Offerings* sets out our views about how the existing regulatory framework applies to non-corporate issuers such as income trusts. It also sets out how we expect an income trust to provide executive compensation disclosure for the executives of the underlying operating entity.

Should we amend Form 51-102F6 to provide additional guidance on these matters, or are the existing instructions sufficient?

Please submit your comments on the proposed amendments to the Instruments in writing on or before March 9, 2006. If you are not sending your comments by email, you should also forward a diskette containing the submissions (in Windows format, Word).

Address your submission to all of the CSA member commissions, as follows:

British Columbia Securities Commission  
Alberta Securities Commission  
Saskatchewan Financial Services Commission – Securities Division  
Manitoba Securities Commission  
Ontario Securities Commission  
Autorité des marchés financiers  
New Brunswick Securities Commission  
Registrar of Securities, Prince Edward Island  
Nova Scotia Securities Commission  
Newfoundland and Labrador Securities Commission  
Registrar of Securities, Northwest Territories

Registrar of Securities, Yukon Territory  
Registrar of Securities, Nunavut

Deliver your comments **only** to the addresses that follow. Your comments will be forwarded to the remaining CSA member jurisdictions.

Rosann Youck, Chair of the Continuous Disclosure Harmonization Committee  
British Columbia Securities Commission  
PO Box 10142, Pacific Centre  
701 West Georgia Street  
Vancouver, British Columbia  
V7Y 1L2  
Fax: (604) 899-6814  
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Anne-Marie Beaudoin, Secretary  
Autorité des marchés financiers  
Stock Exchange Tower  
800 Victoria Square  
P.O. Box 246, 22nd Floor  
Montréal, Québec  
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Fax : (514) 864-8381  
e-mail : consultation-en-cours@lautorite.qc.ca

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period.

### **Questions**

Please refer your questions to any of:

Rosann Youck  
Senior Legal Counsel, Corporate Finance  
British Columbia Securities Commission  
(604) 899-6656 or (800) 373-6393 (if calling from B.C. or Alberta)  
[ryouck@bcsc.bc.ca](mailto:ryouck@bcsc.bc.ca)

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Ian McIntosh  
Deputy Director, Corporate Finance  
Saskatchewan Financial Services Commission – Securities Division  
(306) 787-5867  
imcintosh@sfsc.gov.sk.ca

The text of the proposed amendments follows or can be found elsewhere on a CSA member website.

December 9, 2005



## Appendix A

### Summary of proposed amendments

#### *NI 51-102*

We propose to amend NI 51-102 as follows:

#### *Part 1 Definitions*

- to amend the definition of *interim period* and add related definitions to account for issuers with financial years that are not 365 or 366 days long; this addresses differences in the definition of *month* in various *Interpretation Acts* across Canada
- to add a definition of *restructuring transaction* that would apply to disclosure in material change reports and information circulars
- to amend the definition of *venture issuer* to provide that issuers listed on the Alternative Investment Market of the London Stock Exchange are venture issuers; this will replace the blanket orders that some jurisdictions have implemented and make the application of the definition consistent across all jurisdictions

#### *Part 3 Language of documents*

- to add a requirement for a certificate as to the accuracy of translations, where a filed document has been translated from a language other than French or English; this is consistent with a requirement in NI 71-102

#### *Part 4 Financial statements*

- to eliminate inconsistencies between the interim financial statement filing requirement in section 4.3 and requirements for filings after an issuer becomes a reporting issuer in sections 4.7 and 4.10
- to eliminate the requirement to send a request form, as discussed in this Notice under the heading *Request for comments*
- to clarify the delivery deadline for foreign issuers; this will make the requirement consistent with discretionary relief we have granted
- to clarify the delivery deadline for issuers that send their financial statements to all their shareholders; this will eliminate the current ambiguity in NI 51-102 and ensure shareholders receive financial information promptly
- to clarify who has to file a change in corporate structure notice, and when
- to provide an exemption from having to provide comparative financial information in interim financial statements after a reverse takeover to parallel the exemption that applies after an issuer becomes a reporting issuer

*Part 5 Management's discussion & analysis*

- to clarify when an issuer does not have to provide MD&A
- to clarify when an SEC issuer has to file a supplement to its MD&A
- to require additional information from an issuer that has invested in a significant business and accounted for it using the equity method; this is consistent with business acquisition reporting for these investments

*Part 8 Business acquisition report*

- to streamline the business acquisition reporting requirement by
  - clarifying what is a business in connection with interests in oil and gas properties
  - eliminating the requirement for non-venture issuers to test significance at the 40% level
  - requiring only one year of audited financial statements of an acquired business, with unaudited comparative information
  - permitting issuers to average their consolidated income from continuing operations for the income test, even if their consolidated income in their most recently completed financial year was negative
  - permitting issuers to apply the income test based on certain previously filed pro forma financial information
  - providing additional exemptions from the interim financial statement requirements for an acquired business
  - eliminating the asset test and revising the income test for acquisitions of interests in oil and gas properties, unless the acquisition is of securities of another issuer
  - eliminating the requirement for a compilation report on pro forma financial statements
- to ensure that the acquired business's most recent annual financial statements are included in the business acquisition report and to give more time to file the report in some circumstances

*Part 11 Additional filing requirements*

- to add a requirement for an issuer to file a copy of certain documents it filed with another securities regulatory authority in Canada
- to add a requirement for an issuer to issue a press release if it is determined that the issuer filed a document that is materially deficient

*Part 13 Exemptions*

- to expand the exemptions in Part 13 to reflect discretionary relief we have granted since we implemented NI 51-102

***Form 51-102F1 Management's Discussion and Analysis***

We propose to amend the Form 51-102F1 as follows:

- to require an issuer to disclose and discuss material differences between actual results for the historical period to which its MD&A relates and future oriented financial information for that period that the issuer previously released to the public
- to eliminate the requirement to provide a sensitivity analysis relating to critical accounting estimates in every case and replace it with instructions relating to quantitative and qualitative disclosure; this amendment is subject to results from staff's continuing review of issuers' MD&A disclosure of their sensitivity analysis
- to clarify in the instructions how an issuer applies the principle of updating its annual MD&A in its interim MD&A in various circumstances

***Form 51-102F2 Annual Information Form***

We propose to amend Form 51-102F2 as follows:

- to clarify in the instructions how and when an issuer must disclose cease trade orders, bankruptcies, penalties or sanctions relating to its directors, executive officers and significant securityholders
- to require an issuer to disclose any penalties or sanctions imposed against, it or settlement agreements it entered into, during the financial year
- to require an issuer to disclose how its securityholders may contact the issuer to request the financial statements and MD&A; this would be in place of the request form

***Form 51-102F3 Material Change Report***

We propose to amend Form 51-102F3 to require an issuer to provide prospectus-level disclosure about restructuring transactions. This requirement would not apply if the issuer already sent an information circular or filed a prospectus or securities exchange takeover bid circular in respect of the transaction.

***Form 51-102F4 Business Acquisition Report***

We propose to amend Form 51-102F4 by permitting an issuer to incorporate information into the BAR by reference, including financial statements.

***Form 51-102F5 Information Circular***

We propose to amend Form 51-102F5 as follows:

- to require an issuer to provide the same penalties or sanctions disclosure about prospective directors that it must provide in the annual information form

- to provide that an issuer has to disclose executive compensation only if it is sending the information circular for an annual general meeting or a meeting at which directors will be elected
- to clarify when prospectus-level disclosure must be provided, and about which issuers
- to expand the exemption from the prospectus-level disclosure requirement for an issuer listed on the TSX Venture Exchange

***CP 51-102***

The proposed amendments to CP 51-102 reflect the changes to NI 51-102 described above and provide further guidance on how to interpret and apply NI 51-102.

***NI 52-107***

We propose to amend NI 52-107 to clarify the exemptions for financial statements of SEC issuers and foreign issuers.

***NI 71-102***

We propose to amend NI 71-102 to expand the exemptions from insider reporting to insiders of issuers that are SEDI issuers.

## **Appendix I**

### **Authority for amendments – Ontario**

In Ontario, the following provisions of the *Securities Act* (the Act) provide the Ontario Securities Commission (OSC) with authority to make the amendments.

Paragraph 143(1)22 authorizes the OSC to prescribe requirements in respect of the preparation and dissemination and other use, by reporting issuers, of documents providing for continuous disclosure that are in addition to the requirements under the Act, including requirements in respect of an annual report, an annual information form and supplemental analysis of financial statements.

Paragraph 143(1)23 authorizes the OSC to exempt reporting issuers from any requirement of Part XVIII (Continuous Disclosure) of the Act.

Paragraph 143(1)24 authorizes the OSC to require issuers or other persons and companies to comply, in whole or in part, with Part XVIII (Continuous Disclosure), or rules made under paragraph 143(1)22 of the Act.

Paragraph 143(1)25 authorizes the OSC to prescribe requirements in respect of financial accounting, reporting and auditing for the purposes of the Act, the regulations and the rules.

Paragraph 143(1)26 authorizes the OSC to prescribe requirements for the validity and solicitation of proxies.

Paragraph 143(1)38 authorizes the OSC to prescribe requirements in respect of reverse take-overs including requirements for disclosure that are substantially equivalent to that provided by a prospectus.

Paragraph 143(1)39 authorizes the OSC to make rules requiring or respecting the media, format, preparation, form, content, execution, certification, dissemination and other use, filing and review of all documents required under or governed by the Act, the regulations or the rules and all documents determined by the regulations or the rules to be ancillary to the documents, including financial statements, proxies and information circulars.

Paragraph 143(1)44 authorizes the OSC to vary the Act to permit or require the use of an electronic or computer-based system for the filing, delivery or deposit of:

- i. documents or information required under or governed by the Act, the regulations or rules, and
- ii. documents determined by the regulations or rules to be ancillary to documents required under or governed by the Act, the regulations or rules.

Paragraph 143(1)49 authorizes the OSC to vary the Act to permit or require methods of filing or delivery, to or by the OSC, issuers, registrants, security holders or others, of documents,

information, notices, books, records, things, orders, authorizations or other communications required under or governed by Ontario securities laws.

Paragraph 143(1)56 authorizes the OSC to make rules providing for exemptions from or varying any or all time periods in the Act.

Appendix B  
Amendments to  
**National Instrument 51-102 *Continuous Disclosure Obligations***

1. ***National Instrument 51-102 Continuous Disclosure Obligations is amended by this Instrument.***
2. ***Section 1.1 is amended by,***

***a. adding the following after the definition of “date of acquisition”:***

“electronic format” has the same meaning as in National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*;

“equity investee” means a business that the issuer has invested in and accounted for using the equity method;

***b. repealing the definition of “executive officer” and substituting the following:***

“executive officer” means, for a reporting issuer, an individual who is

- (a) a chair, vice-chair or president;
- (b) a vice-president in charge of a principal business unit, division or function including sales, finance or production;
- (c) an officer of the issuer or any of its subsidiaries who performs a policy-making function in respect of the issuer; or
- (d) performing a policy-making function in respect of the issuer;

***c. in the definition of “interim period”,***

***i. adding “a non-standard year or” after “in the case of a year other than” in paragraph (a),***

***ii. striking out “or” at the end of paragraph (a), and***

***iii. adding the following after paragraph (a):***

- (a.1) in the case of a non-standard year, a period commencing on the first day of the financial year and ending within 22 days of the date that is nine, six or three months before the end of the financial year; or

***d. adding the following after the definition of “investment fund”:***

“issuer’s GAAP” has the same meaning as in National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*;

***e. adding the following after the definition of “new financial year”:***

“non-standard year” means a financial year, other than a transition year, that does not have 365 days, or 366 days if it includes February 29;

***f. repealing the definition of “published market”,***

***g. in the definition of “recognized exchange” adding “or a legal person, a partnership or any other entity authorized by the securities regulatory authority to carry on securities trading in accordance with securities legislation” after “or self-regulatory body”,***

***h. adding the following after the definition of “restricted voting security”:***

“restructuring transaction” means

- (a) a reverse takeover;
- (b) an amalgamation, merger, arrangement or reorganization;
- (c) a transaction or series of transactions involving a reporting issuer acquiring assets and issuing securities that results in
  - (i) new securityholders owning or controlling a sufficient number of the reporting issuer’s securities to elect a majority of the directors of the reporting issuer; and
  - (ii) a new person or company, a new combination of persons or companies acting together, the vendors of the assets, or new management
    - (A) being able to materially affect the control of the reporting issuer; or
    - (B) holding more than 20% of the outstanding voting securities of the reporting issuer, unless there is evidence showing that the holding of those securities does not materially affect the control of the reporting issuer; and
- (d) any other transaction similar to the transactions listed in paragraphs (a) to (c),

but does not include a subdivision, consolidation, or other transaction that does not alter a securityholder’s proportionate interest in the issuer;



- i. in the definition of “SEC issuer”, striking out “a reporting” and substituting “an”, and*
- j. in the definition of “venture issuer”,
  - i. adding “,” after “a U.S. marketplace”, and*
  - ii. adding “other than the Alternative Investment Market of the London Stock Exchange” after “the United States of America”.**

**3. Part 3 is amended by adding the following after section 3.1:**

**3.2 Filings Translated into French or English**

If a person or company files a document under this Instrument that is a translation of a document prepared in a language other than French or English, the person or company must

- (a) attach a certificate as to the accuracy of the translation to the filed document; and
- (b) make a copy of the document in the original language available to a registered holder or beneficial owner of its securities, on request.

**4. Part 4 is amended by,**

- a. repealing the heading “Comparative Annual Financial Statements and Auditor’s Report” preceding section 4.1 and substituting “Comparative Annual Financial Statements and Audit”,*
- b. in subsection 4.1(2), striking out “accompanied by an auditor’s report” and substituting “audited”,*
- c. in the preamble to paragraph 4.2(a),
  - i. adding “audited” before “annual financial statements”, and*
  - ii. striking out “and auditor’s report”,**
- d. in section 4.3,
  - i. repealing subsection 4.3(1) and substituting the following:
    - (1) A reporting issuer must file interim financial statements for the interim periods of its current financial year.*
  - ii. striking out “and 4.8(8)” and substituting “, 4.8(8) and 4.10(3)” in subsection (2), and**

*iii. adding “that is a reporting issuer” in subsection (4) after “If an SEC issuer”,*

*e. repealing section 4.6 and substituting the following:*

**4.6 Delivery of Financial Statements**

(1) If a registered holder or beneficial owner of securities of a reporting issuer requests the issuer’s annual or interim financial statements, the reporting issuer must send a copy of the requested financial statements to the person or company that made the request, without charge, by the later of,

(a) in the case of a reporting issuer other than a venture issuer, 10 calendar days after the filing deadline in subparagraph 4.2(a)(i) or 4.4(a)(i), section 4.7, or subsection 4.10(2), as applicable, for the financial statements requested;

(b) in the case of a venture issuer, 10 calendar days after the filing deadline in paragraph 4.2(b)(i) or 4.4(b)(i), section 4.7, or subsection 4.10(2), as applicable, for the financial statements requested; and

(c) 10 calendar days after the issuer receives the request.

(2) A reporting issuer is not required to send copies of annual or interim financial statements under subsection (1) that were filed more than two years before the issuer receives the request.

(3) The requirement to send annual financial statements under subsection (1) does not apply to a reporting issuer that sends its annual financial statements to its securityholders, other than holders of debt instruments, within the time set out in paragraph (1)(a) or (1)(b), as applicable, and in accordance with National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*.

(4) If a reporting issuer sends financial statements under this section, the reporting issuer must also send, at the same time, the annual or interim MD&A relating to the financial statements.

*f. in subsection 4.7(1) adding “of the issuer” before “were included in a document filed”;*

*g. in section 4.8,*

*i. striking out “This section does not apply to an SEC issuer” and substituting “An SEC issuer satisfies this section” in subsection (1), and*

- ii. striking out “paragraph 4.3(1)(b)” and substituting “subsection 4.3(1)” and striking “within” and substituting “not more than” in subsection (5),*

*h. repealing section 4.9 and replacing it with the following:*

#### **4.9 Change in Corporate Structure**

If an issuer is party to a restructuring transaction or other transaction that resulted in,

- (a) the issuer becoming a reporting issuer; or
- (b) if the issuer was already a reporting issuer, in
  - (i) the issuer ceasing to be a reporting issuer,
  - (ii) a change in the reporting issuer’s financial year end, or
  - (iii) a change in the name of the reporting issuer;

the issuer must, as soon as practicable, and in any event not later than the deadline for the first filing required under this Instrument following the transaction, file a notice stating

- (c) the names of the parties to the transaction;
- (d) a description of the transaction;
- (e) the effective date of the transaction;
- (f) the names of each party, if any, that ceased to be a reporting issuer subsequent to the transaction and of each continuing entity;
- (g) the date of the reporting issuer’s first financial year-end subsequent to the transaction; and
- (h) the periods, including the comparative periods, if any, of the interim and annual financial statements required to be filed for the reporting issuer’s first financial year subsequent to the transaction.

*i. in subparagraph 4.10(2)(a)(i), striking out “filed” and substituting “or similar document prepared”,*

*j. adding the following after subsection 4.10(2):*

- (3) **Comparative Financial Information in Interim Financial Statements after a Reverse Takeover** – A reporting issuer is not required to provide comparative interim financial information for

the reverse takeover acquirer for periods that ended before the date of a reverse takeover if

- (a) to a reasonable person it is impracticable to present prior-period information on a basis consistent with subsection 4.3(2);
- (b) the prior-period information that is available is presented; and
- (c) the notes to the interim financial statements disclose the fact that the prior-period information has not been prepared on a basis consistent with the most recent interim financial information. , **and**

**k. in section 4.11,**

**i. *repealing the definition of “relevant period” in subsection (1) and substituting the following:***

“relevant period” means the period

- (a) commencing at the beginning of the reporting issuer’s two most recently completed financial years and ending on the date of termination or resignation; or
- (b) during which the former auditor was the reporting issuer’s auditor, if the former auditor was not the reporting issuer’s auditor throughout the period described in paragraph (a);

**ii. *in subsection (3) adding “the following three conditions are met:” before subparagraph (3)(a)(i),***

**iii. *in subsection (4), striking out “This section does not apply to an SEC issuer” and substituting “An SEC issuer satisfies this section”,***

**iv. *in clauses (5)(a)(ii)(B) and (6)(a)(ii)(B), striking out “applicable”, and***

**v. *in subsection (8), striking out “applicable”.***

**5. Part 5 is amended by,**

**a. in section 5.1,**

**i. *adding the following after subsection (1):***

(1.1) Despite subsection (1), a reporting issuer does not have to file MD&A relating to the annual and interim financial statements required under sections 4.7 and 4.10 for financial years and interim periods that ended before the issuer became a reporting issuer.

*ii. striking out “, 4.4 and 4.7” in paragraph (2)(a) and substituting “and 4.4”, and*

*iii. striking out “, 4.3(1) or 4.7(1)” in paragraph (2)(b) and substituting “or 4.3(1)”*,

*b. in section 5.2,*

*i. repealing subsection (1) and substituting the following:*

(1) If an SEC issuer that is a reporting issuer is filing its annual or interim MD&A prepared in accordance with Item 303 of Regulation S-K or Item 303 of Regulation S-B under the 1934 Act, then the SEC issuer must file that document on or before the earlier of

(a) the date the SEC issuer would be required to file that document under section 5.1; and

(b) the date the SEC issuer files that document with the SEC.

(1.2) An SEC issuer that is a reporting issuer must file a supplement prepared in accordance with subsection (2) at the same time it files its annual or interim MD&A, if the SEC issuer

(a) has based the discussion in the MD&A on financial statements prepared in accordance with U.S. GAAP; and

(b) is required by subsection 4.1(1) of National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* to provide a reconciliation to Canadian GAAP., *and*

*ii. striking out “(1)” in subsection (2) and substituting “(1.2)”*,

*c. adding “year-to-date” after “and the comparative” in paragraph 5.3(2)(b),*

*d. in section 5.6,*

*i. repealing subsection (1) and substituting the following:*

- (1) If a registered holder or beneficial owner of securities of a reporting issuer requests the reporting issuer's annual or interim MD&A, the reporting issuer must send a copy of the requested MD&A and any MD&A supplement required under section 5.2 to the person or company that made the request, without charge, by the delivery deadline set out in subsection 4.6(1) for the annual or interim financial statements to which the MD&A relates. , *and*

*ii. in subsection (3),*

*1. striking out "all", and*

- 2. adding " , within the time set out in paragraph 4.6(1)(a) or 4.6(1)(b), as applicable, and in accordance with National Instrument 54-101 Communication with Beneficial Owners of Securities of a Reporting Issuer" after "holders of debt instruments", and*

*e. adding the following after section 5.6:*

**5.7 Additional Disclosure for Reporting Issuers with Significant Equity Investees**

- (1) A reporting issuer that has a significant equity investee must disclose in its MD&A, or in its MD&A supplement if one is required under section 5.2, for each period referred to in subsection (2),
  - (a) summarized information as to the assets, liabilities and results of operations of the equity investee; and
  - (b) the reporting issuer's proportionate interest in the equity investee and any contingent issuance of securities by the equity investee that might significantly affect the reporting issuer's share of earnings.
- (2) The disclosure in subsection (1) must be provided for the following periods:
  - (a) in the case of annual MD&A, for the two most recently completed financial years; and
  - (b) in the case of interim MD&A, for the most recent year-to-date interim period and the comparative year-to-date period presented in the interim financial statements.
- (3) Subsection (1) does not apply if

- (a) the information required under that subsection has been disclosed in the financial statements to which the MD&A or MD&A supplement relates; or
- (b) the issuer files separate financial statements of the equity investee for the periods referred to in subsection (2).

6. ***Part 6 is amended by repealing section 6.3.***

7. ***Part 7 is amended by striking out “paragraph (1)(a)” in subsection 7.1(7) and substituting “subsection (1)”.***

8. ***Part 8 is amended by,***

***a. in subsection 8.1(1),***

***i. adding “to which reserves, as defined in National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities, have been specifically attributed” after “oil and gas property” in the definition of “business”, and***

***ii. repealing subsection (2),***

***b. renumbering section 8.2 as subsection 8.2(1) and adding the following after subsection (1):***

(2) Despite subsection (1), if the financial year of the acquired business referred to in clause 8.4(1)(a)(i)(A) ended 45 days or less before the acquisition, then a reporting issuer must file a business acquisition report

(a) within 90 days after the date of acquisition, in the case of an issuer other than a venture issuer, or

(b) within 120 days after the date of acquisition, in the case of a venture issuer.

***c. in section 8.3,***

***i. adding “and subsections 8.10(1) and 8.10(2)” after “subsection (3)” in subsection (1),***

***ii. adding “and subject to subsections 8.10(1) and 8.10(2)” after “Despite subsection (1)” in subsection (3),***

***iii. adding “or annual” after “recently completed interim” in paragraphs (4)(a) and 4(b) wherever it occurs,***

- iv. *striking out* “ended before the date of the acquisition” *in paragraph (4)(b)*,
- v. *in paragraph (4)(c)*,
  - 1. *renumbering item 1. and item 2. as subparagraph (i) and subparagraph (ii), respectively*,
  - 2. *striking* “item 1.” *and substituting* “subparagraph (i)”, *and*
  - 3. *striking* “item 2.” *and substituting* “subparagraph (ii)”,
- vi. *repealing subsection (5) and substituting the following*:
  - (5) If an acquisition does not meet any of the significance tests under subsection (4), the acquisition is not a significant acquisition.
- vii. *repealing subsections (8) and (9) and substituting the following*:
  - (8) **Application of the Income Test if Lower Than Average Income for the Most Recent Year** - For the purposes of paragraph (2)(c) and clause (4)(c)(ii)(A), if the reporting issuer’s consolidated income from continuing operations for the most recently completed financial year was lower by 20 percent or more than its average consolidated income from continuing operations for the three most recently completed financial years, then the issuer may, subject to subsection (10), substitute the average consolidated income from continuing operations for the three most recently completed financial years in determining whether the significance test set out in paragraph (2)(c) or (4)(c) is satisfied.
  - (9) **Application of the Optional Income Test if Lower Than Average Income for the Most Recent Year** - For the purpose of clause (4)(c)(ii)(B) if the reporting issuer’s consolidated income from continuing operations for the most recently completed 12-month period was lower by 20 percent or more than its average consolidated income from continuing operations for the three most recently completed 12-month periods, then the issuer may, subject to subsection (10), substitute the average consolidated income for the three most recently completed 12-month periods in determining whether the significance test set out in paragraph (4)(c) is satisfied. , *and*



*viii. adding the following after subsection (11):*

- (11.1) **Application of the Optional Income Test based on Pro Forma Financial Information.** For the purposes of calculating the optional income test under clause (4)(c)(ii)(A), a reporting issuer may use pro forma consolidated income from continuing operations for its most recently completed financial year that was included in a previously filed document if
- (a) the reporting issuer has made a significant acquisition of a business subsequent to its most recently completed financial year; and
  - (b) the previously filed document included
    - (i) audited financial statements of that acquired business for the periods required by this Part; and
    - (ii) the pro forma financial information required by subsection 8.4(5).

*d. repealing section 8.4 and substituting the following:*

**8.4 Financial Statement Disclosure for Significant Acquisitions**

- (1) **Comparative Annual Financial Statements** - If a reporting issuer must file a business acquisition report under section 8.2, subject to sections 8.5 through 8.9, the business acquisition report must include the following for each business or related businesses:
- (a) an income statement, a statement of retained earnings and a cash flow statement for the following periods:
    - (i) if the business has completed one financial year,
      - (A) the most recently completed financial year ended on or before the date of acquisition; and
      - (B) the financial year immediately preceding the most recently completed financial year, if any; or
    - (ii) if the business has not completed one financial year, the financial period commencing on the date of formation and ending on a date not more than 45 days before the date of acquisition;
  - (b) a balance sheet as at the end of each of the periods specified in paragraph (a); and
  - (c) notes to the financial statements.

- (2) **Audit** – The most recently completed financial period referred to in subsection (1) must be audited.
- (3) **Interim Financial Statements** - Subject to sections 8.6 through 8.11, if a reporting issuer must include financial statements in a business acquisition report under subsection (1), the business acquisition report must include financial statements for
  - (a) either
    - (i) the most recently completed interim period of the business that started the day after the date of the balance sheet specified in paragraph (1)(b) and ended before the date of acquisition; or
    - (ii) the period that started the day after the date of the balance sheet specified in paragraph (1)(b) and ended after the interim period referred to in subparagraph (i) and before the date of acquisition; and
  - (b) the comparable period in the preceding financial year of the business.
- (4) **Exemption from Interim Financial Statement Requirements** – Subsection (3) does not apply to a reporting issuer if
  - (a) the issuer filed a document before the date of acquisition that provided prospectus-level disclosure for the acquired business;
  - (b) the issuer incorporates by reference into the business acquisition report any interim financial statements for the acquired business's current financial year that were included in the document referred to in paragraph (a);
  - (c) the financial statements included in the document referred to in paragraph (a) are for the interim period or financial year, or a period ending after that interim period or financial year, immediately preceding the interim period referred to in subsection (3);
  - (d) a reasonable investor would not regard the issuer's primary business to be the business acquired by the issuer; and
  - (e) the issuer will not account for the acquisition as continuity of interests.
- (5) **Pro Forma Financial Statements Required in a Business Acquisition Report** - If a reporting issuer is required to include financial statements in

a business acquisition report under subsection (1) or (3), the business acquisition report must include

- (a) a pro forma balance sheet of the reporting issuer, as at the date of
  - (i) the reporting issuer's most recent balance sheet filed, that gives effect, as if they had taken place as at the date of the pro forma balance sheet, to significant acquisitions that have been completed, but are not reflected in the reporting issuer's most recent balance sheet for an annual or interim period, or
  - (ii) the acquired business's most recent balance sheet, if the reporting issuer has not filed a balance sheet for an annual or interim period, that gives effect, as if they had taken place as at the date of the pro forma balance sheet, to significant acquisitions that have been completed;
- (b) a pro forma income statement of the reporting issuer for each of the following financial periods:
  - (i) the reporting issuer's
    - (A) most recently completed financial year for which it has been required to file financial statements, and
    - (B) most recently completed interim period for which it has been required to file financial statements that started after the period in clause (A) and ended before the acquisition date or, at the issuer's option, ended after the acquisition date,  
  
that gives effect to significant acquisitions completed after the ending date of the reporting issuer's most recently completed financial year for which financial statements are required to have been filed, as if they had taken place at the beginning of that financial year; or
  - (ii) if the reporting issuer has not been required to file financial statements, for the acquired business's
    - (A) most recently completed financial year that ended before the date of acquisition, and
    - (B) period for which financial statements are included in the business acquisition report under paragraph 8.4(3)(a),

that gives effect to significant acquisitions completed as if they had taken place at the beginning of the period referred to in clause (A); and

- (c) pro forma earnings per share based on the pro forma financial statements referred to in paragraph (b).
- (6) **Exemption from Pro Forma Financial Statement Requirements** – Paragraph 8.4(5)(a) and clauses 8.4(5)(b)(i)(B) and 8.4(5)(b)(ii)(B) do not apply to a reporting issuer if
- (a) the issuer filed a document before the date of acquisition that provided prospectus-level disclosure for the acquired business;
  - (b) the issuer incorporates by reference into the business acquisition report the pro forma financial statements relating to the acquisition that were included in the document referred to in paragraph (a);
  - (c) the pro forma financial statements referred to in paragraph (b) are,
    - (i) in the case of the income statement, for the interim period or financial year, or a period ending after the interim period or financial year, immediately preceding the period referred to in clause 8.4(5)(b)(i)(B) or 8.4(5)(b)(ii)(B), as applicable, and
    - (ii) in the case of the pro forma balance sheet, as at the last date of the period covered by the income statement referred to in subparagraph (i);
  - (d) a reasonable investor would not regard the issuer's primary business to be the business acquired by the issuer; and
  - (e) the issuer will not account for the acquisition as continuity of interests.
- (7) **Preparation of Pro Forma Financial Statements** - If a reporting issuer is required to include pro forma financial statements in a business acquisition report under subsection (5),
- (a) the reporting issuer must identify in the pro forma financial statements each significant acquisition, if the pro forma financial statements give effect to more than one significant acquisition;
  - (b) the reporting issuer must include in the pro forma financial statements a description of the underlying assumptions on which the pro forma financial statements are prepared, cross-referenced to each related pro forma adjustment;

- (c) if the financial year-end of the business differs from the reporting issuer's year-end by more than 93 days, for the purpose of preparing the pro forma income statement for the reporting issuer's most recently completed financial year, the reporting issuer must construct an income statement of the business for a period of 12 consecutive months ending no more than 93 days before or after the reporting issuer's year-end, by adding the results for a subsequent interim period to a completed financial year of the business and deducting the comparable interim results for the immediately preceding year;
  - (d) if a constructed income statement is required under paragraph (c), the pro forma financial statements must disclose the period covered by the constructed income statement on the face of the pro forma financial statements and must include a note stating that the financial statements of the business used to prepare the pro forma financial statements were prepared for the purpose of the pro forma financial statements and do not conform with the financial statements for the business included elsewhere in the business acquisition report;
  - (e) if a reporting issuer is required to prepare a pro forma income statement for an interim period required by paragraph (5)(b), and the pro forma income statement for the most recently completed financial year includes results of the business which are also included in the pro forma income statement for the interim period, the reporting issuer must disclose in a note to the pro forma financial statements the revenue, expenses, gross profit and income from continuing operations included in each pro forma income statement for the overlapping period; and
  - (f) a constructed period referred to in paragraph (c) does not have to be audited.
- (8) **Financial Statements of Related Businesses** - If a reporting issuer is required under subsection (1) to include financial statements for more than one business because the significant acquisition involves an acquisition of related businesses, the financial statements required under subsection (1) must be presented separately for each business, except for the periods during which the businesses have been under common control or management, in which case the reporting issuer may present the financial statements of the businesses on a combined basis.

