# Continuous Disclosure Obligations

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## Continuous Disclosure Obligations



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# Continuous Disclosure Obligations

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**AMENDMENTS TO AND REVOCATION OF NATIONAL INSTRUMENT 62-102 *DISCLOSURE OF OUTSTANDING SHARE DATA***

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**AND**

**AMENDMENT OF**
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**NATIONAL POLICY 51 *CHANGES IN THE ENDING DATE OF A FINANCIAL YEAR AND IN REPORTING STATUS***

**Introduction**

We, the Canadian Securities Administrators (CSA), have developed a nationally harmonized set of continuous disclosure (CD) requirements for reporting issuers, other than investment funds. The CD requirements are set out in National Instrument 51-102 *Continuous Disclosure Obligations* (the Rule), Form 51-102F1 *Management's Discussion & Analysis*, Form 51-102F2 *Annual Information Form*, Form 51-102F3 *Material Change Report*, Form 51-102F4 *Business Acquisition Report*, Form 51-102F5 *Information Circular*, Form 51-102F6 *Statement of Executive Compensation* (collectively, the Forms), and Companion Policy 51-102CP *Continuous Disclosure Obligations* (the Policy). The Rule and the Forms are together referred to as the Instrument.

The Instrument has been made or is expected to be made by each member of the CSA, and will be implemented as

- a rule in each of British Columbia, Alberta, Manitoba, Ontario and Nova Scotia;
- a commission regulation in Saskatchewan and Québec; and
- a policy in all other jurisdictions represented by the CSA.

We also expect the Policy will be adopted in all jurisdictions.

We have also published a nationally harmonized set of exemptions from certain CD and other requirements for foreign reporting issuers. The Notice of Rule - National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* provides information about the rule (the Foreign Issuer Rule).

The Instrument will be implemented in British Columbia, subject to obtaining the requisite ministerial approval. The British Columbia Securities Commission (BCSC) has decided that reporting issuers in British Columbia will be exempted from Parts 8, relating to business acquisition reports, Part 10, relating to restricted share disclosure, and Part 12, relating to filing certain documents.

In Ontario, the Instrument and the consequential amendments set out in Appendices C and D have been made. Also, in Ontario, the Policy and the amendments to National Policies 31 and 51 described below have been adopted. The Instrument, consequential amendments, and other required materials were delivered to the Minister of Finance on December 19, 2003. If the Minister does not approve or reject the Instrument and the consequential amendments or return them for further consideration, they will come into force on March 30, 2004.

In Québec, the Instrument is a regulation made under section 331.1 of the Act and must be approved, with or without amendment, by the Minister of Finance. The Instrument will come into force on the date of its publication in the Gazette officielle du Québec or on any later date specified in the regulation. It must also be published in the Bulletin.

Provided all necessary ministerial approvals are obtained, the Instrument and consequential amendments will come into force on March 30, 2004. The Policy and the amendments to National Policies 31 and 51 will come into effect at the same time as the Instrument.

The requirements in the Instrument concerning

- annual and interim financial statements, except change in year-end, change in corporate structure and change of auditor requirements,
- MD&A,
- AIFs, and
- filing of documents under Part 12,

will apply for financial years beginning on or after January 1, 2004. The requirements relating to business acquisition reports (BARs) apply to significant acquisitions if the agreement was entered into after March 30, 2004. The requirements relating to proxy solicitation and information circulars, will apply from and after June 1, 2004. All other requirements will apply as of March 30, 2004.

**Substance and Purpose**

The Instrument

- harmonizes CD requirements among Canadian jurisdictions;
- replaces most existing local CD requirements;
- enhances the consistency of disclosure in the primary and secondary securities markets; and
- facilitates capital-raising initiatives such as an integrated disclosure system (IDS).

The Rule sets out the obligations of reporting issuers, other than investment funds, with respect to financial statements, management's discussion and analysis (MD&A), annual information forms (AIFs), material change reporting, information circulars, proxies and proxy solicitation, restricted share disclosure, and certain other CD-related matters. It prescribes the Forms, most of which are derived from existing forms but with some enhancements.

The Rule does not address non-issuer filing obligations, except in the case of persons who solicit proxies from securityholders of reporting issuers, and exemptions from insider reporting in certain circumstances. The Rule also does not address CD obligations for investment funds. We have previously published proposed National Instrument 81-106 *Investment Fund Continuous Disclosure* for comment. That instrument will prescribe the CD obligations of investment funds.

The substance and purpose of the Policy is to state our views on the interpretation and application of the Instrument.

**Background**

We first published the Instrument for comment on June 21, 2002. After considering the comments, we revised the Instrument and Policy and published the revised versions for comment on June 20, 2003 (the 2003 Proposals). The comment period expired in August, 2003. For additional background and the summary of comments received during the first publication period, please refer to the notice we published on June 20, 2003.

**Summary of Written Comments Received by the CSA**

During the second comment period, and shortly after the expiry of the comment period, we received submissions from 23 commenters on the Instrument. We have considered the comments received and thank all the commenters. The names of the 23 commenters and a summary of the comments on the Instrument, together with our responses, are contained in Appendix B to this notice.

We received additional comments significantly after the expiry of the comment period. Those comments are not summarized in Appendix B. To the extent possible, we considered those comments, and, where appropriate, made changes to the Instrument. If the changes were noteworthy, they are described in Appendix A, referred to below.

After considering the comments, we have made amendments to the Instrument and the Policy. However, as these changes are not material, we are not republishing the Instrument or the Policy for a further comment period.

**Summary of Changes to the Proposed Instrument/Policy**

See Appendix A for a description of the noteworthy changes made to the 2003 Proposal.

**Consequential amendments**

***National Amendments***

Amendments that have been made to National Instrument 44-101 *Short Form Prospectus Distributions* (NI 44-101) to replace Forms 44-101F1 *AIF* and 44-101F2 *MD&A* are set out in Appendix C to this Notice. As the AIF and MD&A requirements in the Instrument apply only for financial years starting on or after January 1, 2004, the amendments include transitional provisions.

Amendments that have been made to National Instrument 62-102 *Disclosure of Outstanding Share Data* and National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues* are set out in Appendix D to this Notice. As the financial statement and MD&A requirements in the Instrument apply only for financial years starting on or after January 1, 2004, the amendments include transitional provisions.

In the notice we published on June 20, 2003, we indicated that National Policy No. 31 *Change of Auditor of a Reporting Issuer* and National Policy No. 51 *Changes in the Ending Date of a Financial Year and in Reporting Status* would be rescinded. Instead of rescinding these policies, we are revising them so they apply only to reporting issuers that are investment funds. The amendments are set out in Appendix E to this Notice. The policies may be rescinded in the future when new disclosure rules are implemented for investment funds.

***Local Amendments***

We are amending or repealing elements of local securities legislation and securities directions, in conjunction with implementing the Instrument. The provincial and territorial securities regulatory authorities may publish, or may have published, these local changes or proposed changes separately in their local jurisdictions.

The members of CSA may also publish local changes in Appendix F to this Notice.

**Questions**

Please refer your questions to any of:

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**National Instrument**

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

December 19, 2003.

## Appendix A

## Summary of Changes to the Proposed Instrument

**Title**

The Rule

Form 51-102F1 Management's Discussion & Analysis

Form 51-102F2 Annual Information Form

Form 51-102F4 Business Acquisition Report

Form 51-102F5 Information Circular

Form 51-102F6 Statement of Executive Compensation

The Policy

***The Rule***

*Part 1 Definitions*

- The definition of *acquisition of related businesses* has been moved to Part 8 of the Rule so it is proximate to the place it is used. The definition itself has not changed. We have deleted the definition of *significance tests*, as that term is explained in Part 8.

- We have defined *approved rating* and *approved rating organization*, as these terms are used in the credit supporter exemption referred to below, and, in the case of *approved rating organization*, in the AIF.

- The definitions of *equity security* and *equity share* have been deleted. *Equity security* is defined in National Instrument 14-101 *Definitions*.

- The definition of *executive officer* has been revised to delete the requirement that, to be an executive officer, a person must be the chair or vice-chair on a full-time basis. This provision was inconsistent with paragraph (f) of the definition, which deems a person that performs a policy-making function to be an executive officer whether or not they act on a full-time basis.

- We have deleted the definitions of *group scholarship plan* and *investee* as these terms are no longer used in the Rule or the Forms.

- We have removed the reference in the definition of *restricted security* to the security not being a common share. The reference was not required because it duplicated another part of the definition.

- As contemplated in the notice published on June 20, 2003 with the Instrument, we have revised the definition of *venture issuer* to replace the list of exchanges in the United States with a reference to exchanges registered as national securities exchanges under section 6 of the 1934 Act in the United States. This makes the definition flexible enough to apply to new exchanges that may be formed in the future.

*Part 4 Financial Statements*

- In response to comments, we have changed the location of the disclosure required if an issuer's auditor has not reviewed the interim financial statements. The financial statements must now be accompanied by a notice indicating that they have not been reviewed. This will ensure the disclosure is easy to find.

- We have removed the requirement for the audit committee to review financial statements before they are filed. The responsibilities of audit committees will be set out in other securities legislation.

- In response to comments, the Rule now permits either the board of directors or the audit committee to approve interim financial statements so issuers have the flexibility of giving this responsibility to their audit committee, subject to their corporate legislation.

- We have clarified the requirement to deliver copies of the financial statements on request as follows:

    - the requirement to deliver the annual request form applies to securityholders other than holders of debt instruments

    - the annual request form must be sent to beneficial owners of securities that have chosen under National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* to receive all securityholder materials

    - copies of the financial statements can be requested other than by returning the request form

    - issuers do not have to deliver copies of financial statements that were filed more than two years before the date of the request

    - the financial statements must be sent to the person or company requesting them, without charge; 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.

- The Rule now gives an exemption from the requirement to send an annual request form, and annual financial statements on request, if the issuer delivers a copy of the annual financial statements to all of its securityholders

- The restrictions on the length of a transition year and the first interim period after a change in year-end are now in Part 4 of the Rule, rather than in the definitions.

- We have revised the requirement relating to the notice of change in corporate structure so the notice is now filed, rather than delivered. This means the notice will be available on SEDAR for investors, and will be easier for issuers that must provide a copy of the notice to more than one securities regulatory authority. We have also clarified in what circumstances the notice must be filed, and now require the names of any continuing entities to be included in the notice.

- In response to comments, we have clarified the change of auditor provisions as follows:

    - consistent with the definition of *disagreement*, the definitions of *consultation* and *unresolved issue* contemplate review engagements

    - the definition of *reporting package* provides that, if the former auditor provides an updated letter, it is the updated letter, not the auditor's original letter, that forms part of the reporting package

    - if an updated letter is provided by the former auditor, it must be reviewed by the audit committee or board of directors as is required for the auditor's original letter

    - the news release issued when the successor auditor is appointed must describe the information in the reporting package or cross-reference the original news release issued, if there were any reportable events

    - the requirement for the successor auditor to report that the reporting issuer has not filed the notice under section 4.11 no longer applies in British Columbia, Alberta or Manitoba as the securities regulatory authorities in those jurisdictions do not have the authority to impose obligations on auditors of reporting issuers.

*Part 5 MD&A*

- Parts 5 and 6 have been reversed. Part 5 now deals with MD&A matters, so that it immediately follows the financial statement requirements. Part 6 deals with the filing of the annual information form.

- The requirement for venture issuers that have not had any significant revenues from operations in either of their last two financial years to provide a breakdown of material components of certain of their expenses has been clarified as to the information that must be provided and the periods it must be provided for.

- We have removed the requirement for the audit committee to review the MD&A before it is filed. The responsibilities of audit committees will be set out in other securities legislation.

- The Rule now permits either the board of directors or the audit committee to approve interim MD&A. This gives issuers the flexibility of giving this responsibility to their audit committee.

- The requirement to deliver MD&A has been revised to be consistent with the requirement to deliver financial statements, as described above.

*Part 8 Business Acquisition Report*

- In response to comments, the exemption from the requirement to file a BAR has been extended so it now also applies to issuers

    - that file a filing statement under the policies of the TSX Venture Exchange, provided the filing statement contains the information that would be required by section 14.2 of Form 51-102F5, and

    - that are capital pool companies that prepare a filing statement or information circular in connection with their qualifying transaction and that comply with the policies and requirements of the TSX Venture Exchange.

*Part 9 Proxy Solicitation and Information Circulars*

- In response to comments, we have added an exemption from Part 9 for issuers that comply with the requirements of the laws of the jurisdiction in which they are incorporated or organized, provided the requirements are substantially similar to the requirements in Part 9. This will reduce duplication between corporate and securities requirements in the proxy solicitation area.

*Part 10 Restricted Security Disclosure*

- *We have revised Part 10 so it applies to restricted securities, not just restricted shares.*

- *Restricted security disclosure obligations now only apply to the MD&A and financial statements to the extent that issuers must use the appropriate terms to describe the restricted securities. Restricted security disclosure is already required in other CD documents reporting issuers must prepare, such as the AIF.*

*Part 11 Additional Filing Requirements*

- The requirement in section 11.1 for an issuer to file a copy of any document that it sends to its securityholders has been clarified. It now applies only to disclosure materials, so other administrative mailings do not have to be filed.

- In response to the comments we received, issuers will now be required to file a copy of any disclosure materials they send to their securityholders. We have removed the reference to 50% of the securityholders of a class of security held by more than 50 securityholders. This is consistent with the requirement currently in the securities legislation of some of the jurisdictions.

*Part 12 Filing of Certain Documents*

- In response to the comments we received, the requirement to file copies of documents has been revised as follows:

    - it no longer only applies to securities where the class of security is held by more than 50 securityholders

    - constating documents only have to be filed if they are not statutory instruments

    - shareholder or voting trust agreements only have to be filed if the issuer has access to them

    - contracts that create or can reasonably be regarded as materially affecting the rights or obligations of securities only have to be filed if they affect the securityholders generally

    - the documents are not filed as an attachment to the AIF or material change report, but are instead filed no later than when the AIF or material change report are filed.

- As contemplated in the notice published on June 20, 2003 with the Instrument, issuers must now file copies of all material contracts not entered into in the ordinary course of business. Particulars of these contracts were already required to be disclosed in the AIF. We have permitted issuers to remove portions of the contracts that would be unduly detrimental to the issuer to disclose, and to address confidentiality concerns. We have also grandfathered contracts entered into before January 1, 2002.

*Part 13 Exemptions*

- The exemption from the continuous disclosure requirements for exchangeable share issuers has been revised as follows:

    - it is only available to issuers whose parent issuers are listed on certain named stock exchanges or quotation systems in the United States, which is consistent with the circumstances that we have granted discretionary relief

    - we permit copies of the parent issuer's documents to be filed at the same time as, or as soon as practicable after, their filing with the SEC, as this is consistent with the requirements in the Foreign Issuer Rule

- We have added an exemption from the continuous disclosure requirements for issuers of credit-supported securities that follows the exemption for exchangeable share issuers. This exemption was contemplated when the Rule was first

published for comment, and simply codifies the circumstances in which we have granted discretionary relief on a case-by-case basis.

*Part 14 Effective Date and Transition*

- We have specified when the proxy solicitation and information circular requirements apply, and the requirement in Part 12 to file documents applies, to give time for transition.

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

- The MD&A was revised to clarify its purpose. This was done as part of our review of the disclosure requirements in each of the AIF and MD&A to ensure the requirements are consistent with their stated purposes.

- The selected annual information disclosure that was in the AIF has been moved to the MD&A. This disclosure is primarily financial disclosure that shows investors trends in the issuer's operations. As such, it is disclosure more appropriate to the MD&A, not the AIF.

- Under the liquidity discussion, issuers must now also discuss lease payments, since this requirement has been removed from the AIF.

- In response to comments we received, we have added a description of what must be discussed as off-balance sheet arrangements. The description is consistent with the SEC's description of off-balance sheet arrangements.

- The MD&A has been revised to provide additional guidance for resource issuers when they are discussing the results of their operations.

- We have clarified the requirement in the interim MD&A to update the annual MD&A, if the interim MD&A is the first MD&A in Form 51-102F1 filed by the issuer.

- We have removed the option for issuers to disclose in the MD&A only if the auditor has not reviewed the interim financial statements. As discussed above, this disclosure is now provided in a notice accompanying the interim financial statements.

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

- The AIF was revised to clarify its purpose. This was done as part of our review of the disclosure requirements in each of the AIF and MD&A so the requirements are consistent with their stated purposes.

- We have clarified that issuers cannot satisfy the disclosure requirements by incorporating a previous AIF by reference. The form also now provides that the issuer must have filed the incorporated information under its SEDAR profile, otherwise the issuer must file the information with its AIF.

- We have deleted certain disclosure requirements in the AIF that are more appropriately dealt with in the MD&A, or that overlap with the MD&A. In particular, we have removed the requirements in the AIF to discuss,

    - leases and mortgages

    - selected consolidated financial information, except dividend disclosure.

- We have deleted certain disclosure requirements in the AIF that overlap with requirements in other forms, or that are duplicated within the AIF itself. For example, we have removed the requirements in the AIF to provide a detailed description of significant acquisitions, as this information is already provided in the BAR.

- We have revised the requirement to disclose social or environmental policies so it is limited to policies that are fundamental to the company's operations. We have also given some examples of social and environmental policies. This was in response to comments that the disclosure as originally proposed would add clutter to the AIF.

- In response to comments, we have added instructions to the disclosure of ratings to clarify some of the disclosure that must be provided under this item.

- We have revised the disclosure relating to promoters to require three years of disclosure rather than two. This is consistent with the disclosure required of transactions with informed persons or promoters relating to mineral projects, and the disclosure of interests of management and others in material transactions.

- In the disclosure relating to the interest of management and others in material transactions, we no longer refer to *principal shareholders*, since this term is not defined in the CD context. Instead, we now refer to 10% securityholders, which is consistent with how *principal shareholder* is defined in the prospectus context.

- In response to comments, we have added guidance on when a contract has been entered into in the ordinary course of business. We have also revised the requirement relating to disclosure of material contracts so

    - the contracts no longer have to be available for inspection, since they must be filed under Part 12 of the Rule

    - only contracts entered into within the last financial year, or contracts entered into before the last financial year but which are still in effect, must be disclosed; this is subject to a limit that contracts entered into before January 1, 2002 do not have to be disclosed.

- In response to comments, we have added a reference to the Form 52-110F1 *Audit Committee Information Required in an AIF* in the AIF. This will remind issuers that, if applicable, they will have to include the disclosure contemplated in that form.

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

- We now permit the BAR to incorporate by reference a news release or material change report filed in respect of the acquisition. If the relevant information has already been filed in another document, it is sufficient for that disclosure to be incorporated by reference, rather than repeated.

- Issuers will now be required to disclose, if applicable, if the auditors have not consented to the inclusion of their audit report in the BAR.

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

- The requirement for issuers to provide copies of any document incorporated by reference into the information circular before the meeting has been removed. The requirement is now simply for the issuer to provide a copy *promptly*. As commenters pointed out, the requirement for copies to be delivered before the meeting could be unreasonable, if the request is received very close to the time of the meeting. The requirement for copies to be delivered *promptly* is sufficient.

- We have clarified that, if a document is incorporated by reference into the information circular, the document must be filed with the information circular, if the document has not been previously filed.

- In the requirements relating to equity compensation plans, we have clarified that issuers must disclose plan information for each class of securities separately.

- We have increased the amount of routine indebtedness that does not have to disclosed from $25,000 to $50,000.

- In response to comments, we have re-inserted the requirement for issuers to disclose how securityholders may request copies of the financial statements and MD&A.

***Form 51-102F6 Executive Compensation Form***

- We have replaced the references to restricted stock with shares or units that are subject to restrictions on resale. This avoids the use of technical terms from the Handbook that may not be understood generally.

- In response to comments, we have revised the definition of NEO as follows:

    - chief financial officers are now included, regardless of the amount of compensation they receive, as these officers serve a significant function for the company but, particularly for smaller issuers, may not receive compensation above the threshold

    - we reduced the number of other executive officers that disclosure must be provided for from four to three so that the total number of officers captured by the definition remains the same

  - we have increased the threshold for disclosure for other executive officers from $100,000 to $150,000 to reflect increases in executive salaries and inflation

- We have clarified that disclosure in the summary compensation table should include disclosure of contributions to assist the NEO in purchasing shares, unless the contributions were available to employees generally. This was already contemplated in the instructions, but was unclear as formerly drafted.

- We have clarified that the compensation committee members do not have to sign the compensation report in the executive compensation form. The members of the committee must be named, and, if a member disagrees with the content of the report, certain information must be provided.

***The Policy***

- The Policy has been amended to reflect some of the changes to the Rule described above. For example,

  - the discussion of the disclosure of auditor involvement in the interim financial statements has been updated

  - the discussion relating to the approval of interim financial statements has been updated to reflect that the audit committee may approve the interim financial statements.

- We have added a reference to Multilateral Instrument 52-109 *Certification of Disclosure in Companies' Annual and Interim Filings* as a reminder to issuers that are subject to that instrument.

- We have noted in the Policy that financial statements, and certain operating statements and financial information required to be filed under the Rule, must comply with National Instrument 52-107 *Acceptable Accounting principles, Auditing Standards and Reporting Currency* (NI 52-107). The Policy also notes that disclosing financial information in a news release without disclosing the accounting principles used is inconsistent with NI 52-107.

- The Policy confirms that, in most circumstances, the Rule requires that the auditor's report filed with the annual financial statements cover both the most recently completed financial year, and the comparative period presented in the financial statements.

- The Policy has been updated to reflect the clarifications made to the requirements in the Rule relating to the delivery of financial statements and MD&A. The Policy also clarifies that, if a securityholder does not request the financial statements and MD&A, this will override a beneficial securityholder's standing instructions given under NI 54-101, to the extent those instructions relate to the delivery of financial statements.

- The Policy notes that issuers are not required to send an annual request form under Part 5 of the Rule, since the request form sent under Part 4 relates to both the financial statements and the MD&A applicable to those financial statements.

- The Policy now provides guidance as to how an issuer should interpret the requirements relating to filing financial statements after a reverse takeover.

- In response to comments, the Policy notes that the requirement to file a notice of change in corporate structure may be satisfied by filing a copy of the material change report or news release relating to the change. The material change report or news release must contain all the information required in the notice.

- Guidance has been provided relating to the disclosure in the AIF of asset-backed securities. The disclosure is consistent with the guidance that was provided in Companion Policy 44-101CP.

- The Policy notes that SEC issuers may satisfy the requirement to file a BAR by filing copies of their filings with the SEC, if those filings contain all of the information, including financial statements, required in the BAR.

- In response to comments, we have added guidance on when a contract has been entered into in the ordinary course of business.

- In response to comments, guidance has been added regarding the documents that must be filed under Part 12 of the Rule.

## Appendix B

## Summary of Comments and CSA Responses

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## Summary of Comments and CSA Responses

### Part I Background

On June 20, 2003 the CSA published for comment revised versions of the Rule and the Foreign Issuer Rule. The comment period expired on August 19, 2002. The CSA received 23 submissions from the commenters identified in Schedule 1.

The CSA have considered the comments received and thank all commenters for providing their comments.

The questions contained in the CSA Notice to the Rule (the 2003 Notice) and the comments received in response to them are summarized below. The item numbers below correspond to the question numbers in the 2003 Notice. Below the comments that respond to specific questions in the 2003 Notice, we have summarized numerous other comments on the Rule.

The section references in this summary are to the sections in the Rule as published. The section numbers in square parentheses are the corresponding section references in the current version of the Rule.

The comments and responses relating to the Foreign Issuer Rule are set out as an appendix to the Notice relating to on the Foreign Issuer Rule. Comments that related to other CSA projects, such as proposed Multilateral Instrument 52-109 *Certification of Disclosure in Companies' Annual and Interim Filings* (MI 52-109) and Multilateral Instrument 52-110 *Audit Committees* (MI 52-110) have been forwarded to the appropriate committees.

### Part II National Instrument 51-102 *Continuous Disclosure Obligations*

**Comments in response to questions in 2003 Notice**

**1. Filing documents**

***Question:*** *Part 11 of the Rule requires reporting issuers to file copies of any materials they send to their securityholders. Part 12 of the Rule requires reporting issuers to file copies of contracts that create or materially affect the rights of their securityholders.*

*(a) We propose to limit these requirements to instances in which securities of the class are held by more than 50 securityholders. This is to prevent issuers from having to file documents that relate to isolated securityholders, such as a bank holding security in connection with a business loan, if the bank is the only holder of that class of security. Is this the correct approach, or should copies of all materials sent to securityholders and all agreements that affect the rights of securityholders, regardless of the number of securityholders, be required to be filed?*

Three commenters said the requirement should apply regardless of the number of securityholders in the class.

One commenter said all information sent to securityholders of reporting issuers, other than purely promotional or marketing information, should be required to be filed, as the current proposal could be considered a form of regulatory sanctioned selective disclosure. The commenter suggested that the cost to the reporting issuer of filing the information is relatively cheap, while the benefits to the market are high from having this information. The commenter would be less concerned if there was clear evidence that the changes affecting one class of securities were not going to affect the other classes of securities.

One commenter said copies of all materials sent to at least 50% of a class of securityholders should be filed, regardless of the number of securityholders in the class.

One commenter said the Rule should not require that copies of materials sent to banks and controlling shareholders be filed. The commenter suggested that only documents sent generally to securityholders should be filed. The commenter questioned if the requirement was even necessary, as existing securities legislation provisions may already address the issue. Alternatively, the commenter supported the 50%/50 securityholder approach.

One commenter agreed with limiting the requirement to circumstances where the class of securities is held by more than 50 securityholders.

One commenter asked if annual reports, if distributed to more than 50% of securityholders of a class of securities, would have to be filed under section 11.1(1).

One commenter said venture issuers should not be required to file materials sent to securityholders, as this would add further cost for venture issuers, who are generally the least able to afford increased costs.

*Response: The CSA disagree that the requirement, as proposed in the 2003 Notice, would be sanctioned selective disclosure, as it does not override any of the existing provisions relating to tipping or trading on undisclosed information. However, the CSA*

*agree that the 50%/50 securityholder formulation does not achieve the desired result. The Rule has been revised to reflect the requirement currently in securities regulations, that is, to require the filing of copies of all material sent by the reporting issuer to its securityholders.*

*The Rule is intended to encompass all of the current CD requirements. As such, it will replace the current local requirements.*

Two commenters suggested the 50 securityholder test should be clear as to whether it is referring to registered or beneficial holders. One of the commenters said it should apply to both registered holders and beneficial owners.

*Response: The Rule has been revised to delete the reference to 50 securityholders, so this clarification is no longer required.*

One commenter said this requirement would require every document, no matter how immaterial, to be filed, if the document is sent to securityholders. For example, issuers would have to file the return envelope for completed proxies, or letters to securityholders regarding registering for electronic document delivery. If the intention is for these documents not to be filed, the requirement should be limited to disclosure materials only.

*Response: We have revised the Rule as suggested by the commenter.*

***Question:*** *(b) Should we expand the requirement in Part 12 to require filing of all contracts that are material to the issuer? These contracts are required to be filed with an annual report on Form 10-K, in the US.*

One commenter said that the filing requirement should not be expanded to apply to all material contracts of the issuer.

One commenter supported the current requirement in the rule - filing of contracts that create or materially affect the rights of securityholders.

Two commenters said the requirement should be expanded to include all contracts material to the issuer. One commenter said this requirement should be in addition to the requirement to file materials that affect the rights of securityholders.

One commenter agreed with the concept of filing all contracts that are material to the issuer, subject to confidentiality concerns. The commenter noted though, that the US requirement is part of a CD system that is arguably not as rigorous as the Canadian system. In the US, many of the filed documents are also deleted from the public file for confidentiality reasons.

One commenter said the requirement to file copies of contracts that materially affect the rights or obligations of securityholders is unclear. The obligation should be to file copies of contracts that would reasonably be regarded as material to the investor regardless of whether they create or affect rights or obligations.

*Response: Based on the majority of the comments received, we have expanded the requirement to apply to all material contracts of the issuer, other than contracts entered into in the ordinary course of business. The requirement is now consistent with the disclosure requirement in the annual information form (AIF) so that the material contracts disclosed in the AIF will have to be filed under Part 12. We have added guidance to the Companion Policy to the Rule (the Policy) and an instruction to the AIF Form to clarify what is meant by contracts entered into in the ordinary course of business. In light of this guidance, we expect the scope of contracts that will have to be filed under Part 12 will be limited to those contracts that an investor would not expect to exist, given the industry the reporting issuer operates within. Also, Part 12 of the Rule permits issuers to edit material contracts to delete portions that contain confidential, competitive or commercially sensitive information.*

One commenter said the requirement was unclear as drafted. If the intent was to require indentures governing certain securityholders to be filed, this should be clarified. If the intent is for all material contracts to be filed, then the requirement is too onerous for venture issuers, as almost every contract will be material for a venture issuer. Venture issuers will already be issuing a press release and filing a material change report, and most investors will rely on the summaries in those documents anyway. Given this, the requirement should not apply to venture issuers.

*Response: As discussed above, we have revised the requirement regarding filing contracts so that it requires the filing of all contracts that materially affect the issuer, other than those entered into in the ordinary course of business. Once the reporting issuer considers its contracts in the context of its business and the industry that it operates within, we expect the scope of contracts that will have to be filed under Part 12 will be quite narrow.*

**2. Business acquisition disclosure**

***Question:*** *The Rule would require the filing of a BAR [business acquisition report], in addition to any material change report filed in respect of the acquisition, within 75 days after completion of the significant acquisition. This requirement is meant to achieve greater consistency with the prospectus rules implemented in 2000, and to provide investors in the secondary market, on a*

*relatively timely basis, the type of information currently required for primary market prospectus investors. The requirement is based on meeting certain defined thresholds of significance. It is patterned after a requirement of US federal securities law.*

*(a) Is this approach appropriate? Would it be more appropriate, for some or all classes of reporting issuer, to recast the BAR requirement as a subset of the material change reporting requirement, governed by the same trigger - the occurrence of a material change?*

Two commenters agreed with the approach in the Rule. The commenters did not believe the BAR requirement should be a subset of the material change report requirement. One of the commenters noted the approach in the Rule is consistent with the prospectus rules, so people are familiar with the concepts. The commenter said the material change requirement is more subjective, and is frequently applied inconsistently.

Three commenters said that the BAR should be recast as a subset of material change reporting. Two of the commenters said this would make the information more relevant, as the change report would be filed within 10 days, possibly as a series of material change reports filed as new information about the acquisition becomes available. One commenter said this approach would also permit issuers to withhold competitively sensitive material by filing confidential reports. The commenter suggested that, if this change is made, the Rule should require less detailed disclosure about the acquisition. One of the commenters said this would require the financial statement requirement to be more flexible and allow alternative disclosure where the financial statements do not exist.

One commenter said that, if the BAR became a subset of the material change reporting requirement, the deadline should not be made shorter than the proposed 75 days. Issuers should have 10 days to file their material change reports, but 75 days to file their BAR.

One commenter said the BAR should not be a subset of the material change reporting requirement if the BAR must be accompanied by historical audited and *pro forma* financial statements. It would not be reasonable to expect issuers to comply with the financial requirements in the time frames contemplated for material change reporting.

*Response: We have decided to maintain the separation between the BAR and material change reporting. The CSA remain of the view that it is important to have the prescribed financial statement disclosure for an acquisition that satisfies the significance tests in the Rule. In most cases, the issuer will also have to file a material change report, which will give investors the proximate disclosure some commenters suggested was important.*

***Question:*** *(b) If the BAR requirement is recast as a subset of the material change reporting requirement, should the current thresholds of significance be retained? If so, should they demonstrate materiality in the absence of evidence to the contrary, or merely be guidelines to materiality?*

Three commenters supported using the thresholds of significance as guidelines, rather than prescriptive tests. Two of the commenters said the tests for significance are too rigid, and not indicative of an issuer's true financial situation. The commenters suggested that re-casting the significance tests as guidelines underscores the need for judgment in assessing an acquisition's impact on the acquirer's economic value.

One commenter said that, if the BAR requirement is recast, the current thresholds of significance should be retained and that they should, in the absence of evidence to the contrary, demonstrate materiality.

One comment suggested that if an acquisition met one of the significance tests in Part 8 of the Rule, it would, in most cases, constitute a material change. The commenter said that it may be preferable, though, to provide specific significance tests for BARs so it is clear when an issuer must satisfy the more onerous BAR requirements.

One commenter said a BAR should only be required to be filed if the acquisition meets the significance thresholds outlined in the Rule.

*Response: As we have decided not to make the BAR requirement a subset of material change reporting, we have maintained the significance tests.*

**3. Disclosure of auditor review of interim financial statements**

*Subsection 4.3(3) and section 6.5 of the Rule require that if an auditor has not performed a review of the interim financial statements, a reporting issuer must disclose that fact. These sections also require that if the auditor performed a review and expressed a qualified or adverse communication or denied any assurance, then the reporting issuer must include a written review report from the auditor accompanying the interim financial statements. Section 3.3 of the Policy elaborates that no positive statement is required when an auditor performed a review and provided an unqualified communication.*

*This approach was designed to accommodate the requirement in Section 7050 of the Handbook that, if an auditor's interim review is referred to in any document containing the interim financial statements, the auditor should issue a written interim review report and request that it be included in the document. We understand that the CICA* [Canadian Institute of Chartered Accountants] *Assurance Standards Board currently has a project to amend Section 7050 and this requirement in Section 7050 may be changed. We also understand that the reporting provisions in Section 7050 relating to a scope limitation may be changed; if those provisions of Section 7050 were changed, items (i) and (ii) of subsection 4.3(3)(b) may have to be modified.*

One commenter suggested the CSA should consult with the CICA so reporting issuers do not have a legal obligation that is inconsistent with the professional obligations of their auditors.

*Response: We agree with the commenter that it is important not to impose a legal obligation on issuers that is inconsistent with the auditors' professional obligations. That consideration factored into our decision to not require issuers to disclose that the auditors have reviewed the financial statements if an unqualified review report was issued until the CICA complete their Section 7050 project.*

***Question:*** *(a) Do you agree with the approach in subsection 4.3(3) and section 6.5 of the Rule? Alternatively, if a review was performed and an unqualified report was provided, should a reporting issuer be required to disclose the fact that a review has been performed? If you recommend the latter, what are the benefits of that disclosure?*

One commenter disagreed with the approach because readers may infer a greater level of assurance from the term "review". The commenter said that, until section 7050 of the Handbook is revised, there should be no reference to reviews in an issuer's disclosure.

One commenter expressed concern over requiring auditor involvement with venture issuer interim financial statements. The commenter suggested the relative cost would be higher than for senior issuers, and would not be justified by sufficient benefits to investors.

Three commenters agreed with the approach in subsection 4.3(3) and section 6.5.

Two commenters said issuers should be required to disclose whether or not an auditor has reviewed the interim financial statements, as this would simply the requirement. One of the commenters suggested that the Rule should clarify what is meant by a "review" so investors know what comfort they should take from the review.

Two commenters said the Rule should mandate auditor review of interim financial statements.

*Response: We have not changed the approach set out in the Rule. Issuers will be required to disclose only if an auditor has not reviewed the interim financial statements, or if a review was done and a qualified or adverse communication was provided or the auditor denied an assurance. We are not prepared to mandate auditor review of all interim financial statements at this time, although we will keep the matter under review. Until the CICA project considering Section 7050 of the Handbook is completed, we do not believe it would be appropriate to mandate disclosure of whether or not a review was done.*

***Question:*** *(b) Where a review was performed and an unqualified report was provided, if a reporting issuer discloses that a review has been performed, should the review report from the auditor accompany the financial statements?*

Five commenters said that, if there is a requirement to reference the review, or if an issuer voluntary discloses that a review has been performed, the report should be included with the financial statements. The reasons given by some of the commenters were

- the nature and limitations should be clearly disclosed in a report
- the report would inform securityholders of the auditor's opinion, which is very important information to a securityholder
- the report will inform readers of the limited nature of the review, and so the limited nature of the assurance that should be derived from it; without the report, readers may ascribe too high a degree of assurance to the auditor's review.

One commenter suggested that, if the auditor expressed a qualified or adverse opinion, or denied any assurance, this would be material information and the issuer should include a written review report with the statements.

One commenter said there is no need to file a copy of the review report if an unqualified review has been done.

*Response: We thank the commenters for their input on this point. We will continue to monitor the changes, if any, to Section 7050 of the Handbook resulting from the CICA's review. If, in the future, we require disclosure of if a review has been performed as a result of changes to Section 7050, these comments will assist us in structuring the requirement. For now, issuers that*

*choose to disclose that a review has been done will be requested by their auditors under Section 7050 of the Handbook to include a copy of the review report.*

**4. Added MD&A disclosure**

***Question**: In the MD&A [management's discussion and analysis], we propose to require all issuers to discuss off-balance sheet arrangements, and to analyze changes in their accounting policies.*

*(a) Would it be helpful to include a definition of "off-balance sheet arrangements" to the MD&A? What would you expect the definition would capture?*

One commenter noted that their MD&A Interpretive Release *Disclosure About Off-Balance Sheet Arrangements and Related Exposures* recommends that management disclose the definition it has applied in determining the off-balance sheet arrangements it considered. The commenter suggested it would be useful if the Rule provided a definition or other guidance as to the nature and scope of the off-balance sheet arrangements the requirement applied to.

Three commenters suggested that the Rule should define *off-balance sheet arrangements*, as it is important to specify what exactly an issuer is required to disclose in the MD&A. One of the commenters suggested the definition should capture all contractual obligations such as, for example, details of operating leases, commodity delivery arrangements, forward sales, and guarantees. Another of the commenters suggested referencing the United States Securities and Exchange Commission (SEC) definition. The third commenter suggested the need for a principles approach could be discussed in the Policy.

Two commenters said there would be benefits if the Rule had a definition harmonized with the SEC definition, which essentially captures guarantees, retained or contingent interests, derivative instruments and interests in unconsolidated entities.

One commenter said the disclosure obligation relating to off-balance sheet arrangements should require disclosure of arrangements that would reasonably be expected to have an impact on the financial condition of the issuer and that would be of interest to an investor.

One commenter said any definition of *off-balance sheet arrangement* will quickly become outdated with the introduction of new financing structures. Generally accepted accounting principles (GAAP) should govern what constitutes an off-balance sheet arrangement so the disclosure will be focussed on material financing arrangements not otherwise reflected on the balance sheet or in the notes.