*e. repealing section 8.5,*

*f. in section 8.6,*

- i. striking out “an investment accounted for using the equity method” and substituting “of an equity investee” in paragraph (a),*
- ii. striking out “business” and substituting “equity investee” in subparagraphs (b)(i) and (b)(ii), wherever it appears, and*
- iii. striking out “business” and substituting “equity investee” in subparagraph (c)(i),*
- g. repealing section 8.7,*
- h. in section 8.8,*
  - i. striking out “8.5” and substituting “8.4”, and*
  - ii. striking out “two completed financial years for”,*
- i. in section 8.9, striking out “(2)” and substituting “(3)”,*
- j. repealing section 8.10 and substituting the following:*

**8.10 Acquisition of an Interest in an Oil and Gas Property**

- (1) **Asset Test** - Despite subsections 8.3(2) and 8.3(4), the asset tests in paragraphs 8.3(2)(a) and 8.3(4)(a) do not apply to an acquisition of
  - (a) a business that is an interest in an oil and gas property, or
  - (b) related businesses that are interests in oil and gas properties,
 unless the acquisition is of securities of another issuer.
- (2) **Income Test** - Despite subsections 8.3(2), 8.3(4), 8.3(8), 8.3(9), 8.3(10) and 8.3(12), a reporting issuer must substitute “operating income” for “consolidated income from continuing operations” for the purposes of the income test in paragraphs 8.3(2)(c) and 8.3(4)(c) if the acquisition is one described in subsection (1).
- (3) **Exemption from Financial Statement Disclosure** - A reporting issuer is exempt from the requirements in section 8.4 if
  - (a) the significant acquisition is an acquisition described in subsection (1);
  - (b) the reporting issuer is unable to provide the financial statements in respect of the significant acquisition otherwise required under this Part because those financial statements do not exist or because the reporting issuer does not have access to those financial statements;

- (c) the acquisition does not constitute a reverse takeover;
- (d) the business or related businesses did not, immediately before the time of completion of the acquisition, constitute a “reportable segment” of the vendor, as defined in the Handbook;
- (e) in respect of the business or related businesses, for each of the financial periods for which financial statements would, but for this section, be required under section 8.4, the business acquisition report includes
  - (i) an operating statement, accompanied by a report of an auditor, presenting for the business or related businesses at least the following:
    - (A) gross revenue;
    - (B) royalty expenses;
    - (C) production costs; and
    - (D) operating income;
  - (ii) a pro forma operating statement of the reporting issuer that gives effect to significant acquisitions completed after the ending date of the reporting issuer’s most recently completed financial year for which financial statements are required to have been filed, as if they had taken place at the beginning of that financial year, for each of the financial periods referred to in paragraph 8.4(5)(b);
  - (iii) a description of the property or properties and the interest acquired by the reporting issuer; and
  - (iv) disclosure of the annual oil and gas production volumes from the business or related businesses; and
- (f) the business acquisition report discloses
  - (i) the estimated reserves and related future net revenue attributable to the business or related businesses, the material assumptions used in preparing the estimates and the identity and relationship to the reporting issuer or to the vendor of the person who prepared the estimates; and
  - (ii) the estimated oil and gas production volumes from the business or related businesses for the first year reflected in the estimates disclosed under subparagraph (f)(i). , **and**

*k. in section 8.11, striking out “(3)” and substituting “(5)”.*

**9. Part 9 is amended by repealing section 9.5 and substituting the following:**

**9.5 Exemption**

Sections 9.1 to 9.4 do not apply to a reporting issuer that complies with the requirements of the laws under which it is incorporated, organized or continued, if

- (a) the requirements are substantially similar to the requirements of this Part; and
- (b) the person or company promptly files a copy of any information circular, form of proxy and all other material sent by the person or company in connection with the meeting.

**10. Part 11 is amended by**

*a. in the heading preceding section 11.1, striking “Filing” and substituting “Disclosure”;*

*b. striking “or” at the end of paragraph 11.1(1)(a), adding “or” at the end of paragraph 11.1(1)(b), and adding the following after paragraph 11.1(1)(b):*

(c) that it files with another provincial or territorial securities regulatory authority or regulator other than in connection with a distribution.

*c. in paragraph 11.1(1)(b), adding “under the 1934 Act” after “furnishes to the SEC”;*

*d. striking out “and” at the end of paragraph 11.1(2)(a), adding “and” at the end of paragraph 11.1(2)(b), and adding the following after paragraph 11.1(2)(b):*

(c) the date on which the reporting issuer files that material with the other provincial or territorial securities regulatory authority or regulator. , *and*

*e. adding the following after section 11.4:*

**11.5 Re-filing Documents**

If a reporting issuer decides it will re-file a document, or re-state information in a document, filed under this Instrument, and the information in the re-filed document, or re-stated information, will differ materially from the information in the original document, the issuer must immediately issue and file a news release authorized by a senior officer disclosing the nature and substance of the change or proposed changes.



11. **Part 12 is amended by striking out** “under National Instrument 13-101 *System for Electronic Data Analysis and Retrieval (SEDAR)*” **in paragraph 12.1(2)(b).**

12. **Part 13 is amended by,**

**a. adding the following after subsection 13.1(2):**

(3) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

**b. in subsection 13.3(2),**

**i. striking** “this Instrument does not apply to”,

**ii. adding** “satisfies the requirements in this Instrument” **before** “if”,

**iii. striking out** “direct or indirect” **in paragraph (a),**

**iv. repealing paragraph (b) and substituting the following:**

(b) the parent issuer is either

(i) an SEC issuer with a class of securities listed or quoted on a U.S. marketplace; or

(ii) a reporting issuer in Alberta, British Columbia, Manitoba, Nova Scotia, Ontario, Québec or Saskatchewan that has filed all documents it is required to file under this Instrument;

**v. adding** “the parent issuer or an affiliate of” **in subparagraph (c)(ii) after** “securities issued to”,

**vi. in subparagraph (c)(iii),**

**1. adding** “loan and investment corporations, savings companies, ” **after** “loan corporations, ”,

**2. adding** “savings or” **after** “treasury branches, ”, **and**

**3. adding** “financial services cooperatives, ” **after** “credit unions, ”, **and**

**vii. repealing paragraphs (d), (e) and (f) and substituting the following:**

(d) the exchangeable security issuer files in electronic format,

- (i) if the parent issuer is not a reporting issuer in a jurisdiction listed in subparagraph (b)(ii), copies of all documents the parent issuer is required to file with the SEC under the 1934 Act, at the same time as, or as soon as practicable after, the filing by the parent issuer of those documents with the SEC; or
- (ii) if the parent issuer is a reporting issuer in a jurisdiction listed in subparagraph (b)(ii),
  - (A) a notice indicating that the exchangeable security issuer is relying on the continuous disclosure documents filed by its parent issuer and setting out where those documents can be found in electronic format, if the parent issuer is a reporting issuer in the local jurisdiction; or
  - (B) copies of all documents the parent issuer is required to file under securities legislation, other than in connection with a distribution, at the same time as the filing by the parent issuer of those documents with a securities regulatory authority or regulator;
- (e) the exchangeable security issuer concurrently sends to all holders of designated exchangeable securities all disclosure materials that are sent to holders of the underlying securities in the manner and at the time required by
  - (i) U.S. laws and any U.S. marketplace on which securities of the parent issuer are listed or quoted, if the parent issuer is an SEC issuer; or
  - (ii) securities legislation, if the parent issuer is not an SEC issuer;
- (f) the parent issuer
  - (i) complies with U.S. laws and the requirements of any U.S. marketplace on which the securities of the parent issuer are listed or quoted if the parent issuer is an SEC issuer, or securities legislation if the parent issuer is not an SEC issuer, in respect of making public disclosure of material information on a timely basis; and

- (ii) immediately issues in Canada and files any news release that discloses a material change in its affairs;

**c. in subsection 13.3(3),**

**i. by repealing paragraphs (a), (b) and (c) and substituting the following:**

(a) if the insider is not the parent issuer,

- (i) the insider does not receive, in the ordinary course, information as to material facts or material changes concerning the parent issuer before the material facts or material changes are generally disclosed, and
- (ii) the insider is not an insider of the parent issuer in any capacity other than by virtue of being an insider of the exchangeable security issuer;

(b) the parent issuer is the beneficial owner of all of the issued and outstanding voting securities of the exchangeable security issuer;

(c) if the insider is the parent issuer, the insider does not beneficially own any designated exchangeable securities;

**ii. adding “or a reporting issuer in Alberta, British Columbia, Manitoba, Nova Scotia, Ontario, Québec or Saskatchewan” after “SEC issuer” in paragraph (d),**

**iii. adding “the parent issuer or an affiliate of” after “securities issued to” in subparagraph (e)(ii), and**

**iv. in subparagraph (e)(iii),**

1. **striking** “to the parent issuer or”,
2. **adding** “loan and investment corporations, savings companies, ” **after** “loan corporations, ”,
3. **adding** “savings or” **after** “treasury branches, ”, **and**
4. **adding** “financial services cooperatives, ” **after** “credit unions, ”,

**d. in subsection 13.4(1),**

**i. adding “and” after the definition of “credit supporter”,**

*ii. striking “;” at the end of the definition of “designated credit support securities” and substituting “.”, and*

*iii. repealing the definition of “SEC MJDS issuer”,*

*e. in subsection 13.4(2),*

*i. striking out “this Instrument does not apply to”,*

*ii. adding “satisfies the requirements in this Instrument” before “if”,*

*iii. repealing paragraphs (a) and (b) and substituting the following:*

(a) the credit support issuer is a direct or indirect wholly-owned subsidiary of the credit supporter;

(b) the credit supporter is either

(i) an SEC issuer; or

(ii) a reporting issuer in Alberta, British Columbia, Manitoba, Nova Scotia, Ontario, Québec or Saskatchewan that has filed all documents it is required to file under this Instrument;

*iv. in subparagraph (c)(iii),*

*1. adding “loan and investment corporations, savings companies, ” after “loan corporations, ”,*

*2. adding “savings or” after “treasury branches, ”, and*

*3. adding “financial services cooperatives, ” after “credit unions, ”,*

*v. repealing paragraphs (d) and (e) and substituting the following:*

(d) the credit support issuer files in electronic format,

(i) if the credit supporter is an SEC issuer, copies of all documents the credit supporter is required to file with the SEC under the 1934 Act, at the same time or as soon as practicable after the filing by the credit supporter of those documents with the SEC; or

(ii) if the credit supporter is not an SEC issuer,

(A) a notice indicating that the credit support issuer is relying on the continuous disclosure documents

filed by the credit supporter and setting out where those documents can be found for viewing in electronic format, if the credit support issuer is a reporting issuer in the local jurisdiction; or

- (B) copies of all documents the credit supporter is required to file under securities legislation, other than in connection with a distribution, at the same time as the filing by the credit supporter of those documents with a securities regulatory authority or regulator;

(e) the credit supporter

- (i) complies with U.S. laws and the requirements of any U.S. marketplace on which securities of the credit supporter are listed or quoted if the credit supporter is an SEC issuer, or securities legislation if the credit supporter is not an SEC issuer, in respect of making public disclosure of material information on a timely basis; and
- (ii) immediately issues in Canada and files any news release that discloses a material change in its affairs; , **and**

**vi. *repealing paragraphs (g), (h) and (i) and substituting the following:***

(g) in the case of a credit support issuer that has operations, other than minimal operations, that are independent of the credit supporter, the credit support issuer files the following financial information by the filing deadlines set out in sections 4.2 and 4.4, as applicable, in electronic format:

- (i) annual comparative financial information, derived from the credit support issuer's audited consolidated financial statements for its most recently completed financial year, that is accompanied by a specified procedures report of the auditors to the credit support issuer and that includes the following line items for the most recently completed financial year and the financial year immediately preceding the most recently completed financial year:
  - (A) sales or revenues;
  - (B) income from continuing operations;
  - (C) net earnings; and

(D) unless the issuer's GAAP permits the preparation of the credit support issuer's balance sheet without classifying assets and liabilities between current and non-current and the credit support issuer provides alternative meaningful financial information which is more appropriate to the industry,

(I) current assets;

(II) non-current assets;

(III) current liabilities; and

(IV) non-current liabilities; and

(ii) interim comparative financial information, derived from the credit support issuer's unaudited consolidated financial statements for its most recently completed interim period, that includes the following line items for the most recently completed interim period and, for items (A), (B) and (C), the corresponding interim period in the immediately preceding completed financial year, and for item (D), if applicable, as at the end of the immediately preceding financial year:

(A) sales or revenues;

(B) income from continuing operations;

(C) net earnings or loss; and

(D) unless the issuer's GAAP permits the preparation of the credit support issuer's balance sheet without classifying assets and liabilities between current and non-current and the credit support issuer provides alternative meaningful financial information which is more appropriate to the industry,

(I) current assets;

(II) non-current assets;

(III) current liabilities; and

(IV) non-current liabilities;

(h) in the case of designated credit support securities that include debt, the credit support issuer concurrently sends to all holders of such

securities all disclosure materials that are sent to holders of non-convertible debt of the credit supporter that has an approved rating in the manner and at the time required by

- (i) U.S. laws and any U.S. marketplace on which securities of the credit supporter are listed or quoted, if the credit supporter is an SEC issuer; or
  - (ii) securities legislation, if the credit supporter is not an SEC issuer; and
- (i) in the case of designated credit support securities that include preferred shares, the credit support issuer concurrently sends to all holders of such securities all disclosure materials that are sent to holders of non-convertible preferred shares of the credit supporter that have an approved rating in the manner and at the time required by
- (i) U.S. laws and any U.S. marketplace on which securities of the credit supporter are listed or quoted, if the credit supporter is an SEC issuer; or
  - (ii) securities legislation, if the credit supporter is not an SEC issuer. , *and*

*f. in subsection 13.4(3),*

*i. by repealing paragraphs (a), (b) and (c) and substituting the following:*

- (a) if the insider is not the credit supporter,
  - (i) the insider does not receive, in the ordinary course, information as to material facts or material changes concerning the credit supporter before the material facts or material changes are generally disclosed, and
  - (ii) the insider is not an insider of the credit supporter in any capacity other than by virtue of being an insider of the credit support issuer;
- (b) the credit supporter is the beneficial owner of all the issued and outstanding voting securities of the credit support issuer;
- (c) if the insider is the credit supporter, the insider does not beneficially own any designated credit support securities;

*ii. striking “MJDS” in paragraph (d) and adding “or a reporting issuer in Alberta, British Columbia, Manitoba, Nova Scotia, Ontario, Québec or Saskatchewan” after “SEC issuer”, and*

*iii. in subparagraph (e)(iii),*

- 1. adding “loan and investment corporations, savings companies, ” after “loan corporations, ”,*
- 2. adding “savings or” after “treasury branches, ”, and*
- 3. adding “financial services cooperatives, ” after “credit unions, ”.*

*13. Part 14 is amended by adding the following as section 14.2:*

**14.2 Transition**

Despite section 14.1, section 5.7 applies for financial years of the reporting issuer beginning on or after January 1, 2007.

*14. This amendment comes into force •, 2006.*



## Appendix C

### *Amendments to*

**Form 51-102F1 Management’s Discussion and Analysis,  
Form 51-102F2 Annual Information Form,  
Form 51-102F3 Material Change Report,  
Form 51-102F4 Business Acquisition Report,  
Form 51-102F5 Information Circular, and  
Form 51-102F6 Statement of Executive Compensation**

1. *Form 51-102F1 Management’s Discussion and Analysis, Form 51-102F2 Annual Information Form, Form 51-102F3 Material Change Report, Form 51-102F4 Business Acquisition Report, Form 51-102F5 Information Circular, and Form 51-102F6 Statement of Executive Compensation are amended by this Instrument.*
2. *Form 51-102F1 Management’s Discussion and Analysis is amended by*
  - a. *repealing the heading “General Instructions and Interpretation” preceding paragraph 1(a) and substituting “General Provisions”,*
  - b. *in paragraph 1(g),*
    - i. *striking “You are encouraged to provide forward-looking information if you have a reasonable basis for making the statements.”,*
    - ii. *striking “or projection”,*
    - iii. *striking “a detailed forecast” and substituting “detailed estimates”,*
    - iv. *adding “You must have a reasonable basis for any forward-looking information.” before “All forward-looking information must contain a statement”,*
    - v. *adding the following after “risk disclosure and cautionary language.”:*

In addition, some securities legislation provides a statutory right of action for damages for misrepresentation in continuous disclosure documents. You may have protection against liability for forward-looking information. You are responsible for determining what additional disclosure, if any, you must provide to have that protection.

- vi. *striking* “Forward-looking statements may be considered misleading when they are unreasonably optimistic or aggressive, or lack objectivity, or are not adequately explained.”

c. *adding the following after paragraph 1(g):*

(g.1) **FOFI**

You must disclose and discuss material differences between actual results for the annual or interim period to which your MD&A relates and future oriented financial information for that period that you previously released to the public (either in a previous MD&A or in some other manner). Future oriented financial information ("FOFI") is one type of forward-looking information. FOFI is information about prospective results of operations, financial position and/or cash flows, based on assumptions about future economic conditions and courses of action, and presented in the format of a historical balance sheet, income statement or cash flow statement. You should disclose and discuss material differences for material individual items included in the FOFI, including assumptions. For example, if the actual dollar amount of revenue approximates the forecasted amount but the sales mix or sales volume differs materially from what you expected, you should explain this. If you do not identify any material differences, you must disclose that you compared the actual results to previously released FOFI for the relevant period, and that you did not identify any material differences.

You must also discuss events and circumstances that occurred during the period to which the MD&A relates that are reasonably likely to cause actual results to differ materially from FOFI previously released for a period that is not yet complete. As well, you must discuss the expected differences. For example, if you published FOFI for the current year assuming no change in the prime interest rate, but by the end of the second quarter the prime interest rate went up by 2%, in your second quarter MD&A you should discuss the interest rate increase and its expected effect on results compared to those indicated in the FOFI.

If during the period to which the MD&A relates you decided to withdraw previously released FOFI, you must disclose that decision and the reasons for it. However, you do not have to disclose and discuss differences between actual results and FOFI as discussed above, if you disclosed withdrawal of the FOFI in an MD&A filed before the end of the period covered by the FOFI.

Paragraph g.1 of these instructions does not apply to future net revenue (discounted cash flow information) provided in accordance with National Instrument 51-101 or to cash flow forecasts provided in

accordance with National Instrument 43-101. Issuers should refer to those instruments for their obligations relating to such information.

- d. striking “and” at the end of instruction (iii)(I) to section 1.5,**
- e. striking “.” and substituting “; and” at the end of instruction (iii)(J) to section 1.5,**
- f. adding the following after instruction (iii)(J) to section 1.5:**
  - (K) if you have an equity investee that is significant to your company, the nature of the investment and significance to your company.**
- g. repealing paragraph 1.12(c),**
- h. after section 1.12,**
  - i. striking the heading “Instruction” and substituting “Instructions”,**
  - ii. numbering the paragraph under the heading “Instructions” as paragraph (i), and**
  - iii. adding the following after paragraph (i) under the heading “Instructions”:**
    - (ii) As part of your discussion of why an accounting estimate is reasonably likely to change, in addition to qualitative disclosure, you should provide quantitative disclosure when quantitative information is reasonably available and will provide material information for investors. For example, quantitative information may include the changes in overall financial performance and financial statement line items if you assume that the accounting estimate was to change by using either**
      - (A) reasonably likely changes in the material assumptions; or**
      - (B) the upper and lower ends of the range of estimates from which the recorded estimate was selected.**
- i. in paragraph 1.15(b),**
  - i. adding “, if applicable” after “National Instrument 51-102”,**
  - ii. striking “and” at the end of subparagraph (b)(i),**

*iii. striking “.” and substituting “; and” at the end of subparagraph (b)(ii), and*

*iv. adding the following after subparagraph (b)(ii):*

(iii) Section 5.7 – Additional Disclosure for Reporting Issuers with Significant Equity Investees.

*j. in the instructions after section 2.2,*

*i. striking “not an annual” and substituting “an interim” in paragraph (i),*

*ii. adding “Base the disclosure, except the disclosure for section 1.3, on your interim financial statements. Since you do not have to update the disclosure required in section 1.3 in your interim MD&A, your first MD&A will provide disclosure under section 1.3 based on your annual financial statements.” after “in your first MD&A” in paragraph (i), and*

*iii. adding the following after paragraph (v):*

*(vi) In your interim MD&A, update the summary of quarterly results in section 1.5 by providing summary information for the eight most recently completed quarters.*

*(vii) Your annual MD&A may not include all the information in Item 1 if you were a venture issuer as at the end of your last financial year. If you ceased to be a venture issuer during your interim period, you do not have to restate the MD&A you previously filed. Instead, provide the disclosure for the additional sections in Item 1 that you were exempt from as a venture issuer in the next interim MD&A you file. Base your disclosure for those sections on your interim financial statements.*

**3. Form 51-102F2 Annual Information Form is amended by,**

*a. repealing the heading “General Instructions and Interpretation” preceding paragraph 1(a) and substituting “General Provisions”,*

*b. adding “, including any documents incorporated by reference into the document or excerpt,” before “under your SEDAR profile” in paragraph 1(f),*

*c. striking the heading “Bankruptcy, etc” preceding subsection 5.1(2) and substituting “Bankruptcy and Similar Procedures”,*

- d. repealing paragraph 5.5(1)(c),*
- e. striking “paragraphs (1)(a) and (1)(b) above” in subsection 5.5(2) and substituting “subsection (1),”*
- f. adding the following after subsection 5.5(3):*

(4) **Material Changes** – To the extent not reflected in the information disclosed in response to subsection (1), disclose the information contemplated by Part 6 of National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* in respect of material changes that occurred after your company’s most recently completed financial year-end.
- g. adding “approved” after “has been received from one or more” in section 7.3,*
- h. after section 10.2,*
  - i. striking the heading “Instruction” and substituting “Instructions”,*
  - ii. numbering the paragraph under the heading “Instructions” as paragraph (i), and*
  - iii. adding the following after paragraph (i) under the heading “Instructions”:*
    - (ii) A management cease trade order is “a cease trade or similar order” for the purposes of subparagraph 10.2(1)(a)(i) and so must be disclosed, whether or not the director, executive officer or shareholder was named in the order.
    - (iii) A late filing fee, such as a filing fee that applies to the late filing of an insider report, is not a “penalty or sanction” for the purposes of section 10.2.
- i. repealing the heading “Legal Proceedings” preceding section 12.1 and substituting “Legal Proceedings and Regulatory Actions”,*
- j. striking “Describe any legal proceedings to which your company is a party or of which any of its property is the subject and any such proceedings known to your company to be contemplated, including” in section 12.1 and substituting “Describe any legal proceedings your company is or was a party to, or that any of its property is or was the subject of, during your financial year. Describe any such legal proceedings your company knows are contemplated. Include”,*
- k. adding the following after section 12.1:*

## **12.2 Regulatory Actions**

Describe any

- (a) penalties or sanctions imposed against your company or by a regulatory authority during your financial year, and
  - (b) settlement agreements your company entered into with a regulatory authority or a court relating to securities legislation during your financial year.
- l. adding* “Disclose how securityholders may contact the company to request copies of the company’s financial statements and MD&A.” *after* “www.sedar.com.” *in subsection 17.1(1).*

**4. Form 51-102F3 Material Change Report is amended by**

- a. repealing the heading “General Instructions and Interpretation” preceding paragraph 1(a) and substituting “General Provisions”, and*
- b. in Item 5,*
  - i. numbering the paragraph under the heading for Item 5 as section 5.1,*
  - ii. adding the heading “Full Description of Material Change” to section 5.1,*
  - iii. adding the following after section 5.1:*

**5.2 Disclosure for Restructuring Transactions**

This item applies to a material change report filed in respect of the closing of a restructuring transaction under which securities are to be changed, exchanged, issued or distributed. This item does not apply if, in respect of the transaction, your company sent an information circular to its securityholders or filed a prospectus or a securities exchange takeover bid circular.

Include the disclosure required for the resulting entity in a restructuring transaction by section 14.2 of Form 51-102F5. You may satisfy the requirement to include this disclosure by incorporating the information by reference to another document.

- iv. striking the heading “Instruction” and substituting “Instructions”,*
- v. numbering the paragraph under the heading “Instructions” as paragraph (i), and*

*vi. adding the following after paragraph (i) under the heading “Instructions”:*

(ii) If you incorporate information by reference to another document, clearly identify the referenced document or any excerpt from it. Unless you have already filed the referenced document or excerpt, you must file it with the material change report. You must also disclose that the document is on SEDAR at [www.sedar.com](http://www.sedar.com).

**5. Form 51-102F4 Business Acquisition Report is amended by**

*a. repealing the heading “General Instructions and Interpretation” preceding paragraph 1(a) and substituting “General Provisions”, and*

*b. in paragraph 1(d),*

*i. striking “, other than the financial statements or other information required by Item 3,”*

*ii. adding “you have already filed” after “Unless”,*

*iii. striking “has already been filed” and substituting “, including any documents incorporated by reference into the document or excerpt”, and*

*iv. adding “You must also disclose that the document is on SEDAR at [www.sedar.com](http://www.sedar.com).” after “file it with this Report.”.*

**6. Form 51-102F5 Information Circular is amended by**

*a. repealing the heading “General Instructions and Interpretation” preceding paragraph 1(a) and substituting “General Provisions”,*

*b. adding “including any documents incorporated by reference into the document or except,” after “document or excerpt,” in paragraph 1(c),*

*c. adding “(a “proposed director”)” after “nominated for election as a director” in section 7.1,*

*d. adding the following after section 7.2:*

7.3 Describe the penalties or sanctions imposed and the grounds on which they were imposed, or the terms of the settlement agreement and the circumstances that gave rise to the settlement agreement, if a proposed director has been subject to

(a) any penalties or sanctions imposed by a court relating to securities legislation or by a securities regulatory authority

or has entered into a settlement agreement with a securities regulatory authority; or

- (b) any other penalties or sanctions imposed by a court or regulatory body that would likely be considered important to a reasonable securityholder in deciding whether to vote for a proposed director.

7.4 Despite section 7.3, no disclosure is required of a settlement agreement entered into before December 31, 2000 unless the disclosure would likely be important to a reasonable securityholder in deciding whether to vote for a proposed director.

#### *INSTRUCTIONS*

- (i) *The disclosure required by sections 7.2 and 7.3 also apply to any personal holding companies of the proposed director.*
- (ii) *A management cease trade order is “a cease trade or similar order” for the purposes of paragraph 7.2(a)(i) and so must be disclosed, whether or not the proposed director was named in the order.*
- (iii) *A late filing fee, such as a filing fee that applies to the late filing of an insider report, is not a “penalty or sanction” for the purposes of section 7.3.*

**e. striking “Include” and substituting “If you are sending this information circular in connection with an annual general meeting or a meeting at which directors are to be elected, include” in Item 8,**

**f. repealing section 14.2 and substituting the following:**

14.2 If the action to be taken is in respect of a significant acquisition as determined under Part 8 of National Instrument 51-102 under which securities of the acquired business are being exchanged for the company’s securities, or in respect of a restructuring transaction under which securities are to be changed, exchanged, issued or distributed, include disclosure for

- (a) the company, if the company has not filed all documents required under National Instrument 51-102,
- (b) the business being acquired, if the matter is a significant acquisition,
- (c) each entity, other than the company, whose securities are being changed, exchanged, issued or distributed, if



- (i) the matter is a restructuring transaction, and
- (ii) the company's current securityholders will have an interest in that entity after the restructuring transaction is completed, and
- (d) each entity that would result from the significant acquisition or restructuring transaction, if the company's securityholders will have an interest in that entity after the significant acquisition or restructuring transaction is completed.

The disclosure must be the disclosure (including financial statements) prescribed by the form of prospectus that the entity would be eligible to use for a distribution of securities in the jurisdiction.

***g. in section 14.5,***

- i. striking* "Section 14.2 does not apply to an information circular that is prepared" ***and substituting*** "A company satisfies section 14.2 if it prepares an information circular",
- ii. adding* "," ***after*** "connection with a Qualifying Transaction",
- iii. striking* "(as such terms" ***and substituting*** " , or in connection with a Reverse Take-Over (as Qualifying Transaction, CPC and Reverse Take-Over",
- iv. striking* "policy on Capital Pool Companies" ***and substituting*** "policies", ***and***
- v. adding* "or Reverse Take-Over" ***after*** "in respect of that Qualifying Transaction",

***h. adding the following after section 14.5:***

***INSTRUCTION***

*For the purposes of section 14.2, a securityholder will not be considered to have an interest in an entity after an acquisition or restructuring transaction is completed if the securityholder will only hold a redeemable security that is immediately redeemed for cash.*

***7. Form 51-102F6 Statement of Executive Compensation is amended by***

- a. repealing the heading "General Instructions and Interpretation" preceding section 1.1 and substituting "General Provisions",***

- b. striking “primary” in paragraphs 1.4(e) and 1.4(f), wherever it appears, and*
- c. adding “or Québec Pension Plan” after “CPP” in paragraph 2.1 1.(a) relating to column (e).*

*8. This amendment comes into force ●, 2006.*

## Appendix D

### Amendments to National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*

1. *National Instrument 52-107 Acceptable Accounting Principles, Auditing Standards and Reporting Currency is amended by this Instrument.*
2. *In section 1.1,*
  - a. *in paragraph (b) of the definition of “designated foreign issuer”, adding “in a designated foreign jurisdiction” after “foreign disclosure requirements”,*
  - b. *repealing the definition of “executive officer” and substituting the following:*

“executive officer” means, for a reporting issuer, an individual who is

    - (a) a chair, vice-chair or president;
    - (b) a vice-president in charge of a principal business unit, division or function including sales, finance or production;
    - (c) an officer of the issuer or any of its subsidiaries who performs a policy-making function in respect of the issuer; or
    - (d) performing a policy-making function in respect of the issuer; , *and*
  - c. *in paragraph (b) of the definition of “recognized exchange” adding “or a legal person, a partnership or any other entity authorized by the securities regulatory authority to carry on securities trading in accordance with securities legislation” after “or self-regulatory body”.*
3. *In subsection 4.1(1) and section 4.2, striking “filed by an SEC issuer” and substituting “of an SEC issuer that are filed or delivered” wherever it appears.*
4. *In sections 5.1 and 5.2, striking “filed by a foreign issuer” and substituting “of a foreign issuer that are filed or delivered” wherever it appears.*
5. *Repealing paragraph 5.2(a) and substitute the following:*
  - (a) U.S. GAAS, if the auditor’s report
    - (i) contains an unqualified opinion;

- (ii) identifies all financial periods presented for which the auditor has issued an auditor's report;
- (iii) refers to the former auditor's reports on the comparative periods, if the issuer has changed its auditor and one or more of the comparative periods presented in the financial statements were audited by a different auditor; and
- (iv) identifies the auditing standards used to conduct the audit and the accounting principles used to prepare the financial statements;

**6. *Adding the following after subsection 9.1(2):***

- (3) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

**7. *This amendment comes into force ●, 2006.***

## Appendix E

### Amendments to National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*

1. *National Instrument 71-102 Continuous Disclosure and Other Exemptions Relating to Foreign Issuers is amended by this Instrument.*

2. *In section 1.1,*

a. *repealing the definitions of “board of directors” and “SEDI issuer”,*

b. *in paragraph (b) of the definition of “designated foreign issuer”, adding “in a designated foreign jurisdiction” after “foreign disclosure requirements”,*

c. *repealing the definition of “executive officer” and substituting the following:*

“executive officer” means, for a reporting issuer, an individual who is

- (a) a chair, vice-chair or president;
- (b) a vice-president in charge of a principal business unit, division or function including sales, finance or production;
- (c) an officer of the issuer or any of its subsidiaries who performs a policy-making function in respect of the issuer; or
- (d) performing a policy-making function in respect of the issuer;

d. *in the definition of “interim period”,*

i. *adding “a non-standard year or” after “in the case of a year other than” in paragraph (a),*

ii. *striking out “or” at the end of paragraph (a), and*

iii. *adding the following after paragraph (a):*

- (a.1) in the case of a non-standard year, a period commencing on the first day of the financial year and ending within 22 days of the date that is nine, six or three months before the end of the financial year; or

e. *adding the following after the definition of “NI 52-107”:*

“non-standard year” means a financial year, other than a transition year, that does not have 365 days, or 366 days if it includes February 29; , *and*

*f.* *in paragraph (b) of the definition of “recognized exchange” adding “or a legal person, a partnership or any other entity authorized by the securities regulatory authority to carry on securities trading in accordance with securities legislation” after “or self-regulatory body”.*

*3. In sections 4.2, 4.8, 4.9, 4.11, 5.3, 5.9, 5.10 and 5.12, striking “is exempt from” and substituting “satisfies” wherever it appears.*

*4. In subsections 4.7(2) and 5.8(2), striking “the exemption in”, wherever it appears.*

*5. In section 4.10,*

*a. striking “An SEC foreign issuer is exempt from securities” and substituting “Securities”, and*

*b. adding “do not apply to an SEC foreign issuer” after “material contracts”.*

*6. Repealing section 4.12 and substituting the following:*

#### **4.12 Insider Reporting**

The insider reporting requirement does not apply to an insider of an SEC foreign issuer that has a class of securities registered under section 12 of the 1934 Act if the insider complies with the requirements of U.S. federal securities law relating to insider reporting.

*7. In section 5.11,*

*a. striking “A designated foreign issuer is exempt from securities” and substituting “Securities”, and*

*b. adding “do not apply to a designated foreign issuer” after “material contracts”.*

*8. Repealing section 5.13 and substituting the following:*

#### **5.13 Insider Reporting**

The insider reporting requirement does not apply to an insider of a designated foreign issuer if the insider complies with foreign disclosure requirements relating to insider reporting.

*9. This amendment comes into force •, 2006.*

Appendix F

COMPANION POLICY 51-102CP  
CONTINUOUS DISCLOSURE OBLIGATIONS

(Black-lined)

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**COMPANION POLICY 51-102CP**  
***CONTINUOUS DISCLOSURE OBLIGATIONS***

**PART 1 INTRODUCTION AND DEFINITIONS**

**1.1 Introduction and Purpose**

- (1) National Instrument 51-102 *Continuous Disclosure Obligations* (the “Instrument”) sets out disclosure requirements for all issuers, other than investment funds, that are reporting issuers in one or more jurisdictions in Canada.
- (2) The purpose of this Companion Policy (the “Policy”) is to help you understand how the provincial and territorial regulatory authorities interpret or apply certain provisions of the Instrument. This Policy includes explanations, discussion and examples of various parts of the Instrument.

**1.2 Filing Obligations**

- (1) Reporting issuers must file continuous disclosure documents under the Instrument only in the local jurisdictions in which they are a reporting issuer.
- (2) In some circumstances, the Instrument permits an issuer to satisfy a filing requirement by filing a different document instead. If an issuer is relying on one of these sections, the issuer must file the substitute document in the appropriate filing category and type on SEDAR. For example, an exchangeable share issuer relying on section 13.3(2) that must file a copy of its parent issuer’s annual financial statements, must file those financial statements under the exchangeable share issuer’s SEDAR profile in the “Annual Financial Statement” filing type.

**1.3 Corporate Law Requirements**

Reporting issuers are reminded that they may be subject to requirements of corporate law that address matters similar to those addressed by the Instrument, and which may impose additional or more onerous requirements. For example, applicable corporate law may require the delivery of annual financial statements to shareholders or may require the board of directors to approve interim financial statements.

**1.4 Definitions**

- (1) **General** – Many of the terms for which the Instrument or Forms prescribed by the Instrument provide definitions are defined somewhat differently in the applicable securities legislation of several local jurisdictions. A term used in the Instrument and defined in the securities statute of a local jurisdiction has the meaning given to it in the statute unless: (a) the definition in that statute is restricted to a specific portion of the statute that does not govern continuous disclosure; or (b) the context otherwise requires.

For instance, the terms “form of proxy”, “material change”, “proxy”, “~~published market~~”, “recognized quotation and trade reporting system” and “solicit” are defined in local

securities legislation of most jurisdictions. The provincial and territorial regulatory authorities consider the meanings given to these terms in securities legislation to be substantially similar to the definitions set out in the Instrument.

- (2) **Asset-backed security** – Section ~~1.7~~1.8 of Companion Policy 44-101CP provides guidance for the ~~definitions~~definition of “asset-backed securities”~~—and—~~“~~principal obligor~~”.
- (3) **Directors and Executive Officers** – Where the Instrument or any of the Forms use the term “directors” or “executive officers”, a reporting issuer that is not a corporation must refer to the definitions in securities legislation of “director” and “officer”. The definition of “officer” may include any individual acting in a capacity similar to that of an officer of a company. Similarly, the definition of “director” typically includes a person acting in a capacity similar to that of a director of a company. Therefore, non-corporate issuers must determine in light of the particular circumstances which individuals or persons are acting in such capacities for the purposes of complying with the Instrument and the Forms. Further, in considering paragraph (f)d of the definition of “executive officer”, we would consider an individual that is employed by an entity separate from the reporting issuer, but that performs a policy-making function in respect of the reporting issuer through that separate entity or otherwise, to fit within this definition.
- (4) **Investment Fund** - Generally, the definition of “investment fund” would not include a trust or other entity that issues securities which entitle the holder to substantially all of the net cash flows generated by: (i) an underlying business owned by the trust or other entity, or (ii) the income-producing properties owned by the trust or other entity. Examples of trusts or other entities that are not included in the definition are business income trusts, real estate investment trusts and royalty trusts.
- (5) **Reverse Takeover** – The definition of reverse takeover is based upon the definition in the Handbook. The Handbook adds further clarification that, although legally the enterprise (the legal parent) that issued the securities is regarded as the parent or continuing enterprise, the enterprise (the legal subsidiary) whose former securityholders now control (as that term is used in the Handbook) the combined enterprise is treated as the acquirer for accounting purposes. As a result, for accounting purposes, the issuing enterprise (the legal parent) is deemed to be a continuation of the acquirer and the acquirer is deemed to have acquired control of the assets and business of the issuing enterprise in consideration for the issue of capital.
- (6) **Restructuring transaction** – A “restructuring transaction” includes a transaction in which a reporting issuer acquires assets, which may include assets that constitute a business, and issues securities resulting in
  - new securityholders being able to elect a majority of the issuer’s directors, and
  - a new control person or company, or new control group.

The acquisition and issuance may be in a single transaction, or a series of transactions. To be a “series of transactions”, the transactions must be related to each other.

The phrase “new securityholders” includes both securityholders who did not hold any of the reporting issuer’s securities before the restructuring transaction, and securityholders that held some securities in the reporting issuer before the transaction, but who now, as a result of the transaction, can elect a majority of the issuer’s directors.

## 1.5 Plain Language Principles

We believe that plain language will help investors understand your disclosure so that they can make informed investment decisions. You can achieve this by

- using short sentences
- using definite everyday language
- using the active voice
- avoiding superfluous words
- organizing the document in clear, concise sections, paragraphs and sentences
- avoiding jargon
- using personal pronouns to speak directly to the reader
- avoiding reliance on glossaries and defined terms unless it facilitates understanding of the disclosure
- not relying on boilerplate wording
- avoiding abstract terms by using more concrete terms or examples
- avoiding multiple negatives
- using technical terms only when necessary and explaining those terms
- using charts, tables and examples where it makes disclosure easier to understand.

## 1.6 Signature and Certificates

Reporting issuers are not required by the Instrument to sign or certify documents filed under the Instrument. ~~In certain jurisdictions, certification~~ Certification requirements ~~may~~ apply to some documents under Multilateral Instrument 52-109 *Certification of Disclosure in Companies’ Annual and Interim Filings*. Whether or not a document is signed or certified, it is an offence under securities legislation to make a false or misleading statement in any required document.

## 1.7 Audit Committees

Reporting issuers are reminded that their audit committees must fulfill their responsibilities set out in other securities legislation. For example, ~~in certain jurisdictions,~~ the responsibilities of audit committees are set out in Multilateral Instrument 52-110 [Audit Committees or, in British Columbia, BC Instrument 52-509 Audit Committees](#).

## 1.8 Acceptable Accounting Principles, Auditing Standards and Reporting Currency

An issuer filing any of the following items under the Instrument must comply with National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (“NI 52-107”):

- (a) financial statements;
- (b) an operating statement for an oil and gas property as referred to in section 8.10 of the Instrument;
- (c) financial information as to the assets, liabilities and results of operations of a business as referred to in section 8.6 of the Instrument; or
- (d) financial information derived from a credit support issuer’s financial statements as referred to in section 13.4 of the Instrument.

NI 52-107 sets out, among other things, when issuers can use accounting principles and auditing standards other than Canadian accounting principles and auditing standards in preparing financial statements.

## 1.9 Ordinary Course of Business

Whether a contract has been entered into in the ordinary course of business is a question of fact. It must be considered in the context of the reporting issuer’s business and the industry in which it operates.

## 1.10 Material Deficiencies

After filing a document under the Instrument, a reporting issuer may determine that the document was materially deficient in some respect and, as a result, the filing does not comply with the requirements of the Instrument. In this situation, the reporting issuer would be expected to comply with the Instrument by filing an amended version of the materially deficient document.

## PART 2 FOREIGN ISSUERS AND INVESTMENT FUNDS

### 2.1 Foreign Issuers

National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* provides relief for foreign reporting issuers from certain continuous disclosure and other obligations, including certain obligations contained in the Instrument.

### 2.2 Investment Funds

Section 2.1 of the Instrument states that the Instrument does not apply to an investment fund. Investment funds should look to securities legislation of the local jurisdiction including, ~~when implemented,~~ National Instrument 81-106 *Investment Fund Continuous Disclosure* to find the continuous disclosure requirements applicable to them.

## PART 3 FINANCIAL STATEMENTS

### 3.1 ~~Length of~~ Financial Year

(1) [Length of Financial Year](#) - For the purposes of the Instrument, unless otherwise expressly provided, references to a financial year apply irrespective of the length of that year. The first financial year of a reporting issuer commences on the date of its incorporation or organization and ends at the close of that year.

(2) [Non-Standard Year](#) – [An issuer with a non-standard year should advise the regulator or securities regulatory authority how it calculates its interim and annual periods before its first financial statements are due under the Instrument.](#)

### 3.2 Audit of Comparative Annual Financial Statements

Section 4.1 of the Instrument requires a reporting issuer to file annual financial statements that include comparative information for the immediately preceding financial year and that are ~~accompanied by an auditor's report.~~ [audited.](#) The auditor's report must cover both the most recently completed financial year and the comparative period, except if the issuer changed its auditor during the periods presented in the financial statements and the new auditor has not audited the comparative period. In this situation, the auditor's report would normally refer to the former auditor's report on the comparative period and the former auditor's report would not be re-filed. This is consistent with Assurance and Related Services Guideline AuG-8 *Auditor's Report on Comparative Financial Statements* in the Handbook.

### 3.3 Filing Deadline for Annual Financial Statements and Auditor's Report

Section 4.2 of the Instrument sets out filing deadlines for annual financial statements. While section 4.2 of the Instrument does not address the auditor's report date, reporting issuers are encouraged to file their annual financial statements as soon as practicable after

the date of the auditor's report. The delivery obligations set out in section 4.6 of the Instrument are not tied to the filing of the financial statements.

### 3.4 Auditor Involvement with Interim Financial Statements

- (1) The board of directors of a reporting issuer, in discharging its responsibilities for ensuring the reliability of interim financial statements, should consider engaging an external auditor to carry out a review of the interim financial statements.
- (2) Subsection 4.3(3) of the Instrument requires a reporting issuer to disclose if an auditor has not performed a review of the interim financial statements, to disclose if an auditor was unable to complete a review and why, and to file a written report from the auditor if the auditor has performed a review and expressed a reservation in the auditor's interim review report. No positive statement is required when an auditor has performed a review and provided an unqualified communication. If an auditor was engaged to perform a review on interim financial statements applying review standards set out in the Handbook, and the auditor was unable to complete the review, the issuer's disclosure of the reasons why the auditor was unable to complete the review would normally include a discussion of
  - (a) inadequate internal control;
  - (b) a limitation on the scope of the auditor's work; or
  - (c) the failure of management to provide the auditor with the written representations the auditor believes are necessary.
- (3) If a reporting issuer's annual financial statements are audited in accordance with Canadian GAAS, the terms "review" and "interim review report" used in subsection 4.3(3) of the Instrument refer to the auditor's review of, and report on, interim financial statements applying standards for a review of interim financial statements by the auditor as set out in the Handbook. However, if the reporting issuer's financial statements are audited in accordance with auditing standards other than Canadian GAAS, the corresponding review standards should be applied.

### 3.5 Delivery of Financial Statements

~~Section 4.6 of the Instrument requires reporting issuers to send a request form to the registered holders and beneficial owners of their securities. The registered holders and beneficial owners may use the request form to request a copy of the reporting issuer's annual financial statements and related MD&A, interim financial statements and related MD&A, or both.~~ Reporting issuers are only required to deliver financial statements and MD&A to the person or company that requests them. As a result, if a beneficial owner requests financial statements and MD&A through its intermediary, the issuer is only required to deliver the requested documents to the intermediary.

~~Failing to return the request form or otherwise specifically request a copy of the financial statements or MD&A from the reporting issuer will override the beneficial owner's~~

~~standing instructions under National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* (“NI 54-101”) in respect of the financial statements.~~

~~The Instrument does not prescribe when the request form must be sent, or how it must be returned to the reporting issuer.~~

### **3.6 Comparative Interim Financial Information After Becoming a Reporting Issuer**

Section 4.7(4) of the Instrument provides that a reporting issuer does not have to provide comparative financial information when it first becomes a reporting issuer if it complies with specific requirements. ~~This exemption~~ [Section 4.10\(3\) of the Instrument provides a similar exemption for comparative financial information for a reverse takeover acquirer. These exemptions](#) may, for example, apply to an issuer that was, before becoming a reporting issuer [or before the reverse takeover](#), a private entity and that is unable to prepare the comparative financial information because it is impracticable to do so.

### **3.7 Change in Year-End**

Appendix A to this Policy is a chart outlining the financial statement filing requirements under section 4.8 of the Instrument if a reporting issuer changes its financial year-end.

### **3.8 Reverse Takeovers**

- (1) Following a reverse takeover, although the reverse takeover acquiree is the reporting issuer, from an accounting perspective, the financial statements will be those of the reverse takeover acquirer. Those financial statements must be prepared and filed as if the reverse takeover acquirer had always been the reporting issuer.
- (2) The reverse takeover acquiree must file its own financial statements required by sections 4.1 and 4.3 [and the related MD&A](#) for all interim and annual periods ending before the date of the reverse takeover, even if the filing deadline for those financial statements is after the date of the reverse takeover.

### **3.9 Change in Corporate Structure**

[\(1\)](#) Section 4.9 of the Instrument requires a reporting issuer to file a notice if the issuer has been party to certain restructuring transactions. The reporting issuer may satisfy this requirement by filing a copy of its material change report or news release, provided that

- (a) the material change report or news release contains all the information required in the notice; and
- (b) the reporting issuer files the material change report or news release with the securities regulatory authority or regulator
  - (i) under the Change in Corporate Structure category on SEDAR, or

(ii) if the issuer is not an electronic filer, as a notice under section 4.9.

- (2) If the restructuring transaction was a reverse takeover, the notice should state that fact and who the reverse takeover acquirer was for accounting purposes.
- (3) Under paragraph 4.9(h) of the Instrument, the issuer must state the periods of the interim and annual financial statements it has to file for its first financial year. Issuers should explain how they determined the periods, particularly if section 4.7 of the Instrument applies.

### 3.10 Change of Auditor

The term “disagreement” defined in subsection 4.11(1) should be interpreted broadly. A disagreement may not involve an argument, but rather, a mere difference of opinion. Also, where a difference of opinion occurs that meets the criteria in item (b) of the definition of “disagreement”, and the issuer reluctantly accepts the auditor’s position in order to obtain an unqualified report, a reportable disagreement may still exist. The subsequent rendering of an unqualified report does not, by itself, remove the necessity for reporting a disagreement.

Subsection 4.11(5) of the Instrument requires a reporting issuer, upon a termination or resignation of its auditor, to prepare a change of auditor notice, have the audit committee or board of directors approve the notice, file the reporting package with the **applicable** regulator or securities regulatory authority in each jurisdiction where it is a reporting issuer, and if there are any reportable events, issue and file a news release describing the information in the reporting package. Subsection 4.11(6) of the Instrument requires the reporting issuer to perform these procedures upon an appointment of a successor auditor. If a termination or resignation of a former auditor and appointment of a successor auditor occur within a short period of time, it may be possible for a reporting issuer to perform the procedures described above required by both subsections 4.11(5) and 4.11(6) concurrently and meet the timing requirements set out in those subsections. In other words, the reporting issuer would prepare only one comprehensive notice and reporting package.

## PART 4 DISCLOSURE OF FINANCIAL INFORMATION

### 4.1 Disclosure of Financial Results

- (1) Subsection 4.5(1) of the Instrument requires that annual financial statements be **reviewed by a company’s audit committee (if any) and** approved by the board of directors before filing. ~~Subsections~~ Subsections 4.5(2) and 4.5(3) of the Instrument requires that interim financial statements be **reviewed by a company’s audit committee (if any) and** approved by the board of directors or by the company’s audit committee before filing. We believe that extracting information from financial statements that have not been approved as required by those provisions and releasing that information to the marketplace in a news release is inconsistent with the prior approval requirement. Also see National Policy 51-201 *Disclosure Standards*.



- (2) Reporting issuers that intend to disclose financial information to the marketplace in a news release should consult NI 52-107. We believe that disclosing financial information in a news release without disclosing the accounting principles used is inconsistent with the requirement in NI 52-107 to identify the accounting principles used in the financial statements.

#### **4.2 Non-GAAP Financial Measures**

Reporting issuers that intend to publish financial measures other than those prescribed by GAAP should refer to CSA Staff Notice 52-306 *Non-GAAP Financial Measures* for a discussion of staff expectations concerning the use of non-GAAP measures.

### **PART 5 MD&A**

#### **5.1 ~~Delivery of MD&A~~[\[repealed\]](#)**

~~Reporting issuers are not required to send a request form to their securityholders under Part 5 of the Instrument. This is because the request form that must be delivered under section 4.6 of the Instrument relates to both a reporting issuer's financial statements, and the MD&A applicable to those financial statements.~~

#### **5.2 Additional Information for Venture Issuers Without Significant Revenue**

Section 5.3 of the Instrument requires certain venture issuers to provide in their annual or interim MD&A or MD&A supplement (unless the information is included in their interim and annual financial statements), a breakdown of material costs whether capitalized, deferred or expensed. A component of cost is generally considered to be a material component if it exceeds the greater of

- (a) 20% of the total amount of the class; and
- (b) \$25,000.

#### **5.3 Disclosure of Outstanding Share Data**

Section 5.4 of the Instrument requires disclosure of information relating to the outstanding securities of the reporting issuer as of the latest practicable date. The "latest practicable date" should be current, as close as possible, to the date of filing of the MD&A. Disclosing the number of securities outstanding at the period end is generally not sufficient to meet this requirement.

#### **5.4 Additional Disclosure for Equity Investees**

Section 5.7 of the Instrument requires issuers with significant equity investees to provide in their annual or interim MD&A or MD&A supplement (unless the information is included in their interim and annual financial statements), summarized information about the equity investee. Generally we will consider that an equity investee is significant if the equity investee would meet the thresholds for the significance tests in Part 8 using the

[financial statements of the equity investee and the issuer as at the issuer's financial year end.](#)

## **PART 6 AIF**

### **6.1 Additional and Supporting Documentation**

Any material incorporated by reference in an AIF is required ~~under section 6.3 of the Instrument~~ to be filed with the AIF unless the material has been previously filed. When a reporting issuer using SEDAR files a previously unfiled document with its AIF, the reporting issuer should ensure that the document is filed under the appropriate SEDAR filing type and document type specifically applicable to the document, rather than generic type "Documents Incorporated by Reference". For example, a reporting issuer that has incorporated by reference an information circular in its AIF and has not previously filed the circular should file the circular under the "Management Proxy Materials" filing subtype and the "Management proxy/information circular" document type.

[If the reporting issuer incorporates a document by reference into its AIF that itself incorporates another document by reference, the issuer must also file all of the underlying documents with its AIF.](#)

### **6.2 AIF Disclosure of Asset-backed Securities**

- (1) **Factors to consider** - Issuers that have distributed asset-backed securities under a prospectus are required to provide disclosure in their AIF under section 5.3 of Form 51-102F2. Issuers of asset-backed securities must determine which other prescribed disclosure is applicable and ought to be included in the AIF. Applicable disclosure for a special purpose issuer of asset-backed securities generally pertains to the nature, performance and servicing of the pool of financial assets servicing the asset-backed security. The nature and extent of required disclosure may vary depending on the type and attributes of the underlying pool.

An issuer of asset-backed securities should consider the following factors in preparing its AIF:

1. The extent of disclosure respecting the issuer will depend on the extent of the issuer's on-going involvement in the conversion of the assets comprising the pool to cash, and the distribution of cash to securityholders; this involvement may, in turn, vary dramatically depending on the type, quality and attributes of the assets comprising the pool and on the overall structure of the transaction.
2. Requested disclosure respecting the business and affairs of the issuer should be interpreted to apply to the financial assets underlying the asset-backed securities.
3. Financial information respecting the pool of assets to be described and analyzed in the AIF will consist of information commonly set out in servicing reports prepared to describe the performance of the pool and the specific

allocations of income, loss and cash flows applicable to outstanding asset-backed securities made during the relevant period.

- (2) **Underlying pool of assets** - Paragraph 5.3(2)(a) of Form 51-102F2 requires issuers of asset-backed securities that were distributed by way of prospectus to include information relating to the composition of the underlying pool of financial assets, the cash flows from which service the asset-backed securities. Disclosure respecting the composition of the pool will vary depending upon the nature and number of the underlying financial assets. For example, in a geographically dispersed pool of financial assets, it may be appropriate to provide a summary disclosure based on the location of obligors. In the context of a revolving pool, it may be appropriate to provide details relating to aggregate outstanding balances during a year to illustrate historical fluctuations in asset origination due, for example, to seasonality. In pools of consumer debt obligations, it may be appropriate to provide a breakdown within ranges of amounts owing by obligors in order to illustrate limits on available credit extended.

## PART 7 MATERIAL CHANGE REPORTS

### 7.1 Publication of News Release

Section 7.1 of the Instrument requires reporting issuers to *immediately* issue and file a news release disclosing the nature of a material change. This requirement is substantively the same as the material change reporting requirements in some securities legislation for the news release to be issued *forthwith*.

## PART 8 BUSINESS ACQUISITION REPORTS

### 8.1 Obligations to File a Business Acquisition Report

- (1) **Filing of a Material Change Report** - The requirement in the Instrument for a reporting issuer to file a business acquisition report is in addition to the reporting issuer's obligation to file a material change report, if the significant acquisition constitutes a material change.
- (2) **Filing of a Business Acquisition Report by SEC Issuers** - If a document or a series of documents that an SEC issuer files with or furnishes to the SEC in connection with a business acquisition contains all of the information, including financial statements, required to be included in a business acquisition report under the Instrument, the SEC issuer may file a copy of the documents as its business acquisition report.
- (3) **Financial Statement Disclosure of Significant Acquisitions** - ~~Appendix B to this Policy is a chart outlining the key obligations for financial statement disclosure of significant acquisitions in a business acquisition report.~~ Reporting issuers are reminded that NI 52-107 prescribes the accounting principles, auditing standards and reporting currency that must be used to prepare and audit the financial statements required by Part 8 of the Instrument.

- (4) **Acquisition of a Business** – A reporting issuer that has made a significant acquisition must include in its business acquisition report certain financial statements of each business acquired. The term “business” should be evaluated in light of the facts and circumstances involved. We generally consider that a separate entity, a subsidiary or a division is a business and that in certain circumstances a smaller component of a company may also be a business, whether or not the business previously prepared financial statements. In determining whether an acquisition constitutes the acquisition of a business, a reporting issuer should consider the continuity of business operations, including the following factors:
- (a) whether the nature of the revenue producing activity or potential revenue producing activity will remain generally the same after the acquisition; and
  - (b) whether any of the physical facilities, employees, marketing systems, sales forces, customers, operating rights, production techniques or trade names are acquired by the reporting issuer instead of remaining with the vendor after the acquisition.
- (5) [Acquisition by a Subsidiary – If a reporting issuer’s subsidiary, which is also a reporting issuer, has acquired a business, both the parent and subsidiary must test the significance of the acquisition. Even if the subsidiary files a business acquisition report, the parent must also file a business acquisition report if the acquisition is also significant for the parent.](#)

## 8.2 Significance Tests

- (1) **Nature of Significance Tests** – Subsection 8.3(2) of the Instrument sets out the required significance tests for determining whether an acquisition of a business by a reporting issuer is a “significant acquisition”. The first test measures the assets of the acquired business against the assets of the reporting issuer. The second test measures the reporting issuer’s investments in and advances to the acquired business against the assets of the reporting issuer. The third test measures the income from continuing operations of the acquired business against the income from continuing operations of the reporting issuer. If any one of these three tests is satisfied at the prescribed level, the acquisition is considered “significant” to the reporting issuer. The test must be applied as at the time of the acquisition using the most recent annual audited financial statements of the reporting issuer and the business. These tests are similar to requirements of the SEC and provide issuers with certainty that if an acquisition is not significant at the time of the acquisition, then no business acquisition or report will be required to be filed.
- (2) **Business Using Accounting Principles Other Than Those Used by the Reporting Issuer** – Subsection 8.3(13) of the Instrument provides that where the financial statements of the business or related businesses are prepared in accordance with accounting principles other than those used in reporting issuer’s financial statements, for purposes of applying the significance tests, the relevant financial statements for the business or related businesses must be reconciled. It is unnecessary for the reconciliation to be audited for the purpose of the tests.