*Response: We have added guidance to the MD&A of what the term* off-balance sheet arrangement *includes. We provided guidance rather than a prescriptive definition so the requirement will be flexible enough to adapt to changing financing structures. The guidance we have provided is generally consistent with the SEC concept.*

***Question:** (b) The requirement to discuss and analyze changes in accounting policies applies to any accounting policies a reporting issuer expects to adopt subsequent to the date of its financial statement, and to any accounting policies that have been initially adopted during the financial period. We are considering whether this disclosure is appropriate for venture issuers. Should venture issuers be exempted from the requirement to discuss either changes in their accounting policies, or the adoption of an initial accounting policy, or both, and why?*

Five commenters said venture issuers should not be exempt from disclosure relating to accounting policies for the following reasons:

- one commenter said that, because the changes would not have a significant impact for most issuers, they could be easily dealt with by stating that; changes that would have a significant impact should be discussed
- one commenter suggested the cost of disclosing, discussing and analyzing the changes should be minimal, and offset by the benefits of increasing investors' confidence in the issuer's disclosure standards

One commenter said venture issuers should be exempted from the requirement to discuss accounting policies in their MD&A. Disclosure of the impact of the adoption of a new accounting policy is already required in financial statements under GAAP, and further discussion in the MD&A will not provide significant additional benefits. The commenter also noted the impact of accounting policies is often unknown until a detailed analysis is performed. The commenter said venture issuers should not be required to do this analysis before an accounting policy becomes effective.

*Response: Consistent with the majority of the comments received, we have not added an exemption to the Rule for venture issuers from the requirement to discuss changes in accounting policies in the MD&A.*

**Part III Other comments on the Rule**

The following are additional comments on the Rule. They do not respond to questions posed in the 2003 Notice. The comments generally appear in the same order as the provisions of the Rule they relate to.

**General comments**

Four commenters supported the goal of developing and implementing harmonized CD obligations in Canada. One of the commenters also supported the objective of enhancing the consistency of disclosure in the primary and secondary markets, and facilitating capital-raising initiatives such as an integrated disclosure system.

Two commenters supported the types of initiatives proposed by the Rule that harmonize Canadian and US requirements. One of the commenters also supported the aspects that are compatible with the multijurisdictional disclosure system (MJDS).

*No response required.*

One commenter suggested that, in general, the size of public filings should be reduced. The proposals appear to add more length, and the commenter questioned the value of the additions.

*Response: We agree that public filings should not be so long as to be overwhelming. However, the additional disclosure we have added is necessary given the significant number of investment decisions that are based on CD documents. The disclosure issuers are required to provide under the Rule, which is tied to materiality, is relevant to investors in the secondary market.*

One commenter suggested the Rule should include a general exemption if the issuer complies with the laws of the jurisdiction of its incorporation, or where a substantial portion of its business is carried on, like the exemption in section 212 of the Alberta *Securities Act*. Alternatively, the commenter said the CSA should coordinate with the federal government to have duplicative provisions removed from the *Canada Business Corporations Act* (CBCA), and provide interim relief in the meantime.

*Response: We have revised the Rule to provide an exemption from the proxy solicitation requirements for reporting issuers that comply with the requirements of the jurisdiction in which they are incorporated, organized or continued, provided that the requirements are substantially similar to the requirements of Part 9. We have also exempted reporting issuers from the requirement in Part 4 to send a request form, provided they send copies of their annual financial statements and MD&A to their securityholders. This means that issuers that are required to comply with corporate law requirements to mail financial statements will not also have to send the request form. We have not provided a general exemption like the one in section 212 of the Alberta* Securities Act*, as most corporate legislation is not as comprehensive as the requirements in the Rule.*

One commenter suggested there should be a greater emphasis on plain language in all disclosure documents. The commenter recommended expanding the plain language standards to emulate those required by the SEC. The commenter suggested that plain language saves time and money for investors by giving them more meaningful opportunities to better understand corporate performance and direction, and would raise the standards for many issuers.

*Response: We agree that plain language in disclosure documents is very important. For that reason, most of the forms have instructions requiring issuers to use plain language. We do not think it would be appropriate at this time to emulate the SEC's approach to this issue.*

One commenter recommended that the proposals in the Rule regarding audit committee review of public disclosures, including press releases about financial results, should be harmonized with the requirements in proposed MI 52-109. The Rule should be harmonized with what is called for in MI 52-109.

*Response: We believe the commenter intended to refer to MI 52-110, rather than MI 52-109, as MI 52-110 will address the obligations of audit committees. We do not believe the obligations in the Rule conflict with what is proposed in MI 52-110. If issuers are subject to both the Rule and MI 52-110, they must comply with both instruments. They can do this without breaching the other instrument.*

One commenter said the Rule should be drafted to permit the use of technology for delivery of CD documents, without the need for requiring exemptive relief. The commenter asked, as an example, if issuers would be permitted to extract financial information and MD&A if they were filed as part of a single document, like an annual report, or if the entire report will have to be delivered to the securityholders that request the financial statements. The commenter suggested

- adding specific language that would allow the delivery of only relevant parts of a filed document to securityholders, and
- standardizing where information appears in CD documents and how it is labelled.

*Response: We have decided not to be prescriptive in how information in the forms must be organized or labelled, or how documents are to be delivered to securityholders. This will give issuers the maximum amount of flexibility*

- *in structuring the disclosure to suit their circumstances,*
- *developing industry practice in delivering documents, and*
- *responding to advances in technology to effect delivery.*

Two commenters suggested the Rule or Policy should expressly permit the practice of *householding* of material - that is, delivering one set of materials to all securityholders that share a household.

*Response: We have not revised the Rule to expressly permit the practice of householding materials. The Rule, as it relates to proxy materials, deals only with registered securityholders, while beneficial securityholders have their rights to receive materials set out in National Instrument 54-101* Communication with Beneficial Owners of Securities of Reporting Issuers *(NI 54-101). To be effective, permitting householding of materials must be addressed in both the Rule and in NI 54-101, as approximately 95% of registered securityholders are intermediaries holding on behalf of beneficial owners. We will consider this comment in the context of NI 54-101, and will make changes to the Rule, as appropriate, if changes are made to NI 54-101.*

**Part 1 - Definitions**

One commenter said, generally, definitions referring to the Handbook are difficult for legal practitioners and issuers that use non-Canadian GAAP to apply. The commenter suggested that GAAP-neutral definitions or references should be used in the Rule and in the forms.

*Response: The Handbook is only referenced in two definitions (reverse takeover acquiree, and reverse takeover acquirer). The Handbook provides extensive discussion and guidance relating to these concepts that will be helpful to issuers and their advisors. However, it is impractical to incorporate these lengthy descriptions it into the Rule itself. In these limited circumstances, the cross-references are justified.*

One commenter suggested that the definition of *acquisition of related businesses* [now in Part 8 of the Rule] should be clarified, as the reference to *common event* could mean that two otherwise unrelated acquisitions could be considered related businesses. For example, if both acquisitions were subject to separate regulatory approval. The commenter also suggested paragraph (c) of the definition should be deleted.

*Response: To be a related business, the definition requires the acquisitions to be subject to a* ***single*** *common event. An event such as regulatory approval, for example, would only make the businesses "related" if the regulatory approval of one acquisition is also a condition of the second acquisition.*

One commenter suggested the definition of *asset-backed security* is too broad if it would capture a unit of an income trust that owns 10-year subordinated notes of the underlying company.

*Response: We disagree that the definition is too broad. The term* asset-backed security *is only used in the AIF. The disclosure required in the AIF for asset-backed securities would be extremely relevant to an income trust that owns 10-year subordinated notes.*

One commenter suggested *date of acquisition* should be defined as the legal date of closing of the acquisition, which is when control changes, rather than the date of acquisition as determined for accounting purposes under the Handbook.

*Response: The definition in the Handbook has two branches. The first deals with the date the assets are transferred and the consideration paid. We expect this would usually be the same as the legal date of the closing of the acquisition. The second branch deals with circumstances where the assets themselves have not been transferred, but control over those assets has been transferred. If that is the case, an issuer using Canadian GAAP must start preparing consolidated financial statements. As the issuer has to determine the date of acquisition for accounting purposes so it can prepare its financial statements, it is appropriate for the same factors to be considered in determining when the BAR report must be filed. It would not be appropriate to only use the legal closing date, as that may take place significantly after the control of the assets has been transferred, and after the issuer has started consolidating the acquisition in its financial statements.*

One commenter said the definition of *equity security* should not include securities that have a residual right to participate in earnings. Instead, it should be limited to a security that carries a residual right to participate in the assets of an issuer on the liquidation or winding-up of the reporting issuer.

*Response: We have deleted the definition of* equity security *in the Rule as the term is already defined in National Instrument 14-101* Definitions*. That definition refers back to the definition of equity security in securities legislation. It would not be appropriate to change that definition, which has been used for many purposes in many different national and multilateral instruments, in this Rule.*

One commenter said the definition of *exchange-traded security* excludes

- all foreign-listed or quoted securities,
- in provinces other than Ontario, appears to exclude securities listed on the Toronto Stock Exchange (TSX), and,
- in Ontario, excludes securities listed on the TSX Venture Exchange (TSXV).

*Response: The term is only used in the definition of marketplace. As the definition of marketplace also encompasses exchanges and quotation systems, regardless of where they are located, the limitations to the definition of exchange-traded security suggested by the commenter are irrelevant.*

One commenter suggested paragraphs (e) or (f) of the definition of *executive officer* may be over-broad. There could be a large number of policy-making personnel (for example, in respect of the privacy policy, or the environmental policy) that should not be considered executive officers. The commenter suggested that either *senior officer* or *officer* would be more appropriate, particularly in Parts 10 and 13 of the AIF form, and in the Information Circular form.

*Response: We disagree. The definition of executive officer is designed to capture persons that are directing the operations of the reporting issuer and making its significant decisions. This includes the people responsible for approving a policy direction and ensuring the policy is implemented and followed (that is, the making of the policy for the issuer). This group is distinct from those personnel that simply develop the policies for consideration.*

One commenter suggested the definitions relating to reverse takeovers should not refer to *control*, as the securityholders of the acquired enterprise may not act in concert, and so will not have control. Instead, it should be a numerical test, such as 50% plus 1 aggregate ownership.

*Response: We have added a statement to the Policy to clarify that the term* control*, as used in the reverse takeovers definitions, refers to control in the accounting context. This is distinct from the concept of a* controlled corporation *or a* control person *in securities legislation, which the commenter seems to be alluding to.*

One commenter supported the introduction of the new definition of *venture issuer* to provide relaxed disclosure and filing obligations for those issuers.

*No response required.*

One commenter supported the treatment of venture issuers under the Rule, but said the definition will have to be monitored to determine the effect on smaller capitalization issuers that do not meet the definition.

Two commenters approved of the use of a single threshold for differentiating CD requirements among issuers. One of the commenters, though, thought the threshold should be based on the $75 million market value test, not the issuer's listing. The commenter said a market value test would capture large issuers listed on the TSXV, and prevent small issuers on the TSX from being subject to the more onerous non-venture issuer requirements.

*Response: The listing test is more transparent and easier to understand and apply for investors, who must be able to determine what disclosures they will receive from an issuer they invest in. We recognize that using a listing test, rather than a market value test, will result in some smaller issuers not being able to rely on the exemptions available to venture issuers. If those issuers choose to remain listed on a senior exchange and access the benefits that provides, they should be subject to the associated level of disclosure. Alternatively, those issuers can move to a junior exchange so they can rely on the exemptions for venture issuers.*

One commenter that NASDAQ SmallCap companies and those listed on the UK AIM market, for example, should be *venture issuers* under the Rule.

*Response: We disagree. NASDAQ SmallCap companies are much larger on average than issuers listed on the TSXV, and are more comparable to TSX listed issuers in Canada.*

*The majority of issuers that are reporting in Canada that are not foreign issuers entitled to rely on the Foreign Issuer Rule are listed on exchanges in Canada and the US. As a result, we specifically considered those exchanges, and whether it would be*

*appropriate for issuers listed on those exchanges to be considered venture issuers, or not venture issuers. Issuers that are listed on other exchange or quotation systems, such as the UK AIM market, that feel those markets are comparable to the TSXV can apply for discretionary relief. If it becomes apparent in the future that Canadian reporting issuers are migrating to foreign junior exchanges, the CSA can consider amending the Rule at that time.*

**Part 4 - Financial statements**

***Section 4.1 Annual Financial Statements and Auditor's Report***

One commenter said subparagraph 4.1(1)(a)(ii) of the Rule should be clarified to indicate if it was intended to require a partial financial year be included in the financial statements.

*Response: We do expect partial years to be included in the financial statements. Section 3.1 of the Policy indicates that the term* financial year *does not necessarily mean a 12 month period.*

***Section 4.2 Filing Deadline for Annual Financial Statements***

One commenter expressed concern with the proposed deadline for year-end reporting, given the logistics of having the documents approved, audited, printed, translated, filed, and delivered in the shortened period. The commenter suggested that the quality of the report is more important than shortening the filing deadline.

*Response: The desire of investors for more timely information is not always easily balanced with their desire for heightened reliability. However, we believe that in an environment that increasingly demands, and is capable of furnishing, more timely information, the current filing deadlines are inadequate. We believe that the new filing deadlines, including the different deadlines applicable to venture issuers, reasonably balance the needs for timeliness and reliability. Other changes to the CD requirements, such as removing the requirement to deliver financial statements and MD&A except on request, will also reduce the time it takes to prepare the documents for filing.*

One commenter was concerned about the impact of the shorter time frames for filing financial statements given section 79 of the Ontario *Securities Act*, which requires issuers to send financial statements filed to their securityholders at the same time as they are filed. The commenter questioned what the impact of the Rule on section 79 will be, since the Rule is silent on this point.

*Response: Section 79 of the Ontario* Securities Act *has already been amended to remove the concurrent delivery requirement, provided the financial statements are sent by the filing deadline. In addition, the Ontario Securities Commission has published for comment Ontario Rule 51-801, which will implement the Rule in Ontario. Under Ontario Rule 51-801, section 79 of the Ontario* Securities Act *will not apply to issuers that comply with section 4.6 of the Rule. Other jurisdictions have published similar local rules for comment that will implement the Rule in their jurisdictions or have proposed amendments to their* Securities Acts. *The specific implementation of the Rule in each local jurisdiction cannot be done within the Rule itself, as it differs from jurisdiction to jurisdiction.*

***Section 4.3 Interim Financial Statements***

Two commenters said disclosure of whether an auditor has reviewed the interim financial statements should be prominent and presented in a consistent location with the interim report. They also suggested that issuers should not be given the alternative of disclosing in their financial statements or MD&A. One of the commenters suggested that, instead, the Rule should require a legend to be placed on the face of the interim financial statements.

One commenter said that disclosure about auditor review of interim financial statements should not be in either the financial statements, or in the MD&A. It should be in a notice that accompanies the interim financial statements.

*Response: We have revised the Rule to require disclosure that an auditor has not reviewed the financial statements in a notice that accompanies the financial statements. This ensures that the information is prominent and easily located. We have not required the disclosure to be given as a notation on the financial statements, as this is not a requirement under GAAP, and we have generally not prescribed the format of financial statements.*

***Section 4.5 Review and Approval of Financial Statements***

Four commenters said boards of directors should be permitted to delegate the review and approval of interim financial statements to the audit committee. The commenters had the following concerns with requiring board approval of interim financial statements:

- none of the recent United States initiatives relating to corporate governance, including the *Sarbanes-Oxley Act* and the most recent requirements of the New York Stock Exchange, mandate board approval of interim financial statements

- the logistics of obtaining board approval of interim financial statements within the short time frames for filing interim financial statements are prohibitive, would increase costs, and would delay the filing of the interim financial statements
- the requirement removes responsibility from the audit committee, which should be encouraged to contribute their knowledge and expertise to the fullest extent practical, not have opportunities to actively participate removed
- the standard and quality of financial statements reviewed and approved by an audit committee, which includes independent members of the board with an appropriate level of financial understanding, are high
- boards are permitted to delegate approval of interim financial statements under the CBCA
- delegation of approval to the audit committee does not reduce the liability of non-audit committee directors

One commenter supported the requirement to have the board of directors approve all interim and annual financial statements as it provides greater clarity to market participants than "review" of the financial statements.

One commenter supported the requirement for the audit committee to review all interim financial statements.

*Response: We have noted the concerns expressed by the commenters about the logistics of obtaining board approval before filing the interim financial statements. We are also aware of the general trend toward the creation of audit committees that have more financial experience, both as a result of increasing regulatory requirements, and as an industry response to investor demands. With the increased expertise within audit committees, and recognizing the pressures that the reduced filing deadlines will place on issuers, we have revised the Rule to require that either the audit committee or the board of directors must approve the interim financial statements. We explain in the Policy that, because of restrictions in some corporate legislation, only the board of directors of some issuers will be permitted to approve financial statements. However, we have given flexibility for those issuers that are not subject to that corporate legislation, and that decide they can satisfy their obligations to their shareholders by utilizing the expertise available in their audit committees.*

***Section 4.6 Delivery of Financial Statements***

***General***

One commenter supported the requirement for delivery of financial statements and MD&A together.

One commenter suggested the CSA should work with the federal government to amend the requirement in the CBCA that corporations mail their annual financial statements to all securityholders except those that inform the corporation in writing that they do not want a copy. The commenter noted that, until this requirement is changed in the CBCA, federally incorporated companies will not have the benefit of section 4.6.

*Response: We will draw the government's attention to the areas of inconsistency between the corporate legislation and the Rule. It will then be up to the government to decide if changes to the corporate legislation will be made.*

***The concept and interaction with NI 54-101***

One commenter expressed concern with the entire framework governing the delivery of documents to securityholders set out in NI 54-101.

Two commenters opposed the approach in section 4.6 of the Rule. The reasons one or both of the commenters gave were

- it permits issuers to respect the wishes of investors that have indicated under NI 54-101 that they do not want to receive certain materials, but requires other investors to reconfirm annually that they do want to receive materials
- the conflict behind, and confusion created by, requiring intermediaries to obtain a one-time-only instruction from beneficial owners, and the requirement for issuers to ask again, on an annual basis, if the beneficial owners wish to receive annual financial statements (but not proxy materials)
- it is unclear if the non-return of a request form overrides an investor's election under NI 54-101 to receive materials; if it does override the instructions under NI 54-101, then there is little value in requiring intermediaries to obtain clients' instructions under NI 54-101 at all
- it does not conform to investors' requests to receive less paper, because they will receive request forms from each issuer whose securities they own

- proxy materials should not be delivered without the financial statements – it would be a severe deficiency from a corporate governance point of view, and call into question the integrity of the vote

- the uncertainty of who is to pay for the cost of delivery of the request form to objecting beneficial owners (OBOs) that have indicated under NI 54-101 that they wish to receive securityholder materials - neither intermediaries or clients should be expected to pay the costs of delivery of the request form

- the significant costs and effort in implementing a system to track the mailing and return of request forms, and the annual instructions, to both the issuers and intermediaries

One commenter suggested the Rule should be clear what the effect would be of failing to respond to the request form, if the securityholder has already elected under NI 54-101 to receive all proxy related materials.

*Response: We have not changed the requirement to deliver an annual request form, although we have clarified the requirement in some respects. In response to the specific concerns raised by the commenters:*

- *The requirement to send the request form only to those securityholders that have indicated they want to receive materials under NI 54-101 is appropriate. The basic principal behind the delivery requirement is that only those investors that want the financial statements should receive copies of them. Currently, under NI 54-101, securityholders must give instructions for their entire portfolio – they cannot distinguish among the various issuers represented in their portfolio. The instructions they give relate to all proxy-related materials, which includes both information circulars and financial statements. As a result, securityholders have to indicate they want to receive proxy materials for all issuers in their portfolio, even if the only information they wish to receive is the information circular for one issuer represented in their portfolio. The request form gives securityholders an opportunity to respond to each issuer individually, and so "customize" their instructions on an issuer-by-issuer basis.*

- *The Policy now indicates that failing to request the financial statements and MD&A will override the instructions given under NI 54-101, to the extent those instructions relate to the financial statements and MD&A only. Failing to request the financial statements will not affect securityholders' right to receive the forms of proxy or information circulars in accordance with their instructions. The NI 54-101 instructions are still relevant, because issuers are still required to deliver information circulars and forms of proxies in accordance with the instructions.*

- *We disagree that the requirement to send a request form will not conform to investors' requests to receive less paper. There is a significant difference between receiving a one-page request form, and receiving a set of financial statements and MD&A that the securityholder does not want.*

- *Investors that want the financial statements will still have access to the statements. Once they request the statements, issuers must deliver a copy within 10 days of receiving the request, if the financial statements have already been filed. We do not agree that delivering the financial statements only on request will result in corporate governance deficiencies.*

- *The request form should be treated the same as all other materials delivered under NI 54-101. As such, issuers are not required to pay for delivery of the form to OBOs that decline to disclose their beneficial ownership to the issuer.*

- *As we expect the request forms will be sent as part of the proxy-related materials, and will largely be returned directly to the issuer, we expect the implementing costs will not be significant. Some groups may also consider providing a separate tracking service to issuers.*

One commenter asked if there should be a distinction between OBOs and non-objecting beneficial owners (NOBOs) under NI 54-101, as reporting issuers should not be required to pay for delivery to OBOs.

One commenter said the Rule should specify that the reporting issuer is responsible for paying the costs of sending the request forms to all registered and beneficial owners.

*Response: We agree that issuers should not be required to pay for the delivery of the request form or financial statements to OBOs that decline to disclose their beneficial ownership to the issuer. We have revised the Rule to ensure this is the result.*

One commenter agreed that the onus should be on the reporting issuer to determine if its securityholders want copies of its financial statements and MD&A. The commenter had concerns with how the requirement would interact with NI 54-101, and suggested a thorough analysis of how the Rule and NI 54-101 interact should be done to ensure there are no gaps. In particular, the commenter asked the following:

- Since the wording in NI 54-101 and the Rule is not identical, does "declined to receive materials" mean declined to receive all materials, or does it also include a securityholder that has declined to receive some materials?

- Will those securityholders that were deemed under NI 54-101 to have opted to not receive materials be considered to have "declined to receive materials" under the Rule?

The commenter suggested these questions could be resolved by changing the requirement so issuers must deliver the request form to beneficial owners that have chosen to receive all securityholder materials.

*Response: We have changed the Rule as suggested by the commenter.*

One commenter suggested the annual request form should ask the securityholders to indicate if they do **not** want to receive the financial statements and MD&A. If the securityholder does not indicate he or she does not want to receive the documents, the issuer should be required to deliver them.

One commenter suggested that a securityholder that fails to return the request form should be deemed to have requested the annual financial statements, and declined to receive the interim financial statements. The commenter suggested this would be a more appropriate approach, as the rate of response of securityholders is relatively constant, regardless of the question asked.

*Response: We disagree with these suggestions, as we expect they would result in people receiving copies of the financial statements and MD&A that did not actually want them. The requirement for securityholders to request the financial statements and MD&A ensures that securityholders that want paper copies can still easily obtain them, without imposing unnecessary delivery obligations on issuers*

Two commenters suggested the financial statements and MD&A should be delivered to securityholders on request, regardless of whether the request is made by returning the request form, or in some other way.

*Response: We have revised the Rule to delete the reference to the request for the financial statements being made in the request form. Securityholders are entitled to copies of the financial statements and MD&A, regardless of how they request them.*

One commenter asked if the request form must be sent only to equity securityholders, or to holders of all publicly traded securities, including debtholders.

One commenter suggested the Rule should be clear that the request form does not have to be sent to non-voting shareholders and debtholders.

*Response: We have clarified the Rule to specify that the request form must only be sent to securityholders other than holders of debt instruments. We have not excluded non-voting shareholders from the requirement, as shareholders, whether holding voting or non-voting securities, are in a different position from debtholders. Debtholders can negotiate the delivery of documents, such as financial statements, when the terms of the debt instrument are being settled. Securityholders do not normally have the option of negotiating terms with the issuer. As a result, holders of non-voting shares should be treated the same as holders of voting shares. This is consistent with their treatment under the financial statement delivery requirement currently in securities legislation.*

One commenter said issuers should be given an exemption from the requirement to send the request form if they elect to send their financial statements and MD&A to all their securityholders.

*Response: We have added an exemption to the Rule for issuers that elect to send the financial statements and MD&A to all their securityholders other than holders of debt instruments.*

***Delivery of the financial statements***

One commenter supported not requiring financial statements to be filed and delivered to securityholders concurrently.

*No response required.*

One commenter said issuers should be given 30 days after the deadline for filing their financial statements and MD&A to deliver copies to their securityholders. This would give them sufficient time to print, package and mail the annual proxy-related documents that include the annual financial statements and MD&A. In the meantime, the information would be available on the System for Electronic Document Analysis and Retrieval (SEDAR) and on the issuer's website. The commenter noted that, under United States securities laws, issuers have much more than 90 days after year-end to print and mail their annual report to their securityholders.

*Response: We disagree. We have already reduced the burden on issuers by removing the requirement to deliver the financial statements and MD&A to all securityholders. Securityholders that do request a copy of the financial statements and MD&A are entitled to receive the copies in a timely manner. Requiring delivery by the later of the filing deadline, and 10 days after the issuer receives the request, provides this timeliness for securityholders. Our requirement for delivery of the financial statements and MD&A to securityholders on request is different from the concept in the United States, where delivery is not required. As such, the requirements are not comparable.*

One commenter suggested that it should be clarified that only the current year's financial statements and MD&A are required to be sent to securityholders.

*Response: The Rule now specifies that an issuer does not have to deliver financial statements that were filed more than two years before the date of the request.*

One commenter noted that, as the issuer may not be able to control when it receives requests for copies of the financial statements and MD&A, the issuer may be required to undertake several separate mailings of materials. This will increase the issuer's costs.

*Response: While we recognize that the issuer may have to undertake several different mailings, we expect the overall costs of delivery will be reduced from the current requirement of having to mail to all securityholders. As securityholders should be entitled to receive copies of the financial statements and MD&A on request, and as these requests may be made over time as new investors acquire securities of the issuer, it is not possible to eliminate the costs associated with multiple mailings.*

***Content of the request form***

Two commenters suggested that reporting issuers and intermediaries will need to prepare their own form of request form, as none is prescribed. One of the commenters suggested the Rule should clarify that it is up to reporting issuers and intermediaries to develop the necessary mechanisms to comply with the request form requirements.

One commenter suggested the Rule should mandate certain information be given to securityholders on or with the request form, such as an explanation of the effect of failing to respond, that investors may change their choice at any time, and who to contact to make changes.

One commenter suggested the procedures involved in sending the request form should be spelled out in the Rule.

*Response: We have decided to give issuers the maximum flexibility relating to the request form. As a result, we have not prescribed the content of the form, when it should be sent, or the exact procedures for sending it. This will allow issuers to consider what practices work best in their individual circumstances, and industry to develop aids to assist issuers.*

One commenter supported the requirement to only deliver financial statements and MD&A to securityholders that request them. The commenter did not object to the sending of the annual request form, as long as the requirement is not onerous. The commenter said it is reassuring that securityholders can obtain copies of documents in print, if they want, but suggested it would be preferable for securityholders to be directed to company websites and SEDAR for copies.

*Response: Issuers may choose to direct securityholders to their websites and SEDAR in the request form.*

***Additional disclosure***

Two commenters said reporting issuers should be required to include a statement in their AIFs, proxy circulars, or annual financial statements telling securityholders how they can request a copy of the financial statements.

*Response: We have added a requirement to the information circular for issuers to disclose how copies of the financial statements and MD&A can be requested from the issuer.*

***Section 4.9 Change in Corporate Structure***

One commenter noted that much of the information required in the notice of a change in corporate structure will already be disclosed in both press releases and material change reports. The commenter suggested the Rule should be revised so issuers will not be required to provide previously disclosed information.

*Response: We have added a statement to the Policy that issuers may use a news release or material change report as their notice under section 4.9 provided that the news release or material change report*

- *has all the information required under section 4.9, and*

- *is filed as the notice under either the Change in Corporate Structure category on SEDAR, or as a paper filing for issuers that are not required to filed on SEDAR.*

***Section 4.11 Change of Auditor***

One commenter asked if the "personnel of a reporting issuer responsible for finalizing" financial statements in the definition of *disagreement* are the directors, as the directors are responsible for the final step of approving them. If so, was this intended?

*Response: The choice of the word* finalizing *in the Rule, a broader term than* approval*, was purposeful. The term* personnel *encompasses those members of management that are responsible for the preparation of the financial statements, as opposed to the board of directors which is responsible for approving the final annual financial statements before they are filed.*

One commenter suggested that the press release issued in connection with the appointment of a new auditor should include a requirement to describe the information in the reporting package. This is already a requirement in the press releases issued in connection with the termination or resignation, but reportable events should be disclosed in both press releases.

*Response: We agree. Issuers will now be required to either describe the information in the reporting package in the news release issued when the successor auditor is appointed, or refer to the prior news release that contained this disclosure.*

One commenter said the requirement for a successor auditor to communicate with the reporting issuer and securities regulatory authorities if the issuer has not complied with the change of auditor requirements should also apply to the former auditor.

*Response: The CSA have determined that it is not appropriate to impose obligations on auditors that are no longer associated with the reporting issuer. Accordingly, the requirement that was in National Policy 31 has been revised to impose the obligation solely on the successor auditor.*

**Part 5 [Part 6] – AIFs and Form 51-102F1 [Form 51-102F2]**

See below under the heading **Part 6 – MD&A and Form 51-102F2 - Form 51-102F2 – Relationship between the AIF and MD&A** for comments relating to the interaction and relationship between the AIF and the MD&A.

One commenter questioned if it was appropriate for venture issuers to not be required to prepare an AIF, given that the AIF is a core disclosure document. The commenter also suggested that, as a core document, all issuers should be required to post the AIF, or the filings comprising an AIF, in the case of venture issuers, on their websites.

*Response: During the first comment period on the Rule, the majority of the commenters supported the distinctions between categories of reporting issuers. We considered these comments, and the financial and other resource constraints that venture issuers may be particularly subject to, when we exempted venture issuers from filing the AIF. The CSA believe that, even with these exemptions, investors will still have access to timely information about all public companies. The CSA are satisfied that the exemptions for venture issuers balance the needs of investors with the challenges facing those issuers. If the CSA adopts an integrated disclosure system (IDS), it may be appropriate to extend the requirement to all issuers that wish to access IDS.*

*We have not mandated that the AIF be posted on an issuer's website. As the AIF is already available on the Internet through SEDAR, this additional requirement is not necessary. Issuer's may choose to post the AIF on their website, if they have a website.*

One commenter suggested Form 51-102F1 [now Form 51-102F2] should be explicitly referred to in this Part.

*Response: We disagree.* AIF *is a defined term in the Rule that includes the Form 51-102F2, but also includes alternative forms of AIFs.*

***Form 51-102F1 [Form 51-102F2]***

***General***

One commenter supported the increased disclosure obligations in the AIF that are currently only in prospectuses. The commenter particularly supported

- the requirement to disclose risk factors
- the guidance given with respect to risk factors, such as cash flow and liquidity problems

- the requirement for directors and officers to disclose involvement with a company just before it became bankrupt or when an event occurred that resulted in a penalty being imposed.

*No response required.*

One commenter said the Form should include references to the requirements in Part 12 of the Rule as well as in Form 52-110F1 *Information Required in an AIF* as a reminder to include all required information.

*Response: We have not added the cross-reference to Part 12 of the Rule because we have amended Part 12 so that material contracts are not filed as part of the AIF. We have added a reference in the AIF to Form 52-110F1.*

***Part 1 General Instructions and Interpretation***

One commenter said the requirements relating to the date of information included in the AIF are inconsistent. Information must be dated as at the year-end, but the instructions then say the information provided in the AIF must be current.

*Response: We have clarified the language in the AIF. Information must be provided as at the financial year-end. If that information would be misleading because of intervening events, though, it must be updated so the AIF will not be misleading when it is filed.*

One commenter suggested *special purpose vehicle* should be defined in the form.

*Response: We have not added a definition as the term is only used in Part 1(i) of the Form. Further, the reference to* special purpose vehicle *is consistent with the reference in National Instrument 44-101* Short Form Prospectus Distributions *(NI 44-101), which has been applied by issuers for a number of years, without a definition.*

***Item 4 General Development of the Business***

One commenter suggested the Form should contemplate an issuer without a three-year history.

*Response: We have not revised the Form. If the issuer does not have a three-year history because it was the resulting issuer from an amalgamation, for example, it may be appropriate to include the history of the predecessor issuers. If the issuer does not have a three-year history because it is a newly incorporated issuer with a new business, it can rely on Part 1(l) of the Form. Part 1(l) provides that issuers do not have to respond to items that are inapplicable. As a result, that issuer can satisfy the disclosure requirement by providing history for the period it has been in existence.*

One commenter said the requirement to discuss expected changes to the business in the AIF is inconsistent with the AIF's stated purpose of disclosing information "up to a point in time".

*Response: We have revised the stated purpose of the AIF to be consistent with CSA's expectations of the disclosure. That is, the AIF is intended to provide material information at a point in time in the context of the issuer's historical and possible future developments. Given this stated purpose, the discussion of expected changes is appropriate.*

***Item 5 Describe the Business***

One commenter suggested that the requirement to disclose the terms of any leases is too onerous. Although the instructions to the Form qualify the requirements with the materiality concept, a less onerous requirement could be drafted.

*Response: As part of our review of the MD&A and AIF we discuss below under the heading* ***Part 6 MD&A - Form 51-102F2 – Relationship between the AIF and MD&A****, we have deleted this requirement in the AIF. The relevant discussion will be provided in the MD&A as part of the financial discussion.*

One commenter suggested the disclosure about mortgages should take into account that a mortgage may have a face amount in excess of the current obligation secured, as it is the amount of the debt that matters.

*Response: As part of our review of the MD&A and AIF we discuss below under the heading* ***Part 6 MD&A - Form 51-102F2 – Relationship between the AIF and MD&A****, we have deleted this requirement in the AIF. The relevant discussion will be provided in the MD&A as part of the financial discussion. Also, in the MD&A, the disclosure relating to mortgages will relate to the current obligation secured, rather than the face value of the mortgage.*

One commenter said the requirement to disclose changes to contracts could be very difficult to comply with, given the involvement of third parties. Having to provide this disclosure could also prejudice the issuer's negotiating position to the detriment of investors.

*Response: Issuers are only required to disclose the affects of renegotiations or terminations that they are aware of. This is consistent with the disclosure requirement in NI 44-101. If the issuer is not able to ascertain the possible effects because of the uncertainties of dealing with third parties, it is important for investors to know of these uncertainties.*

Two commenters approved of the requirement for companies to provide social and environmental policies disclosure in the general description of their business. The commenters suggested that the instructions relating to risk factor disclosure should also include a broad instruction to disclose risks of a social responsibility or sustainability nature. The commenters felt that inclusion of environmental, social and cultural disclosure in the general description of the business is insufficient, without specific inclusion of these items in risk factors.

*Response: The examples provided in the risk factor disclosure are not intended to be comprehensive nor exhaustive. The likely result of attempting to list every type of risk disclosure that may be appropriate would be to exclude those that may be relevant to a specific issuer. Instead, the examples are provided to encourage the issuer to think about what is applicable in its circumstances. It is not necessary to list social or environmental issues in the risk factor disclosure. If those items are applicable to an issuer, the issuer will be expected to discuss them, given the broad language in the Form.*

Three commenters disagreed with requiring disclosure of social and environmental policies. One of the commenters said the disclosure will only add clutter without helping the investing public or other people that may be concerned about these issues. Another commenter suggested that, instead of mandating the disclosure of social and environmental policies, guidance should be added to the Form. The guidance would provide that issuers may have to discuss social and environmental policies if they otherwise constitute information required to be disclosed under general AIF and MD&A requirements relating to risks and uncertainties. The third commenter said the requirement inappropriately expands the scope of the AIF, which generally includes financial, operational and governance information. The commenter said this non-material information should not be in the AIF, which is expected to be subject to chief executive officer (CEO) and chief financial officer (CFO) certification with prospectus-level liability. Similar policy information is provided, as required under the *Bank Act*, through Public Accountability Statements posted on bank's web sites. The commenter suggested that is a better way to provide this information.

*Response: We have not deleted the requirement to disclose social and environmental policies, however, we have clarified that the topic only applies if the issuer has implemented social or environmental policies that are fundamental to the issuer's operations. In that context, such policies would not expand the scope of the AIF – they are intrinsically linked to the issuer's operational practices.*

One commenter said the requirement to disclose social and environmental policies should be limited to those policies that are material.

*Response: All of the disclosure requirements in the AIF, subject to certain named exceptions, are subject to the general instruction in Part 1(c) that issuers do not need to disclose information that is not material. As such, the requirement to disclose social and environmental policies is already limited to those policies that are material to the issuer.*

One commenter suggested *social policy* should be defined in the form.

*Response: We have revised the requirement to provide examples of the types of policies that should be disclosed in the Form.*

One commenter stated that risk factors should not be required to be disclosed in the order of their seriousness. The commenter said the requirement could cause litigation or regulatory risks because it may not be possible to predict which risk would be the most serious. The commenter suggested the requirement should, at a minimum, reflect the uncertainty of this disclosure.

*Response: We disagree that risk factors should not have to be disclosed in the order of their seriousness for the following reasons:*

- *it is important for the most serious risks to be disclosed first so this information is not buried,*
- *the disclosure itself will reflect the uncertainties of the risks, and*
- *the requirement has existed in the prospectus context for a number of years, and we are not aware of any litigation commenced as a result of the order of the disclosure.*

One commenter said the requirement to disclose all environmental liabilities in the Form should be limited to those known, and material, environmental liabilities.

*Response: We have not added the suggested qualifiers to the disclosure. Issuers can only disclose information that is known to them, so that qualification is not necessary. Further, all of the disclosure requirements in the AIF, subject to certain named*

*exceptions, are subject to the general instruction in Part 1(c) that issuers do not need to disclose information that is not material. As such, the requirement to disclose environmental liabilities is already limited to those liabilities that are material to the issuer.*

***Item 6 Selected Consolidated Financial Information***

One commenter noted discrepancies between the content and periods covered by the AIF financial discussion and the MD&A financial discussion. The commenter suggested that instead of having separate disclosure in the AIF, issuers should be required to reference their latest annual MD&A, or latest two MD&As, in their AIFs.

*Response: As discussed below, we have done a thorough review of the AIF and MD&A to clarify their purposes, and the disclosure required to achieve those purposes. As a result, we have moved the disclosure that was in section 6.1 of the AIF to the MD&A. In the MD&A, it will provide an annual overview from which broad trends can be seen.*

One commenter questioned the value of requiring the dividends disclosure, as that information can be found in the notes to the annual financial statements and a cross-reference should suffice.