- (3) **Acquisition of a Previously Unaudited Business** – Subsections 8.3(2) and 8.3(4) of the Instrument require the significance of an acquisition to be determined using the most recent audited financial statements of the reporting issuer and the business acquired. However, if the financial statements of the business or related businesses for the most recently completed financial year were not audited, subsection 8.3(14) of the Instrument permits use of the unaudited financial statements for the purpose of applying the significance tests. If the acquisition is determined to be significant, then the annual financial statements required by subsection 8.4(1) of the Instrument must be audited.
- (4) **Application of Investment Test for Significance of an Acquisition** – One of the significance tests set out in subsections 8.3(2) and (4) of the Instrument is whether the reporting issuer’s consolidated investments in and advances to the business or related businesses exceed a specified percentage of the consolidated assets of the reporting issuer. In applying this test, the “investments in” the business should be determined using the total cost of the purchase, as determined by generally accepted accounting principles, including consideration paid or payable and the costs of the acquisition. If the acquisition agreement includes a provision for contingent consideration, for the purpose of applying the test, the contingent consideration should be included in the total cost of the purchase unless the likelihood of payment is considered remote at the date of the acquisition. In addition, any payments made in connection with the acquisition which would not constitute purchase consideration but which would not have been paid unless the acquisition had occurred, should be considered part of investments in and advances to the business for the purpose of applying the significance tests. Examples of such payments include loans, royalty agreements, lease agreements and agreements to provide a pre-determined amount of future services.
- (5) **Application of the Significance Tests When the Financial Year Ends are Non-Coterminous** – Subsection 8.3(2) of the Instrument requires the significance of a business acquisition to be determined using the most recent audited financial statements of both the reporting issuer and the acquired business. For the purpose of applying the tests under this subsection, the year-ends of the reporting issuer and the acquired business need not be coterminous. Accordingly, neither the audited financial statements of the reporting issuer nor those of the business should be adjusted for the purposes of applying the significance tests. However, if the acquisition of a business is determined to be significant and *pro forma* income statements are required by subsection 8.4(35) of the Instrument and, if the business’ year-end is more than 93 days before the reporting issuer’s year-end, the business’ reporting period required under paragraph 8.4(47)(c) of the Instrument should be adjusted to reduce the gap to 93 days or less. Refer to subsection 8.7(3) of this Policy for further guidance.

### 8.3 Optional Significance Tests

- (1) **Optional Significance Tests – Decrease in Significance** – The optional significance tests under subsections 8.3(3) and (4) of the Instrument have been included to recognize the possible growth of a reporting issuer between the date of its most recently completed year-end and the date of [acquisition filing a business acquisition report](#) and the corresponding potential decline in significance of the acquisition to the reporting issuer.

~~If the significance of an acquisition increases at the second date under subsection 8.3(4), only the financial statements required for the level of significance calculated by the required significance tests under subsection 8.3(2) of the Instrument must be included in the business acquisition report. Applying the optional significance tests at the second date is not intended to increase the level of significance of an acquisition and thereby the number of years of financial statements included in a business acquisition report.~~

- (2) **Availability of the Optional Significance Tests** – The optional significance tests at the second date are available to all reporting issuers. However, depending on how or when a reporting issuer integrates the acquired business into its existing operations and the nature of post-acquisition financial records it maintains for the acquired business, it may not be possible for a reporting issuer to apply the optional significance test at ~~the~~a second date.
- (3) **Optional Investment Test** – If an acquisition is determined under subsection 8.3(2) of the Instrument to be significant, a reporting issuer has the option under subsections 8.3(3) and (4) of the Instrument of applying optional significance tests using more recent financial statements than those used for the required significance tests in subsection 8.3(2). For the purpose of applying the optional investment test under paragraph 8.3(4)(b) of the Instrument, the reporting issuer's investments in and advances to the business should be as at the date of the acquisition and not as at the date of the reporting issuer's financial statements used to determine its consolidated assets for the optional investment test.

#### 8.4 Financial Statements of Related Businesses

Subsection 8.4(~~58~~) of the Instrument requires that if a reporting issuer includes in its business acquisition report financial statements for more than one related business, separate financial statements must be presented for each business except for the periods during which the businesses were under common control or management, in which case the reporting issuer may present the financial statements on a combined basis. Although one or more of the related businesses may be insignificant relative to the others, separate financial statements of each business for the same number of periods required must be presented. Relief from the requirement to include financial statements of the least significant related business or businesses may be granted depending on the facts and circumstances.

#### 8.5 Application of the Significance Tests for Step-By-Step Acquisitions

Subsection 8.3(11) of the Instrument explains how the significance test should be applied when the reporting issuer increases its investment in a business by way of a step-by-step purchase as described in the Handbook. If the reporting issuer acquired an interest in the business in a previous year and that interest is reflected in the most recent audited financial statements of the reporting issuer filed, then the issuer should determine the significance of only the incremental investment in the business which is not reflected in the reporting issuer's most recent audited financial statements filed.

## 8.6 Preparation of Divisional and Carve-out Financial Statements

- (1) **Interpretations** – In this section of this Policy, unless otherwise stated,
  - (a) a reference to “a business” includes a division or some lesser component of another business acquired by a reporting issuer that constitutes a significant acquisition; and
  - (b) the term “parent” refers to the vendor from whom the reporting issuer purchased a business.
  
- (2) **Acquisition of a Division** - As discussed in subsection 8.1(4) of this Policy, the acquisition of a division of a business and in certain circumstances, a lesser component of a person or company, may constitute an acquisition of a business for purposes of the Instrument, whether or not the subject of the acquisition previously prepared financial statements. To determine the significance of the acquisition and comply with the requirements for financial statements in a business acquisition report under Part 8 of the Instrument, financial statements for the business must be prepared. This section provides guidance on preparing these financial statements.
  
- (3) **Divisional and Carve-Out Financial Statements** – The terms “divisional” and “carve-out” financial statements are often used interchangeably although a distinction is possible. Some companies maintain separate financial records and financial statements for a business activity or unit that is operated as a division. Financial statements prepared from these financial records are often referred to as “divisional” financial statements. In other circumstances, no separate financial records for a business activity are maintained; they are simply consolidated with the parent’s records. In these cases, if the parent’s financial records are sufficiently detailed, it is possible to extract or “carve-out” the information specific to the business activity in order to prepare separate financial statements of that business. Financial statements prepared in this manner are commonly referred to as “carve-out” financial statements. The guidance in this section applies to the preparation of both divisional and carve-out financial statements unless otherwise stated.
  
- (4) **Preparation of Divisional and Carve-Out Financial Statements**
  - (a) When complete financial records of the business acquired have been maintained, those records should be used for preparing and auditing the financial statements of the business. For the purposes of this section, it is presumed that the parent maintains separate financial records for its divisions.
  - (b) When complete financial records of the business acquired do not exist, carve-out financial statements should generally be prepared in accordance with the following guidelines:
    - (i) *Allocation of Assets and Liabilities* - A balance sheet should include all assets and liabilities directly attributable to the business.

- (ii) *Allocation of Revenues and Expenses* - Income statements should include all revenues and expenses directly attributable to the business. Some fundamental expenditures may be shared by the business and its parent in which case the parent's management must determine a reasonable basis for allocating a share of these common expenses to the business. Examples of such common expenses include salaries, rent, depreciation, professional fees, general and administration.
  - (iii) *Calculation of Income and Capital Taxes* - Income and capital taxes should be calculated as if the entity had been a separate legal entity and filed a separate tax return for the period presented.
  - (iv) *Disclosure of Basis of Preparation* - The financial statements should include a note describing the basis of preparation. If expenses have been allocated as discussed in subparagraph (b)(ii), the financial statements should include a note describing the method of allocation for each significant line item, at a minimum.
- (5) **Statements of Assets Acquired, Liabilities Assumed and Statements of Operations** – When it is impracticable to prepare carve-out financial statements of a business, a reporting issuer may be required to include in its business acquisition report an audited statement of assets acquired and liabilities assumed and a statement of operations of the business. The statement of operations should exclude only those indirect operating costs not directly attributable to the business, such as corporate overhead. If indirect operating costs were previously allocated to the business and there is a reasonable basis of allocation, they should not be excluded.

## **8.7 Preparation of Pro Forma Financial Statements Giving Effect to Significant Acquisitions**

- (1) **Objective and Basis of Preparation** – The objective of pro forma statements is to illustrate the impact of a transaction on a reporting issuer's financial position and results of operations by adjusting the historical financial statements of the reporting issuer to give effect to the transaction. Accordingly, the pro forma financial statements should be prepared on the basis of the reporting issuer's financial statements as already filed. No adjustment should be made to eliminate extraordinary items or discontinued operations.
- (2) **Pro Forma Balance Sheet and Income Statements** – Subsection 8.4(~~35~~) of the Instrument does not require a pro forma balance sheet to be prepared to give effect to significant acquisitions that are reflected in the reporting issuer's most recent annual or interim balance sheet filed under the Instrument.
- (3) **Non-coterminous Year-ends** - Where the financial year-end of a business differs from the reporting issuer's year-end by more than 93 days, paragraph 8.4(~~47~~)(c) requires an income statement for the business to be constructed for a period of 12 consecutive months. For example, if the constructed reporting period is 12 months and ends on June 30, the 12 months should commence on July 1 of the immediately preceding year; it



should not begin on March 1st of the immediately preceding year with three of the following 15 months omitted, such as the period from October 1 to December 31, since this would not be a consecutive 12 month period.

- (4) **Effective Date of Adjustments** - For the pro forma income statements included in a business acquisition report, the acquisition and the adjustments should be computed as if the acquisition had occurred at the beginning of the reporting issuer's most recently completed financial year and carried through the most recent interim period presented, if any. However, one exception to the preceding is that adjustments related to the allocation of the purchase price, including the amortization of fair value increments and intangibles, should be based on the purchase price allocation arising from giving effect to the acquisition as if it occurred on the date of the reporting issuer's most recent balance sheet filed.
- (5) **Acceptable Adjustments** – Pro forma adjustments should be limited to those that are directly attributable to the specific acquisition transaction for which there are firm commitments and for which the complete financial effects are objectively determinable.
- (6) **Multiple Acquisitions** – If the pro forma financial statements give effect to more than one acquisition, the pro forma adjustments may be grouped by line item on the face of the pro forma financial statements provided the details for each transaction are disclosed in the notes.

## 8.8 Relief from the Requirement to Audit Operating Statements of an Oil and Gas Property

The ~~applicable~~ securities regulatory authority or regulator may exempt a reporting issuer from the requirement to include the report of an auditor on the operating statements referred to in section 8.10 of the Instrument if, during the 12 months preceding the date of the acquisition, the average daily production of the property is less than 20 percent of the total average daily production of the vendor for the same or similar periods, and

- (a) the reporting issuer provides written submissions prior to the deadline for filing the business acquisition report which establishes to the satisfaction of the appropriate regulator, that despite reasonable efforts during the purchase negotiations, the reporting issuer was prohibited from including in the purchase agreement the rights to obtain an audited operating statement of the property;
- (b) the purchase agreement includes representations and warranties by the vendor that the amounts presented in the operating statement agree to the vendor's books and records; and
- (c) the reporting issuer discloses in the business acquisition report its inability to obtain an audited operating statement, the reasons therefor, the fact that the representations and warranties referred to in paragraph (b) have been obtained, and a statement that the results presented in the operating statement may have been materially different if the statement had been audited.

For the purpose of determining average daily production when production includes both oil and natural gas, production may be expressed in barrels of oil equivalent using the conversion ratio of 6000 cubic feet of gas to one barrel of oil.

## 8.9 Exemptions From Requirement for Financial Statements in a Business Acquisition Report

- (1) **Exemptions** – We are of the view that relief from the financial statement requirements of Part 8 of the Instrument should be granted only in unusual circumstances and generally not related solely to cost or the time involved in preparing and auditing the financial statements. Reporting issuers seeking relief from the financial statement or audit requirements of Part 8 must apply for the relief before the filing deadline for the business acquisition report and before the closing date of the transaction, if applicable. Reporting issuers are reminded that many securities regulatory authorities and regulators do not have the power to grant retroactive relief.
- (2) **Conditions to Exemptions** – If relief is granted from the requirements of Part 8 of the Instrument to include audited financial statements of an acquired business or related businesses, conditions will likely be imposed, such as a requirement to include audited divisional or partial income statements or divisional statements of cash flow, or an audited statement of net operating income for a business.
- (3) **Exemption from Comparatives if Financial Statements Not Previously Prepared** – Section 8.9 of the Instrument provides that a reporting issuer does not have to provide comparative financial information for an acquired business in a business acquisition report if it complies with specific requirements. This exemption may, for example, apply to an acquired business that was, before the acquisition, a private entity and that the reporting issuer is unable to prepare the comparative financial information for because it is impracticable to do so.
- (4) ~~**Exemption from Including Two Years**~~ – Relief may be granted from the requirement to include financial statements of an acquired business or related businesses for two years in a business acquisition report in some situations that may include the following: [\[repealed\]](#)
  - (a) ~~the business’s historical accounting records have been destroyed and cannot be reconstructed. In this case, as a condition of granting the exemption, the reporting issuer may be requested by the securities regulatory authority or regulator to~~
    - (i) ~~represent in writing to the securities regulatory authority or regulator, no later than the time the business acquisition report is required to be filed, that the reporting issuer made every reasonable effort to obtain copies of, or reconstruct the historical accounting records necessary to prepare and audit the financial statements, but such efforts were unsuccessful; and~~
    - (ii) ~~disclose in the business acquisition report the fact that the historical accounting records have been destroyed and cannot be reconstructed;~~

- ~~(b) the business has recently emerged from bankruptcy and current management of the business and the reporting issuer is denied access to the historical accounting records necessary to audit the financial statements. In this case, as a condition of granting the exemption, the reporting issuer may be requested by the securities regulatory authority or regulator to~~
- ~~(i) represent in writing to the securities regulatory authority or regulator, no later than the time the business acquisition report is filed that the reporting issuer has made every reasonable effort to obtain access to, or copies of, the historical accounting records necessary to audit the financial statements but that such efforts were unsuccessful;~~
  - ~~(ii) disclose in the business acquisition report the fact that the business has recently emerged from bankruptcy and current management of the business and the reporting issuer are denied access to the historical accounting records;~~
  - ~~(iii) the business has undergone a fundamental change in the nature of its business or operations affecting the majority of its operations and all, or substantially all, of the executive officers and directors of the company have changed. The evolution of a business or progression of a development cycle will not be considered to be a fundamental change in a reporting issuer's business or operations. Relief from the requirement to include audited financial statements of the business for the year in which the change in operations occurred, or for the most recently completed financial year if the change in operations occurred during the business's current financial year, generally will not be granted.~~

**8.10 ~~Unaudited Comparatives in Annual Financial Statements of an Acquired Business~~ Audits and Auditor Review of Financial Statements of an Acquired Business**

- (1) ~~Where item 8.5(1)1. and subsection 8.5(2) of the Instrument require audited financial statements for the most recently completed financial year of the business, accounting principles, as defined in NI 52-107, generally require the financial statements~~ **Unaudited Comparatives in Annual Financial Statements of an Acquired Business – Subsection 8.4(1) requires a reporting issuer to include comparative financial information of the business in the business acquisition report.** This comparative financial information may be unaudited.
- (2) **Auditor Review of Interim Financial Statements of an Acquired Business – An issuer does not have to engage an auditor to review the interim financial statements of an acquired business included in a business acquisition report. However, if the issuer later incorporates the business acquisition report into a prospectus, the interim financial statements will have to be reviewed in accordance with the requirements relating to financial statements included in a prospectus.**

## PART 9 PROXY SOLICITATION AND INFORMATION CIRCULARS

### 9.1 Beneficial Owners of Securities

Reporting issuers are reminded that ~~NI—54-101~~[National Instrument 54-101 \*Communication with Beneficial Owners of Securities of a Reporting Issuer\*](#) prescribes certain procedures relating to the delivery of materials, including forms of proxy, to beneficial owners of securities and related matters. It also prescribes certain disclosure that must be included in the proxy-related materials sent to beneficial owners.

## PART 10 ELECTRONIC DELIVERY OF DOCUMENTS

### 10.1 Electronic Delivery of Documents

Any documents required to be sent under the Instrument may be sent by electronic delivery, as long as such delivery is made in compliance with Québec Staff Notice, *The Delivery of Documents by Electronic Means*, in Québec, and National Policy 11-201 *Delivery of Documents by Electronic Means*, in the rest of Canada.

## PART 11 ADDITIONAL ~~FILING~~[DISCLOSURE](#) REQUIREMENTS

### 11.1 Additional Filing Requirements

Paragraph 11.1(1)(b) of the Instrument requires a document to be filed only if it contains information that has not been included in disclosure already filed by the reporting issuer. For example, if a reporting issuer has filed a material change report under the Instrument and the Form 8-K filed by the reporting issuer with the SEC discloses the same information, whether in the same or a different format, there is no requirement to file the Form 8-K under the Instrument.

### 11.2 [Re-filing Documents](#)

[If a reporting issuer decides to re-file a document, or re-state information in a document, with information that differs materially from the information in the original document, the issuer should disclose in the news release required by section 11.5 of the Instrument](#)

- [\(a\) the facts underlying the changes,](#)
- [\(b\) the general impact of the changes on previously filed documents, and](#)
- [\(c\) the steps the issuer would take before filing an amended version, or re-stating the information, if the issuer is not re-filing an amended version or re-stating the information immediately.](#)

## **PART 12 FILING OF CERTAIN DOCUMENTS**

### **12.1 Statutory or Regulatory Instruments**

Paragraph 12.1(1)(a) of the Instrument requires reporting issuers to file copies of their articles of incorporation, amalgamation, continuation or any other constating or establishing documents, unless the document is a statutory or regulatory instrument. This is a very narrow exception. For example, it would apply to Schedule I or Schedule II banks under the *Bank Act*, whose charter is the *Bank Act*. It would not apply when only the form of the constating document is prescribed under statute or regulation, such as articles under the *Canada Business Corporations Act*.

### **12.2 Contracts that Affect the Rights or Obligations of Securityholders**

Paragraph 12.1(1)(e) of the Instrument requires reporting issuers to file contracts that can reasonably be regarded as materially affecting the rights of its securityholders generally. A warrant indenture is one example of this type of contract. We would expect that contracts entered into in the ordinary course of business would not usually affect the rights of securityholders generally, and so would not have to be filed.

### **12.3 Filing of Other Material Contracts**

We expect that the contracts required under section 12.2 of the Instrument to be filed by a reporting issuer will generally be the same contracts the reporting issuer is required to provide disclosure of under section 15.1 of Form 51-102F2. The exemption in subsection 12.2(2) of the Instrument does not affect the issuer's obligation in section 15.1 of Form 51-102F2 to disclose the particulars of the material contracts.

## **PART 13 EXEMPTIONS**

### **13.1 Prior Exemptions and Waivers**

Section 13.2 of the Instrument essentially allows a reporting issuer, in certain circumstances, to continue to rely upon an exemption or waiver from continuous disclosure obligations obtained prior to the Instrument coming into force if the exemption or waiver relates to a substantially similar provision in the Instrument and the reporting issuer provides written notice to the securities regulatory authority or regulator of its reliance on such exemption or waiver. Upon receipt of such notice, the securities regulatory authority or regulator, as the case may be, will review it to determine if the provision of the Instrument referred to in the notice is substantially similar to the provision from which the prior exemption or waiver was granted. The written notice should be sent to each jurisdiction where the prior exemption or waiver is relied upon. Contact addresses for these notices are:

**Alberta Securities Commission**  
4th Floor

300 – 5th Avenue S.W.  
Calgary, Alberta  
T2P 3C4  
Attention: Director, Capital Markets

**British Columbia Securities Commission**

P.O. Box 10142, Pacific Centre  
701 West Georgia Street  
Vancouver, British Columbia  
V7Y 1L2  
Attention: Financial Reporting

**Manitoba Securities Commission**

1130 – 405 Broadway  
Winnipeg, Manitoba  
R3C 3L6  
Attention: Filings Department

~~Office of the Administrator,~~ New Brunswick Securities Commission

P.O. Box 5001  
133 Prince William Street, Suite 606  
Saint John, NB  
E2L 4Y9  
Attention: Minister of Finance

**Securities Commission of Newfoundland and Labrador**

P.O. Box 8700  
2nd Floor, West Block  
Confederation Building  
75 O’Leary Avenue  
St. John’s, NFLD  
A1B 4J6  
Attention: Director of Securities

**Department of Justice, Northwest Territories**

Legal Registries  
P.O. Box 1320  
1st Floor, 5009-49th Street  
Yellowknife, NWT X1A 2L9  
Attention: Director, Legal Registries

**Nova Scotia Securities Commission**

2nd Floor, Joseph Howe Building  
1690 Hollis Street  
Halifax, Nova Scotia B3J 3J9  
Attention: Corporate Finance

**Department of Justice, Nunavut**

Legal Registries Division  
P.O. Box 1000 – Station 570  
1st Floor, Brown Building  
Iqaluit, NT X0A 0H0  
Attention: Director, Legal Registries Division

**Ontario Securities Commission**

Suite 1903, Box 55  
20 Queen Street West  
Toronto, ON M5H 3S8  
Attention: Manager, Team 3, Corporate Finance

**Registrar of Securities, Prince Edward Island**

P.O. Box 2000  
95 Rochford Street, 5th Floor,  
Charlottetown, PEI  
C1A 7N8  
Attention: Registrar of Securities

**~~Agence nationale d'encadrement du secteur financier~~**

**Autorité des marchés financiers**

800 Square Victoria, 22nd Floor  
P.O. Box 246, Tour de la Bourse  
Montréal, Québec  
H4Z 1G3  
Attention: Direction ~~du marché~~ des marchés des capitaux

**Saskatchewan Financial Services Commission – Securities Division**

6th Floor,  
1919 Saskatchewan Drive  
Regina, SK S4P 3V7  
Attention: Deputy Director, Corporate Finance

**Registrar of Securities, Government of Yukon**

Corporate Affairs J-9

P.O. Box 2703

Whitehorse, Yukon

Y1A 5H3

Attention: Registrar of Securities



**APPENDIX A**  
**EXAMPLES OF FILING REQUIREMENTS FOR CHANGES IN THE YEAR END**

The following examples assume the old financial year ended on December 31, 20X0

Transition Year	Comparative Annual Financial Statements to Transition Year	New Financial Year	Comparative Annual Financial Statements to New Financial Year	Interim Periods for Transition Year	Comparative Interim Periods to Interim Periods in Transition Year	Interim Periods for New Financial Year	Comparative Interim Periods to Interim Periods in New Financial Year
<b>Financial year end changed by up to 3 months</b>							
2 months ended 2/28/X1	12 months ended 12/31/X0	2/28/X2	2 months ended 2/28/X1 and 12 months ended 12/31/X0*	Not applicable	Not applicable	3 months ended 5/31/X1 6 months ended 8/31/X1 9 months ended 11/30/X1	3 months ended 6/30/X0 6 months ended 9/30/X0 9 months ended 12/31/X0
Or							
14 months ended 2/28/X2	12 months ended 12/31/X0	2/28/X3	14 months ended 2/28/X2	3 months ended 3/31/X1 6 months ended 6/30/X1 9 months ended 9/30/X1 12 months ended 12/31/X1	3 months ended 3/31/X0 6 months ended 6/30/X0 9 months ended 9/30/X0 12 months ended 12/31/X0	3 months ended 5/31/X2 6 months ended 8/31/X2 9 months ended 11/30/X2	3 months ended 6/30/X1 6 months ended 9/30/X1 9 months ended 12/31/X1
				or			
				2 months ended 2/28/X1 5 months ended 5/31/X1 8 months ended 8/31/X1 11 months ended 11/30/X1	3 months ended 3/31/X0 6 months ended 6/30/X0 9 months ended 9/30/X0 12 months ended 12/31/X0	3 months ended 5/31/X2 6 months ended 8/31/X2 9 months ended 11/30/X2	3 months ended 6/30/X1 6 months ended 9/30/X1 9 months ended 12/31/X1
<b>Financial year end changed by 4 to 6 months</b>							
6 months ended 6/30/X1	12 months ended 12/31/X0	6/30/X2	6 months ended 6/30/X1 and 12 months ended 12/31/X0*	3 months ended 3/31/X1	3 months ended 3/31/X0	3 months ended 9/30/X1 6 months ended 12/31/X1 9 months ended 3/31/X2	3 months ended 9/30/X0 6 months ended 12/31/X0 9 months ended 3/31/X1
<b>Financial year end changed by 7 or 8 months</b>							
7 months ended 7/31/X1	12 months ended 12/31/X0	7/31/X2	7 months ended 7/31/X1 and 12 months ended 12/31/X0*	3 months ended 3/31/X1	3 months ended 3/31/X0	3 months ended 10/31/X1 6 months ended 1/31/X2 9 months ended 4/30/X <sup>1</sup> <sub>2</sub>	3 months ended 9/30/X0 6 months ended 12/31/X0 9 months ended 3/31/X1
				or			
				4 months ended 4/30/X1	3 months ended 3/31/X0	3 months ended 10/31/X1 6 months ended 1/31/X2 9 months ended 4/30/X <sup>1</sup> <sub>2</sub>	3 months ended 9/30/X0 6 months ended 12/31/X0 10 months ended 4/30/X1
<b>Financial year end changed by 9 to 11 months</b>							
10 months ended 10/31/X1	12 months ended 12/31/X0	10/31/X2	10 months ended 10/31/X1	3 months ended 3/31/X1 6 months ended 6/30/X1	3 months ended 3/31/X0 6 months ended 6/30/X0	3 months ended 1/31/X2 6 months ended 4/30/X2 9 months ended 7/31/X2	3 months ended 12/31/X0 6 months ended 3/31/X1 9 months ended 6/30/X1
				or			
				4 months ended 4/30/X1 7 months ended 7/31/X1	3 months ended 3/31/X0 6 months ended 6/30/X0	3 months ended 1/31/X2 6 months ended 4/30/X2 9 months ended 7/31/X2	3 months ended 12/31/X0 6 months ended 3/31/X1 9 months ended 6/30/X1

\* Balance sheet required only at the transition year end date

~~**APPENDIX B**~~  
~~**FINANCIAL STATEMENTS REQUIRED IN A BUSINESS ACQUISITION REPORT**~~

## Appendix G

### COMPANION POLICY 71-102CP TO NATIONAL INSTRUMENT 71-102 *CONTINUOUS DISCLOSURE AND OTHER EXEMPTIONS RELATING TO FOREIGN ISSUERS*

(Black-lined)

#### PART 1 GENERAL

##### 1.1 Introduction and Purpose

- (1) National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (the “Instrument”) provides broad relief from most of the requirements of National Instrument 51-102 *Continuous Disclosure Obligations* (“NI 51-102”) for two sub-categories of foreign reporting issuers – SEC foreign issuers and designated foreign issuers – on the condition that they comply with the continuous disclosure (“CD”) requirements of the SEC or a designated foreign jurisdiction. SEC foreign issuers and designated foreign issuers are also exempted from certain other requirements of provincial and territorial securities legislation, including insider reporting and early warning, that are not contained in NI 51-102.
- (2) This Companion Policy provides information about how the provincial and territorial securities regulatory authorities interpret the Instrument, and should be read in conjunction with it.

##### 1.2 Other Relevant Legislation

In addition to the Instrument, foreign issuers should consult the following non-exhaustive list of legislation to see how it may apply to them:

- (1) implementing legislation (the regulation, rule, ruling, order or other instrument that implements the Instrument in each applicable jurisdiction);
- (2) NI 51-102;
- (3) National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (“NI 52-107”); and
- (4) National Instrument 71-101 *The Multijurisdictional Disclosure System* (“NI 71-101”).

##### 1.3 Multijurisdictional Disclosure System

- (1) NI 71-101 permits certain U.S. incorporated issuers to satisfy specified Canadian CD requirements by using disclosure prepared in accordance with U.S.

requirements. The Instrument does not replace or alter NI 71-101. There are instances in which NI 71-101 and the Instrument offer similar relief to a reporting issuer, but other instances in which the relief available to a reporting issuer in one instrument differs from the relief available to the reporting issuer under the other instrument. Many issuers that are eligible for an exemption under the Instrument will be ineligible to rely on NI 71-101 and vice versa. For example, the Instrument defines a class of “SEC foreign issuers”. Not all U.S. issuers referred to in NI 71-101 are SEC foreign issuers and not all SEC foreign issuers are U.S. issuers.

- (2) ~~An eligible U.S. issuer may choose to use an exemption in the Instrument or NI 71-101. For example, section 17.1 of NI 71-101 grants an exemption from the insider reporting requirement to an insider of a U.S. issuer that has securities registered under section 12 of the 1934 Act if the insider complies with the requirements of U.S. federal securities law regarding insider reporting and files with the SEC any insider report required to be filed with the SEC. This relief goes beyond the exemption provided by section 4.12 of the Instrument which is not available to insiders of a SEDI issuer as defined in National Instrument 55-102 System for Electronic Disclosure by Insiders (SEDI).~~ [\[repealed\]](#)

#### 1.4 Exemptions May Not Require Disclosure

Most of the exemptions in the Instrument are only available to a person or company that complies with a particular aspect of either U.S. federal securities laws or the laws of a designated foreign jurisdiction. If those laws do not require the issuer to disclose, file or send any information, for example, because the issuer may rely on an exemption under those laws, then the issuer is not required to disclose, file or send any information to rely on the exemption contained in the Instrument.