*Response: The disclosure required relating to dividends goes beyond disclosure that would be included in the notes. To the extent the disclosure does overlap, section 1(f) (formerly 1(e)) of the Form permits issuers to incorporate information required to be included in the AIF by reference to another document.*

***Item 7 Description of Capital Structure***

One commenter questioned the value of requiring a description of the issuer's capital structure, as that information can be found in the notes to the annual financial statements and a cross-reference should suffice.

*Response: Section 1(f) (formerly 1(e)) of the Form permits issuers to incorporate information required to be included in the AIF by reference to another document.*

One commenter supported the added disclosure about ratings in the AIF.

One commenter supported the ratings disclosure in the AIF, except the requirement to describe any factors or considerations identified by the approved rating organization as giving rise to unusual risks associated with the securities. The commenter's reasons were:

- the factors and considerations reflect the rating organization's own views that the issuer may not agree with
- the factors and considerations would normally be publicly disclosed in the rating organization's press release.

One commenter stated that an issuer should not be responsible for giving lengthy disclosures on credit ratings beyond the rating, the agency involved, and the address of the agency's public web site.

One commenter questioned the value of requiring detailed information about ratings, given that accurate and timely information is publicly available.

*Response: The full disclosure about the ratings information is important information for investors to have. Investors should not be expected to locate the information on the ratings agency's web page, or by locating news releases that have been issued by third parties some time prior to the date of the AIF. By providing this information in their AIF, issuers are not adopting the ratings agency's statements; they are simply repeating the relevant information that led to the rating being given.*

One commenter questioned whether an issuer must disclose "quiet" or "shadow" ratings, or unsolicited ratings, in the AIF.

*Response: We expect it will be rare for Canadian reporting issuers that are not able to rely on the exemptions from the AIF requirement under the Foreign Issuer Rule to have unsolicited ratings. When an unsolicited rating is given, though, the issuer should disclose it, as it is relevant information for investors.*

One commenter suggested clarification should be added of what disclosure is being sought by the phrase "what attributes, if any, of the securities are not addressed by the rating".

*Response: As discussed in the Companion Policy to NI 44-101, ratings agencies may consider other factors in addition to, for example, creditworthiness of the issuer, when assigning a rating. These factors must be discussed in the AIF. We have added an instruction to the Form to clarify this requirement.*

***Item 8 Market for Securities***

One commenter suggested that the requirement to include a summary of the monthly volume and price ranges of securities in the AIF is no longer warranted. There is a significant chance of error in preparing the information, and the value to the reader is minimal since most securityholders have access to real-time graphing and share price information.

*Response: Including this disclosure in the AIF makes it easily accessible by investors. Investors should not be required to locate or create the information through the marketplace.*

***Item 10 Directors and Officers***

One commenter was concerned with the requirement to disclose bankruptcies of issuers that a director or officer has been involved with. The commenter thought it may have the unintended consequence of preventing experienced people from becoming involved in an issuer because of their past connection with a bankrupt company. These people may have more expertise in avoiding bankruptcies than people that have not had this experience. The commenter suggested that, if the intent is to elicit information about criminal activity, the wording should be clearer.

One commenter supported the requirement for issuers to disclose the involvement of their directors and officers with a company just before it became bankrupt or when an event occurred that resulted in a penalty being imposed.

*Response: We agree that this is relevant information for investors. By requiring the information to be disclosed, investors will be able to draw their own conclusions – positive or negative - about the qualifications of the directors and officers.*

One commenter said the disclosure in the AIF relating to bankruptcies and penalties should not be necessary, as the information will already be provided in a prospectus. Every year after that, it will be included in the proxy circular, which will normally be filed before the AIF.

*Response: The disclosure required in the information circular relates solely to directors proposed for election. The information required in the AIF is broader, as it includes all directors and executive officers. To the extent the information in the AIF duplicates what is in the information circular, issuers can satisfy the AIF disclosure by incorporating the disclosure from their information circular into the AIF, as contemplated in section 1(f).*

One commenter suggested the disclosure should be limited to the knowledge of the officers and directors. The commenter also suggested the December 31, 2000 date in section 10.2(3) should be updated.

*Response: We disagree that the disclosure should be limited to the knowledge of the officers and directors. The disclosure is limited to bankruptcies that occur within a year of the director or officer ceasing to be involved with the issuer, and penalties that resulted from events that occurred while the director or officer was involved. Directors and officers are expected to have this information or, if they do not, to obtain it.*

We have not changed the date in section 10.2(3), as it is based on the date for the corresponding disclosure obligation in the prospectus disclosure rules.

***Item 11 Promoters***

One commenter suggested disclosure of promoters can be very difficult since the term is very ambiguous and poorly drafted. Further, the securityholder may not agree that it is a promoter, particularly since promoter's resales have been added to the "always a distribution" category, and the issuer may not have the ability to obtain the necessary disclosure information from the promoter.

One commenter had concerns about the disclosure relating to promoters for the following reasons:

- the term is not defined in the Rule and, in other contexts, has been used to refer to investor relations persons
- this is a new requirement for TSX listed issuers, who are less likely than smaller issuers to engage promoters to tout their stock
- no rationale is provided for this proposed new requirement in the AIF.

The commenter recommended that both *promoter* and *investor relations* should be defined in the Rule to distinguish the "touting" of stock (that is, promoting), from valid investor relations activities.

*Response: The term* promoter *is clearly defined in various* Securities Acts *as a person that takes the initiative in founding, organizing or reorganizing the business of the issuer, and persons that receive more than 10% of an issuer's outstanding securities in consideration for services or property received in connection with founding, organizing or reorganizing the issuer's business. As a matter of law, a term defined in a* Securities Act *and used in the Rule has the meaning in the Act of the local jurisdiction. As a result, the use of promoter in the AIF is distinct from the more colloquially used "stock promoter". The disclosure relating to promoters is important and relevant information for securityholders. Securityholders should know who has taken the initiative in organizing the issuer's business, and what consideration that person received for doing so.*

***Item 12 Legal Proceedings***

One commenter suggested only legal proceedings that have been instituted should be required to be disclosed except (if applicable) under material change requirements, where confidentiality can be maintained. The commenter suggested the requirement to disclose contemplated legal proceedings could preclude the sensitive negotiation of settlements.

*Response: We have not eliminated the requirement to disclose contemplated legal proceedings. Many contemplated legal proceedings are required under GAAP to be disclosed in the notes to the financial statements. If the legal proceedings are not already disclosed in the notes, and disclosure would prejudice the issuer, the issuer can apply for an exemption on a case-by-case basis.*

One commenter suggested the 10% exclusion from the requirement to disclose potential or actual legal proceedings should be based on equity or market capitalization, as liabilities should perhaps also be taken into account.

*Response: Issuers are required to disclose information about legal proceedings because of the effect on the issuer of having to pay out a claim, or receiving a payout, as a result of the proceedings. It is the relationship between the issuer's assets and the amount of the claim that is the relevant test, not the amount of the claim in relation to the issuer's equity or market capitalization.*

One commenter said disclosure should not be required of any legal proceedings which are deemed to be frivolous and without merit by both the company and its outside counsel. Otherwise, plaintiffs could be incited to claim damages that exceed the 10% threshold set out in Part 12 to seek public attention.

*Response: We disagree. This exclusion would be too subjective to be applied consistently by issuers, and would cause uncertainty for investors.*

***Item 13 Interest of Management and Others in Material Transactions***

One commenter supported the added disclosure about the interest of management and others in material transactions.

*No response required.*

***Item 15 Material Contracts***

One commenter suggested it would be helpful if the Policy included a narrative and some examples to clarify the meaning of the phrase *entered into in the ordinary course of business*. Absent this guidance, the commenter would expect that almost all business contracts are entered in the ordinary course of business because the transactions regularly occur in the industry, even if they do not occur frequently for the issuer.

One commenter questioned the value of disclosing material contracts in the AIF. The commenter suggested that, if the requirement is retained, additional guidance should be provided.

*Response: To clarify what is meant by* ordinary course of business*, we have added guidance to the Policy, and an instruction to the Form. As the requirement is to disclose material contracts that are not entered into in the ordinary course of business, it relates to a very narrow range of contracts that investors would not otherwise expect to exist. Given the nature of these contracts, it is very important that they be disclosed in the AIF.*

One commenter suggested the requirement to disclose material contracts should be limited to one year, rather than two years, to avoid repetition.

*Response: We agree with the commenter that the requirement to disclose contracts entered into within the last two years is not necessary. We have revised the requirement so that issuers will be required to disclose contracts entered into during the last financial year, and contracts that are still in effect. As a result, investors can look to the AIF to see what material contracts the issuer entered into during the year, and which contracts are still affecting the issuer.*

One commenter questioned the need to make these contracts available for inspection, since issuers are required

- to describe any contracts that their business is substantially dependent on in the AIF (paragraph 5.1(1)(j)),
- to describe every contract that can reasonably be regarded as material to an investor in the AIF (section 15.1), and
- file copies of material contracts under Part 12 of the Rule.

One commenter said the requirement to make copies of the contracts available for inspection must be modified so it will not apply to contracts that contain competitive or commercially sensitive information.

One commenter said issuers should not be required to produce copies of business contracts, whether they are entered into the ordinary course of business or not, for the following reasons:

- analysts and securityholders can get information about a contract from a well-written summary of the main terms of the contract
- the most likely people to benefit from full disclosure of all terms of business contracts include an issuer's competitors and litigants
- certain terms of business contracts are confidential, or may contain information protected by privacy law
- the cost of determining what terms of a contract must be blacked out to protect confidentiality or privacy is not justified – it will create new expenses for issuers, and regulatory uncertainty.

*Response: We have removed the requirement to make material contracts available for inspection from the Form, as reporting issuers must now file copies of these documents under Part 12 of the Rule (see the responses to the comments under* ***Question 1(b)*** *above). Part 12 of the Rule permits issuers to edit material contracts to delete portions that contain confidential, competitive or commercially sensitive information.*

***Item 16 Interests of Experts***

One commenter said the disclosure relating to experts should be removed. The commenter suggested that imposing a requirement to name experts in an AIF will likely increase issuer costs, particularly if the issuer has to obtain consent from the expert simply to include the expert's name in the AIF.

*Response: We have not imposed a requirement in the Rule for issuers to obtain consent simply to include the expert's name in the AIF. The AIF merely points out that instruments other than the Rule may require consents if the expert's statement, report or valuation is included in the AIF. We have revised the instruction to make this clear.*

One commenter suggested eliminating the requirement to disclose experts' holdings. The commenter noted it is not a requirement in the United States, and can be very difficult and invasive to determine in the case of large law firms.

*Response: We disagree with the commenter. It is relevant to an investor if an expert the issuer is relying on to provide information has an interest in the issuer. This has been a requirement in the prospectus context for some time, and has not proven to be too onerous for issuers or their experts.*

**Part 6 [Part 5]- MD&A and Form 51-102F2 [Form 51-102F1]**

***General***

One commenter suggested Form 51-102F2 [Form 51-102F1] should be explicitly referred to in this Part.

*Response: We disagree.* MD&A *is a defined term in the Rule that includes the Form 51-102F1, but also includes alternative forms of MD&A.*

One commenter supported the concept of issuers filing fourth quarter MD&A, but recognized this could not be a requirement when detailed fourth quarter financial statements are not required.

*No response required.*

One commenter recommended that the Rule explicitly articulate that MD&A and financial statements form the two-part core reporting package in the CD system.

One commenter suggested the AIF and MD&A should be co-ordinated to form the core integrated disclosure document, with the AIF providing basic disclosure at a point in time, and the MD&A being a living document updated quarterly and referenced into the AIF.

*Response: We agree that the financial statements and MD&A are important documents – that is reflected in the disclosure we require in the financial statements and the MD&A. The fact that they are inter-related is apparent given the requirement for issuers to file them at the same time, and deliver them to securityholders together. We also agree that the disclosure required in the AIF and MD&A have different focuses. For that reason, we have carefully reviewed the disclosures in the AIF and MD&A to ensure they are consistent with their stated purposes. We disagree that any of the disclosure documents in the Rule should be rated as more important than the others.*

***Section 6.1 [5.1] Filing of MD&A***

One commenter said the annual MD&A should not have to be filed at the same time as the annual financial statements. This will delay the filing of the annual financial statements, as they are ready earlier than the MD&A. The commenter suggested the MD&A should be filed as soon as possible after the financial statements are filed.

*Response: We asked commenters during the first comment period on the Rule whether the financial statements and MD&A should be required to be filed at the same time, as one filing. The vast majority of commenters that responded were in favour of the financial statements and MD&A being filed at the same time. We agree with those commenters. The benefit of having the discussion of the financial statements filed concurrently with the statements themselves outweighs the concern that completing the MD&A may delay the filing of the financial statements.*

One commenter suggested that the MD&A should be filed electronically on SEDAR with the financial statements as one filing, because a person reading an MD&A must have the full set of financial statements at the same time.

*Response: The CSA agree that the financial statements and MD&A should be filed at the same time. However the CSA have decided not to combine them into one document. Having the financial statements and MD&A filed at the same time provides the same benefit without imposing the additional burden of compiling them into one document, particularly as different people may have responsibility for preparing the documents.*

***Section 6.3 [5.3] Additional Disclosure for Venture Issuers Without Significant Revenue***

One commenter said the additional disclosure for venture issuers without significant revenue should be made in the notes to the financial statements. The MD&A should be used for any needed discussion of this disclosure.

*Response: The disclosure required under section 5.3 of the Rule is not currently required under GAAP to be included in the financial statements. To ensure the information is provided, we have made it a requirement of the MD&A, unless the issuer already provided it in the financial statements. As the disclosure is financial in nature, it is more appropriate to the MD&A, than, for example, the AIF.*

***Section 6.4 [5.4] Disclosure of Outstanding Share Data***

One commenter suggested that, in disclosing its outstanding share data, the issuer should be required to estimate the number of its voting or equity securities that are issuable on the conversion, exercise or exchange of outstanding securities, if that number is not determinable. Investors should not be required to make this estimate, particularly since they are relying on that information for the purposes of National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues*. The commenter suggested the CSA could provide a safe harbour for issuers that make reasonable estimates in good faith.

*Response: If the number of securities issuable is not known, this will normally be because the number depends on the market price of that class of securities at a future point in time, or on some other benchmark that could fluctuate significantly over time. As a result, it may be difficult or impossible to arrive at a reasonable estimate of the number, and any attempt to do so may result in a misleading figure being provided. Accordingly, we do not propose to require an estimate.*

One commenter said issuers should be specifically permitted to incorporate the outstanding share data information from the notes to their financial statements into the MD&A, if the information has not changed since the date of the financial statements, and if this is specifically indicated in the MD&A.

One commenter suggested disclosure of outstanding share data should be provided in the notes to the financial statements, or the AIF. The commenter noted that sections 3210 and 3240 of the Handbook already provide for much of this information.

*Response: It is very important for securityholders to be able to find this information in the same place for all issuers, as they rely on this disclosure in determining if the take-over bid or early warning requirements have been triggered. For the same reason, this information must be as current as possible. As a result, we have continued to require the disclosure in the MD&A, not the AIF, and have not permitted incorporation by reference. The information provided in the MD&A will be more up-to-date than the information provided in the notes to the financial statements.*

***Section 6.5 [5.5] Disclosure of Auditor Review of Interim Financial Statements***

Two commenters said disclosure of whether an auditor has reviewed the interim financial statements should be prominent and presented in a consistent location. They also suggested that issuers should not be given the alternative of disclosing in the financial statements or MD&A. One of the commenters suggested that, instead, the Rule should require a legend to be placed on the face of the interim financial statements.

One commenter said the disclosure should not be in either the financial statements, or in the MD&A. It should be in a notice that accompanies the interim financial statements.

*Response: We have revised the Rule to provide that the disclosure that an auditor has not reviewed the financial statements must be made in a notice that accompanies the financial statements. This ensures that the information is prominent and easily located.*

***Section 6.6 [5.6] Approval of MD&A***

Two commenters supported the requirement for board approval of MD&A.

One commenter expressed support for the clarification around audit committee review and board approval of MD&A.

Three commenters supported the proposal for audit committee review of the MD&A.

*Response: Consistent with the requirements relating to the approval of interim financial statements, we have revised the Rule to require that either the audit committee or the board of directors must approve the interim MD&A.*

One commenter suggested that board approval of the MD&A should occur following any CEO or CFO certifications of the annual or interim filings. These certifications are contemplated in proposed MI 52-109.

*Response: The Rule does not prescribe procedures issuers must follow to obtain board or audit committee approval. We do not expect that MI 52-109 will prescribe procedures either. Issuers must determine what the appropriate procedures are for them, depending on their operations and internal controls.*

***Section 6.7 [5.7] Delivery of MD&A***

For comments relating to the sending of an annual request form, see above under the heading for **Part 4 Financial Statements - Section 4.6 Delivery of Financial Statements**.

One commenter supported the requirement for delivery of financial statements and MD&A together.

*No response required.*

***Form 51-102F2 [Form 51-102F1]***

***General comments***

One commenter was concerned that MD&A is being, or will be, used for detailed disclosures that are or should be called for under GAAP. The commenter suggested that, if the disclosure is necessary but is not currently required under GAAP, then the information should be provided as an appendix to the MD&A, not in the MD&A itself.

*Response: We do not agree with using an appendix, rather than including the information in the body of the MD&A. The disclosure of outstanding share data, additional disclosure for venture issuers without significant revenue, and restricted share disclosure is relevant to the financial statements, but not specifically called for under GAAP. This disclosure helps investors understand what the financial statements show and do not show.*

One commenter suggested that the MD&A content should be organized and reported according to an appropriate framework that is conceptually realistic and logical. This would

- make it easier for readers to locate information, and understand its links with other information within the MD&A and the financial statements
- improve the preparers' understanding of the historical and prospective disclosures required
- more strongly address the need for information relevant to assessing future prospects that place the results reported in the financial statements in a business context

The commenter provided detailed comments suggesting how the MD&A could be reorganized. The suggestions included restructuring the contents of the MD&A so the issuer is asked first to present its "big picture" assessment, then a more detailed assessment of financial condition, results of operations and cash flows, followed by other disclosures.

*Response: The framework provided in the Form is a guideline only. Issuers are permitted to follow the order that is appropriate for them to make their discussion meaningful in their individual circumstances. We do not agree that it would be appropriate to be prescriptive in the format, as what is appropriate for one issuer may not be appropriate for another.*

One commenter said issuers should be required to discuss their business strategies, key performance drivers and core capabilities in their MD&A, as contemplated by the CICA MD&A guidance. The commenter suggested the CSA and CICA should take a more complementary approach to adopt a common disclosure framework for the MD&A.

*Response: We have undertaken a complete review of the disclosures required in each of the AIF and MD&A, and considered the requirements of the CICA in its MD&A guidance. We have ensured that the disclosure required in the two documents focuses on their respective purposes in the CD environment. For a complete discussion of this process, and the results of our review, see below under the heading* ***Relationship between the AIF and MD&A****.*

***Relationship between the AIF and MD&A***

Two commenters suggested a section on risk factors, like the section included in the AIF, should be added to the MD&A. One of the commenters suggested the risk factor section should list social and environmental risks as examples. That commenter stated that the Guidelines produced by the Canadian Performance Report Board are not sufficient in this regard, as they do not include the concept of social and environmental risk. The other commenter suggested there should be more specific requirements about risk and risk management disclosures in the MD&A, consistent with, or further strengthening, the requirements in Form 44-101F2.

*Response: Risk factors should be discussed in the context of the other topics specifically listed in the MD&A, such as liquidity and off-balance sheet arrangements, not as a stand-alone item. This is distinct from the AIF, where risks to the issuer's overall business, rather than its financial position specifically, are discussed separately.*

One of the commenters suggested risk factors is just one area in the AIF that should be required in the MD&A. The commenter suggested there are other areas in the AIF that are relevant to understanding reported financial results so should be in the MD&A, such as

- Item 4 – General Development of the Business, as it provides important contextual information and contemplates disclosure of changes in the business that may occur during the current financial year
- portions of Item 5 - Description of the Business, such as specialized skill and knowledge, economic dependence, and environmental protection, as they provide important contextual information
- Item 6 – Selected Consolidated Financial Information
- the portion of Item 7 – Description of Capital Structure relating to ratings information
- the portion of Item 8 – Market for Securities relating to trading prices and volumes
- the portion of Item 10 – Directors and Officers relating to conflicts of interests between officers and directors and the company
- Item 13 – Interest of Management and Others in Material Transactions
- Item 15 – Material Contracts

The commenter said that the distinctive purposes of the AIF and MD&A should be clarified, and that the disclosures called for in each of the respective forms should be made consistent with that stated purpose. The commenter felt this was important since there is no obligation to deliver an AIF, and venture issuers are not required to prepare an AIF. Alternatively, the commenter suggested issuers should be required to distribute the AIF to their securityholders.

One commenter said the overlap between the AIF form requirements, MD&A form requirements, and the MD&A content recommended by the CICA, must be addressed so issuers can report more efficiently and investors know which document to reference for disclosure.

*Response: We agree with the commenters that suggested the roles of the MD&A and AIF must be clarified. We have revised the descriptions of the AIF and MD&A in each of the Forms to reflect their different focuses. We have also reviewed the disclosure requirements to eliminate overlap wherever possible, and ensure the disclosure in each form is appropriate to its stated purpose. As a result, disclosure relating to leases and mortgages, and the financial discussion, has been removed from the AIF and, in some cases, added to the MD&A. Similarly, portions of the MD&A that went beyond the financial statements have been revised or removed.*

*We have not added a requirement for issuers to distribute their AIFs. Instead, we have added a requirement in the MD&A for issuers to disclose that, if they prepare an AIF, the AIF is available on SEDAR.*

*The CSA approach the AIF and MD&A within the overall context of the CD environment. This is a different approach than the CICA, which dealt only with MD&A through the Canadian Performance Reporting November 2002 release called Board's Management's Discussion and Analysis: Guidance on Preparation and Disclosure. Given this different context, we have not moved disclosure of a more general, business focus from the AIF to the MD&A. Instead, we have focused the MD&A on the financial statements, with the AIF speaking to the business in general.*

One commenter suggested there should be a prominent notice in the MD&A as to the existence of the AIF, and information as to how securityholders can access it. The commenter also suggested the MD&A should include an explicit reference to the Form 51-102F5 *Information Circular* and Form 51-102F6 *Statement of Executive Compensation Form*. The commenter said that these documents contain important information enabling investors to understand the business and factors that may affect an issuer's performance and prospects.

*Response: We have revised the MD&A to require issuers that are required to prepare an AIF to disclose that the AIF and other disclosure documents are available on SEDAR.*

***Part 1 General Instructions and Interpretation***

One commenter supported the principle that the MD&A should enable investors to see the company through the eyes of management.

Three commenters supported the emphasis on the content of the MD&A being in plain language.

*No response required.*

Two commenters approved of the reference to social and environmental issues in the introduction to the MD&A. One of the commenter suggested that the MD&A should also include a direction to describe a company's social and environmental policies.

*Response: As part of the general clarification of the roles of the AIF and MD&A discussed above, we have deleted the reference in the MD&A description to social and environmental issues. We have continued to require disclosure of these policies in the AIF. These areas may be discussed in the MD&A, if appropriate, as part of the general risks and uncertainties that may affect the issuer's future performance.*

One commenter suggested the ideas in section 1(g) relating to forward-looking information should be embodied as requirements in Part 2 of the form.

*Response: Part 1 is general guidance that applies to all MD&A. As such, the reference in section 1(g) has broader application being in Part 1, than if it were a specific requirement in Part 2.*

One commenter said issuers should be permitted to incorporate information contained in the notes to the financial statements by reference into the MD&A. The commenter suggested this would not prejudice securityholders, since the financial statements will always accompany the MD&A.

*Response: The CSA are not prepared to permit incorporation by reference from the financial statements into the MD&A. The financial statements are the base documents that must present, in full, all information required by GAAP. MD&A serves the*

*important, but different, purpose of supplementing and complementing the financial statements. We do not agree that the financial statements can substitute for portions of the MD&A.*

***Part 2 – Item 1 Annual MD&A***

Refer to the comments under **Part II - Question 4(b)** above for the comments relating to exemptions from certain disclosure requirements in the MD&A for venture issuers.

Two commenters supported the requirement to date the annual and interim MD&A.

*No response required.*

One commenter suggested the Form should provide additional guidance on the scope of the discussion required under Section 1.3 - Summary of Quarterly Results. The commenter questioned whether the instructions to "discuss the factors that have caused variations over the quarters" requires issuers to

- identify general trends that have developed over the eight quarters (which will likely have been discussed under section 1.2),
- compare results in a single quarter against results from the corresponding period in the prior year, or
- speak to the seasonality of its business.

*Response: We have clarified the requirement in the Form by referring to trends and seasonality.*

One commenter questioned whether section 1.5(h) of the Form requires disclosure of defaults that have been waived prior to or after their occurrence.

*Response: Yes, section 1.5(h) of the MD&A requires disclosure of defaults that have been waived prior to or after their occurrence. Despite having been waived, such defaults are "arrears", as referred to in section 1.5(h).*

Three commenters supported the expanded disclosures about off-balance sheet arrangements.

*No response required.*

One commenter said the requirement to discuss transactions involving related parties should be limited to those transactions that are material.

*Response: All of the disclosure requirements in the MD&A are subject to the general instruction in Part 1(e) that issuers do not need to disclose information that is not material. As such, the requirement to disclose transactions involving related parties is already limited to those transactions that are material to the issuer.*

Three commenters supported giving disclosure to investors about changes in accounting policies, and two of those commenters supported the critical accounting estimates disclosure. One of the commenters felt that disclosure should be given in the notes to the financial statements, where significant accounting policies are disclosed. That commenter suggested portions of the proposed disclosure could possibly remain in the MD&A as explanation and discussion by management.

*Response: The disclosure that we have required relating to changes in accounting policies goes beyond what is required under GAAP. As such, the disclosure complements and supplements what will be in the financial statements.*

One commenter said venture issuers should not be exempted from the requirement to discuss critical accounting estimates.

*Response: We disagree. We have retained this exemption as the disclosure obligation on venture issuers would be too significant a burden, even when balanced against the interests of investors in having this information.*

One commenter said the CSA should not require disclosure of critical accounting estimates until the SEC has finalized its requirements, otherwise the goal of consistency with the US could be defeated.

*Response: While we were aware of the SEC discussions on this issue, we did not reproduce the SEC proposals into the MD&A. Instead, having regard to what the SEC was proposing to require disclosure of, we extracted the portions that we felt were important and relevant in Canada. We will continue to monitor the SEC developments in this area.*

One commenter suggested an assessment of the different critical accounting estimates that could have been used would be useful disclosure, if the administrative burden on reporting issuers is not unreasonable.

*Response: We have not added a requirement to assess the different critical accounting estimates that could have been used, as we are not satisfied that the administrative burden would not be unreasonable.*

One commenter suggested section 1.13 [1.14] should be clear that ordinary business arrangements (for example, purchase orders) are not *financial or **other** instruments*.

*Response: The definition of financial instruments in the Handbook does capture contracts that give rise to both a financial asset of one party and a financial liability of another party. As a result, some "ordinary business arrangements" would be considered financial instruments under section 1.14.*

One commenter suggested the restricted share disclosure should be in the notes to the financial statements or the AIF, not the MD&A.

*Response: We have revised the Rule so the only restricted share disclosure requirements that will apply to the MD&A and financial statements will be to use the appropriate terms to describe the restricted securities. Full restricted security disclosure will be required in other CD documents reporting issuers must prepare, such as the AIF.*

One commenter agreed with the requirement to discuss causes for variations in the fourth quarter (annual) MD&A since a fourth quarter interim MD&A is not otherwise required. The commenter suggested, though, that the discussion in the annual MD&A should be limited to referencing the first through third quarter interim MD&As.

*Response: We disagree. The annual MD&A is not intended to be an update or a fourth quarter MD&A. It should reflect the annual financial statements, which contain information for a full year. Once the annual MD&A is filed, it is itself updated quarterly by the interim MD&A.*

***Part 2 – Item 2 Interim MD&A***

One commenter said that interim MD&A requirements are now, in effect, as exhaustive as annual MD&A requirements because of the requirement to update the annual MD&A. The commenter questioned whether this was appropriate given the time constraints in preparing the interim MD&A, and the absence of an audit.

*Response: The interim MD&A is not intended to reproduce all the information in the annual MD&A. As noted in the instructions to section 2.2 of the Form, the issuer can assume that the reader has access to the annual MD&A, so the information in the annual MD&A does not have to be repeated. The interim MD&A is intended to update the annual MD&A for material changes that have occurred.*

One commenter supported having interim MD&A update the annual MD&A, but suggested the form should specifically require that any significant change related to historical or prospective performance and risks needs to be disclosed.

*Response: As discussed above, we are not requiring comprehensive risk disclosure to be provided in the MD&A, as that information will be provided in the AIF. There are requirements in the MD&A to discuss known trends, risks or uncertainties that will materially affect the issuer's future performance. To the extent these trends, risks or uncertainties have materially changed from the date of the annual MD&A, this will have to be updated in the interim MD&A.*

**Part 7 - Material change reporting and Form 51-102F3**

One commenter suggested the material change report requirements should be left to statute, particularly given references in the Ontario Bill 198 civil liability provisions to "failure to make timely disclosure in the manner and at the time required under [the] Act". The commenter suggested the requirements may also be inconsistent with the material change requirements in certain provinces' statutes.

*Response: It is hoped that the civil liability provisions can be amended to refer to securities legislation in general. In any event, we disagree that the requirements are inconsistent with the current material change reporting requirements.*

One commenter said the CSA should adopt a "material information" CD standard because

- the current material change standard is insufficient, and
- the standard would then be harmonized with stock exchange timely disclosure policies.

*Response: Any such fundamental changes would require the various* Securities Acts *to be amended, which goes beyond the scope of this Rule. The Draft Report of the Ontario Five-Year Review Committee also recommended not changing the requirement from "material change" to "material information".*

One commenter said that the reference in subsection 7.1(4) [now subsection 7.1(3)] of the Rule to "transaction" may not work properly, since a material change may itself be a proposed transaction.

*Response: We have clarified the section by replacing the reference to "transaction" with "trade".*

One commenter suggested subsections 7.1(4) and (5) [now subsections 7.1(3) and (5)] should be amended so issuers will not be required to disclose matters that will not proceed.

*Response: We disagree and so have not made any changes to the Rule.*

One commenter said it should be clear that confidential negotiations between parties, absent a binding definitive agreement, do not constitute a material change. The commenter suggested that the TSX and TSXV should also be asked to conform their approaches.

*Response: We do not agree. Confidential negotiations may constitute a material change in some circumstances. If the issuer decides the negotiations do constitute a material change, the issuer can, if appropriate, use the procedures in Part 7 to file a confidential material change report.*

***Form 51-102F3***

One commenter said material change reports should be expressly permitted to be filed with cautionary language to the effect that the transaction *may be* a material change, when the issue is unclear. This can be particularly important where there are cross-border issuers, since there is no equivalent requirement in the United States.

*Response: We do not agree. It is up to an issuer to determine whether a change is a material change for it or not. It would not be appropriate for issuers to couch their material change reports in language that creates uncertainty.*

One commenter said issuers should not be required to have a principal office in Canada.

*Response: The requirement in the Form to disclose the address of the issuer's principal office in Canada does not create a requirement for the issuer to have a principal office in Canada. If the issuer has only one office in Canada, that will be the issuer's principal office in Canada, even though the head office and other major offices are outside of Canada. If the issuer does not have any office in Canada, the disclosure requirement is inapplicable.*

One commenter said Item 7 of the Form, relating to keeping some significant facts confidential, is unclear as to what statutory "discretion" is being referred to. The commenter also said it is unclear how the instructions under Item 7 are to be legally accomplished.

*Response: The individual Commissions have discretion, within their Acts, to keep information filed under the Act confidential, if the tests set out in those provisions are met. An issuer may determine that there is certain information relating to the material change that it wants to keep confidential, although the change itself can be made public. Part 7 simply sets out the procedure the issuer must follow to have the information kept confidential, not the tests that will be applied under the various Acts.*

**Part 8 - Business acquisition report and Form 51-102F4**

***General***

One commenter said the level of detail required in the BAR should be reduced so it could be filed earlier. The commenter noted that, by the time the BAR is actually filed, the information in it may be stale.

*Response: We have not reduced the level of detail required in the BAR to reduce the time for filing it. We consider the information in the BAR to be important information for investors. The issuer will usually also have to file a material change report, which will give investors the proximate disclosure the commenter suggests is important.*

One commenter suggested that the Rule should have a definition of *step-by-step acquisition* as used in section 8.10 [8.11].

*Response: We have revised section 8.11 of the Rule to refer to step-by-step purchases, as described in the Handbook.*

**Exemption with an information circular**

One commenter said that the exemption from the BAR requirement if an information circular has been filed should be available even if there is a material change to the non-financial terms of the transaction. If the change is to non-financial terms, issuers should not be required to re-do the financial statements for filing with the BAR.

*Response: Most often, a material change to the terms of the transaction is accompanied by changes to the financial statements. In these circumstances, the disclosure in the information circular is no longer an accurate substitute for the BAR. Issuers can apply for relief from the BAR requirement, or the requirement to up-date the financial statements, if the material change has not affected the financial statements.*

One commenter said the exemption from the BAR requirement should permit issuers to rely on filing statements, which may be used as alternative detailed disclosure documents by issuers listed on the TSXV, as well as information circulars. The commenter noted that the disclosure standards for filing statements prepared by capital pool companies (CPCs) are virtually identical to the disclosure standards applicable to a CPC's information circular, except the filing statement does not include any disclosure as to proxy-related matters or matters dealing with a shareholder meeting or shareholder approvals.

*Response: We have revised the exemption so that issuers that file a filing statement prepared under the policies of the TSXV that contains the disclosure required by section 14.2 of the Information Circular form are exempt from the BAR requirements.*

One commenter said it is not clear if a CPC that relies on the exemption in section 14.5 of the Form 51-102F5 from the requirement to include prospectus-level disclosure of a transaction would be entitled to rely on the exemption in section 8.1(4) [now section 8.1(2)].

*Response: We have clarified the Rule so that a CPC that files a filing statement or information circular that complies with TSXV policies and requirements will be entitled to rely on the exemption from the BAR requirements.*

One commenter said the exemption in section 8.1 should contain a clause similar to section 14.5 in the Form 51-102F5 Information Circular so the exemption would be available to issuers that comply with the policies and requirements of the TSXV. Otherwise, an issuer that obtains a waiver from the TSXV relating to its policies, would have to apply for separate relief from the securities regulatory authorities under Part 13 of the Rule.

*Response: Except as noted above for CPCs, we have not revised the exemption to permit an information circular or filing statement that complies with TSXV policies to be used to satisfy the business acquisition requirements. We do not permit waivers under TSXV policies to determine what is appropriate reporting for CD requirements under the Rule except in the limited context of CPCs. We are not prepared to extend the exemption as suggested by the commenter. The TSXV will not be considering whether waivers it grants are appropriate in the BAR context.*

***Significance tests***

Two commenters supported the change to the thresholds in the significance tests proposed in the Rule. One of the commenters suggested the prospectus rules should be amended to correspond with the BAR requirements in the Rule to facilitate an integrated disclosure system.

*Response: The CSA intends to reconsider the significant acquisition reporting requirements in prospectuses in light of the changes to the Rule. This will occur as part of a general review of the long form and short form prospectus regimes that is currently underway.*

*One commenter said the income test should not be one of the tests of significance, as income is too cyclical to use as a standard significance measure. The commenter suggested using balance sheet measures, such as total assets or total capital, as these are more stable and provide more insight into overall financial position.*

Response: The CSA agree that the income test is not appropriate for venture issuers. For other issuers, the income test is often a major indicator of significance. Issuers can also recalculate significance based on more recent financial statements. This makes the income statement measures even more valid, as the test does not have to be based on out-of-date information.

***Financial statement requirements***

One commenter was concerned with the requirement to file audited historical financial statements for the acquired business. The commenter submitted that

- there is not much utility in the requirement as, in many circumstances, they will not help an investor form a view as to the appropriateness of the price paid or the future performance to be expected

- the focus on factors not considered relevant by the decision makers implementing the transaction may create a misleading impression for readers of the reports

- the requirement may result in transactions for private businesses that do not have historically audited financial statements not proceeding.

The commenter suggested that the utility of historical financial statements should be tested in some meaningful way, such as a cost/benefit analysis, before being imposed.

*Response: The CSA believe historical financial statement information about the target company required in a BAR is relevant for ongoing secondary market investors, as well as current securityholders of the issuer. We do not agree that the financial statements may create a misleading impression for readers, as, whether or not the issuer's decision to acquire the business was based on the financial statements of the acquired business, the financial statements provide valuable information about the acquired business. For a number of years, the prospectus rules have required financial statements of an acquired business. Given the number of investment decisions that are based on CD, rather than prospectus disclosure, it is no longer appropriate for this kind of comprehensive information to be limited to the prospectus context.*

One commenter suggested that, if issuers are required to file *pro forma* financial statements, they should not be required to also produce a compilation report.

*Response: The requirement to produce a compilation report in addition to* pro forma *financial statements is a requirement under the prospectus rules. We are currently reviewing the prospectus rules, including the differences between the BAR requirements in the Rule and those in the prospectus requirements. We will consider this comment as part of that review.*

One commenter asked if, in section 8.4 [8.5], the reference to the 45-day period should be 90 days in the case of financial years, since an audit is required.

*Response: The reference to 45 days is appropriate. Issuers are not required to file the BAR until 75 days after the date of acquisition. With the additional 45 days set out in section 8.5, issuers will actually have in excess of the 90 days that would apply to annual financial statement filings under Part 4.*

One commenter suggested there should be an express exemption from the financial statement requirements for situations where financial statements are not available, and where an unqualified audit report is not available. If the current approach is retained, the commenter suggested it should be subjected to a rigorous cost-benefit analysis first.

*Response: It is not appropriate to provide blanket relief from the financial statement requirement where financial statements "are not available". A test of whether or not financial statements are available would necessarily be extremely subjective, difficult to apply for issuers, and subject to widely different application by issuers. Issuers can seek discretionary relief based on their individual circumstances, if they require relief from the financial statement requirements. This provides flexibility for issuers, without undermining the BAR requirement, and ensures exemptions are provided on a consistent basis.*

***Form 51-102F4***

One commenter said issuers should not be required to have a principal office in Canada.