## PART 2 DEFINITIONS

### 2.1 Foreign Reporting Issuers

To qualify for any of the exemptions contained in the Instrument, other than the relief for “foreign transition issuers” in Part 6, the issuer in question must be a “foreign reporting issuer”. The definition of foreign reporting issuer is based upon the definition of foreign private issuer in Rule 405 of the 1933 Act and Rule 3b-4 of the 1934 Act. For the purposes of the definition of “foreign reporting issuer”, it is the CSA’s view that

- (a) in calculating the percentage of assets located in Canada, the issuer should ~~look to use~~ the book value of the assets recorded in its most recent consolidated financial statements, either annual or interim; and
- (b) in determining the outstanding voting securities that are owned, directly or indirectly, by residents of Canada, an issuer should

- (i) use reasonable efforts to identify securities held by a broker, dealer, bank, trust company or nominee or any of them for the accounts of customers resident in Canada;
- (ii) count securities beneficially owned by residents of Canada as reported on reports of beneficial ownership, including insider reports and early warning reports; and
- (iii) assume that a customer is a resident of the jurisdiction or foreign jurisdiction in which the nominee has its principal place of business if, after reasonable inquiry, information regarding the jurisdiction or foreign jurisdiction of residence of the customer is unavailable.

The determination of the percentage of securities of the foreign issuer owned by residents of Canada should be made in the same manner for the purposes of paragraph (c) of the definition of “designated foreign issuer” and paragraph (d) of the definition of “foreign transition issuer” in section 6.2 of the Instrument. This method of calculation differs from that of NI 71-101, which only requires a calculation based on the address of record. Accordingly, some SEC foreign issuers may qualify for exemptive relief under NI 71-101 but not under the Instrument.

## 2.2 Investment Funds

Generally, the definition of “investment fund” would not include a trust or other entity that issues securities which entitle the holder to substantially all of the net cash flows generated by: (i) an underlying business owned by the trust or other entity, or (ii) the income-producing properties owned by the trust or other entity. Examples of trusts or other entities that are not included in the definition are business income trusts, real estate investment trusts and royalty trusts.

## PART 3 INSIDER REPORTS

### 3.1 ~~Requirement to File Insider Reports on SEDI~~[\[repealed\]](#)

~~Insiders of foreign issuers who voluntarily file under National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)* are required to file insider reports electronically under SEDI. The Instrument does not provide an exemption from filing insider reports in the form required by provincial and territorial securities legislation if the foreign issuer is a SEDI filer. However, under NI 71-101 an insider of an eligible U.S. issuer, as defined in NI 71-101, is exempt from the insider reporting requirement if the insider complies with U.S. federal securities law regarding insider reporting and files with the SEC any insider report required to be filed with the SEC. Consequently, insiders of NI 71-101 eligible issuers are also exempt from the requirement to file insider reports on SEDI.~~

## PART 4 FILING OF DISCLOSURE DOCUMENTS

### 4.1 Filing of Disclosure Documents on SEDAR

A foreign issuer does not have to file multiple copies of a foreign disclosure document that it is filing to satisfy the conditions of more than one exemption under the Instrument. The issuer need only file the document in one SEDAR category, and under any other applicable SEDAR category may provide an appropriate reference to the location of the filed document. For example, a foreign issuer may wish to file its U.S. Form 20F to satisfy the conditions relating to both the AIF exemption and the MD&A exemption. The foreign issuer could file the Form 20 on SEDAR under either of the AIF category or the MD&A category, and under the other category would file a letter giving the SEDAR project number that the Form 20F is filed under.

## **PART 5 ELECTRONIC DELIVERY OF DOCUMENTS**

### **5.1 Electronic Delivery of Documents**

Any documents required to be sent under the Instrument may be sent by electronic delivery, as long as such delivery is made in compliance with Québec Staff Notice, *The Delivery of Documents by Electronic Means*, in Québec, and National Policy 11-201 *Delivery of Documents by Electronic Means*, in the rest of Canada.

## **PART 6 EXEMPTIONS NOT INCLUDED**

### **6.1 Resource Issuers - Standards of Disclosure for Mineral Projects and Oil and Gas Activities**

The Instrument does not provide an exemption from National Instrument 43-101 *Standards of Disclosure for Mineral Projects* or National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*. Issuers are reminded that those National Instruments apply to SEC foreign issuers and designated foreign issuers.

### **6.2 SEC Foreign Issuers**

NI 51-102 contains exemptions for SEC issuers from the change in year-end requirements in NI 51-102. SEC foreign issuers under the Instrument will also meet the definition of SEC issuers under NI 51-102, and so will be able to rely on the change in year-end exemption in NI 51-102.

### **6.3 Foreign Reporting Issuers**

The Instrument does not provide an exemption for any foreign reporting issuers from the requirement in section 4.9 of NI 51-102. A foreign reporting issuer must deliver a notice if it has been a party to an amalgamation, arrangement, merger, winding-up, reverse takeover, reorganization or other transaction that will have the effect of changing its continuous disclosure obligations under NI 51-102. The Instrument also does not provide an exemption for any foreign reporting issuers from the requirement to file disclosure materials under section 11.1 of NI 51-102 or to file a notice of change of status under section 11.2 of NI 51-102.

## 6.4 Auditor Oversight - Canadian Public Accountability Board, [Certification and Audit Committees](#)

Section 4.3 of the Instrument provides relief for an SEC foreign issuer relating to annual financial statements and auditors' reports on annual financial statements. Section 5.4 provides similar relief for a designated foreign issuer. Reporting issuers are subject to section ~~2.3~~[2.2](#) of National Instrument 52-108 *Auditor Oversight* ("NI 52-108") but may rely on the exemptions in sections 4.3 and 5.4 of the Instrument for relief from these obligations.

Sections 4.3 and 5.4, however, do not provide relief from

- (a) the requirements applicable in jurisdictions other than Alberta, British Columbia and Manitoba in sections 2.1, ~~2.2~~ and Part 3 of NI 52-108 imposed directly on a public accounting firm that issues an auditor's report with respect to the financial statements of a reporting issuer;
- (b) the certification requirements in Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*; or
- (c) the audit committee requirements in Multilateral Instrument 52-110 *Audit Committees* or BC Instrument 52-509 *Audit Committees*.

SEC foreign issuers and designated foreign issuers must look to those instruments for any exemptions that may be available to them.

## PART 7 EXEMPTIONS

### 7.1 Exemptions

- (1) The exemptions contained in the Instrument are in addition to any exemptions that may be available to an issuer under any other applicable legislation.
- (2) Issuers that have been given an exemption, waiver or approval by a regulator or securities regulatory authority before the Instrument and NI 51-102 came into effect, may be entitled to continue to rely on that exemption, waiver or approval. Issuers should refer to section 13.2 of NI 51-102 to determine in what circumstances the prior exemption, waiver or approval is available and what the reporting issuer must do to continue to rely on it.
- (3) If an issuer wishes to seek exemptive relief from NI 51-102 or other requirements of provincial and territorial securities legislation on grounds similar but not identical to those permitted under the Instrument, the issuer should apply for this relief under the exemptive provisions of NI 51-102, or other provincial and territorial securities legislation, as the case may be.

## Appendix H

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(Black-lined)

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**NATIONAL INSTRUMENT 51-102**  
**CONTINUOUS DISCLOSURE OBLIGATIONS**

**PART 1 DEFINITIONS AND INTERPRETATION**

**1.1 Definitions and Interpretation**

In this Instrument:

“AIF” means a completed Form 51-102F2 *Annual Information Form* or, in the case of an SEC issuer, a completed Form 51-102F2 or an annual report or transition report under the 1934 Act on Form 10-K, Form 10-KSB or Form 20-F;

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

<b>Approved Rating Organization</b>	<b>Long Term Debt</b>	<b>Short Term Debt</b>	<b>Preferred Shares</b>
Dominion Bond Rating Service Limited	BBB	R-2	Pfd-3
Fitch Ratings Ltd.	BBB	F3	BBB
Moody’s Investors Service	Baa	Prime-3	“baaa”
Standard & Poor’s	BBB	A-3	P-3

“approved rating organization” means each of Dominion Bond Rating Service Limited, Fitch Ratings Ltd., Moody’s Investors Service, Standard & Poor’s and any of their successors;

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

“board of directors” means, for a person or company that does not have a board of directors, an individual or group that acts in a capacity similar to a board of directors;

“business acquisition report” means a completed Form 51-102F4 *Business Acquisition Report*;

“class” includes a series of a class;

“common share” means an equity security to which are attached voting rights exercisable in all circumstances, irrespective of the number or percentage of securities owned, that are not less, per security, than the voting rights attached to any other outstanding securities of the reporting issuer;

“date of acquisition” means the date of acquisition required for accounting purposes;

“electronic format” has the same meaning as in National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*;

“equity investee” means a business that the issuer has invested in and accounted for using the equity method;

“exchange-traded security” means a security that is listed on a recognized exchange or is quoted on a recognized quotation and trade reporting system or is listed on an exchange or quoted on a quotation and trade reporting system that is recognized for the purposes of National Instrument 21-101 *Marketplace Operation* and National Instrument 23-101 *Trading Rules*;

~~“executive officer” of a reporting issuer means an individual who is~~

- ~~(a) a chair of the reporting issuer;~~
- ~~(b) a vice chair of the reporting issuer;~~
- ~~(c) the president of the reporting issuer;~~
- ~~(d) a vice president of the reporting issuer in charge of a principal business unit, division or function including sales, finance or production;~~
- ~~(e) an officer of the reporting issuer or any of its subsidiaries who performed a policy making function in respect of the reporting issuer; or~~
- ~~(f) any other individual who performed a policy making function in respect of the reporting issuer;~~

“executive officer” means, for a reporting issuer, an individual who is

- (a) a chair, vice-chair or president;
- (b) a vice-president in charge of a principal business unit, division or function including sales, finance or production;
- (c) an officer of the issuer or any of its subsidiaries who performs a policy-making function in respect of the issuer; or
- (d) performing a policy-making function in respect of the issuer;

“form of proxy” means a document containing the information required under section 9.4 that, on completion and execution by or on behalf of a securityholder, becomes a proxy;

“income from continuing operations” means income or loss, adjusted to exclude discontinued operations, extraordinary items and income taxes;

“information circular” means a completed Form 51-102F5 *Information Circular*;

“informed person” means

- (a) a director or executive officer of a reporting issuer;
- (b) a director or executive officer of a person or company that is itself an informed person or subsidiary of a reporting issuer;
- (c) any person or company who beneficially owns, directly or indirectly, voting securities of a reporting issuer or who exercises control or direction over voting securities of a reporting issuer or a combination of both carrying more than 10 percent of the voting rights attached to all outstanding voting securities of the reporting issuer other than voting securities held by the person or company as underwriter in the course of a distribution; and
- (d) a reporting issuer that has purchased, redeemed or otherwise acquired any of its securities, for so long as it holds any of its securities;

“inter-dealer bond broker” means a person or company that is approved by the Investment Dealers Association under its By-Law No. 36 *Inter-Dealer Bond Brokerage Systems*, as amended, and is subject to its By-law No. 36 and its Regulation 2100 *Inter-Dealer Bond Brokerage Systems*, as amended;

“interim period” means,

- (a) in the case of a year other than [a non-standard year](#) or a transition year, a period commencing on the first day of the financial year and ending nine, six or three months before the end of the financial year;~~or~~
  - (a.1) [in the case of a non-standard year, a period commencing on the first day of the financial year and ending within 22 days of the date that is nine, six or three months before the end of the financial year; or](#)
- (b) in the case of a transition year, a period commencing on the first day of the transition year and ending
  - (i) three, six, nine or twelve months, if applicable, after the end of the old financial year; or
  - (ii) twelve, nine, six or three months, if applicable, before the end of the transition year;

“investment fund” means a mutual fund or a non-redeemable investment fund, and, for greater certainty in British Columbia, includes an EVCC and a VCC as those terms are defined in National Instrument 81-106 *Investment Fund Continuous Disclosure*;

[“issuer’s GAAP” has the same meaning as in National Instrument 52-107 \*Acceptable Accounting Principles, Auditing Standards and Reporting Currency\*](#);

“MD&A” means a completed Form 51-102F1 *Management’s Discussion & Analysis* or, in the case of an SEC issuer, a completed Form 51-102F1 or management’s discussion and analysis prepared in accordance with Item 303 of Regulation S-K or item 303 of Regulation S-B under the 1934 Act;

“marketplace” means

- (a) an exchange;
- (b) a quotation and trade reporting system;
- (c) a person or company not included in paragraph (a) or (b) that
  - (i) constitutes, maintains or provides a market or facility for bringing together buyers and sellers of securities;
  - (ii) brings together the orders for securities of multiple buyers and sellers; and
  - (iii) uses established, non-discretionary methods under which the orders interact with each other, and the buyers and sellers entering the orders agree to the terms of a trade; or
- (d) a dealer that executes a trade of an exchange-traded security outside of a marketplace,

but does not include an inter-dealer bond broker;

“material change” means

- (a) a change in the business, operations or capital of the reporting issuer that would reasonably be expected to have a significant effect on the market price or value of any of the securities of the reporting issuer; or
- (b) a decision to implement a change referred to in paragraph (a) made by the board of directors or other persons acting in a similar capacity or by senior management of the reporting issuer who believe that confirmation of the decision by the board of directors or any other persons acting in a similar capacity is probable;

“mineral project” means any exploration, development or production activity in respect of natural, solid, inorganic or fossilized organic material including base and precious metals, coal and industrial minerals;

“new financial year” means the financial year of a reporting issuer that immediately follows a transition year;

“non-standard year” means a financial year, other than a transition year, that does not have 365 days, or 366 days if it includes February 29;

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

“non-redeemable investment fund” means an issuer,

- (a) whose primary purpose is to invest money provided by its securityholders;
- (b) that does not invest,
  - (i) for the purpose of exercising or seeking to exercise control of an issuer, other than an issuer that is a mutual fund or a non-redeemable investment fund, or
  - (ii) for the purpose of being actively involved in the management of any issuer in which it invests, other than an issuer that is a mutual fund or a non-redeemable investment fund, and
- (c) that is not a mutual fund;

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

“preference share” means a security to which is attached a preference or right over the securities of any class of equity securities of the reporting issuer, but does not include an equity security;

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

“proxy” means a completed and executed form of proxy by which a securityholder has appointed a person or company as the securityholder’s nominee to attend and act for the securityholder and on the securityholder’s behalf at a meeting of securityholders;

~~“published market” means, for a class of securities, a marketplace on which the securities have traded that discloses regularly in a publication of general and regular paid circulation or in a form that is broadly distributed by electronic means the prices at which those securities have traded;~~

“recognized exchange” means

- (a) in Ontario, an exchange recognized by the securities regulatory authority to carry on business as a stock exchange; and
- (b) in every other jurisdiction, an exchange recognized by the securities regulatory authority as an exchange, self-regulatory organization or self-regulatory body or a legal person, a partnership or any other entity authorized by the securities regulatory authority to carry on securities trading in accordance with securities legislation;

“recognized quotation and trade reporting system” means

- (a) in every jurisdiction other than British Columbia, a quotation and trade reporting system recognized by the securities regulatory authority under securities legislation to carry on business as a quotation and trade reporting system; and
- (b) in British Columbia, a quotation and trade reporting system recognized by the securities regulatory authority under securities legislation as a quotation and trade reporting system or as an exchange;

“restricted security” means an equity security of a reporting issuer, if any of the following apply:

- (a) there is another class of securities of the reporting issuer that, to a reasonable person, appears to carry a greater vote per security relative to the equity security;
- (b) the conditions of the class of equity securities, the conditions of another class of securities of the reporting issuer, or the reporting issuer’s constating documents have provisions that nullify or, to a reasonable person, appear to significantly restrict the voting rights of the equity securities; or
- (c) the reporting issuer has issued a second class of equity securities that, to a reasonable person, appears to entitle the owners of securities of that second class to participate in the earnings or assets of the reporting issuer to a greater extent, on a per security basis, than the owners of the first class of equity securities;

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

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

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

“restructuring transaction” means

(a) a reverse takeover;

(b) an amalgamation, merger, arrangement or reorganization;

(c) a transaction or series of transactions involving a reporting issuer acquiring assets and issuing securities that results in

(i) new securityholders owning or controlling a sufficient number of the reporting issuer’s securities to elect a majority of the directors of the reporting issuer; and

(ii) a new person or company, a new combination of persons or companies acting together, the vendors of the assets, or new management

(A) being able to materially affect the control of the reporting issuer; or

(B) holding more than 20% of the outstanding voting securities of the reporting issuer, unless there is evidence showing that the holding of those securities does not materially affect the control of the reporting issuer; and

(d) any other transaction similar to the transactions listed in paragraphs (a) to (c),

but does not include a subdivision, consolidation, or other transaction that does not alter a securityholder’s proportionate interest in the issuer;

“reverse takeover” means a transaction by which an enterprise obtains ownership of the securities of another enterprise but, as part of the transaction, issues enough voting securities as consideration that control of the combined enterprise passes to the securityholders of the acquired enterprise;

“reverse takeover acquiree” means the legal parent, as that term is used in the Handbook, in a reverse takeover;

“reverse takeover acquirer” means the legal subsidiary, as that term is used in the Handbook, whose securityholders control the combined enterprise as a result of a reverse takeover;

“SEC issuer” means ~~a reporting~~an issuer that

(a) has a class of securities registered under section 12 of the 1934 Act or is required to file reports under section 15(d) of the 1934 Act; and

(b) is not registered or required to be registered as an investment company under the *Investment Company Act of 1940* of the United States of America, as amended;

“solicit”, in connection with a proxy, includes



- (a) requesting a proxy whether or not the request is accompanied by or included in a form of proxy;
- (b) requesting a securityholder to execute or not to execute a form of proxy or to revoke a proxy;
- (c) sending a form of proxy or other communication to a securityholder under circumstances that to a reasonable person will likely result in the giving, withholding or revocation of a proxy; or
- (d) sending a form of proxy to a securityholder by management of a reporting issuer;

but does not include

- (e) sending a form of proxy to a securityholder in response to a unsolicited request made by or on behalf of the securityholder; or
- (f) performing ministerial acts or professional services on behalf of a person or company soliciting a proxy;

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

“transition year” means the financial year of a reporting issuer in which the issuer changes its financial year-end;

“U.S. GAAP” means generally accepted accounting principles in the United States of America that the SEC has identified as having substantial authoritative support and as supplemented by Regulation S-X and Regulation S-B under the 1934 Act;

“U.S. laws” means the 1933 Act, the 1934 Act, all enactments made under those Acts and all SEC releases adopting the enactments, as amended;

“U.S. marketplace” means an exchange registered as a “national securities exchange” under section 6 of the 1934 Act, or the Nasdaq Stock Market; and

“venture issuer” means a reporting issuer that, as at the applicable time, did not have any of its securities listed or quoted on any of the Toronto Stock Exchange, a U.S. marketplace, or a marketplace outside of Canada and the United States of America [other than the Alternative Investment Market of the London Stock Exchange](#); where the “applicable time” in respect of

- (a) Parts 4 and 5 of this Instrument and Form 51-102F1, is the end of the applicable financial period;
- (b) Parts 6 and 9 of this Instrument and Form 51-102F6, is the end of the most recently completed financial year;

- (c) Part 8 of this Instrument and Form 51-102F4, is the date of acquisition; and
- (d) section 11.3 of this Instrument, is the date of the meeting of the securityholders.

## **PART 2 APPLICATION**

### **2.1 Application**

This Instrument does not apply to an investment fund.

## **PART 3 LANGUAGE OF DOCUMENTS**

### **3.1 French or English**

- (1) A person or company must file a document required to be filed under this Instrument in French or in English.
- (2) Despite subsection (1), if a person or company files a document only in French or only in English but delivers to securityholders a version of the document in the other language, the person or company must file that other version not later than when it is first delivered to securityholders.
- (3) In Québec, a reporting issuer must comply with linguistic obligations and rights prescribed by Québec law.

### **3.2 Filings Translated into French or English**

If a person or company files a document under this Instrument that is a translation of a document prepared in a language other than French or English, the person or company must

- (a) attach a certificate as to the accuracy of the translation to the filed document; and
- (b) make a copy of the document in the original language available to a registered holder or beneficial owner of its securities, on request.

## **PART 4 FINANCIAL STATEMENTS**

### **4.1 ~~Comparative Annual Financial Statements and Auditor's Report~~ Comparative Annual Financial Statements and Audit**

- (1) Subject to subsection 4.8(6), a reporting issuer must file annual financial statements that include
  - (a) an income statement, a statement of retained earnings, and a cash flow statement for
    - (i) the most recently completed financial year; and

- (ii) the financial year immediately preceding the most recently completed financial year, if any;
  - (b) a balance sheet as at the end of each of the periods referred to in paragraph (a); and
  - (c) notes to the financial statements.
- (2) Annual financial statements filed under subsection (1) must be ~~accompanied by an auditor's report~~audited.

#### 4.2 Filing Deadline for Annual Financial Statements

The audited annual financial statements ~~and auditor's report~~ required to be filed under section 4.1 must be filed

- (a) in the case of a reporting issuer other than a venture issuer, on or before the earlier of
  - (i) the 90th day after the end of its most recently completed financial year; and
  - (ii) the date of filing, in a foreign jurisdiction, annual financial statements for its most recently completed financial year; or
- (b) in the case of a venture issuer, on or before the earlier of
  - (i) the 120th day after the end of its most recently completed financial year; and
  - (ii) the date of filing, in a foreign jurisdiction, annual financial statements for its most recently completed financial year.

#### 4.3 Interim Financial Statements

~~(1) — A reporting issuer must file,~~

- ~~(a) if it has not completed its first financial year, interim financial statements for the interim periods of the reporting issuer's current financial year other than a period that is less than three months in length; or~~
- ~~(b) if it has completed its first financial year, interim financial statements for the interim periods of the reporting issuer's current financial year.~~

(1) A reporting issuer must file interim financial statements for the interim periods of its current financial year.

- (2) Subject to subsections 4.7(4), 4.8(7), ~~and 4.8(8), and 4.10(3)~~, the interim financial statements required to be filed under subsection (1) must include

- (a) a balance sheet as at the end of the interim period and a balance sheet as at the end of the immediately preceding financial year, if any;
- (b) an income statement, a statement of retained earnings and a cash flow statement, all for the year-to-date interim period, and comparative financial information for the corresponding interim period in the immediately preceding financial year, if any;
- (c) for interim periods other than the first interim period in a reporting issuer's financial year, an income statement and cash flow statement for the three month period ending on the last day of the interim period and comparative financial information for the corresponding period in the preceding financial year, if any; and
- (d) notes to the financial statements.

**(3) Disclosure of Auditor Review of Interim Financial Statements**

- (a) If an auditor has not performed a review of the interim financial statements required to be filed under subsection (1), the interim financial statements must be accompanied by a notice indicating that the financial statements have not been reviewed by an auditor.
- (b) If a reporting issuer engaged an auditor to perform a review of the interim financial statements required to be filed under subsection (1) and the auditor was unable to complete the review, the interim financial statements must be accompanied by a notice indicating that the auditor was unable to complete a review of the interim financial statements and the reasons why the auditor was unable to complete the review.
- (c) If an auditor has performed a review of the interim financial statements required to be filed under subsection (1) and the auditor has expressed a reservation in the auditor's interim review report, the interim financial statements must be accompanied by a written review report from the auditor.

**(4) SEC Issuer - Restatement of Interim Financial Statements**

If an SEC [issuer that is a reporting](#) issuer

- (a) has filed interim financial statements prepared in accordance with Canadian GAAP for one or more interim periods since its most recently completed financial year for which financial statements have been filed; and
- (b) prepares its annual or interim financial statements for the period immediately following the periods referred to in paragraph (a) in accordance with U.S. GAAP,

the SEC issuer must

- (c) restate the interim financial statements for the periods referred to in paragraph (a) in accordance with U.S. GAAP and comply with the reconciliation requirements set out in Part 4 of National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*; and
- (d) file the restated financial statements referred to in paragraph (c) by the filing deadline for the financial statements referred to in paragraph (b).

#### **4.4 Filing Deadline for Interim Financial Statements**

The interim financial statements required to be filed under subsection 4.3(1) must be filed

- (a) in the case of a reporting issuer other than a venture issuer, on or before the earlier of
  - (i) the 45th day after the end of the interim period; and
  - (ii) the date of filing, in a foreign jurisdiction, interim financial statements for a period ending on the last day of the interim period; or
- (b) in the case of a venture issuer, on or before the earlier of
  - (i) the 60th day after the end of the interim period; and
  - (ii) the date of filing, in a foreign jurisdiction, interim financial statements for a period ending on the last day of the interim period.

#### **4.5 Approval of Financial Statements**

- (1) The financial statements a reporting issuer is required to file under section 4.1 must be approved by the board of directors before the statements are filed.
- (2) The financial statements a reporting issuer is required to file under section 4.3 must be approved by the board of directors before the statements are filed.
- (3) In fulfilling the requirement in subsection (2), the board of directors may delegate the approval of the financial statements to the audit committee of the board of directors.

#### **4.6 Delivery of Financial Statements**

- ~~(1) Subject to subsection (2), a reporting issuer must send annually a request form to the registered holders and beneficial owners of its securities, other than debt instruments, that the registered holders and beneficial owners may use to request a copy of the reporting issuer's annual financial statements and MD&A for the annual financial statements, the interim financial statements and MD&A for the interim financial statements, or both.~~
- ~~(2) For the purposes of subsection (1), the reporting issuer must, applying the procedures set out in National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*, send the request form to the beneficial owners of its securities who~~

~~are identified under that Instrument as having chosen to receive all securityholder materials sent to beneficial owners of securities.~~

- ~~(3) If a registered holder or beneficial owner requests the reporting issuer's annual or interim financial statements, the reporting issuer must send a copy of the requested financial statements to the person or company that made the request, without charge, by the later of~~
- ~~(a) the filing deadline for the financial statements requested; and~~
  - ~~(b) 10 calendar days after the issuer receives the request.~~
- ~~(4) A reporting issuer is not required to send copies of annual or interim financial statements under subsection (3) that were filed more than two years before the issuer receives the request.~~
- ~~(5) Subsection (1) and the requirement to send annual financial statements under subsection (3) do not apply to a reporting issuer that sends its annual financial statements to all its securityholders, other than holders of debt instruments.~~
- ~~(6) If a reporting issuer sends financial statements under this section, the reporting issuer must also send, at the same time, the annual or interim MD&A relating to the financial statements.~~
- (1) If a registered holder or beneficial owner of securities of a reporting issuer requests the issuer's annual or interim financial statements, the reporting issuer must send a copy of the requested financial statements to the person or company that made the request, without charge, by the later of,
- (a) in the case of a reporting issuer other than a venture issuer, 10 calendar days after the filing deadline in subparagraph 4.2(a)(i) or 4.4(a)(i), section 4.7, or subsection 4.10(2), as applicable, for the financial statements requested;
  - (b) in the case of a venture issuer, 10 calendar days after the filing deadline in paragraph 4.2(b)(i) or 4.4(b)(i), section 4.7, or subsection 4.10(2), as applicable, for the financial statements requested; and
  - (c) 10 calendar days after the issuer receives the request.
- (2) A reporting issuer is not required to send copies of annual or interim financial statements under subsection (1) that were filed more than two years before the issuer receives the request.
- (3) The requirement to send annual financial statements under subsection (1) does not apply to a reporting issuer that sends its annual financial statements to its securityholders, other than holders of debt instruments, within the time set out in paragraph (1)(a) or (1)(b), as applicable, and in accordance with National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*.

- (4) [If a reporting issuer sends financial statements under this section, the reporting issuer must also send, at the same time, the annual or interim MD&A relating to the financial statements.](#)

#### **4.7 Filing of Financial Statements After Becoming a Reporting Issuer**

- (1) Despite any provisions of this Part other than subsections (2), (3) and (4) of this section, the first annual and interim financial statements that a reporting issuer must file under sections 4.1 and 4.3 are the financial statements for the financial year and interim periods immediately following the periods for which financial statements [of the issuer](#) were included in a document filed
- (a) that resulted in the issuer becoming a reporting issuer; or
- (b) in respect of a transaction that resulted in the issuer becoming a reporting issuer.
- (2) If, under subsection (1), a reporting issuer is required to file annual financial statements for a financial year that ended before the issuer became a reporting issuer, those financial statements must be filed on or before the later of
- (a) the 20<sup>th</sup> day after the issuer became a reporting issuer; and
- (b) the filing deadline in section 4.2.
- (3) If, under subsection (1), a reporting issuer is required to file interim financial statements for an interim period that ended before the issuer became a reporting issuer, those financial statements must be filed on or before the later of
- (a) the 10<sup>th</sup> day after the issuer became a reporting issuer; and
- (b) the filing deadline in section 4.4.
- (4) A reporting issuer is not required to provide comparative interim financial information for periods that ended before the issuer became a reporting issuer if
- (a) to a reasonable person it is impracticable to present prior-period information on a basis consistent with subsection 4.3(2);
- (b) the prior-period information that is available is presented; and
- (c) the notes to the interim financial statements disclose the fact that the prior-period information has not been prepared on a basis consistent with the most recent interim financial information.