*Response: The requirement in the Form to disclose the address of the issuer's principal office in Canada does not create a requirement for the issuer to have a principal office in Canada. If the issuer has only one office in Canada, that will be the issuer's principal office in Canada, even though the head office and other major offices are outside of Canada. If the issuer does not have any office in Canada, the disclosure requirement is inapplicable.*

One commenter asked what would happen if a valuator would not consent to the disclosure of a prior valuation of an acquired business as is required in the form.

*Response: If the issuer cannot comply with a requirement in the Form, the issuer can apply for relief on a case-by-case basis.*

**Part 9 - Proxy solicitation and information circulars**

One commenter suggested section 9.1(1) should be clear that the reference is only to the *formal* notice requirements of a proposed meeting, not the advance notice given by press release.

*Response: The wording in the Rule is consistent with corporate legislation, and with the requirements as they have existed in securities laws. We are not aware of any confusion in applying the requirements, and disagree that it is necessary to clarify what notice is being referred to.*

One commenter said debt securities may not contemplate proxies, which could cause problems under section 9.1(2).

*Response: The basis for the requirement in subsection 9.1(3) [9.1(2)] is to enable the debtholder to make an informed decision when asked to vote on matters submitted to the meeting of debtholders. If a notice of a meeting is sent, then a form of proxy and an information circular must also be sent to debtholders. In those circumstances where debt securities do not contemplate proxies, an application can be made to obtain relief from the requirement to send a form of proxy.*

One commenter said the Rule should be clear that the proxy solicitation requirements apply to registered owners and beneficial holders of securities.

*Response: We have not revised the Rule. The Rule applies the proxy solicitation requirements to registered holders of securities. An issuer's obligations to its beneficial owners is set out in section 2.7 of NI 54-101. Section 9.1 of the Policy alerts issuers to the requirements in NI 54-101.*

Two commenters suggested that the Rule should provide an exemption from the proxy solicitation requirements where an issuer has complied with similar corporate law requirements under its corporate statute. One of the commenters said, if the exemption is not provided, the CSA should coordinate with the federal government to have duplicative provisions removed from the CBCA, and provide interim relief in the meantime.

*Response: We have revised the Rule as suggested by the commenters.*

One commenter suggested that the CSA should not be legislating in the area of proxy solicitation, which is an area of corporate law.

*Response: We disagree. Not all reporting issuers are corporate entities. As a result, it is important to ensure that investors of all reporting issuers, whether or not they are corporations, are treated fairly and equally. Further, information circulars form an important part of an issuer's CD record for securities laws purposes. As such, it is appropriate for the Rule to specify the requirements for information circulars. Finally, as noted above, we have also provided an exemption from the proxy solicitation requirements for reporting issuers that comply with the requirements of the jurisdiction in which they are incorporated, organized or continued, provided that the requirements are substantially similar to the requirements of Part 12. This will reduce duplication between corporate and securities requirements in the proxy solicitation area.*

One commenter suggested CBCA-type solicitation exclusions should be incorporated in Part 9 of the Rule, and such exclusions should not apply to foreign companies, especially those whose laws are inconsistent.

One commenter said the definition of *solicit* should be harmonized with corporate law. If this change cannot be made until legislative amendment is completed, the commenter suggested the CSA clarify in the interim the nature of solicitation where it does not conflict with the legislative definition.

*Response: A change to the definition of* solicit *would require amendment of the various* Securities Acts*, which is not possible in all the jurisdictions at this time. We will consider this issue again in the context of the CSA's Uniform Securities Law Project. In the interim, the definitions of* solicit *contained in the various* Securities Acts *will apply to the term as used in the Rule. We also note that foreign issuers can rely on the exemptions under the Foreign Issuer Rule for exemptions from all of the proxy solicitation requirements.*

One commenter noted that subsections 9.4(5), (8), and (9) refer to *form of proxy of a reporting issuer*, while other subsections simply refer to *form of proxy*. The commenter suggested the words *of a reporting issuer* should be deleted if the intention is to capture solicitations by dissidents, as well as solicitations by management.

*Response: We have not deleted the words as suggested, as the proxy content requirements are intended to apply only to proxies sent to securityholders of reporting issuers, whether it is management or a dissident soliciting the proxies. We have revised the wording so this is clear.*

***Form 51-102F5***

One commenter approved of permitting an information circular to incorporate information by reference, but suggested issuers should be cautioned that this may not be permitted under corporate legislation. The commenter suggested this warning should be added to Part 1(c) of the Form 51-102F5, or section 1.3 of the Policy.

*Response: We disagree that further guidance is required in section 1.3 of the Policy. The fact that corporate legislation may not permit incorporation by reference is, in effect, a "more onerous requirement", as contemplated in section 1.3.*

One commenter suggested the requirement to deliver a copy of any document incorporated by reference into the information circular *before the meeting* should be deleted. The commenter said requiring the documents *promptly* should be sufficient, and the requirement could cause uncertainty if the request is not received until shortly before the meeting.

*Response: We have revised the Form. Issuers will now be required to promptly deliver a copy of any document incorporated by reference if requested.*

One commenter said Item 4 – Proxy Instructions should refer to the disclosure required under section 2.16 of NI 54-101.

*Response: We have not added this reference to the Form, but have added a reminder regarding NI 54-101 to Part 9 of the Policy.*

Two commenters supported the requirement for issuers to disclose bankruptcies of proposed directors and any penalties, sanctions or bankruptcies of companies that the proposed director was a director or executive officer of.

One commenter said that the requirement to disclose bankruptcies of companies that a proposed director has been involved with may have the unintended consequence of preventing experienced people from becoming involved in an issuer because of their past connection with a bankrupt company. These people may have more expertise in avoiding bankruptcies than people that have not had this experience. The commenter suggested that, if the intent is to elicit information about criminal activity, the wording should be clearer.

*Response: We agree that this is relevant information for investors. By requiring the information to be disclosed, investors will be able to draw their own conclusions – positive or negative - about the qualifications of the directors and officers.*

One commenter suggested the disclosure about bankruptcies and penalties should be limited to the knowledge of the issuer.

*Response: We disagree that the disclosure should be limited to the knowledge of the issuer, or its officers and directors. The disclosure is limited to bankruptcies that occur within a year of the director or officer ceasing to be involved with the issuer, and penalties that resulted from events that occurred while the director or officer was involved. Directors and officers are expected to have this information or, if they do not, to obtain it, and provide it to the issuer.*

One commenter suggested foreign issuers should be expressly exempted from the Canadian executive compensation requirements in Item 8, as is done in the United States.

*Response: SEC foreign issuers and designated foreign issuers can rely on the exemptions from the proxy solicitation requirements, including the form requirements, under 71-102.*

One commenter suggested the disclosure requirements relating to securities authorized for issuance under equity compensation plans under Item 9 should not extend to non-compensation arrangements, as currently implied in the instructions.

*Response: It is clear that the requirements in Item 9 apply only to compensation arrangements. All of the requirements and instructions specifically refer to compensation arrangements.*

One commenter suggested further guidance is required for issuers to be able to provide the disclosure required under Item 9 – Securities Authorized for Issuance under Equity Compensation Plans. In particular

- is the disclosure under the Equity Compensation Plan Information Table intended to cover all awards that may result in an employee holding stock – for example, it does not appear to include an award of restricted stock that is subject to forfeiture
- how is the information in column (c) to be calculated, if the compensation plan may provide for a formula that automatically increases the number of securities available for issuance based on a percentage of the issuer's outstanding capital as contemplated in instruction (vii)
- it is unclear if the reference to *aggregate plan information for each class of security* in instruction (ii) is intended to require information be provided separately for each class or series of equity security, or how issuers should deal with classes of securities that are inter-convertible
- instruction (iv) should refer to options, warrants or rights *to be issued pursuant to a compensation plan assumed* in connection with a merger, consolidation or other acquisition
- the instructions sometimes refer to *compensation plan and individual compensation arrangement*, *compensation plan*, and *equity compensation plan* – the differing language is confusing.

*Response: The disclosure in the Form relates to securities that are not yet issued – that is, the equity security is issuable. Securities that are already outstanding, whether they are subject to forfeiture or not, will be reflected in the issuer's issued and outstanding capital disclosure, and so are not required to be discussed in this Item.*

*The Item requires the calculation to be done as of the end of the most recently completed financial year. Any formulas that may affect the number of securities available for issuance are then disclosed in the footnote.*

*We have clarified the language in the Form. Disclosure is required for each class of separately.*

*We have revised the language in the Form relating to options, warrants or rights outstanding under a compensation plan assumed in connection with a merger, consolidation or other acquisition transaction.*

*We have clarified in the instructions that all references to compensation plans include individual compensation arrangements. In some places* equity compensation plan *is used because it would not otherwise be clear from the context that the compensation plan disclosure relates to plans under which equity securities may be issued. If this is clear from the context, the Form refers simply to* compensation plans*.*

One commenter said the disclosure of equity compensation plans is redundant, as issuers already provide substantially similar disclosure in the notes to the financial statements. If the information must be repeated, the requirement should distinguish between equity compensation plans that involve the issuance of shares from treasury, and those that do not. Because the current disclosure requirements are structured with stock option plans in mind, the disclosure provided for other types of plans could be misleading to investors. The commenter also suggested issuers should be permitted to refer readers to the corresponding note in their annual financial statements.

*Response: Although some of the disclosure in Item 9 repeats what may be provided in the notes to the financial statements, there is additional disclosure that would not be in the financial statements, and it provides a place for all the information to be seen together. Further, to the extent there is duplication, section 1(c) of the Form permits issuers to incorporate information by reference. The only disclosure required in the Item is disclosure of compensation plans "under which equity securities of the issuer are authorized for* issuance*". As a result, plans that do not involve the issuance of shares from treasury do not have to be discussed.*

One commenter suggested section 10.1(2) seemed to require *all* employee debt to be disclosed, which could be practically impossible.

*Response: Section 10.1(2) does not require all employee debt to be disclosed. As provided in section 10.3, issuers are not required to disclose* routine indebtedness.

One commenter supported the requirement to disclose aggregate indebtedness to the issuer of all directors and executive officers.

*No response required.*

One commenter said the requirement for prospectus-level disclosure in some circumstances should not apply to foreign issuers. Instead, they should be required to provide sufficient detail to enable securityholders to form a reasoned judgement.

*Response: We made prospectus-level disclosure the standard in response to the majority of comments received during the first comment period on the Rule. We continue to believe this is the appropriate standard to apply. Certain foreign issuers can rely on the exemptions in the Foreign Issuer Rule from the information circular requirements.*

One commenter suggested prospectus-level disclosure should not be required if a prospectus exemption is available, as often there is only a circular because the exchange requires shareholder approval for dilution protection purposes.

*Response: We disagree. Often the policy rational behind the prospectus exemption is that there is prospectus-level disclosure in an information circular.*

One commenter said section 14.2 requiring prospectus-level disclosure should also refer to a cancellation or redemption of securities.

*Response: We disagree. The requirement in the Form to provide prospectus-level disclosure is based on the principle in securities legislation that an issuer must deliver a prospectus in connection with a distribution. It is consistent with the legislation because, in the restructuring transactions described in the Form, securities are being changed, exchanged, issued or distributed. Extending the requirement to cancellations or redemptions would be inconsistent with this principle.*

One commenter said it appears the financial statement disclosure required by section 14.2 must be on an unconsolidated basis. The commenter suggested the wording should be revised so information could be consolidated for an entity and all of its subsidiaries.

*Response: We have not revised the Form. Prospectus-level disclosure must be provided for "each entity, securities of which are being changed, exchanged, issued, or distributed, and for each entity that would result from the significant acquisition". To the extent one of the entities named in the Form is a subsidiary of a parent issuer, the consolidated financial statements of the parent would not satisfy the disclosure requirement. Securityholders are entitled to receive financial statements of the actual subsidiary entity involved in the transaction.*

One commenter noted that, in many subdivisions and consolidations, a cash settlement is paid in lieu of issuing fractional shares. *Restructuring transactions* currently excludes subdivisions, consolidations, or other transactions that only affect the number of securities of a class that are outstanding. If cash is paid, however, issuers could not rely on that exclusion.

*Response: The exclusion would still be available in the circumstances described by the commenter. The payment of cash under a restructuring transaction does not change the fundamental nature of the transaction – being a transaction that is only affecting the number of securities outstanding.*

One commenter said it is anomalous that a dissident is not required to provide the same prospectus-level disclosure under section 14.4 as an issuer, unless the restructuring involves the change, exchange, issue or distribution of securities of the dissident or an affiliate of the dissident.

*Response: We disagree. It would be an impossible burden on dissidents to require them to provide prospectus-level disclosure about an issuer they may not be affiliated with. They would likely not have access to the information, or be able to verify the accuracy of the disclosure. Further, the prospectus-level disclosure about the issuer would likely already have been provided in management's information circular. As a result, even if the dissident could provide the disclosure, it would be duplicative.*

One commenter said the exemption from the prospectus-level disclosure requirement for CPCs effecting a qualifying transaction should be available to other issuers effecting reverse takeovers (RTOs) because

- a qualifying transaction is merely one form of RTO, so they should be treated the same
- the policies of the TSXV afford very similar protections to investor interests in the context of qualifying transactions and RTOs.

The commenter noted, though, that the role of the TSXV in reviewing information circulars for both qualifying transactions and RTOs may be changing.

*Response: We exempted CPCs effecting qualifying transactions from the prospectus-level disclosure requirement in recognition of the active role of the TSXV in establishing disclosure standards for qualifying transactions. The CSA disagree that exchange issuers completing RTOs and changes of business should be exempt from section 14.2, as the TSXV does not necessarily impose the same prospectus-form disclosure requirement or review procedures. If the role of the TSXV does change with respect to qualifying transactions, we may reconsider whether the exemption for CPCs is appropriate.*

One commenter said the exemption from prospectus-level disclosure for CPCs should extend to CPCs preparing a filing statement, rather than an information circular.

*Response: It is not necessary to extend the exemption for CPCs to their filing statements. The Rule does not speak to filing statement requirements – they are requirements prescribed by the TSXV. Only the TSXV can grant an exemption from its requirements.*

***Form 51-102F6***

One commenter noted current executive compensation disclosure has been modified in the Form to include certain portions of the guidelines on executive compensation previously issued by the CSA. The commenter questioned whether there were other portions of the previously issued guidelines that should be reflected in the new Form, and whether the Rule or the Form should clarify the status of the guidelines issued prior to the Rule being adopted.

*Response: We have incorporated all the relevant guidance that has been previously issued into this Form. Issuers can choose to look at the guidance we previously issued as a useful reference indicating the results of our issue-oriented review of current executive compensation disclosures and some of the problem areas.*

One commenter suggested that disclosure of executive compensation should only be required for the current year to help keep the document short. Securityholders can obtain information on prior years by "calling up" the prior year's document.

*Response: While the document would be shorter with only one year of information presented, its usefulness would be significantly diminished without the comparative historical information. We expect most investors want the comparative information in the document to assist in their understanding of the information, while saving them the difficulty of accessing the information separately.*

One commenter suggested the definition of *Named Executive Officers*, or *NEOs*, should include the chief financial officer, regardless of the amount of compensation received by the CFO. Otherwise, for many venture issuers, disclosure will usually only be provided for the CEO, as very few officers will receive compensation exceeding the $100,000 threshold.

*Response*: *We agree with the commenter, and have added CFOs to the definition of NEO.*

One commenter suggested the threshold in the definition of *Named Executive Officer* should be increased to at least $150,000 to reflect the impact of inflation since the disclosure requirement was introduced.

*Response: We agree with the commenter, and have increased the threshold to $150,000.*

One commenter said the reference in section 8.2 to "signs" should be deleted, since Item 9 does not require the members of the compensation committee to sign the report.

*Response: We have deleted the reference to a compensation committee member* signing *the report under Item 9.*

One commenter suggested that the requirement to include a performance graph in the Statement of Executive Compensation is no longer warranted. There is a significant chance of error in preparing the graph, and the value to the reader is minimal since most securityholders have access to real-time graphing and share price information.

*Response: We have not removed the requirement to include the graph, as it provides useful information about an issuer's performance relative to a market indicator. The requirements are defined to minimize the chance of error in preparing the graph. Further, while some users may be able to construct their own graph, the majority of users would prefer to have the relevant information easily accessible in one document. Investors should not be required to locate or create this information.*

One commenter said the restrictions that apply if an issuer abandons a voluntarily-provided comparison index are unduly restricted. The commenter noted that securityholders will still have the standard comparison index for comparison purposes. Issuers should only be required to provide this information as a footnote to the performance graph in the first year after the additional index is no longer provided.

*Response: This comment refers to the timing of the disclosures. The commenter would like to delay the reporting of the change until the year of the change instead of the year before the change is made. We do not agree that the current requirement is unduly restrictive. Investors are entitled to know that a change will be made in the future, why it is being made, and its expected impact, then they will not be surprised in the following year when the comparative index is different.*

**Part 11 – Additional filing requirements**

***Section 11.1 Additional Filing Requirements***

See the comments under **Question 1. Filing documents** above relating to the filing of documents sent to securityholders.

***Section 11.2 Change of Status Report***

One commenter said the status of a venture issuer must be very transparent to the marketplace. As a result, the CSA should consider adding a separate report category to SEDAR or keeping a separate list of venture issuers on CSA member websites to ease public access to this information.

*Response: The change of status filing will be added as a separate category in SEDAR.*

***Section 11.3 Voting Results***

One commenter said the Rule should not include a mandatory requirement to file a report disclosing information related to securityholder votes unless and until an equivalent requirement is adopted in the United States.

*Response: Although we are mindful of the approach to securities regulation in the United States, we do not decide what disclosure is appropriate in Canada based on the requirements in the United States. In any event, we note that there is a similar requirement in the United States in the Form 10-K.*

One commenter said the requirement to disclose voting results should be limited to those meetings where a person was required under the Rule to send an information circular or form of proxy to registered securityholders. Otherwise, the issuer could be in default for failing to file a report disclosing voting results after a meeting it was not involved in, for example, a meeting of its noteholders.

*Response: We have not made the change suggested by the commenter. Management of a reporting issuer will be aware of meetings held by its securityholders, even if it did not call the meeting, and will be informed of the results of the meeting.*

One commenter said the Rule should require issuers to disclose information regarding vote totals and vote percentages in a standardized form. The commenter suggested the form should be filed within 30 days of the annual general meeting, and be posted on SEDAR.

*Response: The Rule requires issuers to disclose the results of any vote promptly after a meeting of securityholders. The report will be filed under a separate category on SEDAR. As the information that must be disclosed in the report is prescribed, it is not necessary to mandate a specific form of report.*

Two commenters agreed with the proposal to require disclosure of voting results, but said the requirement should also apply to venture issuers. One of the commenters suggested that the discipline imposed by disclosure of voting results may be more necessary for venture issuers, as it is very difficult for small securityholders to exert much pressure on management. The commenter felt the cost of filing would be minimal, since the venture issuer will have to tabulate the votes regardless.

*Response: We disagree that the requirement should also apply to venture issuers. Before imposing additional filing requirements on an issuer, the CSA must be satisfied that the requirement will provide a benefit to the capital markets that justifies the cost to the issuer. We are not satisfied that the requirement will provide sufficient benefit to investors in venture issuers to justify imposing this requirement.*

***Section 11.4 Financial Information***

One commenter supported the requirement to file copies of news releases disclosing information regarding results of operations or financial condition, but suggested it should expressly apply to releases about both historical and prospective information.

*Response: We have revised the requirement as suggested by the commenter.*

One commenter suggested the requirement to file a copy of any news release issued that discloses information regarding results of operations or financial condition should apply only to statements for the period in question.

*Response: We disagree. It is important that all disclosure relating to an issuer's financial condition or operations be filed, whether it relates to the current, completed, or future periods.*

**Part 12 – Filing of material documents [now Filing of certain documents]**

One commenter suggested that, instead of filing copies of particularly lengthy documents, issuers should be permitted to file summaries of the documents.

One commenter suggested issuers should not be required to file constating documents, as

- those documents are available on demand from other sources
- there is very little demand for the documents
- meaningful information about these documents is already provided in AIFs, prospectuses, proxy circulars, and financial statements

The commenter said the burden of filing the documents is not offset by a corresponding benefit.

*Response: We disagree. Requiring the filing of the documents listed in Part 12 ensures that everything contained in them is easily accessible by securityholders, whose rights are created, and greatly affected, by those documents. Further, issuers are not required to file their corporate by-laws at all, and do not file their articles of incorporation with government offices electronically. Filing these documents on SEDAR gives investors immediate electronic access.*

One commenter said the requirement should be clarified so banks will not be required to file copies of the *Bank Act*. Section 13 of the *Bank Act* provides that the Act is the charter of all Schedule I and II banks.

*Response: We have made this change.*

One commenter questioned the need to file copies of these contracts, since issuers are required in their AIFs to describe

- any contracts that their business is substantially dependent on (paragraph 5.1(1)(j)), and
- every contract that can reasonably be regarded as material to an investor (section 15.1).

*Response: The requirement to file contracts entered into other than in the ordinary course of business gives investors access to the details of agreements that are not usual, and so would not be expected, in the issuer's business. We expect this will be a very limited number of contracts, as issuers would not be expected to enter into contracts that are unusual in its business on a regular basis.*

Three commenters suggested the requirement to file copies of shareholder or voting trust agreements, and other contracts that materially affect the rights or obligations of securityholders, should be limited to those contracts that the issuer is a party to. One of the commenters suggested that the requirement should also be limited to agreements that restrict the exercise of voting rights by shareholders holding not less than 10% of the outstanding voting rights.

*Response: We have limited the requirement to file securityholder or voting trust agreements to those agreements that the reporting issuer has access to. The requirement in subsection 12.1(1)(e) to file copies of contracts that create or materially affect the rights or obligations of securityholders is already limited to contracts "of the issuer or a subsidiary of the issuer". As such, third party contracts would not have to be filed under this requirement.*

One commenter suggested that, in the case of contracts that materially affect the rights or obligations of securityholders, the requirement should also be limited to agreements that directly affect the securityholders' rights or obligations generally, and in their capacity as securityholders.

*Response: As suggested by the commenter, we have revised the Rule so it is clear that the agreements that must be filed are those that affect securityholders generally.*

One commenter suggested the Rule should give guidance on the meaning of the phrase *materially affect the rights or obligations of securityholders*.

*Response: We have not given any guidance on this point. Whether a contract will materially affect the rights or obligations of securityholders will be so fact specific to a particular issuer that general guidance would not be useful.*

Two commenters said the requirement must be modified to provide that contracts that contain competitive or commercially sensitive information do not have to be filed.

*Response: We have provided that issuers may exclude portions of documents that contain competitive or commercially sensitive information. Issuers will still be required to file the remaining portions of the documents.*

Four commenters said all contracts that create or materially affect the rights or obligations of securityholders should be filed, whether or not the class of security is held by more than 50 securityholders. One commenter said the 50 securityholder limit should be clarified for securities held by CDS.

*Response: We have clarified the requirement by taking out the reference to 50 securityholders. As a result, the requirement will be consistent with the requirement, as revised, in Part 11 discussed in the response to Question 1(a) above.*

One commenter said the documents filed under Part 12 should have to be filed within a fixed number of days after the Rule is implemented. Otherwise, it may be more than a year before some issuers are required to file the documents.

*Response: We do not agree that it is necessary to accelerate when the documents under Part 12 must be filed. If the document is new and constitutes a material change, it will be filed with a material change report. Otherwise, the documents will be filed with the first AIF.*

One commenter suggested that, given the different wording between this requirement and the requirement in Item 15 of the AIF, the requirement in Part 12 is limited to corporate documents, while the disclosure in the AIF extends to business contracts. The commenter said it would be helpful if this, and what *entered into in the ordinary course of business* means, was clarified.

*Response: We have added guidance to the Policy relating to the interpretation of the phrase* ordinary course of business*.*

Two commenters said that the contracts should not be published as an attachment to, or an integral part of the AIF, as proposed. One of the commenters suggested this would make the AIF too cumbersome for most investors, unnecessarily costly for issuers to produce, and could infringe on confidential information involving private parties. The commenter recommended that the agreements be summarized in the AIF, and made accessible through SEDAR.

*Response: We agree that the material documents should not be published as an attachment to the AIF. We have deleted this requirement. Instead, the documents must be filed no later than when the AIF or the material change report is filed.*

**Part 13 – Exemptions**

One commenter suggested the exemption for reporting issuers wishing to rely on their existing exemptions should expressly apply to all new requirements, including Parts 8, 11 and 12, and sections 4.8, 4.10 and 4.11, which are new or were previously only policies.

One commenter suggested foreign issuers that previously obtained discretionary relief should be fully grandfathered, and all new provisions in the Rule should not apply to them.

*Response: Foreign issuers that previously obtained relief may continue to rely on that relief in a jurisdiction under section 13.2 of the Rule, if the prior relief was granted by the jurisdiction from a substantially similar provision of the Rule. When prior discretionary orders were issued, each jurisdiction would only have considered if it was appropriate to grant relief from the requirements that actually existed in that jurisdiction. The conditions to the relief would reflect this. As such, it would not be appropriate, and is in fact beyond the legislative authority in some jurisdictions, to retroactively extend the relief to areas that did not exist at the time the order was originally issued. We also note that the Foreign Issuer Rule provides exemptions from most of the requirements of the Rule for SEC foreign issuers and designated foreign issuers, provided certain conditions are met. Those conditions reflect the circumstances in which the CSA believe it is appropriate for foreign issuers to not have to comply with the CD obligations in the Rule.*

One commenter suggested the requirement to file a notice to rely on the exemption in section 13.2 should not apply to foreign issuers, who may have no knowledge that the Rule has been implemented.

*Response: The Foreign Issuer Rule provides exemptions from most of the requirements of the Rule for SEC foreign issuers and designated foreign issuers, provided certain conditions are met. Those foreign issuers do not have to file a notice to rely on the exemptions. If the issuer is not able to rely on the exemptions in the Foreign Issuer Rule, then it is important for the issuer to assess if the relief it obtained is still relevant. Once the issuer has done this assessment, it is not difficult for the issuer to advise the securities regulatory authorities that it is still able to rely on the relief so we can ensure our records accurately reflect what the issuer will be filing.*

One commenter noted that, Québec, unlike other provinces, has traditionally required the parent company of exchangeable share issuers to become reporting issuers, and then granted them CD relief. The commenter suggested Québec should exempt parent companies from the Rule (expressly including all new requirements) under Part 13 without any need to inform the CVMQ.

*Response: The CVMQ will continue to require that the parent issuer of the exchangeable share issuer become a reporting issuer in Québec. The parent issuer, if an SEC foreign issuer, may be exempted from complying with Canadian CD requirements under either MJDS or the Foreign Issuer Rule. Parent issuers that cannot rely on either MJDS or the Foreign Issuer Rule can apply for relief on a case-by-case basis.*

One commenter said the exemption for exchangeable share issuers and insiders of exchangeable share issuers should still be available if the issuers have incentive options outstanding.

*Response: We have not revised the Rule as suggested by the commenter at this time. Issuers that have incentive options outstanding can apply for discretionary relief on a case-by-case basis. We will consider amending the Rule in the future, if it becomes appropriate.*

One commenter suggested that the requirement to file documents under the exchangeable share exemption should require the filing to be done *promptly*, rather than *concurrently*, as formatting or other changes may have to occur first.

*Response: We have revised the requirement so documents must be filed at the same time, or as soon as practicable after, they are filed with the SEC.*

One commenter suggested the exemption from the insider reporting requirement should not be subject to

- the insider not receiving information as to material facts or material changes concerning the parent issuer before they are generally disclosed, or

- the insider not being an insider of the parent issuer in any capacity other than by virtue of being an insider of the exchangeable share issuer.

The commenter suggested that the requirement in the exemption for United States disclosure should be sufficient for the purposes of the exemption. The commenter said that, in any event, *insider* is not a definition that applies to a parent issuer that is not also a reporting issuer.

*Response: We disagree. The conditions to the exemption are consistent with the exemptions in National Instrument 55-101* Exemption from Certain Insider Reporting Requirements*. Further, the exchangeable securities are essentially identical to the parent issuer's securities. If the Canadian insider has material undisclosed information about the parent issuer, the Canadian insider could use this information to profit from trading in exchangeable securities in Canada.. We also disagree with the statement that the term* insider *does not apply to a parent issuer that is not also a reporting issuer. The definition of* insider *includes being an insider of an issuer that holds more than 10% of the outstanding voting rights. It does not matter if the parent issuer is a reporting issuer or not.*

One commenter suggested an exemption should also be given in the Rule from the early warning requirements in securities legislation.

*Response: The exemption in section 13.3 has been added to codify certain exemptive relief that has been routinely granted in the applications context. The applications have generally not requested relief from the early warning requirements. As a result, we have not had a full opportunity to consider the implications of this relief, and so have not added the exemption to this section. We also note that the early warning requirements relate to acquisitions of voting or equity securities of a reporting issuer. In our experience, designated exchangeable securities have tended to be non-voting securities in relation to the exchangeable security issuer, and would not meet the definition of* equity security*. Accordingly, we believe the need for this relief will be rare, and would be better addressed through an application for exemptive relief.*

**Part 14 Effective Date and transition**

One commenter said the requirements in the Rule relating to financial statements, MD&A and AIFs should not apply until the filing in 2005 of a company's annual documents for the financial year ended in 2004. For example, the quarterly MD&A should only have to update the annual MD&A filed under the Rule.

*Response: The Rule provides that the financial statement, MD&A and AIF requirements apply to financial years beginning on or after January 1, 2004. As a result, the first AIF and first annual financial statements and MD&A will not have to be filed under the Rule until 2005. It would not be appropriate to delay the implementation of the Rule as it relates to interim financial statements and interim MD&A until 2005. The Rule does not substantially change the financial statement filing requirements, except the deadline for filing for issuers other than venture issuers. Those issuers have had sufficient time to prepare for the shorter filing deadline because of the CSA notices issued on the anticipated effective date of the Rule, and through the advance notice of implementation of the Rule.*

*We have also clarified in the MD&A that, if the first MD&A filed in the Form 51-102F1 is an interim MD&A, the first MD&A must contain all of the disclosure required in the annual MD&A. This was already required under the Form, but has been made clearer. Issuers can, and are encouraged to, start using the Form 51-102F1 for any MD&A filed for periods before their 2004 financial year. If they chose to do this, their first interim MD&A can update the annual MD&A filed under Form 51-102F1.*

**Part IV Companion Policy 51-102CP *Continuous Disclosure Obligations***

**Part 3 Financial statements**

One commenter said the language in the Policy regarding the return of the request form under section 4.6 of the Rule should be expanded to make it clear that any requested financial statements must be sent to OBOs through their intermediaries. The commenter also suggested these provisions should be in the Rule, rather than in the Policy.

*Response: We disagree. We have not been prescriptive in the Rule about the procedures for the request forms. As a result, the Rule contemplates that an OBO may request the financial statements through its intermediary, or not.*

**Part 7 Electronic delivery of documents**

One commenter welcomed the guidance that CD documents may be delivered electronically, if the issuer complies with the relevant Québec staff notice and CSA national policy.

*No response required.*

**Part 8 Business acquisition reports**

One commenter said the statement in section 8.9(1) of the Policy that relief from the financial statement requirements in the BAR will not be granted because of the cost or time of preparing them is inconsistent with the principles of securities regulation set out in, for example, section 2.1 of the Ontario *Securities Act*.

*Response: The Policy has been revised to reflect that relief will* generally *not be granted solely based on cost or the time of preparing them. The securities regulatory authorities will consider all of the relevant factors in the context of an application for discretionary relief.*

**Schedule 1**

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**Appendix C**

**Amendments to**
**National Instrument 44-101**
***Short Form Prospectus Distributions***
**Form 44-101F3 and Companion Policy 44-101CP**
**And Revocation of**
**Form 44-101F1 and Form 44-101F2**

**Part 1 Amendments to National Instrument 44-101**

**1.1 Amendments to Part 1 of NI 44-101 -** ***Part 1 of National Instrument 44-101 is amended by,***

***(a) in section 1.1, repealing the definition of* "AIF" *and substituting the following:***

"AIF" means an annual information form

(a) in Form 51-102F2,

(b) in Form 51-102F2 or Form 44-101F1, if the annual information form was filed in respect of financial years beginning before January 1, 2004, or

(c) in the form referred to in section 3.4;

***(b) in the definition of "*current AIF*" in section 1.1, adding*** ", Form 10-KSB," ***after the words "*Form 10-K*", wherever they appear;***

***(c) in section 1.1, adding immediately after the definition of* "foreign GAAS" *and immediately before the definition of* "44-101 regulator" *the following:***

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

"Form 51-102F2" means Form 51-102F2 *Annual Information Form*;

***(d) in section 1.1, repealing the definition of* "MD&A" *and substituting the following:***

"MD&A" means the management's discussion and analysis of financial condition and results of operations of an issuer

(a) in Form 51-102F1, or

(b) for financial years beginning before January 1, 2004,

(i) in Form 51-102F1, or

(ii) required to be disclosed in an AIF in respect of financial years beginning before January 1, 2004;

***(e) in section 1.1, adding immediately after the definition of* "MRRS" *and immediately before the definition of* "non-convertible" *the following:***

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

**1.2 Amendments to Part 3 of NI 44-101 -** ***Part 3 of National Instrument 44-101 is amended by***

***(a) repealing subsection 3.1(1) and substituting the following:***

(1) An issuer filing an initial AIF under this Instrument shall file the AIF

(a) in Form 51-102F2;

(b) in respect of financial years beginning before January 1, 2004, in Form 51-102F2 or Form 44-101F1; or

(c) in the form referred to in section 3.4.

***(b) repealing subsection 3.2(1) and substituting the following:***

(1) An issuer filing a renewal AIF under this Instrument shall file the AIF

(a) in Form 51-102F2;

(b) in respect of financial years beginning before January 1, 2004, in Form 51-102F2 or Form 44-101F1; or

(c) in the form referred to in section 3.4.

***(c) repealing subsection 3.2(5) and substituting the following:***

(5) Upon receipt of a notice from the 44-101 regulator that its renewal AIF is being reviewed, an issuer shall promptly file the renewal AIF again, in all jurisdictions in which the renewal AIF was filed, with

(a) the following statement added in bold type to the cover page of the renewal AIF, if the renewal AIF is in Form 51-102F2, until the issuer is notified that the review has been completed:

**"This annual information form is currently under review by the provincial and territorial securities regulatory authorities of one or more jurisdictions. Information contained in this form is subject to change**.", or (b) the statement required under Item 1.2 of Form 44-101F1, if the renewal AIF is in Form 44-101F1.

***(d) repealing subsection 3.3(2) and substituting the following:***

(2) An issuer that files an AIF under this Instrument shall file an undertaking with the regulator to the effect that, when the securities of the issuer are in the course of a distribution under a preliminary short form prospectus or a short form prospectus, the issuer will provide to any person or company, upon request to the secretary of the issuer,

(a) one copy of the AIF of the issuer, together with one copy of any document, or the pertinent pages of any document, incorporated by reference in the AIF,

(b) one copy of the financial statements of the issuer for its most recently completed financial year for which financial statements have been filed together with the accompanying report of the auditor and one copy of the most recent interim financial statements of the issuer that have been filed, if any, for any period after the end of its most recently completed financial year,

(c) one copy of the information circular of the issuer in respect of its most recent annual meeting of shareholders that involved the election of directors, and

(d) one copy of any other documents that are incorporated by reference into the preliminary short form prospectus or the short form prospectus and are not required to be provided under paragraphs (a), (b) or (c).

***(e) repealing section 3.4 and substituting the following:***

**3.4 Alternative Forms of AIF** - 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,

may file an AIF in the form of an annual report or transition report under the 1934 Act on Form 10-K, Form 10-KSB or on Form 20-F.

**Part 2 Amendments to Companion Policy 44-101CP**

***2.1 Part 1 of Companion Policy 44-101CP is amended by,***

***(a) in section 1.7, adding the following as new subsection (1):***

(1) **AIF** – The term "AIF" is defined to mean either a Form 51-102F2 or Form 44-101F1 *AIF*, depending on when the AIF is filed. Issuers may choose to file their annual information forms for financial years beginning before January 1, 2004 in either Form 51-102F2 or Form 44-101F1. For financial years beginning on or after January 1, 2004, issuers must use Form 51-102F2.

***(b) renumbering subsections 1.7(1) to (6) as* subsections 1.7(2) to (7)*.***

***2.2 Part 8 of Companion Policy 44-101CP is amended by,***

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

***(i) striking the words* "Item 4.2 of Form 44-101F1 specifies" *and substituting*** "Item 4.2 of Form 44-101F1 and section 5.3 of Form 51-102F2 specify"***; and***

***(ii) striking the words* "Form 44-101F1 leaves" *in the second sentence and substituting*** "Form 44-101F1 and Form 51-102F2 leave"***;***

***(b) in subsection 8.1(2),***

***(i) striking the words* "Item 4.2(b)(i) of Form 44-101F1 AIF requires" *and substituting*** "Item 4.2(b)(i) of Form 44-101F1 AIF and section 5.3(2) of Form 51-102F2 require"***; and***

***(ii) striking the words* ", the cash flows from which service the asset-backed securities"***; and***

***(c) in section 8.2,***

***(i) adding the words*** "and Item 10 of Form 51-102F2" ***after the words* "Item 8 of Form 44-101F1" *wherever they appear; and***

***(ii) striking the word* "requires" *and substituting*** "require"***.***

**Part 3 Revocation of Forms 44-101F1 *AIF* and 44-101F2 *MD&A***

**3.1 Revocation of Form 44-101F1 *AIF* – *Form 44-101F1 AIF is revoked.***

**3.2 Revocation of Form 44-101F2 *MD&A* – *Form 44-101F2 MD&A is revoked.***

**Part 4 Amendments to Form 44-101F3 *Short Form Prospectus***

**4.1** ***Item 10 of Form 44-101F3 Short Form Prospectus is repealed and the following substituted:***

**Item 10: Resource Property**

**10.1 Resource Property –** If a material part of the proceeds of a distribution is to be expended on a particular resource property and if the current AIF does not contain the disclosure required under Item 4.3 or 4.4, as appropriate, of Form 44-101F1, or section 5.4 or 5.5, as appropriate, of Form 51-102F2, for the property or that disclosure is inadequate or incorrect due to changes, disclose the information required under section 5.4 or 5.5 of Form 51-102F2.