#### **4.8 Change in Year-End**

- (1) **Exemption from Change in Year-End Requirements** – ~~This section does not apply to~~ [an An](#) SEC issuer [satisfies this section](#) if

- (a) it complies with the requirements of U.S. laws relating to a change of fiscal year; and
  - (b) it files a copy of all materials required by U.S. laws relating to a change of fiscal year at the same time as, or as soon as practicable after, they are filed with or furnished to the SEC and, in the case of financial statements, no later than the filing deadlines prescribed under sections 4.2 and 4.4.
- (2) **Notice of Change** – If a reporting issuer decides to change its financial year-end by more than 14 days, it must file a notice containing the information set out in subsection (3) as soon as practicable, and, in any event, not later than the earlier of
- (a) the filing deadline, based on the reporting issuer’s old financial year-end, for the next financial statements required to be filed, either annual or interim, whichever comes first; and
  - (b) the filing deadline, based on the reporting issuer’s new financial year-end, for the next financial statements required to be filed, either annual or interim, whichever comes first.
- (3) The notice referred to in subsection (2) must state
- (a) that the reporting issuer has decided to change its year-end;
  - (b) the reason for the change;
  - (c) the reporting issuer’s old financial year-end;
  - (d) the reporting issuer’s new financial year-end;
  - (e) the length and ending date of the periods, including the comparative periods, of the interim and annual financial statements to be filed for the reporting issuer’s transition year and its new financial year; and
  - (f) the filing deadlines, prescribed under sections 4.2 and 4.4, for the interim and annual financial statements for the reporting issuer’s transition year.
- (4) **Maximum Length of Transition Year** – For the purposes of this section,
- (a) a transition year must not exceed 15 months; and
  - (b) the first interim period after an old financial year must not exceed four months.
- (5) **Interim Period Ends Within One Month of Year-End** – Despite ~~paragraph~~[subsection 4.3\(1\)\(b\)](#), a reporting issuer is not required to file interim financial statements for any period in its transition year that ends ~~within~~[not more than](#) one month
- (a) after the last day of its old financial year; or



- (b) before the first day of its new financial year.
- (6) **Comparative Financial Information in Annual Financial Statements for New Financial Year** – If a transition year is less than nine months in length, the reporting issuer must include as comparative financial information to its financial statements for its new financial year
- (a) a balance sheet and income statement, a statement of retained earnings and a cash flow statement for its transition year; and
  - (b) a balance sheet and income statement, a statement of retained earnings and a cash flow statement for its old financial year.
- (7) **Comparative Financial Information in Interim Financial Statements if Interim Periods Not Changed in Transition Year** – If interim periods for the reporting issuer's transition year end three, six, nine or twelve months after the end of its old financial year, the reporting issuer must include
- (a) as comparative financial information in its interim financial statements during its transition year, the comparative financial information required by subsection 4.3(2), except if an interim period during the transition year is 12 months in length and the reporting issuer's transition year is longer than 13 months, the comparative financial information must be the balance sheet and income statement, statement of retained earnings and cash flow statement for the 12 month period that constitutes its old financial year; and
  - (b) as comparative financial information in its interim financial statements during its new financial year
    - (i) a balance sheet as at the end of its transition year; and
    - (ii) the income statement, statement of retained earnings and cash flow statement for the periods in its transition year or old financial year, for the same calendar months as, or as close as possible to, the calendar months in the interim period in the new financial year.
- (8) **Comparative Financial Information in Interim Financial Statements if Interim Periods Changed in Transition Year** – If interim periods for a reporting issuer's transition year end twelve, nine, six or three months before the end of the transition year, the reporting issuer must include
- (a) as comparative financial information in its interim financial statements during its transition year
    - (i) a balance sheet as at the end of its old financial year; and
    - (ii) the income statement, statement of retained earnings and cash flow statement for periods in its old financial year, for the same calendar

months as, or as close as possible to, the calendar months in the interim period in the transition year; and

- (b) as comparative financial information in its interim financial statements during its new financial year
  - (i) a balance sheet as at the end of its transition year; and
  - (ii) the income statement, statement of retained earnings and cash flow statement in its transition year or old financial year, or both, as appropriate, for the same calendar months as, or as close as possible to, the calendar months in the interim period in the new financial year.

#### 4.9 Change in Corporate Structure

~~If a reporting issuer is party to an amalgamation, arrangement, merger, winding up, reverse takeover, reorganization or other transaction that will result in~~

- ~~(a) the reporting issuer ceasing to be a reporting issuer;~~
- ~~(b) another entity becoming a reporting issuer;~~
- ~~(c) a change in the reporting issuer's financial year end; or~~
- ~~(d) a change in the name of the reporting issuer;~~

~~the issuer must, as soon as practicable, and in any event not later than the deadline for the first filing required under this Instrument following the transaction, file a notice stating~~

- ~~(e) the names of the parties to the transaction;~~
- ~~(f) a description of the transaction;~~
- ~~(g) the effective date of the transaction;~~
- ~~(h) the names of each party, if any, that ceased to be a reporting issuer subsequent to the transaction and of each continuing entity;~~
- ~~(i) the date of the reporting issuer's first financial year end subsequent to the transaction; and~~
- ~~(j) the periods, including the comparative periods, if any, of the interim and annual financial statements required to be filed for the reporting issuer's first financial year subsequent to the transaction.~~

If an issuer is party to a restructuring transaction or other transaction that resulted in,

- (a) the issuer becoming a reporting issuer; or

- (b) if the issuer was already a reporting issuer, in
  - (i) the issuer ceasing to be a reporting issuer,
  - (ii) a change in the reporting issuer's financial year end, or
  - (iii) a change in the name of the reporting issuer;

the issuer must, as soon as practicable, and in any event not later than the deadline for the first filing required under this Instrument following the transaction, file a notice stating

- (c) the names of the parties to the transaction;
- (d) a description of the transaction;
- (e) the effective date of the transaction;
- (f) the names of each party, if any, that ceased to be a reporting issuer subsequent to the transaction and of each continuing entity;
- (g) the date of the reporting issuer's first financial year-end subsequent to the transaction; and
- (h) the periods, including the comparative periods, if any, of the interim and annual financial statements required to be filed for the reporting issuer's first financial year subsequent to the transaction.

#### **4.10 Reverse Takeovers**

- (1) **Change in Year End** - If a reporting issuer must comply with section 4.9 because it was a party to a reverse takeover, the reporting issuer must comply with section 4.8 unless
  - (a) the reporting issuer had the same year-end as the reverse takeover acquirer before the transaction; or
  - (b) the reporting issuer changes its year-end to be the same as that of the reverse takeover acquirer.
- (2) **Financial Statements of the Reverse Takeover Acquirer for Periods Ending Before a Reverse Takeover** - If a reporting issuer completes a reverse takeover, it must
  - (a) file financial statements for the reverse takeover acquirer for all annual and interim periods ending
    - (i) after the date of the financial statements included in an information circular ~~filed~~or similar document prepared in connection with the transaction; and
    - (ii) before the date of the reverse takeover,

unless the financial statements have already been filed;

- (b) file the annual financial statements required by paragraph (a) on or before the later of
  - (i) the 20<sup>th</sup> day after the date of the reverse takeover;
  - (ii) the 90<sup>th</sup> date after the end of the financial year; and
  - (iii) the 120<sup>th</sup> day after the end of the financial year if the reporting issuer is a venture issuer; and
- (c) file the interim financial statements required by paragraph (a) on or before the later of
  - (i) the 10<sup>th</sup> day after the date of the reverse takeover;
  - (ii) the 45<sup>th</sup> day after the end of the interim period; and
  - (iii) the 60<sup>th</sup> day after the end of the interim period if the reporting issuer is a venture issuer.

(3) **Comparative Financial Information in Interim Financial Statements after a Reverse Takeover** – A reporting issuer is not required to provide comparative interim financial information for the reverse takeover acquirer for periods that ended before the date of a reverse takeover if

- (a) to a reasonable person it is impracticable to present prior-period information on a basis consistent with subsection 4.3(2);
- (b) the prior-period information that is available is presented; and
- (c) the notes to the interim financial statements disclose the fact that the prior-period information has not been prepared on a basis consistent with the most recent interim financial information.

#### **4.11 Change of Auditor**

(1) **Definitions** - In this section

“appointment” means, in relation to a reporting issuer, the earlier of

- (a) the appointment as its auditor of a different person or company than its former auditor; and
- (b) the decision by the board of directors of the reporting issuer to propose to holders of qualified securities to appoint as its auditor a different person or company than its former auditor;

“consultation” means advice provided by a successor auditor, whether or not in writing, to a reporting issuer during the relevant period, which the successor auditor concluded was an important factor considered by the reporting issuer in reaching a decision concerning

- (a) the application of accounting principles or policies to a transaction, whether or not the transaction is completed;
- (b) a report provided by an auditor on the reporting issuer’s financial statements;
- (c) scope or procedure of an audit or review engagement; or
- (d) financial statement disclosure;

“disagreement” means a difference of opinion between personnel of a reporting issuer responsible for finalizing the reporting issuer’s financial statements and the personnel of a former auditor responsible for authorizing the issuance of audit reports on the reporting issuer’s financial statements or authorizing the communication of the results of the auditor’s review of the reporting issuer’s interim financial statements, if the difference of opinion

- (a) resulted in a reservation in the former auditor’s audit report on the reporting issuer’s financial statements for any period during the relevant period;
- (b) would have resulted in a reservation in the former auditor’s audit report on the reporting issuer’s financial statements for any period during the relevant period if the difference of opinion had not been resolved to the former auditor’s satisfaction, not including a difference of opinion based on incomplete or preliminary information that was resolved to the satisfaction of the former auditor upon the receipt of further information;
- (c) resulted in a qualified or adverse communication or denial of assurance in respect of the former auditor’s review of the reporting issuer’s interim financial statements for any interim period during the relevant period; or
- (d) would have resulted in a qualified or adverse communication or denial of assurance in respect of the former auditor’s review of the reporting issuer’s interim financial statements for any interim period during the relevant period if the difference of opinion had not been resolved to the former auditor’s satisfaction, not including a difference of opinion based on incomplete or preliminary information that was resolved to the satisfaction of the former auditor upon the receipt of further information;

“former auditor” means the auditor of a reporting issuer that is the subject of the most recent termination or resignation;

“qualified securities” means securities of a reporting issuer that carry the right to participate in voting on the appointment or removal of the reporting issuer’s auditor;

“relevant information circular” means

- (a) if a reporting issuer’s constating documents or applicable law require holders of qualified securities to take action to remove the reporting issuer’s auditor or to appoint a successor auditor
  - (i) the information circular required to accompany or form part of every notice of meeting at which that action is proposed to be taken; or
  - (ii) the disclosure document accompanying the text of the written resolution provided to holders of qualified securities; or
- (b) if paragraph (a) does not apply, the information circular required to accompany or form part of the first notice of meeting to be sent to holders of qualified securities following the preparation of a reporting package concerning a termination or resignation;

~~“relevant period” means the period commencing at the beginning of the reporting issuer’s two most recently completed financial years and ending on the date of termination or resignation;~~

“relevant period” means the period

- (a) commencing at the beginning of the reporting issuer’s two most recently completed financial years and ending on the date of termination or resignation; or
- (b) during which the former auditor was the reporting issuer’s auditor, if the former auditor was not the reporting issuer’s auditor throughout the period described in paragraph (a);

“reportable event” means a disagreement, a consultation, or an unresolved issue;

“reporting package” means

- (a) the documents referred to in subparagraphs (5)(a)(i) and (6)(a)(i);
- (b) the letter referred to in clause (5)(a)(ii)(B), if received by the reporting issuer, unless an updated letter referred to in clause (6)(a)(iii)(B) has been received by the reporting issuer;
- (c) the letter referred to in clause (6)(a)(ii)(B), if received by the reporting issuer; and
- (d) any updated letter referred to in clause (6)(a)(iii)(B) received by the reporting issuer;

“resignation” means notification from an auditor to a reporting issuer of the auditor’s decision to resign or decline to stand for reappointment;

“successor auditor” means the person or company

- (a) appointed;
- (b) that the board of directors have proposed to holders of qualified securities be appointed; or
- (c) that the board of directors have decided to propose to holders of qualified securities be appointed,

as the reporting issuer's auditor after the termination or resignation of the reporting issuer's former auditor;

“termination” means, in relation to a reporting issuer, the earlier of

- (a) the removal of its auditor before the expiry of the auditor's term of appointment, the expiry of its auditor's term of appointment without reappointment, or the appointment of a different person or company as its auditor upon expiry of its auditor's term of appointment; and
- (b) the decision by the board of directors of the reporting issuer to propose to holders of its qualified securities that its auditor be removed before, or that a different person or company be appointed as its auditor upon, the expiry of its auditor's term of appointment;

“unresolved issue” means any matter that, in the former auditor's opinion, has, or could have, a material impact on the financial statements, or reports provided by the auditor relating to the financial statements, for any financial period during the relevant period, and about which the former auditor has advised the reporting issuer if

- (a) the former auditor was unable to reach a conclusion as to the matter's implications before the date of termination or resignation;
- (b) the matter was not resolved to the former auditor's satisfaction before the date of termination or resignation; or
- (c) the former auditor is no longer willing to be associated with any of the financial statements;

(2) **Meaning of “Material”** - For the purposes of this section, the term “material” has a meaning consistent with the discussion of the term “materiality” in the Handbook.

(3) **Exemption from Change of Auditor Requirements** - This section does not apply if

(a) the following three conditions are met:

- (i)  $\oplus$  a termination, or resignation, and appointment occur in connection with an amalgamation, arrangement, takeover or similar transaction involving the reporting issuer or a reorganization of the reporting issuer;

- (ii) the termination, or resignation, and appointment have been disclosed in a news release that has been filed or in a disclosure document that has been delivered to holders of qualified securities and filed; and
    - (iii) no reportable event has occurred;
  - (b) the change of auditor is required by the legislation under which the reporting issuer exists or carries on its activities; or
  - (c) the change of auditor arises from an amalgamation, merger or other reorganization of the auditor.
- (4) **Exemption From Change of Auditor Requirements – SEC Issuers** - ~~This section does not apply to an~~ An SEC issuer satisfies this section if it
- (a) complies with the requirements of U.S. laws relating to a change of auditor;
  - (b) files a copy of all materials required by U.S. laws relating to a change of auditor at the same time as, or as soon as practicable after, they are filed with or furnished to the SEC;
  - (c) issues and files a news release describing the information disclosed in the materials referred to in paragraph (b), if there are any reportable events; and
  - (d) includes the materials referred to in paragraph (b) with each relevant information circular.
- (5) **Requirements Upon Auditor Termination or Resignation** - Upon a termination or resignation of its auditor, a reporting issuer must
- (a) within 10 days after the date of termination or resignation
    - (i) prepare a change of auditor notice in accordance with subsection (7) and deliver a copy of it to the former auditor; and
    - (ii) request the former auditor to
      - (A) review the reporting issuer’s change of auditor notice;
      - (B) prepare a letter, addressed to the ~~applicable~~ regulator or securities regulatory authority, stating, for each statement in the change of auditor notice, whether the auditor
        - (I) agrees,
        - (II) disagrees, and the reasons why, or
        - (III) has no basis to agree or disagree; and



- (C) deliver the letter to the reporting issuer within 20 days after the date of termination or resignation;
  - (b) within 30 days after the date of termination or resignation
    - (i) have the audit committee of its board of directors or its board of directors review the letter referred to in clause (5)(a)(ii)(B) if received by the reporting issuer, and approve the change of auditor notice;
    - (ii) file a copy of the reporting package with the regulator or securities regulatory authority;
    - (iii) deliver a copy of the reporting package to the former auditor;
    - (iv) if there are any reportable events, issue and file a news release describing the information in the reporting package; and
  - (c) include with each relevant information circular
    - (i) a copy of the reporting package as an appendix; and
    - (ii) a summary of the contents of the reporting package with a cross-reference to the appendix.
- (6) **Requirements upon Auditor Appointment** - Upon an appointment of a successor auditor, a reporting issuer must
  - (a) within 10 days after the date of appointment
    - (i) prepare a change of auditor notice in accordance with subsection (7) and deliver it to the successor auditor and to the former auditor;
    - (ii) request the successor auditor to
      - (A) review the reporting issuer's change of auditor notice;
      - (B) prepare a letter addressed to the ~~applicable~~ regulator or securities regulatory authority, stating, for each statement in the change of auditor notice, whether the auditor
        - (I) agrees,
        - (II) disagrees, and the reasons why, or
        - (III) has no basis to agree or disagree; and
      - (C) deliver that letter to the reporting issuer within 20 days after the date of appointment; and

- (iii) request the former auditor to, within 20 days after the date of appointment,
    - (A) confirm that the letter referred to in clause (5)(a)(ii)(B) does not have to be updated; or
    - (B) prepare and deliver to the reporting issuer an updated letter to replace the letter referred to in clause (5)(a)(ii)(B);
  - (b) within 30 days after the date of appointment,
    - (i) have the audit committee of its board of directors or its board of directors review the letters referred to in clauses (6)(a)(ii)(B) and (6)(a)(iii)(B) if received by the reporting issuer, and approve the change of auditor notice;
    - (ii) file a copy of the reporting package with the regulator or securities regulatory authority;
    - (iii) deliver a copy of the reporting package to the successor auditor and to the former auditor; and
    - (iv) if there are any reportable events, issue and file a news release disclosing the appointment of the successor auditor and either describing the information in the reporting package or referring to the news release required under subparagraph (5)(b)(iv).
- (7) **Change of Auditor Notice Content** - A change of auditor notice must state
  - (a) the date of termination or resignation;
  - (b) whether the former auditor
    - (i) resigned on the former auditor's own initiative or at the reporting issuer's request;
    - (ii) was removed or is proposed to holders of qualified securities to be removed during the former auditor's term of appointment; or
    - (iii) was not reappointed or has not been proposed for reappointment;
  - (c) whether the termination or resignation of the former auditor and any appointment of the successor auditor were considered or approved by the audit committee of the reporting issuer's board of directors or the reporting issuer's board of directors;
  - (d) whether the former auditor's report on any of the reporting issuer's financial statements relating to the relevant period contained any reservation and, if so, a description of each reservation;
  - (e) if there is a reportable event, the following information:

- (i) for a disagreement,
    - (A) a description of the disagreement;
    - (B) whether the audit committee of the reporting issuer's board of directors or the reporting issuer's board of directors discussed the disagreement with the former auditor; and
    - (C) whether the reporting issuer authorized the former auditor to respond fully to inquiries by any successor auditor concerning the disagreement and, if not, a description of and reasons for any limitation;
  - (ii) for a consultation,
    - (A) a description of the issue that was the subject of the consultation;
    - (B) a summary of the successor auditor's oral advice, if any, provided to the reporting issuer concerning the issue;
    - (C) a copy of the successor auditor's written advice, if any, received by the reporting issuer concerning the issue; and
    - (D) whether the reporting issuer consulted with the former auditor concerning the issue and, if so, a summary of the former auditor's advice concerning the issue; and
  - (iii) for an unresolved issue,
    - (A) a description of the issue;
    - (B) whether the audit committee of the reporting issuer's board of directors or the reporting issuer's board of directors discussed the issue with the former auditor; and
    - (C) whether the reporting issuer authorized the former auditor to respond fully to inquiries by any successor auditor concerning the issue and, if not, a description of and reasons for any limitation; and
- (f) if there are no reportable events, a statement to that effect.
- (8) **Auditor's Obligations to Report Non-Compliance** - Except in British Columbia, Alberta and Manitoba, if the successor auditor becomes aware that the change of auditor notice required by this section has not been prepared and filed by the reporting issuer, the auditor must, within 7 days, advise the reporting issuer in writing and deliver a copy of the letter to the ~~applicable~~ regulator or securities regulatory authority.

## PART 5 MANAGEMENT'S DISCUSSION & ANALYSIS

### 5.1 Filing of MD&A

(1) A reporting issuer must file MD&A relating to its annual and interim financial statements required under Part 4.

(1.1) Despite subsection (1), a reporting issuer does not have to file MD&A relating to the annual and interim financial statements required under sections 4.7 and 4.10 for financial years and interim periods that ended before the issuer became a reporting issuer.

(2) Subject to section 5.2, the MD&A required to be filed under subsection (1) must be filed by the earlier of

(a) the filing deadlines for the annual and interim financial statements set out in sections ~~4.2, 4.44.2~~ and ~~4.7, 4.4~~, as applicable; and

(b) the date the reporting issuer files the financial statements under subsections ~~4.1(1), 4.3(1)~~ or ~~4.74.3~~(1), as applicable.

### 5.2 Filing of MD&A and Supplement for SEC Issuers

~~(1) If an SEC issuer is filing its annual or interim MD&A prepared in accordance with Item 303 of Regulation S-K or Item 303 of Regulation S-B under the 1934 Act, then the SEC issuer must file~~

~~(a) that document on or before the earlier of~~

~~—— (i) the date the SEC issuer would be required to file that document under section 5.1; and~~

~~—— (ii) the date the SEC issuer files that document with the SEC; and~~

~~(b) at the same time, a supplement prepared in accordance with subsection (2) if the SEC issuer~~

~~—— (i) has based the discussion in the MD&A on financial statements prepared in accordance with U.S. GAAP; and~~

~~—— (ii) is required by subsection 4.1(1) of National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* to provide a reconciliation to Canadian GAAP.~~

(1) If an SEC issuer that is a reporting issuer is filing its annual or interim MD&A prepared in accordance with Item 303 of Regulation S-K or Item 303 of Regulation S-B under the 1934 Act, then the SEC issuer must file that document on or before the earlier of

- (a) the date the SEC issuer would be required to file that document under section 5.1; and
  - (b) the date the SEC issuer files that document with the SEC.
- (1.2) An SEC issuer that is a reporting issuer must file a supplement prepared in accordance with subsection (2) at the same time it files its annual or interim MD&A, if the SEC issuer
- (i) has based the discussion in the MD&A on financial statements prepared in accordance with U.S. GAAP; and
  - (ii) is required by subsection 4.1(1) of National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* to provide a reconciliation to Canadian GAAP.
- (2) A supplement required under subsection (~~1.2~~) must restate, based on financial information of the reporting issuer prepared in accordance with or reconciled to Canadian GAAP, those parts of the MD&A that
- (a) are based on financial statements of the reporting issuer prepared in accordance with U.S. GAAP; and
  - (b) would contain material differences if they were based on financial statements of the reporting issuer prepared in accordance with Canadian GAAP.

### **5.3 Additional Disclosure for Venture Issuers Without Significant Revenue**

- (1) A venture issuer that has not had significant revenue from operations in either of its last two financial years, must disclose in its MD&A or in its MD&A supplement if one is required under section 5.2, for each period referred to in subsection (2), a breakdown of material components of
- (a) capitalized or expensed exploration and development costs;
  - (b) expensed research and development costs;
  - (c) deferred development costs;
  - (d) general and administration expenses; and
  - (e) any material costs, whether capitalized, deferred or expensed, not referred to in paragraphs (a) through (d);

and if the venture issuer's business primarily involves mining exploration and development, the analysis of capitalized or expensed exploration and development costs must be presented on a property-by-property basis.

- (2) The disclosure in subsection (1) must be provided for the following periods:

- (a) in the case of annual MD&A, for the two most recently completed financial years; and
  - (b) in the case of interim MD&A, for the most recent year-to-date interim period and the comparative [year-to-date](#) period presented in the interim financial statements.
- (3) Subsection (1) does not apply if the information required under that subsection has been disclosed in the financial statements to which the MD&A or MD&A supplement relates.

#### **5.4 Disclosure of Outstanding Share Data**

- (1) A reporting issuer must disclose in its MD&A, or in its MD&A supplement if one is required under section 5.2, the designation and number or principal amount of
- (a) each class and series of voting or equity securities of the reporting issuer for which there are securities outstanding;
  - (b) each class and series of securities of the reporting issuer for which there are securities outstanding if the securities are convertible into, or exercisable or exchangeable for, voting or equity securities of the reporting issuer; and
  - (c) subject to subsection (2), each class and series of voting or equity securities of the reporting issuer that are issuable on the conversion, exercise or exchange of outstanding securities of the reporting issuer.
- (2) If the exact number or principal amount of voting or equity securities of the reporting issuer that are issuable on the conversion, exercise or exchange of outstanding securities of the reporting issuer is not determinable, the reporting issuer must disclose the maximum number or principal amount of each class and series of voting or equity securities that are issuable on the conversion, exercise or exchange of outstanding securities of the reporting issuer and, if that maximum number or principal amount is not determinable, the reporting issuer must describe the exchange or conversion features and the manner in which the number or principal amount of voting or equity securities will be determined.
- (3) The disclosure under subsections (1) and (2) must be prepared as of the latest practicable date.

#### **5.5 Approval of MD&A**

- (1) The annual MD&A and any annual MD&A supplement that a reporting issuer is required to file under this Part must be approved by the board of directors before being filed.
- (2) The interim MD&A and any interim MD&A supplement that a reporting issuer is required to file under this Part must be approved by the board of directors before being filed.

- (3) In fulfilling the requirement in subsection (2), the board of directors may delegate the approval of the interim MD&A and any MD&A supplement required to be filed under this Part to the audit committee of the board of directors.

## 5.6 Delivery of MD&A

~~(1) If a registered holder or beneficial owner requests the reporting issuer's annual or interim MD&A, the reporting issuer must send a copy of the requested MD&A and any MD&A supplement required under section 5.2 to the person or company that made the request, without charge, by the later of~~

~~(a) the filing deadline for the MD&A requested; and~~

~~(b) 10 calendar days after the issuer receives the request.~~

(1) If a registered holder or beneficial owner of securities of a reporting issuer requests the reporting issuer's annual or interim MD&A, the reporting issuer must send a copy of the requested MD&A and any MD&A supplement required under section 5.2 to the person or company that made the request, without charge, by the delivery deadline set out in subsection 4.6(1) for the annual or interim financial statements to which the MD&A relates.

(2) A reporting issuer is not required to send copies of any MD&A or MD&A supplement under subsection (1) that was filed more than two years before the issuer receives the request.

(3) The requirement to send annual MD&A and any related MD&A supplement under subsection (1) does not apply to a reporting issuer that sends its annual MD&A and any related MD&A supplement to ~~all~~ its securityholders, other than holders of debt instruments, within the time set out in paragraph 4.6(1)(a) or 4.6(1)(b), as applicable, and in accordance with National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*.

(4) If a reporting issuer sends MD&A under this section, the reporting issuer must also send, at the same time, the annual or interim financial statements to which the MD&A relates.

## 5.7 Additional Disclosure for Reporting Issuers with Significant Equity Investees

(1) A reporting issuer that has a significant equity investee must disclose in its MD&A, or in its MD&A supplement if one is required under section 5.2, for each period referred to in subsection (2),

(a) summarized information as to the assets, liabilities and results of operations of the equity investee; and

(b) the reporting issuer's proportionate interest in the equity investee and any contingent issuance of securities by the equity investee that might significantly affect the reporting issuer's share of earnings.

- (2) The disclosure in subsection (1) must be provided for the following periods:
- (a) in the case of annual MD&A, for the two most recently completed financial years; and
  - (b) in the case of interim MD&A, for the most recent year-to-date interim period and the comparative year-to-date period presented in the interim financial statements.
- (3) Subsection (1) does not apply if
- (a) the information required under that subsection has been disclosed in the financial statements to which the MD&A or MD&A supplement relates; or
  - (b) the issuer files separate financial statements of the equity investee for the periods referred to in subsection (2).

## **PART 6 ANNUAL INFORMATION FORM**

### **6.1 Requirement to File an AIF**

A reporting issuer that is not a venture issuer must file an AIF.

### **6.2 Filing Deadline for an AIF**

An AIF required to be filed under section 6.1 must be filed,

- (a) subject to paragraph (b), on or before the 90th day after the end of the reporting issuer's most recently completed financial year; or
- (b) in the case of a reporting issuer that is an SEC issuer filing its AIF in Form 10-K, Form 10-KSB or Form 20-F, on or before the earlier of
  - (i) the 90<sup>th</sup> day after the end of the reporting issuer's most recently completed financial year; and
  - (ii) the date the reporting issuer files its Form 10-K, Form 10-KSB or Form 20-F with the SEC.

### ~~**6.3 Incorporated Documents to be Filed**~~

~~A reporting issuer that files an AIF must at the same time file copies of all material incorporated by reference in the AIF and not previously filed.~~

### ~~6.3 [repealed]~~



## **PART 7 MATERIAL CHANGE REPORTS**

### **7.1 Publication of Material Change**

- (1) Subject to subsection (2), if a material change occurs in the affairs of a reporting issuer, the reporting issuer must
  - (a) immediately issue and file a news release authorized by a senior officer disclosing the nature and substance of the change; and
  - (b) as soon as practicable, and in any event within 10 days of the date on which the change occurs, file a Form 51-102F3 Material Change Report with respect to the material change.
- (2) Subsection (1) does not apply if,
  - (a) in the opinion of the reporting issuer, and if that opinion is arrived at in a reasonable manner, the disclosure required by subsection (1) would be unduly detrimental to the interests of the reporting issuer; or
  - (b) the material change consists of a decision to implement a change made by senior management of the reporting issuer who believe that confirmation of the decision by the board of directors is probable, and senior management of the reporting issuer has no reason to believe that persons with knowledge of the material change have made use of that knowledge in purchasing or selling securities of the reporting issuer,and the reporting issuer immediately files the report required under paragraph (1)(b) marked so as to indicate that it is confidential, together with written reasons for non-disclosure.
- (3) In Québec, subsection (1) does not apply to a reporting issuer in Québec if
  - (a) senior management of the reporting issuer has reasonable grounds to believe that disclosure required by subsection (1) would be seriously prejudicial to the interests of the reporting issuer and that no trade in the securities of the reporting issuer has been or will be carried out on the basis of the information not generally known; and
  - (b) the reporting issuer immediately files the report required under paragraph (1)(b) marked so as to indicate that it is confidential, together with written reasons for non-disclosure.
- (4) If a reporting issuer relies on subsection (3), the reporting issuer must comply with subsection (1) when the circumstances that justify non-disclosure have ceased to exist.
- (5) If a report has been filed under subsection (2) or (3), the reporting issuer must advise the regulator or securities regulatory authority in writing if it believes the report should

continue to remain confidential, within 10 days of the date of filing of the initial report and every 10 days thereafter until the material change is generally disclosed in the manner referred to in paragraph (1)(a), or, if the material change consists of a decision of the type referred to in paragraph (2)(b), until that decision has been rejected by the board of directors of the reporting issuer.

- (6) Despite subsection (5), in Ontario, the reporting issuer must advise the securities regulatory authority.
- (7) If a report has been filed under subsection (2) or (3), the reporting issuer must promptly generally disclose the material change in the manner referred to in ~~paragraph~~subsection (1)(a) upon the reporting issuer becoming aware, or having reasonable grounds to believe, that persons or companies are purchasing or selling securities of the reporting issuer with knowledge of the material change that has not been generally disclosed.

## **PART 8 BUSINESS ACQUISITION REPORT**

### **8.1 Interpretation and Application**

- (1) In this Part,

“acquisition” includes an acquisition of an interest in a business that is consolidated for accounting purposes or accounted for by another method, such as the equity method;

“acquisition of related businesses” means the acquisition of two or more businesses if

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

“business” includes an interest in an oil and gas property to which reserves, as defined in National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities, have been specifically attributed.

- ~~(2) This Part does not apply to an acquisition made by a reporting issuer if the reporting issuer files its own information circular or that of another person or company, or a filing statement prepared in accordance with the policies and requirements of the TSX Venture Exchange, and~~

~~(a) the information circular or filing statement either~~

- ~~(i) contains the information and financial statements that would be required by section 14.2 of Form 51-102F5 concerning the acquisition of the business or related businesses; or~~

- ~~(ii) — is an information circular or filing statement prepared in connection with a Qualifying Transaction for an issuer that is a capital pool company under the TSX Venture Exchange’s policy on Capital Pool Companies, and the reporting issuer complies with the policies and requirements of the TSX Venture Exchange in respect of the Qualifying Transaction;~~
- ~~(b) — the date of the acquisition is within nine months of the date of the information circular or filing statement; and~~
- ~~(c) — between the date of the information circular or filing statement and the date of acquisition there has been no material change in the terms of the significant acquisition from those disclosed in the information circular or filing statement.~~

(2) [repealed]

## **8.2 Obligation to File a Business Acquisition Report**

- (1) If a reporting issuer completes a significant acquisition, as determined under section 8.3, it must file a business acquisition report within 75 days after the date of acquisition.
- (2) Despite subsection (1), if the financial year of the acquired business referred to in clause 8.4(1)(a)(i)(A) ended 45 days or less before the acquisition, then a reporting issuer must file a business acquisition report
  - (a) within 90 days after the date of acquisition, in the case of a reporting issuer other than a venture issuer, or
  - (b) within 120 days after the date of acquisition, in the case of a venture issuer.

## **8.3 Determination of Significance**

- (1) Significant Acquisitions** - Subject to subsection (3) and subsections 8.10(1) and 8.10(2), an acquisition of a business or related businesses is a significant acquisition,
  - (a) for a reporting issuer that is not a venture issuer, if the acquisition satisfies any of the three significance tests set out in subsection (2); and
  - (b) for a venture issuer, if the acquisition satisfies either of the significance tests set out in paragraphs (2)(a) or (b) if “20 percent” is read as “40 percent”.
- (2) Required Significance Tests** - For the purposes of subsection (1), the significance tests are:
  - (a) **The Asset Test.** The reporting issuer’s proportionate share of the consolidated assets of the business or related businesses exceeds 20 percent of the consolidated assets of the reporting issuer calculated using the audited financial statements of each of the reporting issuer and the business or the related businesses for the most

recently completed financial year of each that ended before the date of the acquisition.

- (b) **The Investment Test.** The reporting issuer's consolidated investments in and advances to the business or related businesses as at the date of the acquisition exceeds 20 percent of the consolidated assets of the reporting issuer as at the last day of the most recently completed financial year of the reporting issuer ended before the date of the acquisition, excluding any investments in or advances to the business or related businesses as at that date.
  - (c) **The Income Test.** The reporting issuer's proportionate share of the consolidated income from continuing operations of the business or related businesses exceeds 20 percent of the consolidated income from continuing operations of the reporting issuer calculated using the audited financial statements of each of the reporting issuer and the business or related businesses for the most recently completed financial year of each ended before the date of acquisition.
- (3) **Optional Significance Tests** - Despite subsection (1) [and subject to subsections 8.10\(1\) and 8.10\(2\)](#), if an acquisition of a business or related businesses is significant based on the significance tests in subsection (2),
- (a) a reporting issuer that is not a venture issuer may re-calculate the significance using the optional significance tests in subsection (4); and
  - (b) a venture issuer may re-calculate the significance using the optional significance tests in paragraphs (4)(a) or (b) if "20 percent" is read as "40 percent".
- (4) For the purposes of subsection (3), the optional significance tests are:
- (a) **The Asset Test.** The reporting issuer's proportionate share of the consolidated assets of the business or related businesses, as at the last day of the reporting issuer's most recently completed interim period [or financial year](#), exceeds 20 percent of the consolidated assets of the reporting issuer, as at the last day of the reporting issuer's most recently completed interim period [or financial year](#), without giving effect to the acquisition.
  - (b) **The Investment Test.** The reporting issuer's consolidated investments in and advances to the business or related businesses as at the date of the acquisition exceeds 20 percent of the consolidated assets of the reporting issuer as at the last day of the most recently completed interim period [or financial year](#) of the reporting issuer ~~ended before the date of the acquisition~~, excluding any investments in or advances to the business or related businesses as at that date.
  - (c) **The Income Test.** The income from continuing operations calculated under the following ~~item 1~~ [paragraph \(i\)](#) exceeds 20 percent of the income from continuing operations calculated under the following ~~item 2~~ [paragraph \(ii\)](#):

~~1.~~(i) The reporting issuer's proportionate share of the consolidated income from continuing operations of the business or related businesses for the later of

(A) the most recently completed financial year of the business or related businesses, or

(B) the 12 months ended on the last day of the most recently completed interim period of the business or related businesses.

~~2.~~(ii) The reporting issuer's consolidated income from continuing operations for the later of

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

(D) the 12 months ended on the last day of the most recently completed interim period of the reporting issuer, without giving effect to the acquisition.

~~(5) If a reporting issuer re-calculates the significance of an acquisition of a business or of related businesses under subsection (4) and none of the significance tests in that subsection is met, the acquisition is not a significant acquisition for purposes of this Instrument.~~

(5) If an acquisition does not meet any of the significance tests under subsection (4), the acquisition is not a significant acquisition.

(6) Despite subsection (3), the significance of an acquisition of a business or related businesses may be re-calculated using financial statements for periods that ended after the date of acquisition only if, after the date of acquisition, the business or related businesses remained substantially intact and were not significantly reorganized, and no significant assets or liabilities were transferred to other entities.

(7) **Application of the Income Test if a Loss Occurred** - For the purposes of paragraphs (2)(c) and (4)(c), if any of the reporting issuer, the business or the related businesses has incurred a loss, the significance test must be applied using the absolute value of the loss.

~~(8) **Application of the Income Test if Lower Than Average Income for the Most Recent Year** - For the purposes of paragraph (2)(c) and clause (4)(c)2.(A), if the reporting issuer's consolidated income from continuing operations for the most recently completed financial year was~~

~~(a) positive; and~~

~~(b) lower by 20 percent or more than the average consolidated income from continuing operations of the reporting issuer for the three most recently completed financial years, then the average consolidated income from continuing operations~~

~~for the three most recently completed financial years may, subject to subsection (10), be substituted in determining whether the significance test set out in paragraph (2)(c) or (4)(c) is satisfied.~~

- ~~(9) **Application of the Optional Income Test if Lower Than Average Income for the Most Recent Year** - For the purpose of clause (4)(c)2.(B) if the reporting issuer's consolidated income from continuing operations for the most recently completed 12-month period was~~
- ~~(a) positive; and~~
- ~~(b) lower by 20 percent or more than the average consolidated income from continuing operations of the reporting issuer for the three most recently completed 12-month periods, then the average consolidated income for the three most recently completed 12-month periods may, subject to subsection (10), be substituted in determining whether the significance test set out in paragraph (4)(c) is satisfied.~~
- (8) **Application of the Income Test if Lower Than Average Income for the Most Recent Year** - For the purposes of paragraph (2)(c) and clause (4)(c)(ii)(A), if the reporting issuer's consolidated income from continuing operations for the most recently completed financial year was lower by 20 percent or more than its average consolidated income from continuing operations for the three most recently completed financial years, then the issuer may, subject to subsection (10), substitute the average consolidated income from continuing operations for the three most recently completed financial years in determining whether the significance test set out in paragraph (2)(c) or (4)(c) is satisfied.
- (9) **Application of the Optional Income Test if Lower Than Average Income for the Most Recent Year** - For the purpose of clause (4)(c)(ii)(B) if the reporting issuer's consolidated income from continuing operations for the most recently completed 12-month period was lower by 20 percent or more than its average consolidated income from continuing operations for the three most recently completed 12-month periods, then the issuer may, subject to subsection (10), substitute the average consolidated income for the three most recently completed 12-month periods in determining whether the significance test set out in paragraph (4)(c) is satisfied.
- (10) **Lower than Average Income of the Issuer if a Loss Occurred** - If the reporting issuer's consolidated income from continuing operations for either of the two earlier financial periods referred to in subsections (8) and (9) is a loss, the reporting issuer's income from continuing operations for that period is considered to be zero for the purposes of calculating the average consolidated income for the three financial periods.
- (11) **Application of Significance Tests – Step-By-Step Acquisitions** - If a reporting issuer has made a “step-by-step” purchase as described in the Handbook, then for the purposes of applying subsections (2) and (4),

- (a) if the initial investment and one or more incremental investments were made during the same financial year, the investments must be aggregated and tested on a combined basis;
- (b) if one or more incremental investments were made in a financial year subsequent to the financial year in which an initial or incremental investment was made and the initial or previous incremental investments are reflected in audited annual financial statements of the reporting issuer previously filed, the reporting issuer must apply the significance tests set out in subsections (2) and (4) on a combined basis to the incremental investments not reflected in audited financial statements of the reporting issuer previously filed; and
- (c) if one or more incremental investments were made in a financial year subsequent to the financial year in which the initial investment was made and the initial investment is not reflected in audited annual financial statements of the issuer previously filed, the reporting issuer must apply the significance tests set out in subsections (2) and (4) to the initial and incremental investments on a combined basis.

**(11.1) Application of the Optional Income Test based on Pro Forma Financial Information.** For the purposes of calculating the optional income test under clause (4)(c)(ii)(A), a reporting issuer may use pro forma consolidated income from continuing operations for its most recently completed financial year that was included in a previously filed document if

- (a) the reporting issuer has made a significant acquisition of a business subsequent to its most recently completed financial year; and
  - (b) the previously filed document included
    - (i) audited financial statements of that acquired business for the periods required by this Part; and
    - (ii) the pro forma financial information required by subsection 8.4(5).
- (12) **Application of Significance Tests – Related Businesses** - In determining whether an acquisition of related businesses is a significant acquisition, related businesses acquired after the ending date of the most recently filed annual audited financial statements of the reporting issuer must be considered on a combined basis.
- (13) **Application of Significance Tests – Accounting Principles and Currency** - For the purposes of the significance tests in subsections (2) and (4), financial statements of the business or related businesses must be reconciled to the accounting principles used to prepare the reporting issuer's financial statements and translated into the same reporting currency as that used in the reporting issuer's financial statements.
- (14) **Application of Significance Tests – Use of Unaudited Financial Statements** - Despite subsections (2) and (4), the significance of an acquisition of a business or related

businesses may be calculated using unaudited financial statements of the business or related businesses that comply with subsection 6.1(1) of National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* if the financial statements of the business or related businesses for the most recently completed financial year have not been audited.

#### 8.4 Financial Statement Disclosure for Significant Acquisitions

~~(1) **Annual Financial Statements**—If an acquisition of a business or related businesses is a significant acquisition under subsection 8.3(1) or 8.3(3), subject to sections 8.6 through 8.11, a business acquisition report must include the following financial statements of each business or related businesses:~~

~~(a) an income statement, a statement of retained earnings and a cash flow statement for the periods specified in section 8.5;~~

~~(b) a balance sheet as at the date on which each of the periods specified in section 8.5 ended;~~

~~(c) notes to the financial statements; and~~

~~(d) an auditor's report on the financial statements for each of the periods specified in section 8.5.~~

~~(2) **Interim Financial Statements**—Subject to sections 8.6 through 8.11, if a reporting issuer must include financial statements in a business acquisition report under subsection (1), the business acquisition report must include interim financial statements for~~

~~(a) either~~

~~(i) the most recently completed interim period of the business that started the day after the balance sheet date specified in paragraph (1)(b) and ended before the date of acquisition; or~~

~~(ii) the period that started the day after the balance sheet date specified in paragraph (1)(b) and ended on a day that is more recent than the ending date of the period in subparagraph (i) and is not later than the date of acquisition; and~~

~~(b) the comparable period in the preceding financial year of the business.~~

~~(3) **Pro Forma Financial Statements Required in a Business Acquisition Report**—If a reporting issuer is required to include financial statements in a business acquisition report under subsection (1) or (2), the business acquisition report must include~~

~~(a) a pro forma balance sheet of the reporting issuer as at the date of the reporting issuer's most recent balance sheet filed that gives effect, as if they had taken place as at the date of the pro forma balance sheet, to significant acquisitions that have~~



~~been completed, but are not reflected in the reporting issuer's most recent annual or interim balance sheet;~~

~~(b) — a pro forma income statement of the reporting issuer that gives effect to significant acquisitions completed after the ending date of the reporting issuer's most recently completed financial year for which financial statements are required to have been filed, as if they had taken place at the beginning of that financial year, for each of the following financial periods:~~

~~(i) — the reporting issuer's most recently completed financial year for which financial statements are required to have been filed; and~~

~~(ii) — the reporting issuer's most recently completed interim period that ended after the period in subparagraph (i) for which financial statements are required to have been filed;~~

~~(c) — pro forma earnings per share based on the pro forma financial statements referred to in paragraph (b); and~~

~~(d) — a compilation report accompanying the pro forma financial statements required under paragraphs (a) and (b) signed by the reporting issuer's auditor and prepared in accordance with the Handbook.~~

~~(4) — **Preparation of Pro Forma Financial Statements** — If a reporting issuer is required to include pro forma financial statements in a business acquisition report under subsection (3),~~

~~(a) — the reporting issuer must identify in the pro forma financial statements each significant acquisition, if the pro forma financial statements give effect to more than one significant acquisition;~~

~~(b) — the reporting issuer must include in the pro forma financial statements a description of the underlying assumptions on which the pro forma financial statements are prepared, cross referenced to each related pro forma adjustment;~~

~~(c) — if the financial year end of the business differs from the reporting issuer's year end by more than 93 days, for the purpose of preparing the pro forma income statement for the reporting issuer's most recently completed financial year, the reporting issuer must construct an income statement of the business for a period of 12 consecutive months ending no more than 93 days before or after the reporting issuer's year end, by adding the results for a subsequent interim period to a completed financial year of the business and deducting the comparable interim results for the immediately preceding year;~~

~~(d) — if a constructed income statement is required under paragraph (c), the pro forma financial statements must disclose the period covered by the constructed income statement on the face of the pro forma financial statements and must include a note stating that the financial statements of the business used to prepare the pro~~

~~forma financial statements were prepared for the purpose of the pro forma financial statements and do not conform with the financial statements for the business included elsewhere in the business acquisition report;~~

~~(e) if a reporting issuer is required to prepare a pro forma income statement for an interim period required by subparagraph (3)(b)(ii), and the pro forma income statement for the most recently completed financial year includes results of the business which are also included in the pro forma income statement for the interim period, the reporting issuer must disclose in a note to the pro forma financial statements the revenue, expenses, gross profit and income from continuing operations included in each pro forma income statement for the overlapping period; and~~

~~(f) an audit report is not required for a constructed period referred to in paragraph (c).~~

~~(5) **Financial Statements of Related Businesses** — If a reporting issuer is required under subsection (1) to include financial statements for more than one business because the significant acquisition involves an acquisition of related businesses, the financial statements required under subsection (1) must be presented separately for each business, except for the periods during which the businesses have been under common control or management, in which case the reporting issuer may present the financial statements of the businesses on a combined basis.~~

(1) **Comparative Annual Financial Statements** - If a reporting issuer must file a business acquisition report under section 8.2, subject to sections 8.6 through 8.11, the business acquisition report must include the following for each business or related businesses:

(a) an income statement, a statement of retained earnings and a cash flow statement for the following periods:

(i) if the business has completed one financial year,

(A) the most recently completed financial year ended on or before the date of acquisition; and

(B) the financial year immediately preceding the most recently completed financial year, if any; or

(ii) if the business has not completed one financial year, the financial period commencing on the date of formation and ending on a date not more than 45 days before the date of acquisition;

(b) a balance sheet as at the end of each of the periods specified in paragraph (a); and

(c) notes to the financial statements.

(2) **Audit** – The most recently completed financial period referred to in subsection (1) must be audited.

- (3) **Interim Financial Statements - Subject to sections 8.6 through 8.11, if a reporting issuer must include financial statements in a business acquisition report under subsection (1), the business acquisition report must include financial statements for**
- (a) either
    - (i) the most recently completed interim period of the business that started the day after the date of the balance sheet specified in paragraph (1)(b) and ended before the date of acquisition; or
    - (ii) the period that started the day after the date of the balance sheet specified in paragraph (1)(b) and ended after the interim period referred to in subparagraph (i) and before the date of acquisition; and
  - (b) the comparable period in the preceding financial year of the business.
- (4) **Exemption from Interim Financial Statement Requirements – Subsection (3) does not apply to a reporting issuer if**
- (a) the issuer filed a document before the date of acquisition that provided prospectus-level disclosure for the acquired business;
  - (b) the issuer incorporates by reference into the business acquisition report any interim financial statements for the acquired business’s current financial year that were included in the document referred to in paragraph (a);
  - (c) the financial statements included in the document referred to in paragraph (a) are for the interim period or financial year, or a period ending after that interim period or financial year, immediately preceding the interim period referred to in subsection (3);
  - (d) a reasonable investor would not regard the issuer’s primary business to be the business acquired by the issuer; and
  - (e) the issuer will not account for the acquisition as continuity of interests.
- (5) **Pro Forma Financial Statements Required in a Business Acquisition Report - If a reporting issuer is required to include financial statements in a business acquisition report under subsection (1) or (3), the business acquisition report must include**
- (a) a pro forma balance sheet of the reporting issuer, as at the date of
    - (i) the reporting issuer’s most recent balance sheet filed, that gives effect, as if they had taken place as at the date of the pro forma balance sheet, to significant acquisitions that have been completed, but are not reflected in the reporting issuer’s most recent balance sheet for an annual or interim period, or

- (ii) the acquired business's most recent balance sheet, if the reporting issuer has not filed a balance sheet for an annual or interim period, that gives effect, as if they had taken place as at the date of the pro forma balance sheet, to significant acquisitions that have been completed;
  - (b) a pro forma income statement of the reporting issuer for each of the following financial periods:
    - (i) the reporting issuer's
      - (A) most recently completed financial year for which it has been required to file financial statements, and
      - (B) most recently completed interim period for which it has been required to file financial statements that started after the period in clause (A) and ended before the acquisition date or, at the issuer's option, ended after the acquisition date,  
that gives effect to significant acquisitions completed after the ending date of the reporting issuer's most recently completed financial year for which financial statements are required to have been filed, as if they had taken place at the beginning of that financial year; or
    - (ii) if the reporting issuer has not been required to file financial statements, for the acquired business's
      - (A) most recently completed financial year that ended before the date of acquisition, and
      - (B) period for which financial statements are included in the business acquisition report under paragraph 8.4(3)(a),  
that gives effect to significant acquisitions completed as if they had taken place at the beginning of the period referred to in clause (A); and
  - (c) pro forma earnings per share based on the pro forma financial statements referred to in paragraph (b).
- (6) **Exemption from Pro Forma Financial Statement Requirements – Paragraph 8.4(5)(a) and clauses 8.4(5)(b)(i)(B) and 8.4(5)(b)(ii)(B) do not apply to a reporting issuer if**
- (a) the issuer filed a document before the date of acquisition that provided prospectus-level disclosure for the acquired business;
  - (b) the issuer incorporates by reference into the business acquisition report the pro forma financial statements relating to the acquisition that were included in the document referred to in paragraph (a);

- (c) the pro forma financial statements referred to in paragraph (b) are,

    - (i) in the case of the income statement, for the interim period or financial year, or a period ending after the interim period or financial year, immediately preceding the period referred to in clause 8.4(5)(b)(i)(B) or 8.4(5)(b)(ii)(B), as applicable, and
    - (ii) in the case of the pro forma balance sheet, as at the last date of the period covered by the income statement referred to in subparagraph (i);
  - (d) a reasonable investor would not regard the issuer's primary business to be the business acquired by the issuer; and
  - (e) the issuer will not account for the acquisition as continuity of interests.
- (7) **Preparation of Pro Forma Financial Statements - If a reporting issuer is required to include pro forma financial statements in a business acquisition report under subsection (5),**
- (a) the reporting issuer must identify in the pro forma financial statements each significant acquisition, if the pro forma financial statements give effect to more than one significant acquisition;
  - (b) the reporting issuer must include in the pro forma financial statements a description of the underlying assumptions on which the pro forma financial statements are prepared, cross-referenced to each related pro forma adjustment;
  - (c) if the financial year-end of the business differs from the reporting issuer's year-end by more than 93 days, for the purpose of preparing the pro forma income statement for the reporting issuer's most recently completed financial year, the reporting issuer must construct an income statement of the business for a period of 12 consecutive months ending no more than 93 days before or after the reporting issuer's year-end, by adding the results for a subsequent interim period to a completed financial year of the business and deducting the comparable interim results for the immediately preceding year;
  - (d) if a constructed income statement is required under paragraph (c), the pro forma financial statements must disclose the period covered by the constructed income statement on the face of the pro forma financial statements and must include a note stating that the financial statements of the business used to prepare the pro forma financial statements were prepared for the purpose of the pro forma financial statements and do not conform with the financial statements for the business included elsewhere in the business acquisition report;
  - (e) if a reporting issuer is required to prepare a pro forma income statement for an interim period required by paragraph (5)(b), and the pro forma income statement for the most recently completed financial year includes results of the business which are also included in the pro forma income statement for the interim period,

the reporting issuer must disclose in a note to the pro forma financial statements the revenue, expenses, gross profit and income from continuing operations included in each pro forma income statement for the overlapping period; and

(f) a constructed period referred to in paragraph (c) does not have to be audited.

(8) **Financial Statements of Related Businesses** - If a reporting issuer is required under subsection (1) to include financial statements for more than one business because the significant acquisition involves an acquisition of related businesses, the financial statements required under subsection (1) must be presented separately for each business, except for the periods during which the businesses have been under common control or management, in which case the reporting issuer may present the financial statements of the businesses on a combined basis.

## **8.5 Reporting Periods**~~repealed~~

~~(1) **Reporting Issuers that are not Venture Issuers**—The periods for which the financial statements are required under subsection 8.4(1) for a reporting issuer that is not a venture issuer as at the date of acquisition must be determined by reference to the significance tests set out in subsections 8.3(2) and 8.3(4) as follows:~~

~~1. **Acquisitions significant between 20 percent and 40 percent**—If none of the significance tests is satisfied if “20 percent” is read as “40 percent”, financial statements must be included for~~

~~(A) the most recently completed financial year of the business ended more than 45 days before the date of acquisition; or~~

~~(B) if the business has not completed one financial year, or the business has completed its first financial year that ended 45 or fewer days before the date of acquisition, the financial period commencing on the date of formation and ending on a date not more than 45 days before the date of acquisition.~~

~~2. **Acquisitions significant over 40 percent**—If any of the significance tests are satisfied if “20 percent” is read as “40 percent”, financial statements must be included for~~

~~(A) each of the two most recently completed financial years of the business ended more than 45 days before the date of acquisition;~~

~~(B) if the business has not completed two financial years, any completed financial year ended more than 45 days before the date of acquisition; or~~

~~(C) if the business has not completed one financial year, or the business has completed its first financial year that ended 45 or fewer days before the date of acquisition, a financial period commencing on the date of~~

~~formation and ending on a date not more than 45 days before the date of acquisition.~~

~~(2) **Venture Issuers**—The period for which the financial statements are required under subsection 8.4(1) for a reporting issuer that is a venture issuer as at the date of acquisition is~~

~~(a) the most recently completed financial year of the business ended more than 45 days before the date of acquisition; or~~

~~(b) if the business has not completed one financial year, or the business has completed its first financial year that ended 45 or fewer days before the date of acquisition, the financial period commencing on the date of formation and ending on a date not more than 45 days before the date of acquisition.~~

## **8.6 Exemption for Significant Acquisitions Accounted for Using the Equity Method**

A reporting issuer is exempt from the requirements in section 8.4 if

- (a) the acquisition is, or will be, of an investment accounted for using the equity method investee;
- (b) the business acquisition report includes disclosure for the periods for which financial statements are otherwise required under subsection 8.4(1) that
  - (i) summarizes information as to the assets, liabilities and results of operations of the business equity investee; and
  - (ii) describes the reporting issuer's proportionate interest in the business equity investee and any contingent issuance of securities by the business equity investee that might significantly affect the reporting issuer's share of earnings;
- (c) the financial information provided under paragraph (b) for any completed financial year
  - (i) has been derived from audited financial statements of the business equity investee; or
  - (ii) has been audited; and
- (d) the business acquisition report
  - (i) identifies the financial statements referred to in subparagraph (c)(i) from which the disclosure provided under paragraph (b) has been derived; or
  - (ii) discloses that the financial information provided under paragraph (b), if not derived from audited financial statements, has been audited; and

- (iii) discloses that the audit opinion with respect to the financial statements referred to in subparagraph (i), or the financial information referred to in subparagraph (ii), was issued without a reservation.

## **8.7 Exemptions for Significant Acquisitions if More Recent Statements Includedrepealed**

- ~~(1) If under item 8.5(1)2, a reporting issuer is required to provide financial statements of a business for two completed financial years, the reporting issuer may omit the financial statements for the oldest financial year, if~~
  - ~~(a) audited financial statements of the business are included for a financial year ended 45 days or less before the date of acquisition; or~~
  - ~~(b) (i) audited financial statements are included in the business acquisition report for a period of at least nine months commencing the day after the most recently completed financial year for which financial statements are required under item 8.5(1)2.;~~
    - ~~(ii) the business is not seasonal; and~~
    - ~~(iii) the reporting issuer has not included audited financial statements in the business acquisition report for a period of less than 12 months using the exemption set out in section 8.8.~~
- ~~(2) A reporting issuer is exempt from the requirement in subsection 8.4(2) to provide interim financial statements if the reporting issuer includes annual audited or unaudited financial statements of the business for a financial year ended 45 days or less before the date of acquisition.~~

## **8.8 Exemption for Significant Acquisitions if Financial Year End Changed**

If under section ~~8.58.4~~ a reporting issuer is required to provide financial statements ~~for two completed financial years~~ for a business acquired and the business changed its financial year end during either of the financial years required to be included, the reporting issuer may include financial statements for the transition year in satisfaction of the financial statements for one of the years, provided that the transition year is at least nine months.

## **8.9 Exemption from Comparatives if Financial Statements Not Previously Prepared**

A reporting issuer is not required to provide comparative information for interim financial statements required under subsection 8.4(~~23~~) for a business acquired if

- (a) to a reasonable person it is impracticable to present prior-period information on a basis consistent with the most recently completed interim period of the acquired business;
- (b) the prior-period information that is available is presented; and



- (c) the notes to the interim financial statements disclose the fact that the prior-period information has not been prepared on a basis consistent with the most recent interim financial information.

#### ~~8.10 Exemption for Acquisition of an Interest in an Oil and Gas Property~~

~~A reporting issuer is exempt from the requirements in section 8.4 if~~

- ~~(a) the significant acquisition is
  - ~~(i) an acquisition of a business that is an interest in an oil and gas property; or~~
  - ~~(ii) an acquisition of related businesses that are interests in oil and gas properties;~~~~
- ~~(b) the reporting issuer is unable to provide the financial statements in respect of the significant acquisition otherwise required under this Part because those financial statements do not exist or because the reporting issuer does not have access to those financial statements;~~
- ~~(c) the acquisition does not constitute a reverse takeover;~~
- ~~(d) the business or related businesses did not, immediately before the time of completion of the acquisition, constitute a “reportable segment” of the vendor, as defined in the Handbook;~~
- ~~(e) in respect of the business or related businesses, for each of the financial years for which financial statements would, but for this section, be required under section 8.4, the business acquisition report includes
  - ~~(i) an operating statement, accompanied by a report of an auditor, presenting for the business or related businesses at least the following:
    - ~~(A) gross revenue;~~
    - ~~(B) royalty expenses;~~
    - ~~(C) production costs; and~~
    - ~~(D) operating income;~~~~
  - ~~(ii) a description of the property or properties and the interest acquired by the reporting issuer; and~~
  - ~~(iii) disclosure of the annual oil and gas production volumes from the business or related businesses; and~~~~
- ~~(f) the business acquisition report discloses~~

- ~~(i) — the estimated reserves and related future net revenue attributable to the business or related businesses, the material assumptions used in preparing the estimates and the identity and relationship to the reporting issuer or to the vendor of the person who prepared the estimates; and~~
- ~~(ii) — the estimated oil and gas production volumes from the business or related businesses for the first year reflected in the estimates disclosed under subparagraph (f)(i).~~

## **8.10 Acquisition of an Interest in an Oil and Gas Property**

- (1) **Asset Test** - Despite subsections 8.3(2) and 8.3(4), the asset tests in paragraphs 8.3(2)(a) and 8.3(4)(a) do not apply to an acquisition of
  - (a) a business that is an interest in an oil and gas property; or
  - (b) related businesses that are interests in oil and gas properties,

unless the acquisition is of securities of another issuer.
- (2) **Income Test** - Despite subsections 8.3(2), 8.3(4), 8.3(8), 8.3(9), 8.3(10) and 8.3(12), a reporting issuer must substitute “operating income” for “consolidated income from continuing operations” for the purposes of the income test in paragraphs 8.3(2)(c) and 8.3(4)(c) if the acquisition is one described in subsection (1).
- (3) **Exemption from Financial Statement Disclosure** - A reporting issuer is exempt from the requirements in section 8.4 if
  - (a) the significant acquisition is an acquisition described in subsection (1);
  - (b) the reporting issuer is unable to provide the financial statements in respect of the significant acquisition otherwise required under this Part because those financial statements do not exist or because the reporting issuer does not have access to those financial statements;
  - (c) the acquisition does not constitute a reverse takeover;
  - (d) the business or related businesses did not, immediately before the time of completion of the acquisition, constitute a “reportable segment” of the vendor, as defined in the Handbook;
  - (e) in respect of the business or related businesses, for each of the financial periods for which financial statements would, but for this section, be required under section 8.4, the business acquisition report includes
    - (i) an operating statement, accompanied by a report of an auditor, presenting for the business or related businesses at least the following:

- (A) gross revenue;
- (B) royalty expenses;
- (C) production costs; and
- (D) operating income;
- (ii) a pro forma operating statement of the reporting issuer that gives effect to significant acquisitions completed after the ending date of the reporting issuer's most recently completed financial year for which financial statements are required to have been filed, as if they had taken place at the beginning of that financial year, for each of the financial periods referred to in paragraph 8.4(5)(b);
- (iii) a description of the property or properties and the interest acquired by the reporting issuer; and
- (iv) disclosure of the annual oil and gas production volumes from the business or related businesses; and
- (f) the business acquisition report discloses
  - (i) the estimated reserves and related future net revenue attributable to the business or related businesses, the material assumptions used in preparing the estimates and the identity and relationship to the reporting issuer or to the vendor of the person who prepared the estimates; and
  - (ii) the estimated oil and gas production volumes from the business or related businesses for the first year reflected in the estimates disclosed under subparagraph (f)(i).