**4.2** ***Item 12 of Form 44-101F3 Short Form Prospectus is amended by***

***(a) striking subparagraph 12.1(1)7. and substituting the following:***

7. MD&A relating to the issuer's interim financial statements included in the short form prospectus.

***(b) in subparagraph 12.1(1)8., adding the words*** "for financial years beginning before January 1, 2004," ***after the words* "information circulars or,"***;***

***(c)*** ***striking subparagraph 12.1(3)(a) and substituting the following***

(a) has filed an AIF in a form of current annual report on Form 10-K, Form 10-KSB or Form 20-F under the 1934 Act, as permitted under section 3.4 of National Instrument 44-101 and under NI 51-102.

***(d)*** ***in subparagraph 12.2 4., adding the words*** "for financial years beginning before January 1, 2004," ***after the words*** **"information circulars or,"*; and***

***(e)*** ***in clause 13.1(2)(b)(ii), striking the words*** **"Form 10-K or Form 20-F"** ***and substituting*** "Form 10-K, Form 10-KSB or Form 20-F"***.***

**Part 5 Effective Date**

**5.1 Effective Date**

(1) This Amendment, except for Part 3, comes into force on March 30, 2004.

(2) Part 3 of this Amendment comes into force on May 19, 2005.

## Appendix D

**Amendment to**
**And Revocation of**
**National Instrument 62-102**
***Disclosure of Outstanding Share Data***

**Part 1 Amendment to National Instrument 62-102**

**1.1 Amendment to Part 3 of National Instrument 62-102** – ***Part 3 of National Instrument 62-102 is amended by adding the following as section 3.2:***

**3.2 Exemption for years beginning January 1, 2004** – This Instrument does not apply to financial years beginning on or after January 1, 2004.

**Part 2 Revocation of National Instrument 62-102**

**1.1 Revocation of National Instrument 62-102 –** ***National Instrument 62-102 is revoked.***

**Part 2 Effective Date**

**2.1 Effective Date**

(1) This Amendment, except for Part 2, comes into force on March 30, 2004.

(2) Part 2 comes into force on May 19, 2005.

**Amendment to**
**National Instrument 62-103**
***The Early Warning System and Related Take-Over Bid and Insider Reporting Issues***

**Part 1 Amendment to National Instrument 62-103**

**1.1 Amendment to Part 1 of National Instrument 62-103** – ***Subsection 1.1(1) of National Instrument 62-103 is amended by repealing paragraph (g) of the definition of* "applicable provisions".**

**1.2 Amendment to Part 2 of National Instrument 62-103** – ***Subsection 2.1(1) of National Instrument 62-103 is amended by adding the words*** "or section 5.4 of National Instrument 51-102 *Continuous Disclosure Obligations*," ***after* "section 2.1 of National Instrument 62-102 *Disclosure of Outstanding Share Data*".**

**Part 2 Effective Date**

**2.1 Effective Date** – This Amendment comes into force on March 30, 2004.

**Appendix E**

**Amendments to**
**National Policy 31**
***Change of Auditor of a Reporting Issuer***
***that is an Investment Fund***

**and**

**National Policy 51**
***Changes in the Ending Date of a Financial Year***
***and in Reporting Status***

**Part 1 Amendments to National Policy 31**

**1.1 Amendment to title of National Policy 31 –** ***National Policy 31 is amended by adding "***that is an Investment Fund***" after "***Change of Auditor of a Reporting Issuer***".**

**1.2 Amendment to Part 1 of National Policy 31 -** ***Section 1.1 of National Policy 31 is amended by adding "***that is an investment fund as defined in National Instrument 51-102 *Continuous Disclosure Obligations*" ***after "***reporting issuer***".**

**1.3 Amendment to Part 2 of National Policy 31** – ***Part 2 of National Policy 31 is amended by renumbering sections 2.1 to 2.6 as sections 2.2 to 2.7, and adding the following as new section 2.1:***

> ***"***2.1 This Policy Statement only applies to reporting issuers that are not subject to National Instrument 51-102 *Continuous Disclosure Obligations*.***"***

**Part 2 Amendments to National Policy 51**

**2.1 Amendment to title of National Policy 51 –** ***National Policy 51 is amended by adding "***of an Investment Fund***" after "***Changes in the Ending Date of a Financial Year and in Reporting Status***".**

**2.2 Amendment to Part 1 of National Policy 51 –** ***The definition of "Filing Issuer" in Part 1 of National Policy 51 is amended by adding "***and that is an investment fund as defined in National Instrument 51-102 *Continuous Disclosure Obligations*" ***after "***Jurisdiction***".**

**2.3 Amendment to Part 3 of National Policy 51** – ***Paragraph 3.1(1)(b) of National Policy 51 is amended by adding "***of a Filing Issuer***" after "***reporting status***".**

**Part 3 Effective Date**

**3.1 Effective Date** – These Amendments comes into force on March 30, 2004.

# CSA STAFF NOTICE 51-308
# FILING OF MANAGEMENT'S DISCUSSION AND ANALYSIS
# AND NATIONAL INSTRUMENT 51-102 *CONTINUOUS DISCLOSURE OBLIGATIONS*

**Introduction**

The CSA have published an advance notice of the expected implementation of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102).

When implemented, NI 51-102 will specify the form of management's discussion and analysis (MD&A) that reporting issuers, other than investment funds, are required to file. Issuers that are subject to NI 51-102 will be required to file MD&A in Form 51-102F1 for financial years beginning on or after January 1, 2004. As a result, the first MD&A that must be filed in Form 51-102F1 for an issuer with a December 31 year-end will be for the first interim period ending March 31, 2004.

Form 51-102F1 provides that, if the first MD&A an issuer is required to file in that form is not an annual MD&A, the first MD&A must provide all the information required in the annual MD&A. The result is that the first interim MD&A filed for interim periods ended on or after March 31, 2004 will have to contain all elements of the annual MD&A in Form 51-102F1.

Current MD&A requirements will be modified to give issuers the option of filing their annual MD&A for fiscal years beginning before January 1, 2004 in Form 51-102F1. If issuers choose this option, their MD&A for subsequent interim periods would update their annual MD&A.

**Questions**

Please refer your questions to any of the following people:

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**December 19, 2003.**

# National Instrument 51-102
# Continuous Disclosure Obligations

**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:

| Approved Rating Organization | Long Term Debt | Short Term Debt | Preferred Shares |
|---|---|---|---|
| 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;

"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;

"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 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

(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;

"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-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 any issuer

(a) where contributions of securityholders are pooled for investment;

(b) where securityholders do not have day-to-day control over the management and investment decisions of the issuer, whether or not they have the right to be consulted or to give directions; and

(c) whose securities do not entitle the securityholder to receive on demand, or within a specified period after demand, an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets of the issuer;

"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;

"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;

"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 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; 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.

## PART 4 FINANCIAL STATEMENTS

### 4.1 Comparative Annual Financial Statements and Auditor's Report

(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.

### 4.2 Filing Deadline for Annual Financial Statements

The 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.

(2) Subject to subsections 4.7(4), 4.8(7) and 4.8(8), 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

(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.

**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 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 20th 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 10th 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 SEC issuer 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 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 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.

**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 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 20th day after the date of the reverse takeover;

(ii) the 90th date after the end of the financial year; and

(iii) the 120th 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 10th day after the date of the reverse takeover;

(ii) the 45th day after the end of the interim period; and

(iii) the 60th day after the end of the interim period if the reporting issuer is a venture issuer.

**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;

"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) (i) 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 SEC issuer 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.

(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, 4.4 and 4.7, as applicable; and

(b) the date the reporting issuer files the financial statements under subsections 4.1(1), 4.3(1) or 4.7(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.

(2) A supplement required under subsection (1) 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 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.

(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.

(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.

## 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 90th 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.

## 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 (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.

(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.

### 8.2 Obligation to File a Business Acquisition Report

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.

### 8.3 Determination of Significance

(1) **Significant Acquisitions** - Subject to subsection (3), 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), 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, 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, 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 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. exceeds 20 percent of the income from continuing operations calculated under the following item 2.:

1. 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. The reporting issuer's consolidated income from continuing operations for the later of

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

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

(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.

(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.

(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.

**8.5 Reporting Periods**

(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, an investment accounted for using the equity method;

(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; and

(ii) describes the reporting issuer's proportionate interest in the business and any contingent issuance of securities by the business 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; 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 Included**

(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 8.5 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(2) 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).

**8.11 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(3), 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.

**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 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, 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.

(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; and

(b) the date on which the reporting issuer files or furnishes the material to the SEC.

**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.

## 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.

**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, 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;

(c) the exchangeable security issuer does not issue any securities, other than

(i) designated exchangeable securities;

(ii) securities issued to the parent issuer; or

(iii) debt securities issued to banks, loan corporations, trust corporations, treasury branches, credit unions, 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;

(g) the exchangeable security 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 exchangeable security issuer that are not also material changes in the affairs of its parent issuer; and

(h) the parent issuer includes in all mailings of proxy solicitation materials to holders of designated exchangeable securities a clear and concise statement that

(i) explains the reason the mailed material relates solely to the parent issuer;

(ii) indicates that the designated exchangeable securities are the economic equivalent to the underlying securities; and

(iii) describes the voting rights associated with the designated exchangeable securities.

(3) The insider reporting requirement and the requirement to file an insider profile under National Instrument 55-102 *System for Electronic Disclosure by Insiders* does not apply to any insider of an exchangeable security issuer in respect of securities of the exchangeable security issuer so long as

(a) 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;

(b) 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;

(c) the parent issuer is the direct or indirect beneficial owner of all of the issued and outstanding voting securities of the exchangeable security issuer;

(d) the parent issuer is an SEC issuer; 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

(iii) debt securities issued to the parent issuer or to banks, loan corporations, trust corporations, treasury branches, credit unions, 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;

"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, this Instrument does not apply to a credit support issuer 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;

(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, trust corporations, treasury branches, credit unions, 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;

(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.

(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;

(d) the credit supporter is an SEC MJDS issuer; 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, trust corporations, treasury branches, credit unions, 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, the provisions of this Instrument, including Part 10, concerning

(a) annual financial statements or MD&A relating to those financial statements, except sections 4.8 to 4.11, apply for financial years beginning on or after January 1, 2004;

(b) interim financial statements or MD&A relating to those financial statements, except sections 4.8 to 4.11, apply for interim periods in financial years beginning on or after January 1, 2004;

(c) AIFs apply in respect of financial years beginning on or after January 1, 2004;

(d) business acquisition reports apply to significant acquisitions if the initial legally binding agreement relating to the acquisition was entered into on or after March 30, 2004;

(e) proxy solicitation and information circulars apply from and after June 1, 2004; and

(f) filing of documents under Part 12 apply in respect of financial years beginning on or after January 1, 2004.

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# Companion Policy 51-102CP
# Continuous Disclosure Obligations

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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

Reporting issuers must file continuous disclosure documents under the Instrument only in the local jurisdictions in which they are a reporting issuer.

### 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 of Companion Policy 44-101CP provides guidance for the definitions 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) 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.

**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 requirements may apply 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*.

**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.

## 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

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.

### 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. 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 may, for example, apply to an issuer that was, before becoming a reporting issuer, 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 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**

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.

### 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. Subsection 4.5(2) 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

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.

## 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.

### 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.

### 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(3) 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(4)(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 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 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(5) 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(3) 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(4)(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:

(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**

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 to include comparative financial information. This comparative financial information may be unaudited.

## PART 9 PROXY SOLICITATION AND INFORMATION CIRCULARS

### 9.1 Beneficial Owners of Securities

Reporting issuers are reminded that NI 54-101 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 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.

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

**Securities Commission of Newfoundland**
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**
800 Square Victoria, 22nd Floor
P.O. Box 246, Tour de la Bourse
Montréal, Québec
H4Z 1G3
Attention: Direction du marché 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**

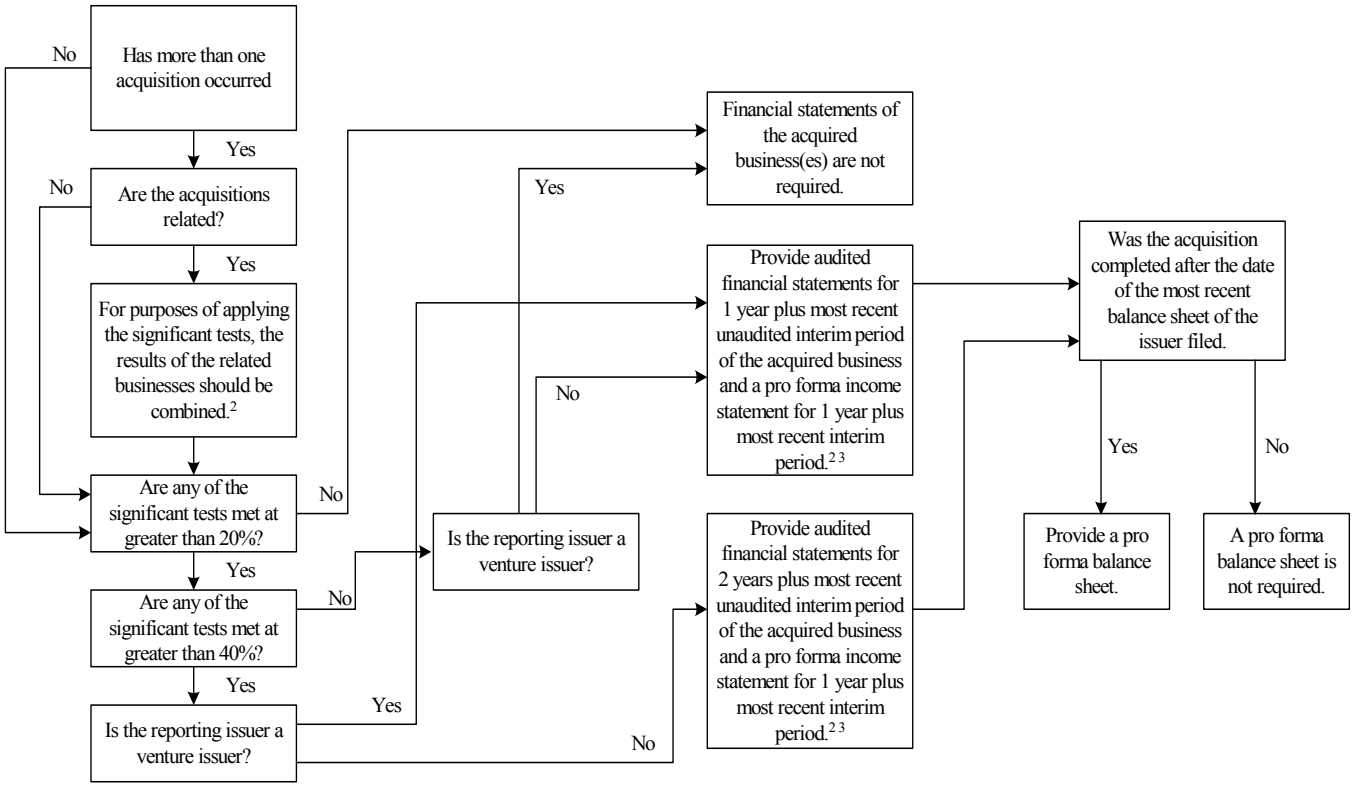
The following examples assume the old financial year ended on December 31, 20X0

| 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 |
|---|---|---|---|---|---|---|---|
| **Financial year end changed by up to 3 months** | | | | | | | |
| 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<br>6 months ended 8/31/X1<br>9 months ended 11/30/X1 | 3 months ended 6/30/X0<br>6 months ended 9/30/X0<br>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<br>6 months ended 6/30/X1<br>9 months ended 9/30/X1<br>12 months ended 12/31/X1 | 3 months ended 3/31/X0<br>6 months ended 6/30/X0<br>9 months ended 9/30/X0<br>12 months ended 12/31/X0 | 3 months ended 5/31/X2<br>6 months ended 8/31/X2<br>9 months ended 11/30/X2 | 3 months ended 6/30/X1<br>6 months ended 9/30/X1<br>9 months ended 12/31/X1 |
| | | | | or | | | |
| | | | | 2 months ended 2/28/X1<br>5 months ended 5/31/X1<br>8 months ended 8/31/X1<br>11 months ended 11/30/X1 | 3 months ended 3/31/X0<br>6 months ended 6/30/X0<br>9 months ended 9/30/X0<br>12 months ended 12/31/X0 | 3 months ended 5/31/X2<br>6 months ended 8/31/X2<br>9 months ended 11/30/X2 | 3 months ended 6/30/X1<br>6 months ended 9/30/X1<br>9 months ended 12/31/X1 |
| **Financial year end changed by 4 to 6 months** | | | | | | | |
| 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<br>6 months ended 12/31/X1<br>9 months ended 3/31/X2 | 3 months ended 9/30/X0<br>6 months ended 12/31/X0<br>9 months ended 3/31/X1 |

| 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 |
|---|---|---|---|---|---|---|---|
| **Financial year end changed by 7 or 8 months** | | | | | | | |
| 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<br>6 months ended 1/31/X2<br>9 months ended 4/30/X1 | 3 months ended 9/30/X0<br>6 months ended 12/31/X0<br>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<br>6 months ended 1/31/X2<br>9 months ended 4/30/X1 | 3 months ended 9/30/X0<br>6 months ended 12/31/X0<br>10 months ended 4/30/X1 |
| **Financial year end changed by 9 to 11 months** | | | | | | | |
| 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<br>6 months ended 6/30/X1 | 3 months ended 3/31/X0<br>6 months ended 6/30/X0 | 3 months ended 1/31/X2<br>6 months ended 4/30/X2<br>9 months ended 7/31/X2 | 3 months ended 12/31/X0<br>6 months ended 3/31/X1<br>9 months ended 6/30/X1 |
| | | | | or | | | |
| | | | | 4 months ended 4/30/X1<br>7 months ended 7/31/X1 | 3 months ended 3/31/X0<br>6 months ended 6/30/X0 | 3 months ended 1/31/X2<br>6 months ended 4/30/X2<br>9 months ended 7/31/X2 | 3 months ended 12/31/X0<br>6 months ended 3/31/X1<br>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




**Notes**:

1 This decision chart provides general guidance and should be read in conjunction with National Instrument 51-102 and Companion Policy 51-102CP.

2 If an acquisition of related businesses constitutes a significant acquisition when the results of the related businesses are combined, the required financial statements shall be provided for each of the related businesses, 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.

3 As an alternative to the most recent interim period, financial statements for the acquired business may be provided for the period that started the day after the business' most recent annual balance sheet and ended on a day that is more recent than the ending date of the most recent interim period otherwise required and is not later than the date of acquisition.

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# Form 51-102F1
# Management's Discussion & Analysis

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**FORM 51-102F1**
***MANAGEMENT'S DISCUSSION & ANALYSIS***

**PART 1 GENERAL INSTRUCTIONS AND INTERPRETATION**

**(a) What is MD&A?**

MD&A is a narrative explanation, through the eyes of management, of how your company performed during the period covered by the financial statements, and of your company's financial condition and future prospects. MD&A complements and supplements your financial statements, but does not form part of your financial statements.

Your objective when preparing the MD&A should be to improve your company's overall financial disclosure by giving a balanced discussion of your company's results of operations and financial condition including, without limitation, such considerations as liquidity and capital resources - openly reporting bad news as well as good news. Your MD&A should

- help current and prospective investors understand what the financial statements show and do not show;
- discuss material information that may not be fully reflected in the financial statements, such as contingent liabilities, defaults under debt, off-balance sheet financing arrangements, or other contractual obligations;
- discuss important trends and risks that have affected the financial statements, and trends and risks that are reasonably likely to affect them in the future; and
- provide information about the quality, and potential variability, of your company's earnings and cash flow, to assist investors in determining if past performance is indicative of future performance.

**(b) Date of Information**

In preparing the MD&A, you must take into account information available up to the date of the MD&A. If the date of the MD&A is not the date it is filed, you must ensure the disclosure in the MD&A is current so that it will not be misleading when it is filed.

**(c) Use of "Company"**

Wherever this Form uses the word "company", the term includes other types of business organizations such as partnerships, trusts and other unincorporated business entities.

**(d) Explain Your Analysis**

Explain the nature of, and reasons for, changes in your company's performance. Do not simply disclose the amount of change in a financial statement item from period to period. Avoid using boilerplate language. Your discussion should assist the reader to understand trends, events, transactions and expenditures.

**(e) Focus on Material Information**

Focus your MD&A on material information. You do not need to disclose information that is not material. Exercise your judgment when determining whether information is material.

**(f) What is Material?**

Would a reasonable investor's decision whether or not to buy, sell or hold securities in your company likely be influenced or changed if the information in question was omitted or misstated? If so, the information is likely material. This concept of materiality is consistent with the financial reporting notion of materiality contained in the Handbook.

**(g) Forward-Looking Information**

You are encouraged to provide forward-looking information if you have a reasonable basis for making the statements. Preparing your MD&A necessarily involves some degree of prediction or projection. For example, MD&A requires a discussion of known trends or uncertainties that are reasonably likely to affect your company's business. However, MD&A does not require that your company provide a detailed forecast of future revenues, income or loss or other information.

All forward-looking information must contain a statement that the information is forward-looking, a description of the factors that may cause actual results to differ materially from the forward-looking information, your material assumptions and appropriate risk disclosure and cautionary language.

You must discuss any forward-looking information disclosed in MD&A for a prior period which, in light of intervening events and absent further explanation, may be misleading. Forward looking statements may be considered misleading when they are unreasonably optimistic or aggressive, or lack objectivity, or are not adequately explained. Your timely disclosure obligations might also require you to issue a news release and file a material change report.

**(h) Venture Issuers Without Significant Revenues**

If your company is a venture issuer without significant revenues from operations, focus your discussion and analysis of results of operations on expenditures and progress towards achieving your business objectives and milestones.

**(i) Reverse Takeover Transactions**

When an acquisition is accounted for as a reverse takeover, the MD&A should be based on the reverse takeover acquirer's financial statements.

**(j) Foreign Accounting Principles**

If your company's primary financial statements have been prepared using accounting principles other than Canadian GAAP and a reconciliation is provided, your MD&A must focus on the primary financial statements.

**(k) Resource Issuers**

If your company has mineral projects, your disclosure must comply with National Instrument 43-101 *Standards of Disclosure for Mineral Projects*, including the requirement that all scientific and technical disclosure be based on a technical report or other information prepared by or under the supervision of a qualified person.

If your company has oil and gas activities, your disclosure must comply with National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*.

**(l) Numbering and Headings**

The numbering, headings and ordering of items included in this Form are guidelines only. You do not need to include the headings or numbering or follow the order of items in this Form. Disclosure provided in response to any item need not be repeated elsewhere.

**(m) Omitting Information**

You do not need to respond to any item in this Form that is inapplicable.

**(n) Defined Terms**

If a term is used but not defined in this Form, refer to Part 1 of National Instrument 51-102 and to National Instrument 14-101 *Definitions*. If a term is used in this Form and is defined in both the securities statute of the local jurisdiction and in National Instrument 51-102, refer to section 1.4 of Companion Policy 51-102CP.

**(o) Plain Language**

Write the MD&A so that readers are able to understand it. Refer to the plain language principles listed in section 1.5 of Companion Policy 51-102CP. If you use technical terms, explain them in a clear and concise manner.

**PART 2 CONTENT OF MD&A**

**Item 1 Annual MD&A**

**1.1 Date**

Specify the date of your MD&A. The date of the MD&A must be no earlier than the date of the auditor's report on the financial statements for your company's most recently completed financial year.

**1.2 Overall Performance**

Provide an analysis of your company's financial condition, results of operations and cash flows. Discuss known trends, demands, commitments, events or uncertainties that are reasonably likely to have an effect on your company's business.

Compare your company's performance in the most recently completed financial year to the prior year's performance. Your analysis should address at least the following:

(a) operating segments that are reportable segments as those terms are used in the Handbook;

(b) other parts of your business if

(i) they have a disproportionate effect on revenues, income or cash needs; or

(ii) there are any legal or other restrictions on the flow of funds from one part of your company's business to another;

(c) industry and economic factors affecting your company's performance;

(d) why changes have occurred or expected changes have not occurred in your company's financial condition and results of operations; and

(e) the effect of discontinued operations on current operations.

*INSTRUCTIONS*

*(i) When explaining changes in your company's financial condition and results, include an analysis of the effect on your continuing operations of any acquisition, disposition, write-off, abandonment or other similar transaction.*

*(ii) Financial condition includes your company's financial position (as shown on the balance sheet) and other factors that may affect your company's liquidity and capital resources.*

*(iii) Include information for a period longer than two financial years if it will help the reader to better understand a trend.*

**1.3 Selected Annual Information**

(1) Provide the following financial data derived from your company's financial statements for each of the three most recently completed financial years:

(a) net sales or total revenues;

(b) income or loss before discontinued operations and extraordinary items, in total and on a per-share and diluted per-share basis;

(c) net income or loss, in total and on a per-share and diluted per-share basis;

(d) total assets;

(e) total long-term financial liabilities; and

(f) cash dividends declared per-share for each class of share.

(2) Discuss the factors that have caused period to period variations including discontinued operations, changes in accounting policies, significant acquisitions or dispositions and changes in the direction of your business, and any other information your company believes would enhance an understanding of, and would highlight trends in, financial condition and results of operations.

*INSTRUCTION*

*Indicate the accounting principles that the financial data has been prepared in accordance with, the reporting currency, the measurement currency if different from the reporting currency and, if the underlying financial statements have been reconciled to Canadian GAAP, provide a cross-reference to the reconciliation that is found in the notes to the financial statements.*

**1.4 Results of Operations**

Discuss your analysis of your company's operations for the most recently completed financial year, including

(a) net sales or total revenues by operating business segment, including any changes in such amounts caused by selling prices, volume or quantity of goods or services being sold, or the introduction of new products or services;

(b) any other significant factors that caused changes in net sales or total revenues;

(c) cost of sales or gross profit;

(d) for issuers that have significant projects that have not yet generated operating revenue, describe each project, including your company's plan for the project and the status of the project relative to that plan, and expenditures made and how these relate to anticipated timing and costs to take the project to the next stage of the project plan;

(e) for resource issuers with producing mines, identify milestones such as mine expansion plans, productivity improvements, or plans to develop a new deposit;

(f) factors that caused a change in the relationship between costs and revenues, including changes in costs of labour or materials, price changes or inventory adjustments;

(g) commitments, events, risks or uncertainties that you reasonably believe will materially affect your company's future performance including net sales, total revenue and income or loss before discontinued operations and extraordinary items;

(h) effect of inflation and specific price changes on your company's net sales and total revenues and on income or loss before discontinued operations and extraordinary items;

(i) a comparison in tabular form of disclosure you previously made about how your company was going to use proceeds (other than working capital) from any financing, an explanation of variances and the impact of the variances, if any, on your company's ability to achieve its business objectives and milestones; and

(j) unusual or infrequent events or transactions.

*INSTRUCTION*

*Your discussion under paragraph 1.4(d) should include*

*(i) whether or not you plan to expend additional funds on the project; and*

*(ii) any factors that have affected the value of the project(s) such as change in commodity prices, land use or political or environmental issues.*

**1.5 Summary of Quarterly Results**

Provide the following information in summary form, derived from your company's financial statements, for each of the eight most recently completed quarters:

(a) net sales or total revenues;

(b) income or loss before discontinued operations and extraordinary items, in total and on a per-share and diluted per-share basis; and

(c) net income or loss, in total and on a per-share and diluted per-share basis.

Discuss the factors that have caused variations over the quarters necessary to understand general trends that have developed and the seasonality of the business.

*INSTRUCTIONS*

*(i) In the case of the annual MD&A, your most recently completed quarter is the quarter that ended on the last day of your most recently completed financial year.*

*(ii) You do not have to provide information for a quarter prior to your company becoming a reporting issuer if your company has not prepared financial statements for those quarters.*

*(iii) For sections 1.2, 1.3, 1.4 and 1.5 consider identifying, discussing and analyzing the following factors:*

*(A) changes in customer buying patterns, including changes due to new technologies and changes in demographics;*

*(B) changes in selling practices, including changes due to new distribution arrangements or a reorganization of a direct sales force;*

*(C) changes in competition, including an assessment of the issuer's resources, strengths and weaknesses relative to those of its competitors;*

*(D) the effect of exchange rates;*

*(E) changes in pricing of inputs, constraints on supply, order backlog, or other input-related matters;*

*(F) changes in production capacity, including changes due to plant closures and work stoppages;*

*(G) changes in volume of discounts granted to customers, volumes of returns and allowances, excise and other taxes or other amounts reflected on a net basis against revenues;*

*(H) changes in the terms and conditions of service contracts;*

*(I) the progress in achieving previously announced milestones; and*

*(J) for resource issuers with producing mines, identify changes to cash flow caused by changes in production throughput, head-grade, cut-off grade, metallurgical recovery and any expectation of future changes.*

*(iv) Indicate the accounting principles that the financial data has been prepared in accordance with, the reporting currency, the measurement currency if different from the reporting currency and, if the underlying financial statements have been reconciled to Canadian GAAP, provide a cross-reference to the reconciliation that is found in the notes to the financial statements.*

**1.6 Liquidity**

Provide an analysis of your company's liquidity, including

(a) its ability to generate sufficient amounts of cash and cash equivalents, in the short term and the long term, to maintain your company's capacity, to meet your company's planned growth or to fund development activities;

(b) trends or expected fluctuations in your company's liquidity, taking into account demands, commitments, events or uncertainties;

(c) its working capital requirements;

(d) liquidity risks associated with financial instruments;

(e) if your company has or expects to have a working capital deficiency, discuss its ability to meet obligations as they become due and how you expect it to remedy the deficiency;

(f) balance sheet conditions or income or cash flow items that may affect your company's liquidity;

(g) legal or practical restrictions on the ability of subsidiaries to transfer funds to your company and the effect these restrictions have had or may have on the ability of your company to meet its obligations; and

(h) defaults or arrears or anticipated defaults or arrears on

(i) dividend payments, lease payments, interest or principal payment on debt;

(ii) debt covenants during the most recently completed financial year; and

(iii) redemption or retraction or sinking fund payments,

and how your company intends to cure the default or arrears.

*INSTRUCTIONS*

*(i) In discussing your company's ability to generate sufficient amounts of cash and cash equivalents you should describe sources of funding and the circumstances that could affect those sources that are reasonably likely to occur. Examples of circumstances that could affect liquidity are market or commodity price changes, economic downturns, defaults on guarantees and contractions of operations.*

*(ii) In discussing trends or expected fluctuations in your company's liquidity and liquidity risks associated with financial instruments you should discuss*

*(A) provisions in debt, lease or other arrangements that could trigger an additional funding requirement or early payment. Examples of such situations are provisions linked to credit rating, earnings, cash flows or share price; and*

*(B) circumstances that could impair your company's ability to undertake transaction considered essential to operations. Examples of such circumstances are the inability to maintain investment grade credit rating, earnings per-share, cash flow or share price.*

*(iii) In discussing your company's working capital requirements you should discuss situations where your company must maintain significant inventory to meet customers' delivery requirements or any situations involving extended payment terms.*

*(iv) In discussing your company's balance sheet conditions or income or cash flow items you should present a summary, in tabular form, of contractual obligations including payments due for each of the next five years and thereafter. The summary and table do not have to be provided if your company is a venture issuer. An example of a table that can be adapted to your company's particular circumstances follows:*

| ***Contractual Obligations*** | ***Payments Due by Period*** | | | | |
|---|---|---|---|---|---|
| | ***Total*** | ***Less than 1 year*** | ***1 - 3 years*** | ***4 - 5 years*** | ***After 5 years*** |
| *Long Term Debt* | | | | | |
| *Capital Lease Obligations* | | | | | |
| *Operating Leases* | | | | | |
| *Purchase Obligations*[1] | | | | | |
| *Other Long Term Obligations* [2] | | | | | |
| *Total Contractual Obligations* | | | | | |

[1] "Purchase Obligation" means an agreement to purchase goods or services that is enforceable and legally binding on your company that specifies all significant terms, including: fixed or minimum quantities to be purchased; fixed, minimum or variable price provisions; and the approximate timing of the transaction.

[2] "Other Long Term Obligations" means other long-term liabilities reflected on your company's balance sheet.

*The tabular presentation may be accompanied by footnotes to describe provisions that create, increase or accelerate obligations, or other details to the extent necessary for an understanding of the timing and amount of your company's specified contractual obligations.*

**1.7 Capital Resources**

Provide an analysis of your company's capital resources, including

(a) commitments for capital expenditures as of the date of your company's financial statements including

(i) the amount, nature and purpose of these commitments;

(ii) the expected source of funds to meet these commitments; and

(iii) expenditures not yet committed but required to maintain your company's capacity, to meet your company's planned growth or to fund development activities;

(b) known trends or expected fluctuations in your company's capital resources, including expected changes in the mix and relative cost of these resources; and

(c) sources of financing that your company has arranged but not yet used.

*INSTRUCTIONS*

*(i) Capital resources are financing resources available to your company and include debt, equity and any other financing arrangements that you reasonably consider will provide financial resources to your company.*

*(ii) In discussing your company's commitments you should discuss any exploration and development, or research and development expenditures required to maintain properties or agreements in good standing.*

**1.8 Off-Balance Sheet Arrangements**

Discuss any off-balance sheet arrangements that have, or are reasonably likely to have, a current or future effect on the results of operations or financial condition of your company including, without limitation, such considerations as liquidity and capital resources.

In your discussion of off-balance sheet arrangements you should discuss their business purpose and activities, their economic substance, risks associated with the arrangements, and the key terms and conditions associated with any commitments. Your discussion should include

(a) a description of the other contracting party(ies);

(b) the effects of terminating the arrangement;

(c) the amounts receivable or payable, revenues, expenses and cash flows resulting from the arrangement;

(d) the nature and amounts of any other obligations or liabilities arising from the arrangement that could require your company to provide funding under the arrangement and the triggering events or circumstances that could cause them to arise; and

(e) any known event, commitment, trend or uncertainty that may affect the availability or benefits of the arrangement (including any termination) and the course of action that management has taken, or proposes to take, in response to any such circumstances.

*INSTRUCTIONS*

*(i) Off-balance sheet arrangements include any contractual arrangement with an entity not reported on a consolidated basis with your company, under which your company has*

*(A) any obligation under certain guarantee contracts;*

*(B) a retained or contingent interest in assets transferred to an unconsolidated entity or similar arrangement that serves as credit, liquidity or market risk support to that entity for the assets;*

*(C) any obligation under certain derivative instruments; or*

*(D) any obligation under a material variable interest held by your company in an unconsolidated entity that provides financing, liquidity, market risk or credit risk support to your company, or engages in leasing, hedging or, research and development services with your company.*

*(ii) Contingent liabilities arising out of litigation, arbitration or regulatory actions are not considered to be off-balance sheet arrangements.*

*(iii) Disclosure of off-balance sheet arrangements should cover the most recently completed financial year. However, the discussion should address changes from the previous year where such discussion is necessary to understand the disclosure.*

*(iv) The discussion need not repeat information provided in the notes to the financial statements if the discussion clearly cross-references to specific information in the relevant notes and integrates the substance of the notes into the discussion in a manner that explains the significance of the information not included in the MD&A.*

**1.9 Transactions with Related Parties**

Discuss all transactions involving related parties as defined by the Handbook.

*INSTRUCTION*

*In discussing your company's transactions with related parties, your discussion should include both qualitative and quantitative characteristics that are necessary for an understanding of the transactions' business purpose and economic substance. You should discuss*

*(A) the relationship and identify the related person or entities;*

*(B) the business purpose of the transaction;*

*(C) the recorded amount of the transaction and the measurement basis used; and*

*(D) any ongoing contractual or other commitments resulting from the transaction.*

**1.10 Fourth Quarter**

Discuss and analyze fourth quarter events or items that affected your company's financial condition, cash flows or results of operations, including extraordinary items, year-end and other adjustments, seasonal aspects of your company's business and dispositions of business segments.

**1.11 Proposed Transactions**

Discuss the expected effect on financial condition, results of operations and cash flows of any proposed asset or business acquisition or disposition if your company's board of directors, or senior management who believe that confirmation of the decision by the board is probable, have decided to proceed with the transaction. Include the status of any required shareholder or regulatory approvals.

*INSTRUCTION*

*You do not have to disclose this information if, under section 7.1 of National Instrument 51-102, your company has filed a Form 51-102F3* Material Change Report *regarding the transaction on a confidential basis and the report remains confidential.*

**1.12 Critical Accounting Estimates**

If your company is not a venture issuer, provide an analysis of your company's critical accounting estimates. Your analysis should

(a) identify and describe each critical accounting estimate used by your company including

(i) a description of the accounting estimate;

(ii) the methodology used in determining the critical accounting estimate;

(iii) the assumptions underlying the accounting estimate that relate to matters highly uncertain at the time the estimate was made;

(iv) any known trends, commitments, events or uncertainties that you reasonably believe will materially affect the methodology or the assumptions described; and

(v) if applicable, why the accounting estimate is reasonably likely to change from period to period and have a material impact on the financial presentation;

(b) explain the significance of the accounting estimate to your company's financial condition, changes in financial condition and results of operations and identify the financial statement line items affected by the accounting estimate;

(c) quantify the changes in overall financial performance and financial statement line items if you assume that the accounting estimate was to change by using either

(i) reasonably likely changes in the material assumptions; or

(ii) the upper and lower ends of the range of estimates from which the recorded estimate was selected;

(d) discuss changes made to critical accounting estimates during the past two financial years including the reasons for the change and the quantitative effect on your company's overall financial performance and financial statement line items; and

(e) identify the segments of your company's business that the accounting estimate affects and discuss the accounting estimate on a segment basis, if your company operates in more than one segment.

*INSTRUCTION*

*An accounting estimate is a critical accounting estimate only if*

*(A) it requires your company to make assumptions about matters that are highly uncertain at the time the accounting estimate is made; and*

*(B) different estimates that your company could have used in the current period, or changes in the accounting estimate that are reasonably likely to occur from period to period, would have a material impact on your company's financial condition, changes in financial condition or results of operations.*

**1.13 Changes in Accounting Policies including Initial Adoption**

Discuss and analyze any changes in your company's accounting policies, including

(a) for any accounting policies that you have adopted or expect to adopt subsequent to the end of your most recently completed financial year, including changes you have made or expect to make voluntarily and those due to a change in an accounting standard or a new accounting standard that you do not have to adopt until a future date, you should

(i) describe the new standard, the date you are required to adopt it and, if determined, the date you plan to adopt it;

(ii) disclose the methods of adoption permitted by the accounting standard and the method you expect to use;

(iii) discuss the expected effect on your company's financial statements, or if applicable, state that you cannot reasonably estimate the effect; and

(iv) discuss the potential effect on your business, for example technical violations or default of debt covenants or changes in business practices; and

(b) for any accounting policies that you have initially adopted during the most recently completed financial year, you should

(i) describe the events or transactions that gave rise to the initial adoption of an accounting policy;

(ii) describe the accounting principle that has been adopted and the method of applying that principle;

(iii) discuss the effect resulting from the initial adoption of the accounting policy on your company's financial condition, changes in financial condition and results of operations;

(iv) if your company is permitted a choice among acceptable accounting principles,

(A) state that you made a choice among acceptable alternatives;

(B) identify the alternatives;

(C) describe why you made the choice that you did; and

(D) discuss the effect, where material, on your company's financial condition, changes in financial condition and results of operations under the alternatives not chosen; and

(v) if no accounting literature exists that covers the accounting for the events or transactions giving rise to your initial adoption of the accounting policy, explain your decision regarding which accounting principle to use and the method of applying that principle.