### **8.11 Exemption for Step-By-Step Acquisitions**

Despite section 8.4, a reporting issuer is exempt from the requirements to file financial statements for an acquired business, other than the pro forma financial statements required by subsection 8.4(35), in a business acquisition report if the reporting issuer has made a “step-by-step” purchase as described in the Handbook and the acquired business has been consolidated in the reporting issuer's most recent annual financial statements that have been filed.

## **PART 9 PROXY SOLICITATION AND INFORMATION CIRCULARS**

### **9.1 Sending of Proxies and Information Circulars**

- (1) If management of a reporting issuer gives notice of a meeting to its registered holders of voting securities, management must, at the same time as or before giving that notice, send to each registered holder of voting securities who is entitled to notice of the meeting a form of proxy for use at the meeting.

- (2) Subject to section 9.2, a person or company that solicits proxies from registered holders of voting securities of a reporting issuer must,
  - (a) in the case of a solicitation by or on behalf of management of a reporting issuer, send an information circular with the notice of meeting to each registered securityholder whose proxy is solicited; or
  - (b) in the case of any other solicitation, concurrently with or before the solicitation, send an information circular to each registered securityholder whose proxy is solicited.
- (3) In Québec, subsections (1) and (2) apply, adapted as required, to a meeting of holders of debt securities of an issuer that is a reporting issuer in Québec, whether called by management of the reporting issuer or by the trustee of the debt securities.

## **9.2 Exemptions from Sending Information Circular**

- (1) Subsection 9.1(2) does not apply to a solicitation by a person or company in respect of securities of which the person or company is the beneficial owner.
- (2) Paragraph 9.1(2)(b) does not apply to a solicitation if the total number of securityholders whose proxies are solicited is not more than 15.
- (3) For the purposes of subsection (2), two or more persons or companies who are joint registered owners of one or more securities are considered to be one securityholder.

## **9.3 Filing of Information Circulars and Proxy-Related Material**

A person or company that is required under this Instrument to send an information circular or form of proxy to registered securityholders of a reporting issuer must promptly file a copy of the information circular, form of proxy and all other material required to be sent by the person or company in connection with the meeting to which the information circular or form of proxy relates.

## **9.4 Content of Form of Proxy**

- (1) A form of proxy sent to securityholders of a reporting issuer by a person or company soliciting proxies must indicate in bold-face type whether or not the proxy is solicited by or on behalf of the management of the reporting issuer, provide a specifically designated blank space for dating the form of proxy and specify the meeting in respect of which the proxy is solicited.
- (2) An information circular sent to securityholders of a reporting issuer or the form of proxy to which the information circular relates must
  - (a) indicate in bold-face type that the securityholder has the right to appoint a person or company to represent the securityholder at the meeting other than the person or company if any, designated in the form of proxy; and

- (b) contain instructions as to the manner in which the securityholder may exercise the right referred to in paragraph (a).
- (3) If a form of proxy sent to securityholders of a reporting issuer contains a designation of a named person or company as nominee, it must provide an option for the securityholder to designate in the form of proxy some other person or company as the securityholder's nominee.
- (4) A form of proxy sent to securityholders of a reporting issuer must provide an option for the securityholder to specify that the securities registered in the securityholder's name will be voted for or against each matter or group of related matters identified in the form of proxy, in the notice of meeting or in an information circular, other than the appointment of an auditor and the election of directors.
- (5) A form of proxy sent to securityholders of a reporting issuer may confer discretionary authority with respect to each matter referred to in subsection (4) as to which a choice is not specified if the form of proxy or the information circular states in bold-face type how the securities represented by the proxy will be voted in respect of each matter or group of related matters.
- (6) A form of proxy sent to securityholders of a reporting issuer must provide an option for the securityholder to specify that the securities registered in the name of the securityholder must be voted or withheld from voting in respect of the appointment of an auditor or the election of directors.
- (7) An information circular sent to securityholders of a reporting issuer or the form of proxy to which the information circular relates must state that
  - (a) the securities represented by the proxy will be voted or withheld from voting in accordance with the instructions of the securityholder on any ballot that may be called for; and
  - (b) if the securityholder specifies a choice under subsection (4) or (6) with respect to any matter to be acted upon, the securities will be voted accordingly.
- (8) A form of proxy sent to securityholders of a reporting issuer may confer discretionary authority with respect to
  - (a) amendments or variations to matters identified in the notice of meeting; and
  - (b) other matters which may properly come before the meeting,if,
  - (c) the person or company by whom or on whose behalf the solicitation is made is not aware within a reasonable time before the time the solicitation is made that any of those amendments, variations or other matters are to be presented for action at the meeting; and

- (d) a specific statement is made in the information circular or in the form of proxy that the proxy is conferring such discretionary authority.
- (9) A form of proxy sent to securityholders of a reporting issuer must not confer authority to vote
- (a) for the election of any person as a director of a reporting issuer unless a bona fide proposed nominee for that election is named in the information circular; or
  - (b) at any meeting other than the meeting specified in the notice of meeting or any adjournment of that meeting.

### ~~9.5 — Exemption from Part 9~~

~~This Part does not apply to a reporting issuer that complies with the requirements of the laws of the jurisdiction in which it is incorporated, organized or continued, if the requirements are substantially similar to the requirements of this Part.~~

### 9.5 Exemption

Sections 9.1 to 9.4 do not apply to a reporting issuer that complies with the requirements of the laws under which it is incorporated, organized or continued, if

- (a) the requirements are substantially similar to the requirements of this Part; and
- (b) the person or company promptly files a copy of any information circular, form of proxy and all other material sent by the person or company in connection with the meeting.

## **PART 10 RESTRICTED SECURITY DISCLOSURE**

### **10.1 Restricted Security Disclosure**

- (1) Except as otherwise provided in section 10.3, if a reporting issuer has outstanding restricted securities, or securities that are directly or indirectly convertible into or exercisable or exchangeable for restricted securities or securities that will, when issued, result in an existing class of outstanding securities being considered restricted securities, each document referred to in subsection (2) must
- (a) refer to restricted securities using a term that includes the appropriate restricted security term;
  - (b) not refer to securities by a term that includes “common”, or “preference” or “preferred”, unless the securities are common shares or preference shares, respectively;
  - (c) describe any restrictions on the voting rights of restricted securities;

- (d) describe the rights to participate, if any, of holders of restricted securities if a takeover bid is made for securities of the reporting issuer with voting rights superior to those attached to the restricted securities;
  - (e) state the percentage of the aggregate voting rights attached to the reporting issuer's securities that are represented by the class of restricted securities; and
  - (f) if holders of restricted securities have no right to participate if a takeover bid is made for securities of the reporting issuer with voting rights superior to those attached to the restricted securities, contain a statement to that effect in bold-face type.
- (2) Subsection (1) applies to the following documents except as provided in subsections (3) and (6):
- (a) an information circular;
  - (b) a document required by this Instrument to be delivered upon request by a reporting issuer to any of its securityholders; and
  - (c) an AIF prepared by a reporting issuer.
- (3) Despite subsection (2), annual financial statements, interim financial statements and MD&A or other accompanying discussion by management of those financial statements are not required to include the details referred to in paragraphs (1)(c), (d), (e) and (f).
- (4) Each reference to restricted securities in any document not referred to in subsection (2) that a reporting issuer sends to its securityholders must include the appropriate restricted security term.
- (5) A reporting issuer must not refer, in any of the documents described in subsection (4), to securities by a term that includes "common" or "preference" or "preferred", unless the securities are common shares or preference shares, respectively.
- (6) Despite paragraph (1)(b) and subsection (5), a reporting issuer may, in one place only in a document referred to in subsection (2) or (4), describe the restricted securities by the term used in the constating documents of the reporting issuer, to the extent that term differs from the appropriate restricted security term, if the description is not on the front page of the document and is in the same type face and type size as that used generally in the document.

## **10.2 Dissemination of Disclosure Documents to Holder of Restricted Securities**

- (1) If a reporting issuer sends a document to all holders of any class of its equity securities the document must also be sent by the reporting issuer at the same time to the holders of its restricted securities.

- (2) A reporting issuer that is required by this Instrument to arrange for, or voluntarily makes arrangements for, delivery of the documents referred to in subsection (1) to the beneficial owners of any securities of a class of equity securities registered in the name of a registrant, must make similar arrangements for delivery of the documents to the beneficial owners of securities of a class of restricted securities registered in the name of the registrant.

### 10.3 Exemptions for Certain Reporting Issuers

The provisions of sections 10.1 and 10.2 do not apply to

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

## PART 11 ADDITIONAL ~~FILING~~DISCLOSURE REQUIREMENTS

### 11.1 Additional Filing Requirements

- (1) A reporting issuer must file a copy of any disclosure material
- (a) that it sends to its securityholders; ~~or~~
- (b) in the case of an SEC issuer, that it files with or furnishes to the SEC under the 1934 Act, including material filed as exhibits to other documents, if the material contains information that has not been included in disclosure already filed in a jurisdiction by the SEC issuer; or
- (c) that it files with another provincial or territorial securities regulatory authority or regulator other than in connection with a distribution.
- (2) A reporting issuer must file the material referred to in subsection (1) on the same date as, or as soon as practicable after, the earlier of
- (a) the date on which the reporting issuer sends the material to its securityholders;
- (b) the date on which the reporting issuer files or furnishes the material to the SEC;  
and



- (c) the date on which the reporting issuer files ~~or furnishes the material to the SEC~~that material with the other provincial or territorial securities regulatory authority or regulator.

## **11.2 Change of Status Report**

A reporting issuer must file a notice promptly after the occurrence of either of the following:

- (a) the reporting issuer becomes a venture issuer; or
- (b) the reporting issuer ceases to be a venture issuer.

## **11.3 Voting Results**

A reporting issuer that is not a venture issuer must, promptly following a meeting of securityholders at which a matter was submitted to a vote, file a report that discloses, for each matter voted upon

- (a) a brief description of the matter voted upon and the outcome of the vote; and
- (b) if the vote was conducted by ballot, including a vote on a matter in which votes are cast both in person and by proxy, the number or percentage of votes cast for, against or withheld from the vote.

## **11.4 Financial Information**

A reporting issuer must file a copy of any news release issued by it that discloses information regarding its historical or prospective results of operations or financial condition for a financial year or interim period.

## **11.5 Re-filing Documents**

If a reporting issuer decides it will re-file a document, or re-state information in a document, filed under this Instrument, and the information in the re-filed document, or re-stated information, will differ materially from the information in the original document, the issuer must immediately issue and file a news release authorized by a senior officer disclosing the nature and substance of the change or proposed changes.

# **PART 12 FILING OF CERTAIN DOCUMENTS**

## **12.1 Filing of Documents Affecting the Rights of Securityholders**

- (1) A reporting issuer must file copies of the following documents, and any amendments to the following documents, unless previously filed:

- (a) articles of incorporation, amalgamation, continuation or any other constating or establishing documents of the issuer, unless the constating or establishing document is a statutory or regulatory instrument;
  - (b) by-laws or other corresponding instruments currently in effect;
  - (c) any securityholder or voting trust agreement that the reporting issuer has access to and that can reasonably be regarded as material to an investor in securities of the reporting issuer;
  - (d) any securityholders' rights plans or other similar plans; and
  - (e) any other contract of the issuer or a subsidiary of the issuer that creates or can reasonably be regarded as materially affecting the rights or obligations of its securityholders generally.
- (2) A document required to be filed under subsection (1) may be filed in paper format if
- (a) it is dated before March 30, 2004; and
  - (b) it does not exist in an acceptable electronic format ~~under National Instrument 13-101 System for Electronic Document Analysis and Retrieval (SEDAR).~~

## **12.2 Filing of Other Material Contracts**

- (1) Unless previously filed, a reporting issuer must file a copy of any contract that it or any of its subsidiaries is a party to, other than a contract entered into in the ordinary course of business, that is material to the issuer and was entered into within the last financial year, or before the last financial year but is still in effect.
- (2) If an executive officer of the reporting issuer has reasonable grounds to believe that disclosure of certain provisions of a contract required by subsection (1) to be filed would be seriously prejudicial to the interests of the reporting issuer, or would violate confidentiality provisions, the reporting issuer may file the contract with those certain provisions omitted or marked so as to be unreadable.
- (3) Despite subsection (1), a reporting issuer is not required to file a contract entered into before January 1, 2002.

## **12.3 Time for Filing of Documents**

The documents required to be filed under sections 12.1 and 12.2 must be filed no later than the time the reporting issuer files a material change report in Form 51-102F3, if the making of the document constitutes a material change for the issuer, and

- (a) no later than the time the reporting issuer's AIF is filed under section 6.1, if the document was made or adopted before the date of the issuer's AIF; or

- (b) if the reporting issuer is not required to file an AIF under section 6.1, within 120 days after the end of the issuer's most recently completed financial year, if the document was made or adopted before the end of the issuer's most recently completed financial year.

## **PART 13 EXEMPTIONS**

### **13.1 Exemptions from this Instrument**

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

### **13.2 Existing Exemptions**

- (1) A reporting issuer that was entitled to rely on an exemption, waiver or approval granted to it by a regulator or securities regulatory authority relating to continuous disclosure requirements of securities legislation or securities directions existing immediately before this Instrument came into force is exempt from any substantially similar provision of this Instrument to the same extent and on the same conditions, if any, as contained in the exemption, waiver or approval.
- (2) A reporting issuer must, at the time that it first intends to rely on subsection (1) in connection with a filing requirement under this Instrument, inform the securities regulatory authority in writing of
  - (a) the general nature of the prior exemption, waiver or approval and the date on which it was granted; and
  - (b) the requirement under prior securities legislation or securities directions in respect of which the prior exemption, waiver or approval applied and the substantially similar provision of this Instrument.

### **13.3 Exemption for Certain Exchangeable Security Issuers**

- (1) In this section:

“designated exchangeable security” means an exchangeable security which provides the holder of the security with economic and voting rights which are, as nearly as possible except for tax implications, equivalent to the underlying securities;

“exchangeable security” means a security of an issuer that is exchangeable for, or carries the right of the holder to purchase, or of the parent issuer to cause the purchase of, an underlying security;

“exchangeable security issuer” means a person or company that has issued an exchangeable security;

“parent issuer”, when used in relation to an exchangeable security issuer, means the person or company that issues the underlying security; and

“underlying security” means a security of a parent issuer issued or transferred, or to be issued or transferred, on the exchange of an exchangeable security.

- (2) Except as provided in this subsection, an exchangeable security issuer satisfies the requirements in this Instrument ~~does not apply to an exchangeable security issuer~~ if
- (a) the parent issuer is the ~~direct or indirect~~ beneficial owner of all the issued and outstanding voting securities of the exchangeable security issuer;
  - ~~(b) the parent issuer is an SEC issuer with a class of securities listed or quoted on a U.S. marketplace;~~
  - (b) the parent issuer is either
    - (i) an SEC issuer with a class of securities listed or quoted on a U.S. marketplace; or
    - (ii) a reporting issuer in Alberta, British Columbia, Manitoba, Nova Scotia, Ontario, Québec or Saskatchewan that has filed all documents it is required to file under this Instrument;
  - (c) the exchangeable security issuer does not issue any securities, other than
    - (i) designated exchangeable securities;
    - (ii) securities issued to the parent issuer or an affiliate of the parent issuer; or
    - (iii) debt securities issued to banks, loan corporations, loan and investment corporations, savings companies, trust corporations, treasury branches, savings or credit unions, financial services cooperatives, insurance companies or other financial institutions;
  - ~~(d) the exchangeable security issuer files copies of all documents the parent issuer is required to file with the SEC, at the same time as, or as soon as practicable after, the filing by the parent issuer of those documents with the SEC;~~
  - ~~(e) the exchangeable security issuer concurrently sends to all holders of designated exchangeable securities, in the manner and at the time required by U.S. laws and~~

~~the requirements of any U.S. marketplace on which securities of the parent issuer are listed or quoted, all disclosure materials that are sent to holders of the underlying securities;~~

~~(f) the parent issuer is in compliance with U.S. laws and the requirements of any U.S. marketplace on which the securities of the parent issuer are listed or quoted in respect of making public disclosure of material information on a timely basis, and immediately issues in Canada and files any news release that discloses a material change in its affairs;~~

(d) the exchangeable security issuer files in electronic format,

(i) if the parent issuer is not a reporting issuer in a jurisdiction listed in subparagraph (b)(ii), copies of all documents the parent issuer is required to file with the SEC under the 1934 Act, at the same time as, or as soon as practicable after, the filing by the parent issuer of those documents with the SEC; or

(ii) if the parent issuer is a reporting issuer in a jurisdiction listed in subparagraph (b)(i),

(A) a notice indicating that the exchangeable security issuer is relying on the continuous disclosure documents filed by its parent issuer and setting out where those documents can be found in electronic format, if the parent issuer is a reporting issuer in the local jurisdiction; or

(B) copies of all documents the parent issuer is required to file under securities legislation, other than in connection with a distribution, at the same time as the filing by the parent issuer of those documents with a securities regulatory authority or regulator;

(e) the exchangeable security issuer concurrently sends to all holders of designated exchangeable securities all disclosure materials that are sent to holders of the underlying securities in the manner and at the time required by

(i) U.S. laws and any U.S. marketplace on which securities of the parent issuer are listed or quoted, if the parent issuer is an SEC issuer; or

(ii) securities legislation, if the parent issuer is not an SEC issuer;

(f) the parent issuer

(i) complies with U.S. laws and the requirements of any U.S. marketplace on which the securities of the parent issuer are listed or quoted if the parent issuer is an SEC issuer, or securities legislation if the parent issuer is not an SEC issuer, in respect of making public disclosure of material information on a timely basis; and



- (d) the parent issuer is an SEC issuer or a reporting issuer in Alberta, British Columbia, Manitoba, Nova Scotia, Ontario, Québec or Saskatchewan; and
- (e) the exchangeable security issuer has not issued any securities, other than
  - (i) designated exchangeable securities;
  - (ii) securities issued to the parent issuer or an affiliate of the parent issuer; or
  - (iii) debt securities issued ~~to the parent issuer or~~ to banks, loan corporations, loan and investment corporations, savings companies, trust corporations, treasury branches, savings or credit unions, financial services cooperatives, insurance companies or other financial institutions.

#### 13.4 Exemption for Certain Credit Support Issuers

- (1) In this section:

“credit support issuer” means an issuer of securities for which a credit supporter has provided a guarantee;

“credit supporter” means a person or company that provides a guarantee for any of the payments to be made by an issuer of securities as stipulated in the terms of the securities or in an agreement governing rights of, or granting rights to, holders of the securities; and

“designated credit support securities” means

- (a) non-convertible debt that has an approved rating; or
- (b) non-convertible preferred shares that have an approved rating,

in respect of which a credit supporter has provided a full and unconditional guarantee of the payments to be made by the credit support issuer, as stipulated in the terms of the securities or in an agreement governing the rights of holders of the securities, that results in the holder of such securities being entitled to receive payment from the credit supporter within 15 days of any failure by the credit support issuer to make a payment;

~~“SEC MJDS issuer” means an issuer that~~

~~(a) — is incorporated or organized under the laws of the United States of America or any state or territory of the United States of America or the District of Columbia;~~

~~(b) — either~~

~~(i) — has a class of securities registered under section 12(b) or 12(g) of the 1934 Act, or~~

~~(ii) — is required to file reports under section 15(d) of the 1934 Act;~~

- ~~(c) — has filed with the SEC all 1934 Act filings for a period of 12 calendar months immediately before the date on which the person or company seeks to rely on the exemptions in subsections (2) or (3);~~
  - ~~(d) — is not registered or required to be registered as an investment company under the *Investment Company Act of 1940* of the United States of America, as amended; and~~
  - ~~(e) — is not an issuer formed and operated for the purpose of investing in commodity futures contracts, commodity futures, related products, or a combination of them.~~
- (2) Except as provided in this subsection, a credit support issuer satisfies the requirements in this Instrument ~~does not apply to a credit support issuer if, if~~
- ~~(a) — the credit supporter is the direct or indirect beneficial owner of all the issued and outstanding voting securities of the credit support issuer;~~
  - ~~(b) — the credit supporter is an SEC MJDS issuer;~~
  - (a) the credit support issuer is a direct or indirect wholly-owned subsidiary of the credit supporter;
  - (b) the credit supporter is either
    - (i) an SEC issuer; or
    - (ii) a reporting issuer Alberta, British Columbia, Manitoba, Nova Scotia, Ontario, Québec or Saskatchewan that has filed all documents it is required to file under this Instrument;
  - (c) the credit support issuer does not issue any securities, other than
    - (i) designated credit support securities;
    - (ii) securities issued to the credit supporter or an affiliate of the credit supporter; or
    - (iii) debt securities issued to banks, loan corporations, loan and investment corporations, savings companies, trust corporations, treasury branches, savings or credit unions, financial services cooperatives, insurance companies or other financial institutions;
  - ~~(d) — the credit support issuer files copies of all documents the credit supporter is required to file with the SEC, at the same time or as soon as practicable after the filing by the credit supporter of those documents with the SEC;~~
  - ~~(e) — the credit supporter is in compliance with the requirements of U.S. laws and any U.S. marketplace on which securities of the credit supporter are listed or quoted in~~



~~respect of making public disclosure of material information on a timely basis and immediately issues in Canada and files any news release that discloses a material change in its affairs;~~

- (d) the credit support issuer files in electronic format,
  - (i) if the credit supporter is an SEC issuer, copies of all documents the credit supporter is required to file with the SEC under the 1934 Act, at the same time or as soon as practicable after the filing by the credit supporter of those documents with the SEC; or
  - (ii) if the credit supporter is not an SEC issuer,
    - (A) a notice indicating that the credit support issuer is relying on the continuous disclosure documents filed by the credit supporter and setting out where those documents can be found for viewing in electronic format, if the credit support issuer is a reporting issuer in the local jurisdiction; or
    - (B) copies of all documents the credit supporter is required to file under securities legislation, other than in connection with a distribution, at the same time as the filing by the credit supporter of those documents with a securities regulatory authority or regulator;
- (e) the credit supporter
  - (i) complies with U.S. laws and the requirements of any U.S. marketplace on which securities of the credit supporter are listed or quoted if the credit supporter is an SEC issuer, or securities legislation if the credit supporter is not an SEC issuer, in respect of making public disclosure of material information on a timely basis; and
  - (ii) immediately issues in Canada and files any news release that discloses a material change in its affairs;
- (f) the credit support issuer issues in Canada a news release and files a material change report in accordance with Part 7 of this Instrument for all material changes in respect of the affairs of the credit support issuer that are not also material changes in the affairs of the credit supporter;
- ~~(g) in the case of a credit support issuer that has operations, other than minimal operations, that are independent of the credit supporter, the credit support issuer files, in electronic format,~~
  - ~~(i) annual comparative financial information, derived from the credit support issuer's audited consolidated financial statements for its most recently completed financial year, that is accompanied by a specified procedures report of the auditors to the credit support issuer and that includes the~~

~~following line items for the most recently completed financial year and the financial year immediately preceding the most recently completed financial year:~~

~~(A) sales/revenues;~~

~~(B) net earnings from continuing operations before extraordinary items;~~

~~(C) net earnings;~~

~~(D) current assets;~~

~~(E) non-current assets;~~

~~(F) current liabilities; and~~

~~(G) non-current liabilities; and~~

~~(ii) interim comparative financial information, derived from the credit support issuer's unaudited consolidated financial statements for its most recently completed interim period, that includes the following line items for the most recently completed interim period and, for items (A), (B) and (C), the corresponding interim period in the immediately preceding completed financial year, and for items (D), (E), (F) and (G), as at the end of the immediately preceding financial year:~~

~~(A) sales/revenues;~~

~~(B) net earnings or loss from continuing operations before extraordinary items;~~

~~(C) net earnings or loss;~~

~~(D) current assets;~~

~~(E) non-current assets;~~

~~(F) current liabilities; and~~

~~(G) non-current liabilities;~~

~~(h) in the case of designated credit support securities that include debt, the credit support issuer concurrently sends to all holders of such securities, in the manner and at the time required by U.S. laws and any U.S. marketplace on which securities of the credit supporter are listed or quoted, all disclosure materials that are sent to holders of non-convertible debt of the credit supporter that has an approved rating; and~~

- ~~(i) in the case of designated credit support securities that include preferred shares, the credit support issuer concurrently sends to all holders of such securities, in the manner and at the time required by U.S. laws and any U.S. marketplace on which securities of the credit supporter are listed or quoted, all disclosure materials that are sent to holders of non-convertible preferred shares of the credit supporter that have an approved rating.~~
- (g) in the case of a credit support issuer that has operations, other than minimal operations, that are independent of the credit supporter, the credit support issuer files the following financial information by the filing deadlines set out in sections 4.2 and 4.4, as applicable, in electronic format:
- (i) annual comparative financial information, derived from the credit support issuer's audited consolidated financial statements for its most recently completed financial year, that is accompanied by a specified procedures report of the auditors to the credit support issuer and that includes the following line items for the most recently completed financial year and the financial year immediately preceding the most recently completed financial year:
- (A) sales or revenues;
  - (B) income from continuing operations;
  - (C) net earnings; and
  - (D) unless the issuer's GAAP permits the preparation of the credit support issuer's balance sheet without classifying assets and liabilities between current and non-current and the credit support issuer provides alternative meaningful financial information which is more appropriate to the industry,
    - (I) current assets;
    - (II) non-current assets;
    - (III) current liabilities; and
    - (IV) non-current liabilities; and
- (ii) interim comparative financial information, derived from the credit support issuer's unaudited consolidated financial statements for its most recently completed interim period, that includes the following line items for the most recently completed interim period and, for items (A), (B) and (C), the corresponding interim period in the immediately preceding completed financial year, and for item (D), if applicable, as at the end of the immediately preceding financial year:

- (A) sales or revenues;
  - (B) income from continuing operations;
  - (C) net earnings or loss; and
  - (D) unless the issuer's GAAP permits the preparation of the credit support issuer's balance sheet without classifying assets and liabilities between current and non-current and the credit support issuer provides alternative meaningful financial information which is more appropriate to the industry,
    - (I) current assets;
    - (II) non-current assets;
    - (III) current liabilities; and
    - (IV) non-current liabilities;
- (h) in the case of designated credit support securities that include debt, the credit support issuer concurrently sends to all holders of such securities; all disclosure materials that are sent to holders of non-convertible debt of the credit supporter that has an approved rating in the manner and at the time required by
- (i) U.S. laws and any U.S. marketplace on which securities of the credit supporter are listed or quoted, if the credit supporter is an SEC issuer; or
  - (ii) securities legislation, if the credit supporter is not an SEC issuer; and
- (i) in the case of designated credit support securities that include preferred shares, the credit support issuer concurrently sends to all holders of such securities all disclosure materials that are sent to holders of non-convertible preferred shares of the credit supporter that have an approved rating in the manner and at the time required by
- (i) U.S. laws and any U.S. marketplace on which securities of the credit supporter are listed or quoted, if the credit supporter is an SEC issuer; or
  - (ii) securities legislation, if the credit supporter is not an SEC issuer.
- (3) The insider reporting requirement and the requirement to file an insider profile under National Instrument 55-102 *System for Electronic Disclosure by Insiders* do not apply to an insider of a credit support issuer in respect of securities of the credit support issuer so long as,

- ~~(a) the insider does not receive, in the ordinary course, information as to material facts or material changes concerning the credit supporter before the material facts or material changes are generally disclosed;~~
- ~~(b) the insider is not an insider of the credit supporter in any capacity other than by virtue of being an insider of the credit support issuer;~~
- ~~(c) the credit supporter is the direct or indirect beneficial owner of all the issued and outstanding voting securities of the credit support issuer;~~
- (a) if the insider is not the credit supporter,
  - (i) the insider does not receive, in the ordinary course, information as to material facts or material changes concerning the credit supporter before the material facts or material changes are generally disclosed, and
  - (ii) the insider is not an insider of the credit supporter in any capacity other than by virtue of being an insider of the credit support issuer;
- (b) the credit supporter is the beneficial owner of all the issued and outstanding voting securities of the credit support issuer;
- (c) if the insider is the credit supporter, the insider does not beneficially own any designated credit support securities;
- (d) the credit supporter is an SEC issuer or a reporting issuer in Alberta, British Columbia, Manitoba, Nova Scotia, Ontario, Québec or Saskatchewan; and
- (e) the credit support issuer has not issued any securities, other than
  - (i) designated credit support securities;
  - (ii) securities issued to the credit supporter or an affiliate of the credit supporter; or
  - (iii) debt securities issued to banks, loan corporations, loan and investment corporations, savings companies, trust corporations, treasury branches, savings or credit unions, financial services cooperatives, insurance companies or other financial institutions.

## **PART 14 EFFECTIVE DATE AND TRANSITION**

### **14.1 Effective Date**

This Instrument comes into force on March 30, 2004.

## **14.2 Transition**

Despite section 14.1, section 5.7 applies for financial years of the reporting issuer beginning on or after January 1, 2007.