*INSTRUCTION*

*You do not have to present the discussion under paragraph 1.13(b) for the initial adoption of accounting policies resulting from the adoption of new accounting standards.*

**1.14 Financial Instruments and Other Instruments**

For financial instruments and other instruments,

(a) discuss the nature and extent of your company's use of, including relationships among, the instruments and the business purposes that they serve;

(b) describe and analyze the risks associated with the instruments;

(c) describe how you manage the risks in paragraph (b), including a discussion of the objectives, general strategies and instruments used to manage the risks, including any hedging activities;

(d) disclose the financial statement classification and amounts of income, expenses, gains and losses associated with the instrument; and

(e) discuss the significant assumptions made in determining the fair value of financial instruments, the total amount and financial statement classification of the change in fair value of financial instruments recognized in income for the period, and the total amount and financial statement classification of deferred or unrecognized gains and losses on financial instruments.

*INSTRUCTIONS*

*(i) "Other instruments" are instruments that may be settled by the delivery of non-financial assets. A commodity futures contract is an example of an instrument that may be settled by delivery of non-financial assets.*

*(ii) Your discussion under paragraph 1.14(a) should enhance a reader's understanding of the significance of recognized and unrecognized instruments on your company's financial position, results of operations and cash flows. The information should also assist a reader in assessing the amounts, timing, and certainty of future cash flows associated with those instruments. Also discuss the relationship between liability and equity components of convertible debt instruments.*

*(iii) For purposes of paragraph 1.14(c), if your company is exposed to significant price, credit or liquidity risks, consider providing a sensitivity analysis or tabular information to help readers assess the degree of exposure. For example, an analysis of the effect of a hypothetical change in the prevailing level of interest or currency rates on the fair value of financial instruments and future earnings and cash flows may be useful in describing your company's exposure to price risk.*

*(iv) For purposes of paragraph 1.14(d), disclose and explain the income, expenses, gains and losses from hedging activities separately from other activities.*

**1.15 Other MD&A Requirements**

(a) Your MD&A must disclose that additional information relating to your company, including your company's AIF if your company files an AIF, is on SEDAR at www.sedar.com.

(b) Your MD&A must also provide the information required in the following sections of National Instrument 51-102:

(i) Section 5.3 – Additional Disclosure for Venture Issuers without Significant Revenue; and

(ii) Section 5.4 – Disclosure of Outstanding Share Data.

*INSTRUCTION*

*Your company may also be required to provide additional disclosure in its MD&A as set out in Form 52-109F1* Certification of Annual Filings *and Form 52-109F2* Certification of Interim Filings.

**Item 2 Interim MD&A**

**2.1 Date**

Specify the date of your interim MD&A.

**2.2 Interim MD&A**

Interim MD&A must update your company's annual MD&A for all disclosure required by Item 1 except section 1.3. This disclosure must include

(a) a discussion of your analysis of

(i) current quarter and year-to-date results including a comparison of results of operations and cash flows to the corresponding periods in the previous year;

(ii) changes in results of operations and elements of income or loss that are not related to ongoing business operations;

(iii) any seasonal aspects of your company's business that affect its financial condition, results of operations or cash flows; and

(b) a comparison of your company's interim financial condition to your company's financial condition as at the most recently completed financial year-end.

*INSTRUCTION*

*(i) If the first MD&A you file in this Form (your first MD&A) is not an annual MD&A, you must provide all the disclosure called for in Item 1 in your first MD&A. Your subsequent interim MD&A for that year will update your first interim MD&A.*

*(ii) For the purposes of paragraph 2.2(b), you may assume the reader has access to your annual MD&A or your first MD&A. You do not have to duplicate the discussion and analysis of financial condition in your annual MD&A or your first MD&A. For example, if economic and industry factors are substantially unchanged you may make a statement to this effect.*

*(iii) For the purposes of subparagraph 2.2(a)(i), you should generally give prominence to the current quarter.*

*(iv) In discussing your company's balance sheet conditions or income or cash flow items for an interim period, you do not have to present a summary, in tabular form, of all known contractual obligations contemplated under section 1.6. Instead, you should disclose material changes in the specified contractual obligations during the interim period that are outside the ordinary course of your company's business.*

*(v) Interim MD&A prepared in accordance with Item 2 is not required for your company's fourth quarter as relevant fourth quarter content will be contained in your company's annual MD&A prepared in accordance with Item 1 (see section 1.10).*

# Form 51-102F2
# Annual Information Form

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**FORM 51-102F2**
***ANNUAL INFORMATION FORM***

## PART 1 GENERAL INSTRUCTIONS AND INTERPRETATION

### (a) What is an AIF?

An AIF (annual information form) is required to be filed annually by certain companies under Part 6 of National Instrument 51-102. An AIF is a disclosure document intended to provide material information about your company and its business at a point in time in the context of its historical and possible future development. Your AIF describes your company, its operations and prospects, risks and other external factors that impact your company specifically.

This disclosure is supplemented throughout the year by subsequent continuous disclosure filings including news releases, material change reports, business acquisition reports, financial statements and management discussion and analysis.

### (b) Date of Information

Unless otherwise specified in this Form, the information in your AIF must be presented as at the last day of your company's most recently completed financial year. If necessary, you must update the information in the AIF so it is not misleading when it is filed. For information presented as at any date other than the last day of your company's most recently completed financial year, specify the relevant date in the disclosure.

### (c) Use of "Company"

Wherever this Form uses the word "company", the term includes other types of business organizations such as partnerships, trusts and other unincorporated business entities.

All references to "your company" in Items 4, 5, 6, 12, 13, 15 and 16 of this Form apply collectively to your company, your company's subsidiaries, joint ventures to which your company is a party and entities in which your company has an investment accounted for by the equity method.

### (d) Focus on Material Information

Focus your AIF on material information. You do not need to disclose information that is not material. Exercise your judgment when determining whether information is material. However, you must disclose all corporate and individual cease trade orders, bankruptcies, penalties and sanctions in accordance with Item 10 of this Form.

### (e) What is Material?

Would a reasonable investor's decision whether or not to buy, sell or hold securities in your company likely be influenced or changed if the information in question was omitted or misstated? If so, the information is likely material. This concept of materiality is consistent with the financial reporting notion of materiality contained in the Handbook.

### (f) Incorporating Information by Reference

You may incorporate information required to be included in your AIF by reference to another document, other than a previous AIF. Clearly identify the referenced document or any excerpt of it that you incorporate into your AIF. Unless you have already filed the referenced document or excerpt under your SEDAR profile, you must file it with your AIF. You must also disclose that the document is on SEDAR at www.sedar.com.

### (g) Defined Terms

If a term is used but not defined in this Form, refer to Part 1 of National Instrument 51-102 and to National Instrument 14-101 *Definitions*. If a term is used in this Form and is defined in both the securities statute of a local jurisdiction and in National Instrument 51-102, refer to section 1.4 of Companion Policy 51-102CP.

### (h) Plain Language

Write the AIF so that readers are able to understand it. Refer to the plain language principles listed in section 1.5 of Companion Policy 51-102CP. If you use technical terms, explain them in a clear and concise manner.

**(i) Special Purpose Vehicles**

If your company is a special purpose vehicle, you may have to modify the disclosure items in this Form to reflect the special purpose nature of your company's business.

**(j) Numbering and Headings**

The numbering, headings and ordering of items included in this Form are guidelines only. You do not need to include the headings or numbering or follow the order of items in this Form. Disclosure provided in response to any item need not be repeated elsewhere.

**(k) Omitting Information**

You do not need to respond to any item in this Form that is inapplicable and you may omit negative answers.

**PART 2 CONTENT OF AIF**

**Item 1 Cover Page**

**1.1 Date**

Specify the date of your AIF. The date must be no earlier than the date of the auditor's report on the financial statements for your company's most recently completed financial year.

You must file your AIF within 10 days of the date of the AIF.

**1.2 Revisions**

If you revise your company's AIF after you have filed it, identify the revised version as a "revised AIF".

**Item 2 Table of Contents**

**2.1 Table of Contents**

Include a table of contents.

**Item 3 Corporate Structure**

**3.1 Name, Address and Incorporation**

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

(2) State the statute under which your company is incorporated, continued or organized or, if your company is an unincorporated entity, the laws of the jurisdiction or foreign jurisdiction under which it is established and exists. Describe the substance of any material amendments to the articles or other constating or establishing documents of your company.

**3.2 Intercorporate Relationships**

Describe, by way of a diagram or otherwise, the intercorporate relationships among your company and its subsidiaries. For each subsidiary state:

(a) the percentage of votes attaching to all voting securities of the subsidiary beneficially owned, controlled or directed, by your company;

(b) the percentage of each class of restricted securities of the subsidiary beneficially owned, controlled or directed, by your company; and

(c) where it was incorporated or continued.

*INSTRUCTION*

*You may omit a particular subsidiary if, at the most recent financial year-end of your company,*

*(i) the total assets of the subsidiary do not exceed 10 per cent of the consolidated assets of your company;*

*(ii) the sales and operating revenues of the subsidiary do not exceed 10 per cent of the consolidated sales and operating revenues of your company; and*

*(iii) the conditions in paragraphs (i) and (ii) would be satisfied if you*

*(A) aggregated the subsidiaries that may be omitted under paragraphs (i) and (ii), and*

*(B) changed the reference in those paragraphs from 10 per cent to 20 per cent.*

**Item 4 General Development of the Business**

**4.1 Three Year History**

Describe how your company's business has developed over the last three completed financial years. Include only events, such as acquisitions or dispositions, or conditions that have influenced the general development of the business. If your company produces or distributes more than one product or provides more than one kind of service, describe the products or services. Also discuss changes in your company's business that you expect will occur during the current financial year.

**4.2 Significant Acquisitions**

Disclose any significant acquisition completed by your company during its most recently completed financial year for which disclosure is required under Part 8 of National Instrument 51-102, by

(a) incorporating by reference any Forms 51-102F4 filed by your company since you filed your previous AIF; and

(b) providing a brief summary of any significant acquisition for which a Form 51-102F4 has not yet been filed.

**Item 5 Describe the Business**

**5.1 General**

(1) Describe the business of your company and its operating segments that are reportable segments as those terms are used in the Handbook. For each reportable segment include:

(a) **Summary -** For products or services,

(i) their principal markets;

(ii) distribution methods;

(iii) for each of the two most recently completed financial years, as dollar amounts or as percentages, the revenues for each category of products or services that accounted for 15 per cent or more of total consolidated revenues for the applicable financial year derived from

A. sales or transfers to joint ventures in which your company is a participant or to entities in which your company has an investment accounted for by the equity method,

B. sales to customers, other than those referred to in clause A, outside the consolidated entity, and

C. sales or transfers to controlling shareholders;

(iv) if not fully developed, the stage of development of the products or services and, if the products are not at the commercial production stage

A. the timing and stage of research and development programs,

B. whether your company is conducting its own research and development, is subcontracting out the research and development or is using a combination of those methods, and

C. the additional steps required to reach commercial production and an estimate of costs and timing.

(b) **Production and Services** – The actual or proposed method of production and, if your company provides services, the actual or proposed method of providing services.

(c) **Specialized Skill and Knowledge** – A description of any specialized skill and knowledge requirements and the extent to which the skill and knowledge are available to your company.

(d) **Competitive Conditions** – The competitive conditions in your company's principal markets and geographic areas, including, if reasonably possible, an assessment of your company's competitive position.

(e) **New Products** – If you have publicly announced the introduction of a new product, the status of the product.

(f) **Components** – The sources, pricing and availability of raw materials, component parts or finished products.

(g) **Intangible Properties** – The importance, duration and effect of identifiable intangible properties, such as brand names, circulation lists, copyrights, franchises, licences, patents, software, subscription lists and trademarks, on the segment.

(h) **Cycles** – The extent to which the business of the segment is cyclical or seasonal.

(i) **Economic Dependence** – A description of any contract upon which your company's business is substantially dependent, such as a contract to sell the major part of your company's products or services or to purchase the major part of your company's requirements for goods, services or raw materials, or any franchise or licence or other agreement to use a patent, formula, trade secret, process or trade name upon which your company's business depends.

(j) **Changes to Contracts** – A description of any aspect of your company's business that you reasonably expect to be affected in the current financial year by renegotiation or termination of contracts or sub-contracts, and the likely effect.

(k) **Environmental Protection** – The financial and operational effects of environmental protection requirements on the capital expenditures, earnings and competitive position of your company in the current financial year and the expected effect in future years.

(l) **Employees** – The number of employees as at the most recent financial year-end or the average number of employees over the year, whichever is more meaningful to understand the business.

(m) **Foreign Operations** – Describe the dependence of your company and any segment upon foreign operations.

(n) **Lending** – With respect to your company's lending operations, disclose the investment policies and lending and investment restrictions.

(2) **Bankruptcy, etc. -** Disclose the nature and results of any bankruptcy, receivership or similar proceedings against your company or any of its subsidiaries, or any voluntary bankruptcy, receivership or similar proceedings by your company or any of its subsidiaries, within the three most recently completed financial years and up to the date of the AIF.

(3) **Reorganizations -** Disclose the nature and results of any material reorganization of your company or any of its subsidiaries within the three most recently completed financial years or completed during or proposed for the current financial year.

(4) **Social or Environmental Policies** – If your company has implemented social or environmental policies that are fundamental to your operations, such as policies regarding your company's relationship with the environment or with the communities in which it does business, or human rights policies, describe them and the steps your company has taken to implement them.

### 5.2 Risk Factors

Disclose risk factors relating to your company and its business, such as cash flow and liquidity problems, if any, experience of management, the general risks inherent in the business carried on by your company, environmental and health risks, reliance on key personnel, regulatory constraints, economic or political conditions and financial history and any other matter that would be most likely to influence an investor's decision to purchase securities of your company. Risks should be disclosed in the order of their seriousness. If there is a risk that securityholders of your company may become liable to make an additional contribution beyond the price of the security, disclose that risk.

### 5.3 Companies with Asset-backed Securities Outstanding

If your company had asset-backed securities outstanding that were distributed under a prospectus, disclose the following information:

(1) **Payment Factors -** A description of any events, covenants, standards or preconditions that may reasonably be expected to affect the timing or amount of any payments or distributions to be made under the asset-backed securities.

(2) **Underlying Pool of Assets -** For the three most recently completed financial years of your company or the lesser period commencing on the first date on which your company had asset-backed securities outstanding, information on the pool of financial assets servicing the asset-backed securities relating to

(a) the composition of the pool as of the end of each financial year or partial period;

(b) income and losses from the pool on at least an annual basis or such shorter period as is reasonable given the nature of the underlying pool of assets;

(c) the payment, prepayment and collection experience of the pool on at least an annual basis or such shorter period as is reasonable given the nature of the underlying pool of assets;

(d) servicing and other administrative fees; and

(e) any significant variances experienced in the matters referred to in paragraphs (a), (b), (c), or (d).

(3) **Investment Parameters -** The investment parameters applicable to investments of any cash flow surpluses.

(4) **Payment History -** The amount of payments made during the three most recently completed financial years or the lesser period commencing on the first date on which your company had asset-backed securities outstanding, in respect of principal and interest or capital and yield, each stated separately, on asset-backed securities of your company outstanding.

(5) **Acceleration Event -** The occurrence of any event that has led to, or with the passage of time could lead to, the accelerated payment of principal, interest or capital of asset-backed securities.

(6) **Principal Obligors -** The identity of any principal obligors for the outstanding asset-backed securities of your company, the percentage of the pool of financial assets servicing the asset-backed securities represented by obligations of each principal obligor and whether the principal obligor has filed an AIF in any jurisdiction or a Form 10-K, Form 10-KSB or Form 20-F in the United States.

*INSTRUCTIONS*

*(i) Present the information requested under subsection (2) in a manner that enables a reader to easily determine the status of the events, covenants, standards and preconditions referred to in subsection (1).*

*(ii) If the information required under subsection (2)*

*(A) is not compiled specifically on the pool of financial assets servicing the asset-backed securities, but is compiled on a larger pool of the same assets from which the securitized assets are randomly selected so that the performance of the larger pool is representative of the performance of the pool of securitized assets, or*

*(B) in the case of a new company, where the pool of financial assets servicing the asset-backed securities will be randomly selected from a larger pool of the same assets so that the performance of the larger pool will be representative of the performance of the pool of securitized assets to be created,*

*a company may comply with subsection (2) by providing the information required based on the larger pool and disclosing that it has done so.*

**5.4 Companies With Mineral Projects**

If your company had a mineral project, disclose the following information for each project material to your company:

(1) **Project Description and Location**

(a) The area (in hectares or other appropriate units) and the location of the project.

(b) The nature and extent of your company's title to or interest in the project, including surface rights, obligations that must be met to retain the project and the expiration date of claims, licences and other property tenure rights.

(c) The terms of any royalties, overrides, back-in rights, payments or other agreements and encumbrances to which the project is subject.

(d) All environmental liabilities to which the project is subject.

(e) The location of all known mineralized zones, mineral resources, mineral reserves and mine workings, existing tailing ponds, waste deposits and important natural features and improvements.

(f) To the extent known, the permits that must be acquired to conduct the work proposed for the project and if the permits have been obtained.

(2) **Accessibility, Climate, Local Resources, Infrastructure and Physiography**

(a) The means of access to the property.

(b) The proximity of the property to a population centre and the nature of transport.

(c) To the extent relevant to the mining project, the climate and length of the operating season.

(d) The sufficiency of surface rights for mining operations, the availability and sources of power, water, mining personnel, potential tailings storage areas, potential waste disposal areas, heap leach pads areas and potential processing plant sites.

(e) The topography, elevation and vegetation.

(3) **History**

(a) The prior ownership and development of the property and ownership changes and the type, amount, quantity and results of the exploration work undertaken by previous owners, and any previous production on the property, to the extent known.

(b) If your company acquired a project within the three most recently completed financial years or during the current financial year from, or intends to acquire a project from, an informed person or promoter of your company or an associate or affiliate of an informed person or promoter, the name of the vendor, the relationship of the vendor to your company, and the consideration paid or intended to be paid to the vendor.

(c) To the extent known, the name of every person or company that has received or is expected to receive a greater than five per cent interest in the consideration received or to be received by the vendor referred to in paragraph (b).

(4) **Geological Setting -** The regional, local and property geology.

(5) **Exploration -** The nature and extent of all exploration work conducted by, or on behalf of, your company on the property, including

(a) the results of all surveys and investigations and the procedures and parameters relating to surveys and investigations;

(b) an interpretation of the exploration information;

(c) whether the surveys and investigations have been carried out by your company or a contractor and if by a contractor, the name of the contractor; and

(d) a discussion of the reliability or uncertainty of the data obtained in the program.

(6) **Mineralization** - The mineralization encountered on the property, the surrounding rock types and relevant geological controls, detailing length, width, depth and continuity together with a description of the type, character and distribution of the mineralization.

(7) **Drilling -** The type and extent of drilling, including the procedures followed and an interpretation of all results.

(8) **Sampling and Analysis -** The sampling and assaying including

(a) description of sampling methods and the location, number, type, nature, spacing or density of samples collected;

(b) identification of any drilling, sampling or recovery factors that could materially impact the accuracy or reliability of the results;

(c) a discussion of the sample quality and whether the samples are representative and of any factors that may have resulted in sample biases;

(d) rock types, geological controls, widths of mineralized zones, cut-off grades and other parameters used to establish the sampling interval; and

(e) quality control measures and data verification procedures.

(9) **Security of Samples -** The measures taken to ensure the validity and integrity of samples taken.

(10) **Mineral Resource and Mineral Reserve Estimates** - The mineral resources and mineral reserves, if any, including

(a) the quantity and grade or quality of each category of mineral resources and mineral reserves;

(b) the key assumptions, parameters and methods used to estimate the mineral resources and mineral reserves; and

(c) the extent to which the estimate of mineral resources and mineral reserves may be materially affected by metallurgical, environmental, permitting, legal, title, taxation, socio-economic, marketing, political and other relevant issues.

(11) **Mining Operations -** For development properties and production properties, the mining method, metallurgical process, production forecast, markets, contracts for sale of products, environmental conditions, taxes, mine life and expected payback period of capital.

(12) **Exploration and Development -** A description of your company's current and contemplated exploration or development activities.

*INSTRUCTIONS*

*(i) Disclosure regarding mineral exploration development or production activities on material projects must comply with, and is subject to the limitations set out in, National Instrument 43-101 Standards of Disclosure for Mineral Projects. You must use the appropriate terminology to describe mineral reserves and mineral resources. You must base your disclosure on a technical report, or other information, prepared by or under the supervision of a qualified person.*

*(ii) You may satisfy the disclosure requirements in section 5.4 by reproducing the summary from the technical report on the material property, and incorporating the detailed disclosure in the technical report into the AIF by reference.*

*(iii) In giving the information required under section 5.4 include the nature of ownership interests, such as fee interests, leasehold interests, royalty interests and any other types and variations of ownership interests.*

**5.5 Companies with Oil and Gas Activities**

If your company is engaged in oil and gas activities as defined in National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*, disclose the following information:

(1) **Reserves Data and Other Information**

(a) In the case of information that, for purposes of Form 51-101F1 *Statement of Reserves Data and Other Oil and Gas Information*, is to be prepared as at the end of a financial year, disclose that information as at your company's most recently completed financial year-end.

(b) In the case of information that, for purposes of Form 51-101F1, is to be prepared for a financial year, disclose that information for your company's most recently completed financial year.

(c) To the extent not reflected in the information disclosed in response to paragraphs (a) and (b), disclose the information contemplated by Part 6 of National Instrument 51-101 in respect of material changes that occurred after your company's most recently completed financial year-end.

(2) **Report of Independent Qualified Reserves Evaluator or Auditor** - Include with the disclosure under subsection (1) a report in the form of Form 51-101F2 *Report on Reserves Data by Independent Qualified Reserves Evaluator or Auditor*, on the reserves data included in the disclosure required under paragraphs (1)(a) and 1(b) above.

(3) **Report of Management -** Include with the disclosure under subsection (1) a report in the form of Form 51-101F3 *Report of Management and Directors on Oil and Gas Disclosure* that refers to the information disclosed under subsection (1).

*INSTRUCTION*

*The information presented in response to section 5.5 must be in accordance with National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities.*

**Item 6 Dividends**

**6.1 Dividends**

(1) Disclose the amount of cash dividends declared per share for each class of your company's shares for each of the three most recently completed financial years.

(2) Describe any restriction that could prevent your company from paying dividends.

(3) Disclose your company's current dividend policy and any intended change in dividend policy.

**Item 7 Description of Capital Structure**

**7.1 General Description of Capital Structure**

Describe your company's capital structure. State the description or the designation of each class of authorized security, and describe the material characteristics of each class of authorized security, including voting rights, provisions for exchange, conversion, exercise, redemption and retraction, dividend rights and rights upon dissolution or winding-up.

*INSTRUCTION*

*This section requires only a brief summary of the provisions that are material from a securityholder's standpoint. The provisions attaching to different classes of securities do not need to be set out in full. This summary should include the disclosure required in subsection 10.1(1) of National Instrument 51-102.*

**7.2 Constraints**

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

### 7.3 Ratings

If one or more ratings, including provisional ratings, has been received from one or more rating organizations for securities of your company that are outstanding and the rating or ratings continue in effect, disclose

(a) each security rating, including a provisional rating, received from an approved rating organization;

(b) for each rating disclosed under paragraph (a), the name of the approved rating organization that has assigned the rating;

(c) a definition or description of the category in which each approved rating organization rated the securities and the relative rank of each rating within the organization's overall classification system;

(d) an explanation of what the rating addresses and what attributes, if any, of the securities are not addressed by the rating;

(e) any factors or considerations identified by the approved rating organization as giving rise to unusual risks associated with the securities;

(f) a statement that a security rating is not a recommendation to buy, sell or hold securities and may be subject to revision or withdrawal at any time by the rating organization; and

(g) any announcement made by an approved rating organization that the organization is reviewing or intends to revise or withdraw a rating previously assigned and required to be disclosed under this section.

*INSTRUCTIONS*

*There may be factors relating to a security that are not addressed by a ratings agency when they give a rating. For example, in the case of cash settled derivatives, factors in addition to the creditworthiness of the issuer, such as the continued subsistence of the underlying interest or the volatility of the price, value or level of the underlying interest may be reflected in the rating analysis. Rather than being addressed in the rating itself, these factors may be described by an approved rating organization by way of a superscript or other notation to a rating. Any such attributes must be discussed in the disclosure under section 7.3.*

## Item 8 Market for Securities

### 8.1 Trading Price and Volume

(1) For each class of securities of your company that is traded or quoted on a Canadian marketplace, identify the marketplace and the price ranges and volume traded or quoted on the Canadian marketplace on which the greatest volume of trading or quotation generally occurs.

(2) If a class of securities of your company is not traded or quoted on a Canadian marketplace, identify the foreign marketplace and the price ranges and volume traded or quoted on the foreign marketplace on which the greatest volume of trading or quotation generally occurs.

(3) Provide the information required under subsections (1) and (2) on a monthly basis for each month or, if applicable, partial months of the most recently completed financial year.

### 8.2 Prior Sales

For each class of securities of your company that is outstanding but not listed or quoted on a marketplace, state the price at which securities of the class have been sold during the most recently completed financial year by your company and the number of securities of the class sold.

**Item 9 Escrowed Securities**

**9.1 Escrowed Securities**

(1) State, in substantially the following tabular form, the number of securities of each class of your company held, to your company's knowledge, in escrow, and the percentage that number represents of the outstanding securities of that class.

| Escrowed Securities | | |
|---|---|---|
| Designation of Class | Number of Securities held in Escrow | Percentage of Class |
| | | |
| | | |

(2) In a note to the table, disclose the name of the escrow agent, if any, and the date of and conditions governing the release of the securities from escrow.

*INSTRUCTION*

*For the purposes of this Item, escrow includes a pooling agreement.*

**Item 10 Directors and Officers**

**10.1 Name, Occupation and Security Holding**

(1) List the name, province or state, and country of residence of each director and executive officer of your company and indicate their respective positions and offices held with your company and their respective principal occupations during the five preceding years.

(2) State the period or periods during which each director has served as a director and when his or her term of office will expire.

(3) State the number and percentage of securities of each class of voting securities of your company or any of its subsidiaries beneficially owned, directly or indirectly, or over which control or direction is exercised, by all directors and executive officers of your company as a group.

(4) Identify the members of each committee of the board.

(5) If the principal occupation of a director or executive officer of your company is acting as an officer of a person or company other than your company, disclose that fact and state the principal business of the person or company.

*INSTRUCTION*

*For the purposes of subsection (3), securities of subsidiaries of your company that are beneficially owned, directly or indirectly, or controlled or directed, by directors or executive officers through ownership or control or direction over securities of your company, do not need to be included.*

**10.2 Cease Trade Orders, Bankruptcies, Penalties or Sanctions**

(1) If a director or executive officer of your company, or a shareholder holding a sufficient number of securities of your company to affect materially the control of your company

(a) is, as at the date of the AIF or has been, within the 10 years before the date of the AIF, a director or executive officer of any company (including your company), that while that person was acting in that capacity,

(i) was the subject of a cease trade or similar order or an order that denied the relevant company access to any exemption under securities legislation, for a period of more than 30 consecutive days, state the fact and describe the basis on which the order was made and whether the order is still in effect;

(ii) was subject to an event that resulted, after the director or executive officer ceased to be a director or executive officer, in the company being the subject of a cease trade or similar order or an order that denied the relevant company access to any exemption under securities legislation, for a period of more than 30 consecutive days, state the fact and describe the basis on which the order was made and whether the order is still in effect; or

(iii) or within a year of that person ceasing to act in that capacity, became bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency or was subject to or instituted any proceedings, arrangement or compromise with creditors or had a receiver, receiver manager or trustee appointed to hold its assets, state the fact; or

(b) has, within the 10 years before the date of the AIF, become bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency, or become subject to or instituted any proceedings, arrangement or compromise with creditors, or had a receiver, receiver manager or trustee appointed to hold the assets of the director, officer or shareholder, state the fact.

(2) 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 director or executive officer of your company, or a shareholder holding a sufficient number of securities of your company to affect materially the control of your company, 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 investor in making an investment decision.

(3) Despite subsection (2), no disclosure is required of a settlement agreement entered into before December 31, 2000 unless the disclosure would likely be important to a reasonable investor in making an investment decision.

*INSTRUCTION*

*The disclosure required by subsections (1) and (2) also applies to any personal holding companies of any of the persons referred to in subsections (1) and (2).*

**10.3 Conflicts of Interest**

Disclose particulars of existing or potential material conflicts of interest between your company or a subsidiary of your company and any director or officer of your company or a subsidiary of your company.

**Item 11 Promoters**

**11.1 Promoters**

For a person or company that has been, within the three most recently completed financial years or during the current financial year, a promoter of your company or of a subsidiary of your company, state

(a) the person or company's name;

(b) the number and percentage of each class of voting securities and equity securities of your company or any of its subsidiaries beneficially owned, directly or indirectly, or over which control is exercised;

(c) the nature and amount of anything of value, including money, property, contracts, options or rights of any kind received or to be received by the promoter directly or indirectly from your company or from a subsidiary of your company, and the nature and amount of any assets, services or other consideration received or to be received by your company or a subsidiary of your company in return; and

(d) for an asset acquired within the three most recently completed financial years or during the current financial year, or an asset to be acquired, by your company or by a subsidiary of your company from a promoter

(i) the consideration paid or to be paid for the asset and the method by which the consideration has been or will be determined;

(ii) the person or company making the determination referred to in subparagraph (i) and the person or company's relationship with your company, the promoter, or an associate or affiliate of your company or of the promoter; and

(iii) the date that the asset was acquired by the promoter and the cost of the asset to the promoter.

**Item 12 Legal Proceedings**

**12.1 Legal Proceedings**

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 the name of the court or agency, the date instituted, the principal parties to the proceedings, the nature of the claim, the amount claimed, if any, whether the proceedings are being contested, and the present status of the proceedings.

*INSTRUCTION*

*You do not need to give information with respect to any proceeding that involves a claim for damages if the amount involved, exclusive of interest and costs, does not exceed ten per cent of the current assets of your company. However, if any proceeding presents in large degree the same legal and factual issues as other proceedings pending or known to be contemplated, you must include the amount involved in the other proceedings in computing the percentage.*

**Item 13 Interest of Management and Others in Material Transactions**

**13.1 Interest of Management and Others in Material Transactions**

Describe, and state the approximate amount of, any material interest, direct or indirect, of any of the following persons or companies in any transaction within the three most recently completed financial years or during the current financial year that has materially affected or will materially affect your company:

(a) a director or executive officer of your company;

(b) a person or company that is the direct or indirect beneficial owner of, or who exercises control or direction over, more than 10 percent of any class or series of your outstanding voting securities; and

(c) an associate or affiliate of any of the persons or companies referred to in paragraphs (a) or (b).

*INSTRUCTIONS*

*(i) The materiality of the interest is to be determined on the basis of the significance of the information to investors in light of all the circumstances of the particular case. The importance of the interest to the person having the interest, the relationship of the parties to the transaction with each other and the amount involved are among the factors to be considered in determining the significance of the information to securityholders.*

*(ii) This Item does not apply to any interest arising from the ownership of securities of your company if the securityholder receives no extra or special benefit or advantage not shared on an equal basis by all other holders of the same class of securities or all other holders of the same class of securities who are resident in Canada.*

*(iii) Give a brief description of the material transactions. Include the name of each person or company whose interest in any transaction is described and the nature of the relationship to your company.*

*(iv) For any transaction involving the purchase of assets by or sale of assets to your company or a subsidiary of your company, state the cost of the assets to the purchaser, and the cost of the assets to the seller if acquired by the seller within three years before the transaction.*

*(v) You do not need to give information under this Item for a transaction if*

*(A) the rates or charges involved in the transaction are fixed by law or determined by competitive bids,*

*(B) the interest of a specified person or company in the transaction is solely that of a director of another company that is a party to the transaction,*

*(C) the transaction involves services as a bank or other depository of funds, a transfer agent, registrar, trustee under a trust indenture or other similar services, or*

*(D) the transaction does not involve remuneration for services and the interest of the specified person or company arose from the beneficial ownership, direct or indirect, of less than ten per cent of any class of equity securities of another company that is party to the transaction and the transaction is in the ordinary course of business of your company or your company's subsidiaries.*

*(vi) Describe all transactions not excluded above that involve remuneration (including an issuance of securities), directly or indirectly, to any of the specified persons or companies for services in any capacity unless the interest of the person or company arises solely from the beneficial ownership, direct or indirect, of less than ten per cent of any class of equity securities of another company furnishing the services to your company or your company's subsidiaries.*

**Item 14 Transfer Agents and Registrars**

**14.1 Transfer Agents and Registrars**

State the name of your company's transfer agent(s) and registrar(s) and the location (by municipalities) of the register(s) of transfers of each class of securities.

**Item 15 Material Contracts**

**15.1 Material Contracts**

(1) Give particulars of every contract, other than a contract entered into in the ordinary course of business, that is material to your company and that was entered into within the most recently completed financial year, or before the most recently completed financial year but is still in effect.

(2) You do not need to give disclosure under subsection (1) of a contract that was entered into before January 1, 2002.

*INSTRUCTION*

*(i) 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 company's business and the industry that it operates within.*

*(ii) Set out a complete list of all contracts for which particulars must be given under section 15.1, indicating those that are disclosed elsewhere in the AIF. Particulars need only be provided for those contracts that do not have the particulars given elsewhere in the AIF.*

*(iii) Particulars of contracts should include the dates of, parties to, consideration provided for in, and key terms of, the contracts.*

**Item 16 Interests of Experts**

**16.1 Names of Experts**

Name each person or company

(a) who is named as having prepared or certified a statement, report or valuation described or included in a filing, or referred to in a filing, made under National Instrument 51-102 by your company during, or relating to, your company's most recently completed financial year; and

(b) whose profession or business gives authority to the statement, report or valuation made by the person or company.

**16.2 Interests of Experts**

(1) Disclose all registered or beneficial interests, direct or indirect, in any securities or other property of your company or of one of your associates or affiliates

(a) held by an expert named in section 16.1 when that expert prepared the statement, report, or valuation referred to in paragraph 16.1(a);

(b) received by an expert named in section 16.1 after the time specified in paragraph 16.2(1)(a); or

(c) to be received by an expert named in section 16.1.

(2) For the purposes of subsection (1), if the person's or company's interest in the securities represents less than one per cent of your outstanding securities of the same class, a general statement to that effect is sufficient.

(3) If a person or a director, officer or employee of a person or company referred to in subsection (1) is or is expected to be elected, appointed or employed as a director, officer or employee of your company or of any associate or affiliate of your company, disclose the fact or expectation.

*INSTRUCTIONS*

*(i) If you have included a statement, report or valuation of an expert in the AIF, your company may be required by other securities legislation to obtain the consent of an expert before referring to the expert's opinion, for example under National Instrument 43-101 Standards of Disclosure for Mineral Projects and National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities.*

*(ii) Section 16.2 does not apply to*

*(A) auditors of a business acquired by your company provided they have not been or will not be appointed as your company's auditor subsequent to the acquisition, and*

*(B) your company's predecessor auditors, if any, for periods when they were not your company's auditor.*

*(iii) Section 16.2 does not apply to registered or beneficial interests, direct or indirect, held through mutual funds.*

**Item 17 Additional Information**

**17.1 Additional Information**

(1) Disclose that additional information relating to your company may be found on SEDAR at www.sedar.com.

(2) If your company is required to distribute a Form 51-102F5 to any of its securityholders, include a statement that additional information, including directors' and officers' remuneration and indebtedness, principal holders of your company's securities and securities authorized for issuance under equity compensation plans, if applicable, is contained in your company's information circular for its most recent annual meeting of securityholders that involved the election of directors.

(3) Include a statement that additional financial information is provided in your company's financial statements and MD&A for its most recently completed financial year.

*INSTRUCTION*

*Your company may also be required to provide additional information in its AIF as set out in Form 52-110F1 Audit Committee Information Required in an AIF.*

**Item 18 Additional Disclosure for Companies Not Sending Information Circulars**

**18.1 Additional Disclosure**

For companies that are not required to send a Form 51-102F5 to any of their securityholders, disclose the information required under Items 6 to 10, 12 and 13 of Form 51-102F5, as modified below, if applicable:

| Form 51-102F5 Reference | Modification |
|---|---|
| Item 6 - Voting Securities and Principal Holders of Voting Securities | Include the disclosure specified in section 6.1 without regard to the phrase "entitled to be voted at the meeting". Do not include the disclosure specified in sections 6.2, 6.3 and 6.4. Include the disclosure specified in section 6.5. |
| Item 7 – Election of Directors | Disregard the preamble of section 7.1. Include the disclosure specified in section 7.1 without regard to the word "proposed" throughout. Do not include the disclosure specified in section 7.3. |
| Item 10 – Indebtedness of Directors and Executive Officers | Include the disclosure specified throughout; however, replace the phrase "date of the information circular" with "date of the AIF" throughout. |
| Item 12 – Appointment of Auditor | Name the auditor. If the auditor was first appointed within the last five years, state the date when the auditor was first appointed. |

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# Form 51-102F3
# Material Change Report

**PART 1 GENERAL INSTRUCTIONS AND INTERPRETATION**

**(a) Confidentiality**

If this Report is filed on a confidential basis, state in block capitals "CONFIDENTIAL" at the beginning of the Report.

**(b) Use of "Company"**

Wherever this Form uses the word "company" the term includes other types of business organizations such as partnerships, trusts and other unincorporated business entities.

**(c) Numbering and Headings**

The numbering, headings and ordering of the items included in this Form are guidelines only. You do not need to include the headings or numbering or follow the order of items in this Form. Disclosure provided in response to any item need not be repeated elsewhere.

**(d) Defined Terms**

If a term is used but not defined in this Form, refer to Part 1 of National Instrument 51-102 and to National Instrument 14-101 Definitions. If a term is used in this Form and is defined in both the securities statute of a local jurisdiction and in National Instrument 51-102, refer to section 1.4 of Companion Policy 51-102CP.

**(e) Plain Language**

Write the Report so that readers are able to understand it. Consider both the level of detail provided and the language used in the document. Refer to the plain language principles listed in section 1.5 of Companion Policy 51-102CP. If you use technical terms, explain them in a clear and concise manner.

**PART 2 CONTENT OF MATERIAL CHANGE REPORT**

**Item 1 Name and Address of Company**

State the full name of your company and the address of its principal office in Canada.

**Item 2 Date of Material Change**

State the date of the material change.

**Item 3 News Release**

State the date and method(s) of dissemination of the news release issued under section 7.1 of National Instrument 51–102.

**Item 4 Summary of Material Change**

Provide a brief but accurate summary of the nature and substance of the material change.

**Item 5 Full Description of Material Change**

Supplement the summary required under Item 4 with sufficient disclosure to enable a reader to appreciate the significance and impact of the material change without having to refer to other material. Management is in the best position to determine what facts are significant and must disclose those facts in a meaningful manner. See also Item 7.

Some examples of significant facts relating to the material change include: dates, parties, terms and conditions, description of any assets, liabilities or capital affected, purpose, financial or dollar values, reasons for the change, and a general comment on the probable impact on the issuer or its subsidiaries. Specific financial forecasts would not normally be required.

Other additional disclosure may be appropriate depending on the particular situation.

*INSTRUCTION*

*If your company is engaged in oil and gas activities, the disclosure under Item 5 must also satisfy the requirements of Part 6 of National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities.*

**Item 6 Reliance on subsection 7.1(2) or (3) of National Instrument 51-102**

If this Report is being filed on a confidential basis in reliance on subsection 7.1(2) or (3) of National Instrument 51-102, state the reasons for such reliance.

*INSTRUCTION*

*Refer to subsections 7.1 (4),(5), (6) and (7) of National Instrument 51-102 concerning continuing obligations in respect of reports filed under subsection 7.1(2) or (3) of National Instrument 51-102.*

**Item 7 Omitted Information**

State whether any information has been omitted on the basis that it is confidential information.

In a separate letter to the applicable regulator or securities regulatory authority marked “Confidential” provide the reasons for your company’s omission of confidential significant facts in the Report in sufficient detail to permit the applicable regulator or securities regulatory authority to determine whether to exercise its discretion to allow the omission of these significant facts.

*INSTRUCTIONS*

*In certain circumstances where a material change has occurred and a Report has been or is about to be filed but subsection 7.1(2), (3) or (5) of National Instrument 51-102 is not or will no longer be relied upon, your company may nevertheless believe one or more significant facts otherwise required to be disclosed in the Report should remain confidential and not be disclosed or not be disclosed in full detail in the Report.*

**Item 8 Executive Officer**

Give the name and business telephone number of an executive officer of your company who is knowledgeable about the material change and the Report, or the name of an officer through whom such executive officer may be contacted.

**Item 9 Date of Report**

Date the Report.

# Form 51-102F4
# Business Acquisition Report

## PART 1 GENERAL INSTRUCTIONS AND INTERPRETATION

### (a) What is a Business Acquisition Report?

Your company must file a Business Acquisition Report after completing a significant acquisition. See Part 8 of National Instrument 51-102. The Business Acquisition Report describes the significant businesses acquired by your company and the effect of the acquisition on your company.

### (b) Use of "Company"

Wherever this Form uses the word "company", the term includes other types of business organizations such as partnerships, trusts and other unincorporated business entities.

### (c) Focus on Relevant Information

When providing the disclosure required by this Form, focus your discussion on information that is relevant to an investor, analyst or other reader.

### (d) Incorporating Material By Reference

You may incorporate information required by this Form, other than the financial statements or other information required by Item 3, by reference to another document. Clearly identify the referenced document, or any excerpt of it, that you incorporate into this Report. Unless the referenced document or excerpt has already been filed, you must file it with this Report.

### (e) Defined Terms

If a term is used but not defined in this Form, refer to Part 1 of National Instrument 51-102 and to National Instrument 14-101 Definitions. If a term is used in this Form and is defined in both the securities statute of a local jurisdiction and in National Instrument 51-102, refer to section 1.4 of Companion Policy 51-102CP.

### (f) Plain Language

Write this Report so that readers are able to understand it. Consider both the level of detail provided and the language used in the document. Refer to the plain language principles listed in section 1.5 of Companion Policy 51-102CP. If you use technical terms, explain them in a clear and concise manner.

### (g) Numbering and Headings

The numbering, headings and ordering of items included in this Form are guidelines only. You do not need to include the headings or numbering or follow the order of items in this Form. Disclosure provided in response to any item need not be repeated elsewhere in the Report.

## PART 2 CONTENT OF BUSINESS ACQUISITION REPORT

### Item 1 Identity of Company

### 1.1 Name and Address of Company

State the full name of your company and the address of its principal office in Canada.

### 1.2 Executive Officer

Give the name and business telephone number of an executive officer of your company who is knowledgeable about the significant acquisition and the Report, or the name of an officer through whom such executive officer may be contacted.

**Item 2 Details of Acquisition**

**2.1 Nature of Business Acquired**

Describe the nature of the business acquired.

**2.2 Date of Acquisition**

State the date of acquisition used for accounting purposes.

*INSTRUCTION*

*If your company is using Canadian GAAP, the date of acquisition for accounting purposes is one of the following two dates, whichever is applicable:*

*(a) the date the net assets or equity interests are received, and the consideration is given; or*

*(b) the date of the written agreement that provides that control of the acquired enterprise transferred to the acquirer, subject only to those conditions required to protect the interests of the parties involved, or the later date, if any, specified in the written agreement that such control is to be transferred.*

**2.3 Consideration**

Disclose the type and amount of consideration, both monetary and non-monetary, paid or payable by your company in connection with the significant acquisition, including contingent consideration. Identify the source of funds used by your company for the acquisition, including a description of any financing associated with the acquisition.

**2.4 Effect on Financial Position**

Describe any plans or proposals for material changes in your business affairs or the affairs of the acquired business which may have a significant effect on the results of operations and financial position of your company. Examples include any proposal to liquidate the business, to sell, lease or exchange all or a substantial part of its assets, to amalgamate the business with any other business organization or to make any material changes to your business or the business acquired such as changes in corporate structure, management or personnel.

**2.5 Prior Valuations**

Describe in sufficient detail any valuation opinion obtained within the last 12 months by the acquired business or your company required by securities legislation or a Canadian exchange or market to support the consideration paid by your company or any of its subsidiaries for the business, including the name of the author, the date of the opinion, the business to which the opinion relates, the value attributed to the business and the valuation methodologies used.

**2.6 Parties to Transaction**

State whether the transaction is with an informed person, associate or affiliate of your company and, if so, the identity and the relationship of the other parties to your company.

**2.7 Date of Report**

Date the Report.

**Item 3 Financial Statements**

Include the financial statements or other information required by Part 8 of National Instrument 51-102. If applicable, disclose that the auditors have not given their consent to include their audit report in this Report.

# Form 51-102F5
# Information Circular

**Table of Contents**

**FORM 51-102F5**
***INFORMATION CIRCULAR***

**Part 1 General Instructions and Interpretation**

**(a) Timing of Information**

The information required by this Form 51-102F5 must be given as of a specified date not more than thirty days prior to the date you first send the information circular to any securityholder of the company.

**(b) Use of "Company"**

Wherever this Form uses the word "company", the term includes other types of business organizations such as partnerships, trusts and other unincorporated business entities.

**(c) Incorporating Information by Reference**

You may incorporate information required to be included in your information circular by reference to another document. Clearly identify the referenced document or any excerpt of it that you incorporate into your information circular. Unless you have already filed the referenced document or excerpt, you must file it with your information circular. You must also disclose that the document is on SEDAR at www.sedar.com and that, upon request, you will promptly provide a copy of any such document free of charge to a securityholder of the company.

**(d) Defined Terms**

If a term is used but not defined in this Form, refer to Part 1 of National Instrument 51-102 and to National Instrument 14-101 *Definitions*. If a term is used in this Form and is defined in both the securities statute of the local jurisdiction and in National Instrument 51-102, refer to section 1.4 of Companion Policy 51-102CP.

**(e) Plain Language**

Write this document so that readers are able to understand it. Refer to the plain language principles listed in section 1.5 of Companion Policy 51-102CP. If you use technical terms, explain them in a clear and concise manner.

**(f) Numbering and Headings**

The numbering, headings and ordering of items included in this Form are guidelines only. You do not need to include the headings or numbering or follow the order of items in this Form. Disclosure provided in response to any item need not be repeated elsewhere.

**(g) Tables and Figures**

Where it is practicable and appropriate, present information in tabular form. State all amounts in figures.

**(h) Omitting Information**

You do not need to respond to any item in this Form that is inapplicable. You may also omit information that is not known to the person or company on whose behalf the solicitation is made and that is not reasonably within the power of the person or company to obtain, if you briefly state the circumstances that render the information unavailable.

You may omit information that was contained in another information circular, notice of meeting or form of proxy sent to the same persons or companies whose proxies were solicited in connection with the same meeting, as long as you clearly identify the particular document containing the information.

**Part 2 Content**

**Item 1 Date**

Specify the date of the information circular.

**Item 2 Revocability of Proxy**

State whether the person or company giving the proxy has the power to revoke it. If any right of revocation is limited or is subject to compliance with any formal procedure, briefly describe the limitation or procedure.

**Item 3 Persons Making the Solicitation**

**3.1** If a solicitation is made by or on behalf of management of the company, state this. Name any director of the company who has informed management in writing that he or she intends to oppose any action intended to be taken by management at the meeting and indicate the action that he or she intends to oppose.

**3.2** If a solicitation is made other than by or on behalf of management of the company, state this and give the name of the person or company by whom, or on whose behalf, it is made.

**3.3** If the solicitation is to be made other than by mail, describe the method to be employed. If the solicitation is to be made by specially engaged employees or soliciting agents, state,

(a) the parties to and material features of any contract or arrangement for the solicitation; and

(b) the cost or anticipated cost thereof.

**3.4** State who has borne or will bear, directly or indirectly, the cost of soliciting.

**Item 4 Proxy Instructions**

**4.1** The information circular or the form of proxy to which the information circular relates must 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 must contain instructions as to the manner in which the securityholder may exercise the right.

**4.2** The information circular or the form of proxy to which the information circular relates must state that 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 that, if the securityholder specifies a choice with respect to any matter to be acted upon, the securities will be voted accordingly.

**Item 5 Interest of Certain Persons or Companies in Matters to be Acted Upon**

Briefly describe any material interest, direct or indirect, by way of beneficial ownership of securities or otherwise, of each of the following persons or companies in any matter to be acted upon other than the election of directors or the appointment of auditors:

(a) if the solicitation is made by or on behalf of management of the company, each person who has been a director or executive officer of the company at any time since the beginning of the company's last financial year;

(b) if the solicitation is made other than by or on behalf of management of the company, each person or company by whom, or on whose behalf, directly or indirectly, the solicitation is made;

(c) each proposed nominee for election as a director of the company; and

(d) each associate or affiliate of any of the persons or companies listed in paragraphs (a) to (c).

*INSTRUCTIONS*

*(i) The following persons and companies are deemed to be persons or companies by whom or on whose behalf the solicitation is made (collectively, "solicitors" or individually a "solicitor"):*

*(A) any member of a committee or group that solicits proxies, and any person or company whether or not named as a member who, acting alone or with one or more other persons or companies, directly or indirectly takes the initiative or engages in organizing, directing or financing any such committee or group;*

*(B) any person or company who contributes, or joins with another to contribute, more than $250 to finance the solicitation of proxies; or*

*(C) any person or company who lends money, provides credit, or enters into any other arrangements, under any contract or understanding with a solicitor, for the purpose of financing or otherwise inducing the purchase, sale, holding or voting of securities of the company but not including a bank or other lending institution or a dealer that, in the ordinary course of business, lends money or executes orders for the purchase or sale of securities.*

*(ii) Subject to paragraph (i), the following persons and companies are deemed not to be solicitors:*

*(A) any person or company retained or employed by a solicitor to solicit proxies or any person or company who merely transmits proxy-soliciting material or performs ministerial or clerical duties;*

*(B) any person or company employed or retained by a solicitor in the capacity of lawyer, accountant, or advertising, public relations, investor relations or financial advisor and whose activities are limited to the performance of their duties in the course of the employment or retainer;*

*(C) any person regularly employed as an officer or employee of the company or any of its affiliates; or*

*(D) any officer or director of, or any person regularly employed by, any solicitor.*

**Item 6 Voting Securities and Principal Holders of Voting Securities**

**6.1** For each class of voting securities of the company entitled to be voted at the meeting, state the number of securities outstanding and the particulars of voting rights for each class.

**6.2** For each class of restricted securities, provide the information required in subsection 10.1(1) of National Instrument 51-102.

**6.3** Give the record date as of which the securityholders entitled to vote at the meeting will be determined or particulars as to the closing of the security transfer register, as the case may be, and, if the right to vote is not limited to securityholders of record as of the specified record date, indicate the conditions under which securityholders are entitled to vote.

**6.4** If action is to be taken with respect to the election of directors and if the securityholders or any class of securityholders have the right to elect a specified number of directors or have cumulative or similar voting rights, include a statement of such rights and state briefly the conditions precedent, if any, to the exercise thereof.

**6.5** If, to the knowledge of the company's directors or executive officers, any person or company beneficially owns, directly or indirectly, or controls or directs, voting securities carrying 10 per cent or more of the voting rights attached to any class of voting securities of the company, name each person or company and state

(a) the approximate number of securities beneficially owned, directly or indirectly, or controlled or directed by each such person or company; and

(b) the percentage of the class of outstanding voting securities of the company represented by the number of voting securities so owned, controlled or directed.

**Item 7 Election of Directors**

**7.1** If directors are to be elected, provide the following information, in tabular form to the extent practicable, for each person proposed to be nominated for election as a director and each other person whose term of office as a director will continue after the meeting:

(a) State the name, province or state, and country of residence, of each director and proposed director.

(b) State the period or periods during which each director has served as a director and when the term of office for each director and proposed director will expire.

(c) Identify the members of each committee of the board.

(d) State the present principal occupation, business or employment of each director and proposed director. Give the name and principal business of any company in which any such employment is carried on. Furnish similar information as to all of the principal occupations, businesses or employments of each proposed director within the five preceding years, unless the proposed director is now a director and was elected to the present term of

office by a vote of securityholders at a meeting, the notice of which was accompanied by an information circular.

(e) If a director or proposed director has held more than one position in the company, or a parent or subsidiary, state only the first and last position held.

(f) State the number of securities of each class of voting securities of the company or any of its subsidiaries beneficially owned, directly or indirectly, or controlled or directed by each proposed director.

(g) If securities carrying 10 per cent or more of the voting rights attached to all voting securities of the company or of any of its subsidiaries are beneficially owned, directly or indirectly, or controlled or directed by any proposed director and the proposed director's associates or affiliates,

(i) state the number of securities of each class of voting securities beneficially owned, directly or indirectly, or controlled or directed by the associates or affiliates; and

(ii) name each associate or affiliate whose security holdings are 10 per cent or more.

**7.2** If a proposed director

(a) is, as at the date of the information circular, or has been, within 10 years before the date of the information circular, a director or executive officer of any company (including the company in respect of which the information circular is being prepared) that, while that person was acting in that capacity,

(i) was the subject of a cease trade or similar order or an order that denied the relevant company access to any exemption under securities legislation, for a period of more than 30 consecutive days, state the fact and describe the basis on which the order was made and whether the order is still in effect;

(ii) was subject to an event that resulted, after the director or executive officer ceased to be a director or executive officer, in the company being the subject of a cease trade or similar order or an order that denied the relevant company access to any exemption under securities legislation, for a period of more than 30 consecutive days, state the fact and describe the basis on which the order was made and whether the order is still in effect; or

(iii) or within a year of that person ceasing to act in that capacity, became bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency or was subject to or instituted any proceedings, arrangement or compromise with creditors or had a receiver, receiver manager or trustee appointed to hold its assets, state the fact; or

(b) has, within the 10 years before the date of the information circular, become bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency, or become subject to or instituted any proceedings, arrangement or compromise with creditors, or had a receiver, receiver manager or trustee appointed to hold the assets of the proposed director, state the fact.

**7.3** If any proposed director is to be elected under any arrangement or understanding between the proposed director and any other person or company, except the directors and executive officers of the company acting solely in such capacity, name the other person or company and describe briefly the arrangement or understanding.

**Item 8 Executive Compensation**

Include in this information circular a completed Form 51-102F6 *Statement of Executive Compensation*.

**Item 9 Securities Authorized for Issuance Under Equity Compensation Plans**

**9.1** In the tabular form under the caption set out, provide the information specified in section 9.2 as of the end of the company's most recently completed financial year with respect to compensation plans under which equity securities of the company are authorized for issuance, aggregated as follows:

(a) all compensation plans previously approved by securityholders; and

(b) all compensation plans not previously approved by securityholders.

**Equity Compensation Plan Information**

| Plan Category | Number of securities to be issued upon exercise of outstanding options, warrants and rights (a) | Weighted-average exercise price of outstanding options, warrants and rights (b) | Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a)) (c) |
|---|---|---|---|
| **Equity compensation plans approved by securityholders** | | | |
| **Equity compensation plans not approved by securityholders** | | | |
| **Total** | | | |

**9.2** Include in the table the following information as of the end of the company's most recently completed financial year for each category of compensation plan described in section 9.1:

(a) the number of securities to be issued upon the exercise of outstanding options, warrants and rights (column (a));

(b) the weighted-average exercise price of the outstanding options, warrants and rights disclosed under subsection 9.2(a) (column (b)); and

(c) other than securities to be issued upon the exercise of the outstanding options, warrants and rights disclosed in subsection 9.2(a), the number of securities remaining available for future issuance under the plan (column (c)).

**9.3** For each compensation plan under which equity securities of the company are authorized for issuance and that was adopted without the approval of securityholders, describe briefly, in narrative form, the material features of the plan.

*INSTRUCTIONS*

*(i) The disclosure under Item 9 relating to compensation plans must include individual compensation arrangements.*

*(ii) Provide disclosure with respect to any compensation plan of the company (or parent, subsidiary or affiliate of the company) under which equity securities of the company are authorized for issuance to employees or non-employees (such as directors, consultants, advisors, vendors, customers, suppliers or lenders) in exchange for consideration in the form of goods or services as described in section 3870 "Stock-based Compensation and Other Stock-based Payments" of the Handbook. You do not have to provide disclosure regarding any plan, contract or arrangement for the issuance of warrants or rights to all securityholders of the company on a pro rata basis (such as a rights offering).*

*(iii) If more than one class of equity security is issued under the company's compensation plans, disclose aggregate plan information for each class of security separately.*

*(iv) You may aggregate information regarding individual compensation arrangements with the plan information required under subsections 9.1(a) and (b), as applicable.*

*(v) You may aggregate information regarding a compensation plan assumed in connection with a merger, consolidation or other acquisition transaction pursuant to which the company may make subsequent grants or awards of its equity securities with the plan information required under subsections 9.1(a) and (b), as applicable. Disclose on an aggregated basis in a footnote to the table the information required under subsections 9.2(a) and (b) with respect to any individual options, warrants or rights outstanding under the compensation plan assumed in connection with a merger, consolidation or other acquisition transaction.*

*(vi) To the extent that the number of securities remaining available for future issuance disclosed in column (c) includes securities available for future issuance under any compensation plan other than upon the exercise of an option, warrant or right, disclose the number of securities and type of plan separately for each such plan in a footnote to the table.*

*(vii) If the description of a compensation plan set forth in the company's financial statements contains the disclosure required by section 9.3, a cross-reference to the description satisfies the requirements of section 9.3.*

*(viii) If an equity compensation plan contains a formula for calculating the number of securities available for issuance under the plan, including, without limitation, a formula that automatically increases the number of securities available for issuance by a percentage of the number of outstanding securities of the company, describe this formula in a footnote to the table.*

**Item 10 Indebtedness of Directors and Executive Officers**

**10.1 Aggregate Indebtedness**

| AGGREGATE INDEBTEDNESS ($) | | |
|---|---|---|
| Purpose | To the Company or its Subsidiaries | To Another Entity |
| (a) | (b) | (c) |
| Share purchases | | |
| Other | | |

(1) Complete the above table for the aggregate indebtedness outstanding as at a date within thirty days before the date of the information circular entered into in connection with:

(a) a purchase of securities; and

(b) all other indebtedness.

(2) Report separately the indebtedness to

(a) the company or any of its subsidiaries (column (b)); and

(b) another entity if the indebtedness is the subject of a guarantee, support agreement, letter of credit or other similar arrangement or understanding provided by the company or any of its subsidiaries (column (c)),

of all executive officers, directors, employees and former executive officers, directors and employees of the company or any of its subsidiaries.

(3) "Support agreement" includes, but is not limited to, an agreement to provide assistance in the maintenance or servicing of any indebtedness and an agreement to provide compensation for the purpose of maintaining or servicing any indebtedness of the borrower.

**10.2 Indebtedness of Directors and Executive Officers under (1) Securities Purchase and (2) Other Programs**

| INDEBTEDNESS OF DIRECTORS AND EXECUTIVE OFFICERS UNDER (1) SECURITIES PURCHASE AND (2) OTHER PROGRAMS | | | | | | |
|---|---|---|---|---|---|---|
| Name and Principal Position | Involvement of Company or Subsidiary | Largest Amount Outstanding During [Most Recently Completed Financial Year] ($) | Amount Outstanding as at [Date within 30 days] ($) | Financially Assisted Securities Purchases During [Most Recently Completed Financial Year] (#) | Security for Indebtedness | Amount Forgiven During [Most Recently Completed Financial Year] ($) |
| (a) | (b) | (c) | (d) | (e) | (f) | (g) |
| Securities Purchase Programs | | | | | | |
| | | | | | | |
| | | | | | | |
| Other Programs | | | | | | |
| | | | | | | |
| | | | | | | |

(1) Complete the above table for each individual who is, or at any time during the most recently completed financial year was, a director or executive officer of the company, each proposed nominee for election as a director of the company, and each associate of any such director, executive officer or proposed nominee,

(a) who is, or at any time since the beginning of the most recently completed financial year of the company has been, indebted to the company or any of its subsidiaries, or

(b) whose indebtedness to another entity is, or at any time since the beginning of the most recently completed financial year has been, the subject of a guarantee, support agreement, letter of credit or other similar arrangement or understanding provided by the company or any of its subsidiaries,

and separately disclose the indebtedness for security purchase programs and all other programs.

(2) Note the following:

Column (a) – disclose the name and principal position of the borrower. If the borrower was, during the most recently completed financial year, but no longer is a director or executive officer, state that fact. If the borrower is a proposed nominee for election as a director, state that fact. If the borrower is included as an associate, describe briefly the relationship of the borrower to an individual who is or, during the financial year, was a director or executive officer or who is a proposed nominee for election as a director, name that individual and provide the information required by this subparagraph for that individual.

Column (b) – disclose whether the company or a subsidiary of the company is the lender or the provider of a guarantee, support agreement, letter of credit or similar arrangement or understanding.

Column (c) – disclose the largest aggregate amount of the indebtedness outstanding at any time during the most recently completed financial year.

Column (d) – disclose the aggregate amount of indebtedness outstanding as at a date within thirty days before the date of the information circular.

Column (e) – disclose separately for each class or series of securities, the sum of the number of securities purchased during the most recently completed financial year with the financial assistance (security purchase programs only).

Column (f) – disclose the security for the indebtedness, if any, provided to the company, any of its subsidiaries or the other entity (security purchase programs only).

Column (g) – disclose the total amount of indebtedness that was forgiven at any time during the most recently completed financial year.

(3) Supplement the above table with a summary discussion of

(a) the material terms of each incidence of indebtedness and, if applicable, of each guarantee, support agreement, letter of credit or other similar arrangement or understanding, including

(i) the nature of the transaction in which the indebtedness was incurred;

(ii) the rate of interest;

(iii) the term to maturity;

(iv) any understanding, agreement or intention to limit recourse; and

(v) any security for the indebtedness;

(b) any material adjustment or amendment made during the most recently completed financial year to the terms of the indebtedness and, if applicable, the guarantee, support agreement, letter of credit or similar arrangement or understanding. Forgiveness of indebtedness reported in column (g) of the above table should be explained; and

(c) the class or series of the securities purchased with financial assistance or held as security for the indebtedness and, if the class or series of securities is not publicly traded, all material terms of the securities, including the provisions for exchange, conversion, exercise, redemption, retraction and dividends.

**10.3** You do not need to disclose information required by this Item for any indebtedness that has been entirely repaid on or before the date of the information circular or for routine indebtedness.

"Routine indebtedness" means indebtedness described in any of the following clauses:

(i) If the company or its subsidiary makes loans to employees generally,

(A) the loans are made on terms no more favourable than the terms on which loans are made by the company or its subsidiary to employees generally, and

(B) the amount, at any time during the last completed financial year, remaining unpaid under the loans to the director, executive officer or proposed nominee, together with his or her associates, does not exceed $50,000.

(ii) A loan to a person or company who is a full-time employee of the company,

(A) that is fully secured against the residence of the borrower, and

(B) the amount of which in total does not exceed the annual salary of the borrower.

(iii) If the company or its subsidiary makes loans in the ordinary course of business, a loan made to a person or company other than a full-time employee of the company

(A) on substantially the same terms, including those as to interest rate and security, as are available when a loan is made to other customers of the company or its subsidiary with comparable credit, and

(B) with no more than the usual risks of collectibility.

(iv) A loan arising by reason of purchases made on usual trade terms or of ordinary travel or expense advances, or for similar reasons, if the repayment arrangements are in accord with usual commercial practice.

**Item 11 Interest of Informed Persons in Material Transactions**

Describe briefly and, where practicable, state the approximate amount of any material interest, direct or indirect, of any informed person of the company, any proposed director of the company, or any associate or affiliate of any informed person or proposed

director, in any transaction since the commencement of the company's most recently completed financial year or in any proposed transaction which has materially affected or would materially affect the company or any of its subsidiaries.

*INSTRUCTIONS:*

*(i) Briefly describe the material transaction. State the name and address of each person or company whose interest in any transaction is described and the nature of the relationship giving rise to the interest.*

*(ii) For any transaction involving the purchase or sale of assets by or to the company or any subsidiary, other than in the ordinary course of business, state the cost of the assets to the purchaser and the cost of the assets to the seller, if acquired by the seller within two years prior to the transaction.*

*(iii) This Item does not apply to any interest arising from the ownership of securities of the company where the securityholder receives no extra or special benefit or advantage not shared on a proportionate basis by all holders of the same class of securities or by all holders of the same class of securities who are resident in Canada.*

*(iv) Include information as to any material underwriting discounts or commissions upon the sale of securities by the company where any of the specified persons or companies was or is to be an underwriter in a contractual relationship with the company with respect to securities or is an associate or affiliate of a person or company that was or is to be such an underwriter.*

*(v) You do not need to disclose the information required by this Item for any transaction or any interest in that transaction if*

*(A) the rates or charges involved in the transaction are fixed by law or determined by competitive bids,*

*(B) the interest of the specified person in the transaction is solely that of director of another company that is a party to the transaction,*

*(C) the transaction involves services as a bank or other depositary of funds, transfer agent, registrar, trustee under a trust indenture or other similar services, or*

*(D) the transaction does not directly or indirectly, involve remuneration for services, and*

*(I) the interest of the specified person or company arose from the beneficial ownership, direct or indirect, of less than 10 per cent of any class of voting securities of another company that is a party to the transaction,*

*(II) the transaction is in the ordinary course of business of the company or its subsidiaries, and*

*(III) the amount of the transaction or series of transactions is less than 10 per cent of the total sales or purchases, as the case may be, of the company and its subsidiaries for the most recently completed financial year.*

*(vi) Provide information for transactions not excluded above which involve remuneration, directly or indirectly, to any of the specified persons or companies for services in any capacity unless the interest of the person arises solely from the beneficial ownership, direct or indirect, of less than 10 per cent of any class of voting securities of another company furnishing the services to the company or its subsidiaries.*

**Item 12 Appointment of Auditor**

Name the auditor of the company. If the auditor was first appointed within the last five years, state the date when the auditor was first appointed.

If action is to be taken to replace an auditor, provide the information required under section 4.11 of National Instrument 51-102.

**Item 13 Management Contracts**

If management functions of the company or any of its subsidiaries are to any substantial degree performed other than by the directors or executive officers of the company or subsidiary,

(a) give details of the agreement or arrangement under which the management functions are performed, including the name and address of any person or company who is a party to the agreement or arrangement or who is responsible for performing the management functions;

(b) give the names and provinces of residence of any person that was, during the most recently completed financial year, an informed person of any person or company with which the company or subsidiary has any such agreement or arrangement and, if the following information is known to the directors or executive officers of the company, give the names and provinces of residence of any person or company that would be an informed person of any person or company with which the company or subsidiary has any such agreement or arrangement if the person were an issuer;

(c) for any person or company named under paragraph (a) state the amounts paid or payable by the company and its subsidiaries to the person or company since the commencement of the most recently completed financial year and give particulars; and

(d) for any person or company named under paragraph (a) or (b) and their associates or affiliates, give particulars of,

(i) any indebtedness of the person, company, associate or affiliate to the company or its subsidiaries that was outstanding, and

(ii) any transaction or arrangement of the person, company, associate or affiliate with the company or subsidiary,

at any time since the start of the company's most recently completed financial year.

*INSTRUCTIONS:*

*(i) Do not refer to any matter that is relatively insignificant.*

*(ii) In giving particulars of indebtedness, state the largest aggregate amount of indebtedness outstanding at any time during the period, the nature of the indebtedness and of the transaction in which it was incurred, the amount of the indebtedness presently outstanding and the rate of interest paid or charged on the indebtedness.*

*(iii) Do not include as indebtedness amounts due from the particular person for purchases subject to usual trade terms, for ordinary travel and expense advances and for other similar transactions.*

**Item 14 Particulars of Matters to be Acted Upon**

**14.1** If action is to be taken on any matter to be submitted to the meeting of securityholders other than the approval of financial statements, briefly describe the substance of the matter, or related groups of matters, except to the extent described under the foregoing items, in sufficient detail to enable reasonable securityholders to form a reasoned judgment concerning the matter. Without limiting the generality of the foregoing, such matters include alterations of share capital, charter amendments, property acquisitions or dispositions, reverse takeovers, amalgamations, mergers, arrangements or reorganizations and other similar transactions.

**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 or a restructuring transaction under which securities are to be changed, exchanged, issued, or distributed, the information circular must include information sufficient to enable a reasonable securityholder to form a reasoned judgment concerning the nature and effect of the significant acquisition or restructuring transaction and the expected resulting entity or entities. This information must include the disclosure (including financial statement disclosure) for each entity, securities of which are being changed, exchanged, issued, or distributed, and for each entity that would result from the significant acquisition or restructuring transaction, prescribed by the form of prospectus that the entity would be eligible to use for a distribution of securities in the jurisdiction. For the purposes of this section, a restructuring transaction means a reverse takeover, amalgamation, merger, arrangement or reorganization or other similar transaction, but does not include a subdivision, consolidation, or other transaction that only affects the number of securities of a class that are outstanding. If the action is to be taken on a matter that is a reverse takeover, disclosure in this Item must include disclosure prescribed by the appropriate prospectus form for the reverse takeover acquirer.

**14.3** If the matter is one that is not required to be submitted to a vote of securityholders, state the reasons for submitting it to securityholders and state what action management intends to take in the event of a negative vote by the securityholders.

**14.4** Section 14.2 does not apply to an information circular that is sent to holders of voting securities of a reporting issuer soliciting proxies otherwise than on behalf of management of the reporting issuer (a "dissident circular"), unless the sender of the dissident circular is proposing a significant acquisition or restructuring transaction involving the reporting issuer and the sender, under which securities of the sender, or an affiliate of the sender, are to be distributed or transferred to securityholders of the reporting issuer. However, a sender of a dissident circular shall include in the dissident circular the disclosure required by section 14.2 if the sender of the dissident circular is proposing a significant

acquisition or restructuring transaction under which securities of the sender or securities of an affiliate of the sender are to be changed, exchanged, issued or distributed.

**14.5** Section 14.2 does not apply to an information circular that is prepared in connection with a Qualifying Transaction for a company that is a CPC (as such terms are defined in the TSX Venture Exchange policy on Capital Pool Companies) provided that the company complies with the policies and requirements of the TSX Venture Exchange in respect of that Qualifying Transaction.

**Item 15 Restricted Securities**

**15.1** If the action to be taken involves a transaction that would have the effect of converting or subdividing, in whole or in part, existing securities into restricted securities, or creating new restricted securities, the information circular must also include, as part of the minimum disclosure required, a detailed description of:

(a) the voting rights attached to the restricted securities that are the subject of the transaction or that will result from the transaction either directly or following a conversion, exchange or exercise, and the voting rights, if any, attached to the securities of any other class of securities of the company that are the same or greater on a per security basis than those attached to the restricted securities that are the subject of the transaction or that will result from the transaction either directly or following a conversion, exchange or exercise;

(b) the percentage of the aggregate voting rights attached to the company's securities that are represented by the class of restricted securities;

(c) any significant provisions under applicable corporate and securities law, in particular whether the restricted securities may or may not be tendered in any takeover bid for securities of the reporting issuer having voting rights superior to those attached to the restricted securities, that do not apply to the holders of the restricted securities that are the subject of the transaction or that will result from the transaction either directly or following a conversion, exchange or exercise, but do apply to the holders of another class of equity securities, and the extent of any rights provided in the constating documents or otherwise for the protection of holders of the restricted securities; and

(d) any rights under applicable corporate law, in the constating documents or otherwise, of holders of restricted securities that are the subject of the transaction either directly or following a conversion, exchange or exercise, to attend, in person or by proxy, meetings of holders of equity securities of the company and to speak at the meetings to the same extent that holders of equity securities are entitled.

**15.2** If holders of restricted securities do not have all of the rights referred to in section 15.1, the detailed description referred to in section 15.1 must include, in bold-face type, a statement of the rights the holders do not have.

**Item 16 Additional Information**

**16.1** Disclose that additional information relating to the company is on SEDAR at www.sedar.com. Disclose how securityholders may contact the company to request copies of the company's financial statements and MD&A.

**16.2** Include a statement that financial information is provided in the company's comparative financial statements and MD&A for its most recently completed financial year.

# Form 51-102F6
# Statement of Executive Compensation

**Table of Contents**

**FORM 51-102F6**
***STATEMENT OF EXECUTIVE COMPENSATION***

**Item 1 General Instructions and Interpretation**

**1.1** The purpose of this Form is to provide disclosure of all compensation earned by certain executive officers and directors in connection with office or employment by your company or a subsidiary of your company. Wherever this Form uses the word "company", the term includes other types of business organizations such as partnerships, trusts and other unincorporated business entities.

**1.2** You should prepare the Form in the prescribed format. You may omit a table or column of a table if it is not applicable.

**1.3** Definitions. For the purposes of this Form

"Chief Executive Officer" or "CEO" means each individual who served as chief executive officer of your company or acted in a similar capacity during the most recently completed financial year;

"Chief Financial Officer" or "CFO" means each individual who served as chief financial officer of your company or acted in a similar capacity during the most recently completed financial year;

"long-term incentive plan" or "LTIP" means a plan providing compensation intended to motivate performance over a period greater than one financial year. LTIPs do not include option or SAR plans or plans for compensation through shares or units that are subject to restrictions on resale;

"measurement period" means the period beginning at the "measurement point" which is established by the market close on the last trading day before the beginning of your company's fifth preceding financial year, through and including the end of your company's most recently completed financial year. If the class or series of securities has been publicly traded for a shorter period of time, the period covered by the comparison may correspond to that time period;

"Named Executive Officers" or "NEOs" means the following individuals:

(a) each CEO;

(b) each CFO;

(c) each of your company's three most highly compensated executive officers, other than the CEO and CFO, who were serving as executive officers at the end of the most recently completed financial year and whose total salary and bonus exceeds $150,000; and

(d) any additional individuals for whom disclosure would have been provided under (c) except that the individual was not serving as an officer of your company at the end of the most recently completed financial year-end;

"normal retirement age" means normal retirement age as defined in a pension plan or, if not defined, the earliest time at which a plan participant may retire without any benefit reduction due to age;

"options" includes all options, share purchase warrants and rights granted by a company or its subsidiaries as compensation for employment services or office. An extension of an option or replacement grant is a grant of a new option. Also, options includes any grants made to a NEO by a third party or a non-subsidiary affiliate of your company in respect of services to your company or a subsidiary of your company;

"plan" includes, but is not limited to, any arrangement, whether or not set forth in any formal document and whether or not applicable to only one individual, under which cash, securities, options, SARs, phantom stock, warrants, convertible securities, shares or units that are subject to restrictions on resale, performance units and performance shares, or similar instruments may be received or purchased. It excludes the Canada Pension Plan, similar government plans and group life, health, hospitalization, medical reimbursement and relocation plans that are available generally to all salaried employees (for example, does not discriminate in scope, terms or operation in favour of executive officers or directors;

"replacement grant" means the grant of an option or SAR reasonably related to any prior or potential cancellation of an option or SAR;

"repricing" of an option or SAR means the adjustment or amendment of the exercise or base price of a previously awarded option or SAR. Any repricing occurring through the operation of a formula or mechanism in, or applicable to, the previously awarded option or SAR equally affecting all holders of the class of securities underlying the option or SAR is excluded; and

"stock appreciation right" or "SAR" means a right, granted by a company or any of its subsidiaries as compensation for employment services or office to receive cash or an issue or transfer of securities based wholly or in part on changes in the trading price of publicly traded securities.

If a term is used but not defined in this Form, refer to Part 1 of National Instrument 51-102 and to National Instrument 14-101 *Definitions*. If a term is used in this Form and is defined in both the securities statute of a local jurisdiction and in National Instrument 51-102, refer to section 1.4 of Companion Policy 51-102CP.

**1.4** In preparing this Form:

(a) **Determination of Most Highly Compensated Executive Officers.** The determination of your company's most highly compensated executive officers is based on the total annual salary and bonus of each executive officer during your company's most recently completed financial year.

(b) **Change in Status of a NEO During the Financial Year.** If the NEO served in that capacity during any part of a financial year for which disclosure is required, disclose all of his or her compensation for the full financial year.

(c) **Exclusion Due to Unusual Compensation or Compensation for Foreign Assignment.** In limited circumstances, you can exclude disclosure of an individual, other than a CEO or CFO, who is one of the three most highly compensated executive officers. Factors to consider in determining to exclude an individual are

(i) a payment or accrual of an unusually large amount of cash compensation (such as bonus or commission) that is not part of a recurring arrangement and is unlikely to continue; or

(ii) the payment of additional amounts of cash compensation for increased living expenses due to an assignment outside of Canada.

(d) **All Compensation Covered.** This Form requires disclosure of all plan and non-plan compensation for each NEO, and each director in accordance with Item 11. Except as expressly provided, no amount, benefit or right reported as compensation for a financial year need be reported as compensation for any subsequent fiscal year.

(e) **Sources of Compensation.** Compensation to officers and directors must include compensation from the company and its subsidiaries. Also, any compensation under an understanding or agreement existing among any of the company, its subsidiaries or an officer or director of the company or its subsidiary and another entity, for the primary purpose of the other entity compensating the officer or director for employment services or office, must be included in the appropriate compensation category.

(f) **Compensation Furnished to Associates.** Any compensation to an associate, under an understanding or agreement among any of the company, its subsidiaries or another entity and an officer or director of the company or its subsidiary for the primary purpose of the company, its subsidiary or the other entity compensating the officer or director for employment services or office, must be included in the appropriate compensation category.

**Item 2 Summary Compensation Table**

**2.1 Summary Compensation Table**

| NEO Name and Principal Position (a) | Year (b) | Annual Compensation | | | Long-Term Compensation | | | All Other Compen-sation ($) (i) |
|---|---|---|---|---|---|---|---|---|
| | | | | | Awards | | Payouts | |
| | | Salary ($) (c) | Bonus ($) (d) | Other Annual Compen-sation ($) (e) | Securities Under Options/ SARs Granted (#) (f) | Shares or Units Subject to Resale Restrictions ($) (g) | LTIP Payouts ($) (h) | |
| CEO | XXX3<br>XXX2<br>XXX1 | | | | | | | |
| CFO | XXX3<br>XXX2<br>XXX1 | | | | | | | |
| A | XXX3<br>XXX2<br>XXX1 | | | | | | | |
| B | XXX3<br>XXX2<br>XXX1 | | | | | | | |
| C | XXX3<br>XXX2<br>XXX1 | | | | | | | |

1. Complete this table for each of the NEOs for your company's three most recently completed financial years. Note the following:

- Columns (c) and (d) – include any cash or non-cash base salary and bonus earned by the NEO. For non-cash compensation, disclose the fair market value of the compensation at the time the compensation is earned. Amounts deferred at the election of a NEO must be included in the financial year in which earned. If the amount of salary and/or bonus earned in a given financial year is not calculable, that fact must be disclosed in a footnote and the amount must be disclosed in the subsequent financial year in the column for the financial year in which earned.

- Any salary or bonus earned in a covered year that was foregone, at the election of a NEO, under a program of your company under which non-cash compensation may be received in lieu of a portion of annual compensation, need not be included in the salary or bonus columns. Instead, you may disclose the non-cash compensation in the appropriate column for that year (i.e. columns (f), (g) and (i)). If the election was made under a LTIP and therefore is not reportable at the time of grant in this table, a footnote must be added to the salary or bonus column disclosing this fact and referring to the table in section 3.1.

- Commissions can be treated as salary or bonus. You can add a footnote to the table to indicate that such amounts are paid under a commission arrangement and disclose details of the arrangement in the compensation committee report (Item 9).

- Column (e) – disclose all other compensation of the NEO that is not properly categorized as salary or bonus, including

  (a) Perquisites and other personal benefits, securities or property, unless the aggregate amount of such compensation is less than $50,000 and 10 per cent of the total of the annual salary and bonus of the NEO for the financial year. Generally, a perquisite is the cost or value of a personal benefit provided to the NEO that is not available to all employees. Examples of things that could be perquisites are

- Car allowance
- Car lease
- Cars
- Corporate aircraft
- Club membership
- Financial assistance to provide education to children of the executives
- Financial counselling
- Parking
- Tax return preparation

The following are not considered perquisites and thus need not be reported:

- Contributions to professional dues
- CPP
- Dental
- Employee relocation plans available to all employees
- Group life benefits available to all employees
- Long-term benefits available to all employees
- Medical

Each perquisite or other personal benefit exceeding 25 per cent of the total perquisites and other personal benefits reported for a NEO must be identified by type and amount in a footnote to column (e). Perquisites and other personal benefits must be valued on the basis of the aggregate incremental cost to your company and its subsidiaries;

(b) The above-market portion of all interest, dividends or other amounts paid concerning securities, options, stock appreciation rights (SARs), loans, deferred compensation or other obligations issued to a NEO during the financial year or payable during that period but deferred at the election of the NEO. Above-market or preferential means a rate greater than the rate ordinarily paid by the company or its subsidiary on securities or other obligations having the same or similar features issued to third parties. Any above-market portion not reported in column (e) should be reported in column (i);

(c) Earnings on LTIP compensation or dividend equivalents paid during the financial year or payable during that period but deferred at the election of the NEO;

(d) Amounts reimbursed during the financial year for the payment of taxes;

(e) The difference between the price paid by a NEO for a security of your company or its subsidiaries that was purchased from your company or its subsidiaries and the fair market value of the security at the time of purchase, unless the discount was available generally, either to all securityholders or to all salaried employees of your company;

(f) The imputed interest benefits from loans provided to, or debts incurred on behalf of, the NEO by your company and its subsidiaries as computed in accordance with the *Income Tax Act* (Canada); and

(g) The amounts of loan or interest obligations of the NEO to your company, its subsidiaries or third parties that were serviced or settled by the company or its subsidiaries without the substitution of an obligation to repay the amount to the company or subsidiaries in its place.

- Column (f) - includes the number of securities under option (with or without SARs awarded with the options) and, separately, the number of securities subject to freestanding SARs. The figures in this column for the most recent fiscal year should equal those reported in the table in section 4.1, column (b). These figures are not cumulative.

- If at any time during the most recently completed financial year your company repriced options or freestanding SARs previously awarded to a NEO, disclose the repriced options or SARs as new options or SARs grants in column (f).

- Column (g) - includes the dollar value (net of consideration paid by the NEO) of any shares or units that are subject to restrictions on resale (calculated by multiplying the closing market price of your company's freely trading shares on the date of grant by the number of stock or stock units awarded).

- In a footnote to column (g) disclose

    - the number and value of the aggregate holdings of shares and units that are subject to restrictions on resale at the end of the most recently completed financial year;

    - for any shares or units that are subject to restrictions on resale that will vest, in whole or in part, in less than three years from the date of grant, the total number of securities awarded and the vesting schedule; and

    - whether dividends or dividend equivalents will be paid on the shares and units that are subject to restrictions on resale disclosed in the column.

- Column (h) – includes the dollar value of all payouts under LTIPs.

- Awards of shares or units that are subject to restrictions on resale that are subject to performance-based conditions prior to vesting may be disclosed as LTIP awards under the table in section 3.1 instead of under column (g). If this approach is selected, once the share or unit vests, it must be reported as an LTIP payout in column (h).

- If any specified performance target, goal or condition to payout was waived regarding any amount included in LTIP payouts, disclose this fact in a footnote to column (h).

- Column (i) – must include, but is not limited to,

    (a) The amount paid, payable or accrued to a NEO for

        (i) the resignation, retirement or other termination of the NEO's employment with your company or one of its subsidiaries; or

        (ii) a change in control of your company or one of its subsidiaries or a change in the NEO's responsibilities following such a change in control.

    (b) The dollar value of the above-market portion of all interest, dividends or other amounts earned during the financial year, or calculated with respect to that period, excluding amounts that are paid during that period, or payable during that period at the election of the NEO that were reported as other annual compensation in column (e). See the description for column (e), point (b) for an explanation of the above market portion.

    (c) The dollar value of amounts earned on LTIP compensation during the financial year, or calculated with respect to that period, and dividend equivalents earned during that period except that amounts paid during that period, or payable during that period at the election of the NEO must be reported as other annual compensation in column (e).

    (d) Annual contributions or other allocations by the company or its subsidiaries to vested and unvested defined contribution plans or employee savings plans. These benefits are not considered to be perquisites due to their all-inclusive nature.

    (e) The dollar value of any insurance premium paid by, or on behalf of, your company or its subsidiaries during the financial year with respect to term life insurance for the benefit of a NEO. If there is an

arrangement or understanding, whether formal or informal, that the NEO has received or will receive or be allocated an interest in any cash surrender value under the insurance policy, either

(i) the full dollar value of the remainder of the premiums paid by, or on behalf of, the company or its subsidiaries; or

(ii) if the premiums will be refunded to the company or its subsidiaries on termination of the policy, the dollar value of the benefit to the NEO of the remainder of the premium paid by, or on behalf of, the company or its subsidiaries during the financial year. This benefit must be determined for the period, projected on an actuarial basis, between payment of premium and the refund.

(f) If the NEO's compensation takes the form of a contribution to assist in the NEO's purchase of shares, the amount of the contribution, unless the contribution was available generally, either to all securityholders or to all salaried employees of the company.

- The same method of reporting under this paragraph must be used for each NEO. If your company changes methods of reporting from one year to the next, that fact and the reason for the change must be disclosed in a footnote to column (i).
- The following need not be reported in column (i):

(i) LTIP awards and amounts received on exercise of options and SARs; and

(ii) information on defined benefit and actuarial plans.

2. The $150,000 threshold only applies to the most recent fiscal year in determining the NEOs.

3. If, during any of the financial years covered by the table, your company or its subsidiaries did not employ a NEO for the entire financial year, disclose this fact and the number of months the NEO was so employed during the year in a footnote to the table.

4. If during any of the financial years covered by the table, a NEO was compensated by a non-subsidiary affiliate of your company, disclose in a note to the table

(a) the amount and nature of such compensation; and

(b) whether the compensation is included in the compensation reported in the table.

5. Information with respect to a financial year-end prior to the most recently completed financial year-end need not be provided if your company was not a reporting issuer at any time during such prior financial year.

**Item 3 LTIP Awards Table**

**3.1 LTIP—Awards In Most Recently Completed Financial Year**

| NEO Name (a) | Securities, Units or Other Rights (#) (b) | Performance or Other Period Until Maturation or Payout (c) | Estimated Future Payouts Under Non-Securities-Price-Based Plans | | |
|---|---|---|---|---|---|
| | | | Threshold ($ or #) (d) | Target ($ or #) (e) | Maximum ($ or #) (f) |
| CEO | | | | | |
| CFO | | | | | |
| A | | | | | |
| B | | | | | |
| C | | | | | |

1. Complete this table for each LTIP award made to the NEOs during the most recently completed financial year. Note the following:

   - Column (b) – Include the number of securities, units or other rights awarded under any LTIP and, if applicable, the number of securities underlying any such unit or right.

   - Columns (d) to (f) - For plans not based on stock price, the dollar value of the estimated payout or range estimated payouts under the award (threshold, target and maximum amount), whether such award is denominated in stock or cash.

     - Threshold is the minimum amount payable for a certain level of performance under the plan.

     - Target is the amount payable if the specified performance target(s) is reached. You should provide a representative amount based on the previous financial year's performance if the target award is not determinable.

     - Maximum is the maximum payout possible under the plan.

2. Describe in a footnote to the table, the material terms of any award, including a general description of the formula or criteria applied in determining the amounts payable. You are not required to disclose confidential information that would adversely affect your company's competitive position.

3. A grant of two instruments in conjunction with each other, only one of which is under an LTIP, need be reported only in the table applicable to the other instrument.

**Item 4 Options and SARs**

**4.1 Option/SAR Grants During The Most Recently Completed Financial Year**

| NEO Name (a) | Securities, Under Options/SARs Granted (#) (b) | Per cent of Total Options/ SARs Granted to Employees in Financial Year (c) | Exercise or Base Price ($/Security) (d) | Market Value of Securities Underlying Options/ SARs on the Date of Grant ($/Security) (e) | Expiration Date (f) |
|---|---|---|---|---|---|
| CEO | | | | | |
| CFO | | | | | |
| A | | | | | |
| B | | | | | |
| C | | | | | |

1. Complete this table for individual grants of options to purchase or acquire securities of your company or any of its subsidiaries (whether or not in conjunction with SARs) and freestanding SARs made during the most recently completed financial year to each of NEO. Note the following:

   - The information must be presented for each NEO in groups according to each issuer and class or series of security underlying the options or SARs granted and within these groups in reverse chronological order. For each grant, disclose in a footnote the issuer and the class or series of securities underlying the options or freestanding SARs granted.

   - If more than one grant of options or freestanding SARs was made to a NEO during the most recently completed financial year, a separate row must be used to provide the particulars of each grant. However, multiple grants during a single financial year to a NEO can be aggregated if each grant was made on the same terms (eg. exercise price, expiration date and vesting thresholds, if any).

   - A single grant of options or freestanding SARs must be reported as separate grants for each tranche with a different exercise or base price, expiration date or performance-vesting threshold.

- Each material term of the grant, including but not limited to the date of exercisability, the number of SARs, dividend equivalents, performance units or other instruments granted in conjunction with options, a performance-based condition to exercisability, a re-load feature or a tax-reimbursement feature must be disclosed in a footnote to the table.

- Options or freestanding SARs granted in an option repricing transaction must be disclosed.

- If the exercise or base price is adjustable over the term of an option or freestanding SAR in accordance with a prescribed standard or formula, include in a footnote to the table, a description of the standard or formula.

- If any provision of an option or SAR (other than an anti-dilution provision) could cause the exercise or base price to be lowered, a description of the provision and its potential consequences must be included in a footnote to the table.

- In determining the grant date market value of the securities underlying options or freestanding SARs, use either the closing market price or any other formula prescribed under the option or SAR plan. For options or SARs granted prior to the establishment of a trading market in the underlying securities, the initial offering price may be used.

**4.2 Aggregated Option/SAR Exercises During The Most Recently Completed Financial Year And Financial Year-End Option/SAR Values**

| NEO Name (a) | Securities, Acquired on Exercise (#) (b) | Aggregate Value Realized ($) (c) | Unexercised Options/SARs at FY-End (#) Exercisable/ Unexercisable (d) | Value of Unexercised in-the-Money Options/SARs at FY-End ($) Exercisable/ Unexercisable (e) |
|---|---|---|---|---|
| CEO | | | | |
| CFO | | | | |
| A | | | | |
| B | | | | |
| C | | | | |

1. Complete this table for each exercise of options (or SARS awarded with the options) and freestanding SARs during the most recently completed financial year by each NEO and the financial year-end value of unexercised options and SARs, on an aggregated basis. Note the following:

   - Column (c) - the aggregate dollar value realized upon exercise. The dollar value is equal to column (b) times the difference between the market value of the securities underlying the options or SARs at exercise or financial year-end, respectively, and the exercise or base price of the options or SARs.

   - Column (d) - the total number of securities underlying unexercised options and SARs held at the end of the most recently completed financial year, separately identifying the exercisable and unexercisable options and SARs.

   - Column (e) - the aggregate dollar value of in-the-money, unexercised options and SARs held at the end of the financial year, separately identifying the exercisable and unexercisable options and SARs. The dollar value is calculated the same way as in column (c). Options or freestanding SARs are in-the-money at financial year-end if the market value of the underlying securities on that date exceeds the exercise or base price of the option or SAR.

**Item 5 Option and SAR Repricings**

**5.1 Table of Option and SAR Repricings**

| NEO Name (a) | Date of Repricing (b) | Securities Under Options/SARs Repriced or Amended (#) (c) | Market Price of Securities at Time of Repricing or Amendment ($/Security) (d) | Exercise Price at Time of Repricing or Amendment ($/Security) (e) | New Exercise Price ($/Security) (f) | Length of Original Option Term Remaining at Date of Repricing or Amendment (g) |
|---|---|---|---|---|---|---|
| CEO | | | | | | |
| CFO | | | | | | |
| A | | | | | | |
| B | | | | | | |
| C | | | | | | |

1. Complete this table if at any time during the most recently completed financial year, your company has repriced downward any options or freestanding SARs held by any NEO.

2. State the following information for all downward repricings of options or SARs held by any NEO during the shorter of

   (a) the 10 year period ending on the date of this Form; and

   (b) the period during which your company has been a reporting issuer.

3. Information about a replacement grant made during the financial year must be disclosed even if the corresponding original grant was cancelled in a prior year. If the replacement grant is not made at the current market value, describe this fact and the terms of the grant in a footnote to the table.

4. The information must be presented in groups according to issuer and class or series of security underlying options or SARs and within these groups in reverse chronological order.

5. In a narrative immediately before or after this table, explain in reasonable detail the basis for all downward repricings during the most recently completed financial year of options and SARs held by any of the NEOs.

**Item 6 Defined Benefit or Actuarial Plan Disclosure**

**6.1 Pension Plan Table**

| Remuneration ($) | Years of Service | | | | |
|---|---|---|---|---|---|
| | 15 | 20 | 25 | 30 | 35 |
| 125,000 | | | | | |
| 150,000 | | | | | |
| 175,000 | | | | | |
| 200,000 | | | | | |
| 225,000 | | | | | |
| 250,000 | | | | | |
| 300,000 | | | | | |
| 400,000 | | | | | |
| [insert additional rows as appropriate for additional increments] | | | | | |
| | | | | | |

1. Complete this table for defined benefit or actuarial plans under which benefits are determined primarily by final compensation (or average final compensation) and years of service. The estimated annual benefits payable upon retirement (including amounts attributable to any defined benefit supplementary or excess pension awards plan) for the specified compensation and years of service should be disclosed.

2. Immediately following the table disclose

   (a) the compensation covered by the plan(s), including the relationship of the covered compensation to the compensation reported in the table in section 2.1;

   (b) the current compensation covered by the plan for any NEO whose total compensation differs substantially (by more than 10 per cent) from that set out in the table in section 2.1;

   (c) a statement as to the basis upon which benefits are computed (for example; straight-life annuity amounts), and whether or not the benefits listed in the table are subject to any deduction for social security or other offset amounts such as Canada Pension Plan or Québec Pension Plan amounts; and

   (d) the estimated credited years of service for each NEO.

3. Compensation disclosed in the table must allow for reasonable increases in existing compensation levels or, alternately, you may present, as the highest compensation level in the table, an amount equal to 120 per cent of the amount of covered compensation of the most highly compensated of the NEOs.

4. For defined benefit or actuarial plans which are not reported in the table in section 6.1 because the benefits are not determined primarily by final compensation (or average final compensation) or years of service, state in narrative form

   (a) the formula by which benefits are determined; and

   (b) the estimated annual benefits payable upon retirement at normal retirement age for each of the NEOs.

**Item 7 Termination of Employment, Change in Responsibilities and Employment Contracts**

**7.1** Describe the terms and conditions, including dollar amounts, of each of the following contracts or arrangements which are in existence at the end of the most recently completed financial year:

   (a) any employment contract between your company or its subsidiaries and a NEO; and

(b) any compensatory plan, contract or arrangement, where a NEO is entitled to receive more than $100,000 from the issuer or its subsidiaries, including periodic payments or instalments, in the event of

(i) the resignation, retirement or any other termination of the NEO's employment with your company and its subsidiaries;

(ii) a change of control of your company or any of its subsidiaries; or

(iii) a change in the NEO's responsibilities following a change in control.

**7.2** A cross reference to disclosure already made of any payments, instalments or contributions to defined benefit pension plans under Items 2 or 6 is permitted.

**Item 8 Composition of the Compensation Committee**

**8.1** If any compensation is reported in Items 2 to 6 for the most recently completed financial year, under the caption "Composition of the Compensation Committee", identify each member of your company's compensation committee (or other board committee performing equivalent functions or in the absence of any such committee, the entire board of directors) during the most recently completed financial year. Also, indicate each committee member who

(a) was, during the most recently completed financial year, an officer or employee of your company or any of its subsidiaries;

(b) was formerly an officer of your company or any of its subsidiaries;

(c) had or has any relationship that requires disclosure by your company under Form 51-102F5 *Information Circular,* Item 10 "Indebtedness of Directors and Executive Officers" and Item 11 "Interest of Informed Persons in Material Transactions";

(d) was an executive officer of your company and also served as a director or member of the compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) of another issuer, one of whose executive officers served either

(i) on the compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) of the issuer; or

(ii) as a director of the issuer.

**8.2** If the composition of the compensation committee changed during the year or before the report in Item 9 "Report on Executive Compensation" is prepared, then disclose the change in membership as well as any of the relationships described in section 8.1, if any.

**Item 9 Report on Executive Compensation**

**9.1** If any compensation is reported in Items 2 to 6 for the most recently completed financial year, describe under the caption "Report on Executive Compensation" the policies of the compensation committee or other board committee performing equivalent functions, or in the absence of any such committee then of the entire board of directors of your company, during the most recently completed financial year, for determining compensation of executive officers. Boilerplate language should be avoided.

**9.2** This report should include a discussion of

(a) the relative emphasis of your company on cash compensation, options, SARs, securities purchase programs, shares or units that are subject to restrictions on resale and other incentive plans, and annual versus long-term compensation;

(b) whether the amount and terms of outstanding options, SARs, shares and units subject to restrictions on resale were taken into account when determining whether and how many new option grants would be made;

(c) the specific relationship of your company's performance to executive compensation, and, in particular, describing each measure of your company's performance, whether quantitative or qualitative, on which executive compensation was based and the weight assigned to each measure, e.g. percentage ranges; and

(d) the waiver or adjustment of the relevant performance criteria and the bases for the decision if an award was made to a NEO under a performance-based plan despite failure to meet the relevant performance criteria. For example, you should explain how bonuses are earned and why they were awarded this period, if applicable.

**9.3** The report should state the following information about each CEO's compensation:

(a) the bases for the CEO's compensation for the most recently completed financial year, including the factors and criteria upon which the CEO's compensation was based and the relative weight assigned to each factor;

(b) the competitive rates, if compensation of the CEO was based on assessments of competitive rates, with whom the comparison was made, the nature of, and the basis for, selecting the group with which the comparison was made and at what level in the group the compensation was placed. Disclose if different competitive standards were used for different components of the CEO's compensation; and

(c) the relationship of your company's performance to the CEO's compensation for the most recently completed financial year, describing each measure of your company's performance, whether quantitative or qualitative, on which the CEO's compensation was based and the weight assigned to each measure, for example, percentage ranges.

**9.4** Name each member of your company's compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors). If the board of directors modified or rejected in any material way any action or recommendation by the committee with respect to decisions in the most recently completed financial year, the report should indicate this fact, explain the reasons for the board's action and include the names of all of the members of the board.

**9.5** If a compensation committee member dissents concerning the content of the report, the report must identify the dissenting member and the reasons provided to the committee for the dissent.

**9.6** Disclosure of target levels with respect to specific quantitative or qualitative performance-related factors considered by the committee (or board), or any factors or criteria involving confidential information is not required.

**9.7** If compensation of executive officers is determined by different board committees, a joint report may be presented indicating the separate committee's responsibilities and members of each committee or alternatively separate reports may be prepared for each committee.

**Item 10 Performance Graph**

**10.1** If any compensation is reported in response to Items 2 to 6 for the most recently completed financial year, immediately after Item 9, provide a line graph called "Performance Graph" comparing

(a) the yearly percentage change in your company's cumulative total shareholder return on each class or series of equity securities that are publicly traded, as measured in accordance with section 10.2, with

(b) the cumulative total return of a broad equity market index assuming reinvestment of dividends, that includes issuers whose securities are traded on the same exchange or are of comparable market capitalization, provided that, if your company is within the S&P/TSX Composite Index, you must use the total return index value of the S&P/TSX Composite Index.

**10.2** The yearly percentage change in your company's cumulative total shareholder return on a class or series of securities must be measured by dividing

(a) the sum of

(i) the cumulative amount of dividends for the measurement period, assuming dividend reinvestment, and

(ii) the difference between the price for the securities of the class or series at the end and the beginning of the measurement period, by

(b) the price for the securities of the class or series at the beginning of the measurement period.

At the measurement point, which is the beginning of the measurement period, the closing price must be converted into a fixed investment of $100 in your company's securities (or in the securities represented by a given index), with cumulative returns for each subsequent financial year measured as a change from that investment.

**10.3** In preparing the required graphic comparisons,

(a) use, to the extent feasible, comparable methods of presentation and assumptions for the total return calculations, provided that, if your company constructs its own peer group index under section 10.5(b), the same methodology must be used in calculating both your company's total return and that of the peer group index;

(b) assume the reinvestment of dividends into additional securities of the same class or series at the frequency with which dividends are paid on the securities during the applicable financial year; and

(c) each financial year should be plotted with points showing the cumulative total return as of that point. The value of the investment as of each point plotted on a given return line is the number of securities held at that point multiplied by the then-prevailing security price.

**10.4** You must present information for your company's last five most recently completed financial years, and may choose to graph a longer period but the $100 measurement point remains the same. A period shorter than five years may be used if the class or series of securities forming the basis for the comparison has been publicly traded for a shorter time period.

**10.5** You also may elect to include in the graph a line charting the cumulative total return, assuming reinvestment of dividends, of

(a) a published industry or line-of-business index which is any index that is prepared by a party other than your company or its affiliate and is accessible to your company's securityholders, provided that, you may use an index prepared by your company or its affiliate if such index is widely recognized and used;

(b) peer issuer(s) selected in good faith. If you do not select your company's peer issuers on an industry or line-of-business basis, you must disclose the basis for your selection; or

(c) issuer(s) with similar market capitalization(s), but only if you do not use a published industry or line-of-business index and do not believe you can reasonably identify a peer group. If you use this alternative, the graph must be accompanied by a statement of the reasons for this selection.

**10.6** If you use peer issuer comparisons or comparisons with issuers with similar market capitalizations, the identity of those issuers must be disclosed and the returns of each component issuer of the group must be weighted according to the respective issuer's market capitalization at the beginning of each period for which a return is indicated.

**10.7** Any election to use an additional index under section 10.5 is considered to apply in respect of all subsequent financial years unless abandoned by your company in accordance with this section. To abandon the index, your company must have, in the information circular or AIF for the financial year immediately preceding the most recently completed financial year

(a) stated its intention to abandon the index;

(b) explained the reason(s) for this change; and

(c) compared your company's total return with that of the elected additional index.

**10.8** You may include comparisons using performance measures in addition to total return, such as return on average common shareholders' equity, so long as your company's compensation committee (or other board committee performing equivalent functions or in the absence of any such committee the entire board of directors) describes the link between that measure and the level of executive compensation in the report required by Item 9.

**Item 11 Compensation of Directors**

**11.1** Disclose the following under the "Compensation of Directors" heading:

(a) any standard compensation arrangements, stating amounts, earned by directors of your company for their services as directors from your company and its subsidiaries during the most recently completed financial year, including any additional amounts payable for committee participation or special assignments;

(b) any other arrangements, stating the amounts paid and the name of the director, under which directors were compensated for their services as directors from your company and its subsidiaries during the most recently completed financial year; and

(c) any other arrangements, stating the amounts paid and the name of the director, under which directors of your company were compensated for services as consultants or experts, by your company and its subsidiaries during the most recently completed financial year.

**11.2** If information required by section 11.1 is provided in response to another item of this Form, a cross-reference to where the information is provided satisfies section 11.1.

**Item 12 Unincorporated Issuers**

**12.1** Unincorporated issuers must report

(a) a description of and amount of fees or other compensation paid by the issuer to individuals acting as directors or trustees of the issuer for the most recently completed financial year; and

(b) a description of and amount of expenses reimbursed by the issuer to such individuals as directors or trustees during the most recently completed financial year.

**12.2** The information required by this Item may be disclosed in the issuer's annual financial statements instead.

**Item 13 Venture Issuers**

**13.1** A venture issuer may omit the disclosure required by Items 5, 6, 8, 9 and 10. A venture issuer must, in a narrative that accompanies the table required in section 4.1, disclose which grants of options or SARs result from repricing and explain in reasonable detail the basis for the repricing.

**Item 14 Issuers Reporting in the United States**

**14.1** Except as provided in section 14.2, SEC issuers may satisfy the requirements of this Form by providing the information required by Item 402 "Executive Compensation" of Regulation S-K under the 1934 Act.

**14.2** Section 14.1 is not available to an issuer that, as a foreign private issuer, satisfies Item 402 of Regulation S-K by providing the information required by Items 6.B "Compensation" and 6.E.2 "Share Ownership" of Form 20-F under the 1934 Act.

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# Implementing Rule

**NOTICE**
**OF**
**RULE 51-801 *IMPLEMENTING NATIONAL INSTRUMENT 51-102 CONTINUOUS DISCLOSURE OBLIGATIONS* AND COMPANION POLICY 51-801CP *IMPLEMENTING NATIONAL INSTRUMENT 51-102 CONTINUOUS DISCLOSURE OBLIGATIONS***

**AND AMENDMENTS TO**

**COMMISSION RULE 51-501 *AIF & MD&A (RULE 51-501)***
**COMMISSION RULE 52-501 *FINANCIAL STATEMENTS (RULE 52-501)***
**COMMISSION RULE 54-501 *PROSPECTUS DISCLOSURE (RULE 54-501)***
**COMMISSION RULE 56-501 *RESTRICTED SHARES (RULE 56-501)***
***AND TO COMMISSION FORM 41-501F1***

**AND REVOCATION OF RULES 51-501, 52-501 AND 54-501**

**AND AMENDMENTS TO**

**COMPANION POLICY 51-501CP TO COMMISSION RULE 51-501 *AIF & MD&A (51-501CP) AND* COMPANION POLICY 52-501CP TO COMMISSION RULE 52-501 *FINANCIAL STATEMENTS (52-501CP)***

**AND**

**RESCISSION OF 51-501CP, 52-501CP,**
**COMMISSION POLICY 52-601CP *APPLICATIONS FOR EXEMPTIONS FROM PREPARATION AND MAILING OF INTERIM FINANCIAL STATEMENTS, ANNUAL FINANCIAL STATEMENTS AND PROXY SOLICITATION MATERIAL (52-601CP)***
**AND**
**COMMISSION POLICY 51-603CP *RECIPROCAL FILINGS (51-603CP)***

**AND**

**REGULATION AMENDING REGULATION 1015 OF R.R.O. 1990**

**Implementing Rule and Companion Policy**

The Commission has, under section 143 of the Act, made Rule 51-801 *Implementing National Instrument 51-102 Continuous Disclosure Obligations,* including the consequential amendments listed below, (the Implementing Rule) and adopted Companion Policy 51-801CP (the Companion Policy). The Implementing Rule and the Companion Policy are together referred to as the Implementing Instrument. In Ontario, the Implementing Rule has been made and the Policy has been adopted. The Implementing Rule and other required materials were delivered to the Minister of Finance on December 19, 2003**.** If the Minister does not approve or reject the Implementing Rule or return it for further consideration, it will come into force on March 30, 2004. The Companion Policy will become effective concurrently with the Implementing Rule.

**Consequential Amendments to and Revocations of Rules, Contained in the Implementing Rule**

The Implementing Rule includes:

a) related amendments to and subsequent revocation of Commission Rule 51-501 *AIF and MD&A* (Rule 51-501)

b) related amendments to and subsequent revocation of Commission Rule 52-501 *Financial Statements* (Rule 52-501)

c) revocation of Commission Rule 54-501 *Prospectus Disclosure* (Rule 54-501)

d) related amendments to Commission Rule 56-501 *Restricted Shares* (Rule 56-501) and

e) related amendments to Form 41-501F1 *Information Required In A Prospectus* (Form 41-501F1)

**Consequential Amendments to, and Rescissions of, Policies**

1. The Commission has adopted an amendment to Companion Policy 51-501 *AIF and MD&A* (51-501CP) to add, at the beginning of section 1.2,:

   "Rule 51-501 does not apply to financial years beginning on or after January 1, 2004 nor to interim periods in financial years beginning on or after January 1, 2004."

2. The Commission has rescinded, effective May 19, 2005, 51-501CP and Companion Policy 52-501CP *Financial Statements*.

3. The Commission has also rescinded, effective March 30, 2004:

   a. Commission Policy 52-601CP *Exemptions from preparation and mailing of Interim Financial Statement, Annual Financial Statements and Proxy Solicitation Material*; and

   b. Commission Policy 51-603CP *Reciprocal Filings*.

**Regulation Amending Regulation 1015 of R.R.O. 1990.**

Concurrently with making National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) and the Implementing Rule, the Commission has made a regulation that amends some provisions of Regulation 1015 of R.R.O. 1990 (the Regulation) and revokes some of its other provisions. This regulation is necessary or advisable to effectively implement NI 51-102 and the Implementing Rule. The regulation is subject to the approval of the Minister of Finance. This regulation makes the following amendments and revocations to the Regulation:

1. revokes subsection 3(1) and subclause 4(a)(ii) and replaces them with provisions that specify the form of material change report for:

   a. investment funds; and

   b. reporting issuers that are not investment funds

2. revokes section 5;

3. amends subsection 6(1) so that it only applies to investment funds;

4. amends section 160 to refer to Form 39 rather than Form 40;

5. revokes the heading of Part IX, "Proxies and Proxy Solicitation" and substitutes "Proxies and Proxy Solicitation re Investment Funds".

6. amends several provisions of Part IX so that Part IX only applies to investment funds;

7. revokes the titles of Form 27 and Form 30 and substitutes titles that only apply to investment funds; and

8. revokes Form 28 and Form 40.

If approved by the Minister of Finance, this regulation will come into force on the day that NI 51-102 comes into force except that the following will come into force on June 1, 2004: the changes referred to in items 5 and 6 above, the amendment of the title of Form 30 and the revocation of Form 40.

**Substance and Purpose**

The Implementing Rule is a local Ontario rule implementing National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) in Ontario. The Companion Policy provides information relating to the manner in which the Commission interprets or applies certain provisions of the Implementing Rule and NI 51-102.

The amendments listed above to policies and rules are being made to provide for transition between those instruments and the effective dates of NI 51-102 and to permit early adoption of Form 51-102F1 *AIF* and Form 51-102F2 *MD&A*.

The rescissions of policies and revocations of rules listed above are being made either because their subject matter is addressed by NI 51-102 or because they will not be needed when NI 51-102 is in force.

**Background**

On June 21, 2002 we published for comment the first version of NI 51-102 and the proposed Implementing Instrument (the 2002 Proposal). After considering the comments received on NI 51-102, we published revised versions of NI 51-102 and the Implementing Rule for comment on June 20, 2003 (the 2003 Proposal). The comment period expired in August, 2003. For additional background information on the 2002 Proposal and the 2003 Proposal, as well as a detailed summary of their contents, please refer to the notices that were published with those versions.

On the same date as publication of this Notice, the Canadian Securities Administrators (CSA) are publishing a Notice of the making of NI 51-102. For a summary of the changes made to NI 51-102, please refer to that CSA Notice.

**Comments**

We received no comments on the proposed Implementing Instrument in the 2002 Proposal. We received one comment on the proposed Implementing Instrument in the 2003 Proposal. The comment was that section 3.6 of the proposed Implementing Rule should be added as a note to Form 51-102F3 *Material Change Report.* We have not done this because Form 51-102F3 is a national form, whereas the Implementing Rule is a local Ontario rule.

**Changes to the Proposed Implementing Rule**

No material changes have been made to the Implementing Instrument that was published for comment on June 20, 2003. However, after further considering the 2003 Proposal, we have made some noteworthy amendments to it. The 2002 Proposal and the 2003 Proposal provided for revocation, amendment or rescission of the same rules and policies as listed in the Implementing Rule and in this Notice, effective as soon as the Implementing Rule would be effective. Amendments have been made to provide for transition between these instruments and the effective dates of NI 51-102 and to permit early adoption of Form 51-102F1 *AIF* and Form 51-102F2 *MD&A*.

**Questions may be referred to any of:**

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**Text of Proposed Rule**

The text of the Implementing Rule and the Companion Policy follow.

## ONTARIO SECURITIES COMMISSION RULE 51-801
## IMPLEMENTING NATIONAL INSTRUMENT 51-102 CONTINUOUS DISCLOSURE OBLIGATIONS

### PART 1 – DEFINITIONS

**1.1 DEFINITIONS**

(1) In this Rule, "NI 51-102" means "National Instrument 51-102 *Continuous Disclosure Obligations*".

(2) Each term used in this Rule that is defined or interpreted in Part 1 of NI 51-102 has the meaning ascribed to it in that Part.

### PART 2 – APPLICATION

**2.1 APPLICATION**

This Rule does not apply to investment funds.

### PART 3 – INTERRELATIONSHIP WITH LEGISLATION

**3.1 ANNUAL FINANCIAL STATEMENTS – CONTENT**

(1) The financial statements required under subsection 78(1) of the Act must include the statements, balance sheet and notes described in subsection 4.1(1) of NI 51-102.

(2) Subsections 4.5(1), 4.8(4) and 4.8(6) and sections 4.2, 4.7, and 4.10 of NI 51-102 apply to financial statements and auditor's reports required under section 78 of the Act as if any reference to section 4.1 in sections 4.2, 4.5, 4.7, 4.8 and 4.10 of NI 51-102 is a reference to section 78 of the Act.

(3) This section applies for financial years beginning on or after January 1, 2004.

**3.2 INTERIM FINANCIAL STATEMENTS – CONTENT**

(1) The financial statements required under subsection 77(1) of the Act must include the statements, balance sheet and notes described in subsections 4.3(1) and 4.3(2) of NI 51-102.

(2) Subsections 4.3(3), 4.3(4), 4.5(2), 4.8(4), 4.8(5), 4.8(7) and 4.8(8) and sections 4.4, 4.7 and 4.10 of NI 51-102 apply to financial statements required under subsection 77(1) of the Act as if any reference to section 4.3 in sections 4.4, 4.5, 4.7, 4.8 and 4.10 of NI 51-102 is a reference to subsection 77(1) of the Act.

(3) This section applies for interim periods in financial years beginning on or after January 1, 2004.

**3.3 FILING ANNUAL FINANCIAL STATEMENTS – EXEMPTION**

Section 78 of the Act does not apply to a reporting issuer that complies with subsections 4.5(1), 4.7(1), 4.7(2), 4.8(4) and 4.8(6) and sections 4.1, 4.2 and 4.10 of NI 51-102 for financial years beginning on or after January 1, 2004.

**3.4 FILING INTERIM FINANCIAL STATEMENTS – EXEMPTION**

Subsection 77(1) of the Act does not apply to a reporting issuer that complies with subsections 4.5(2), 4.7(1), 4.7(3), 4.7(4), 4.8(4), 4.8(5), 4.8(7) and 4.8(8) and sections 4.3, 4.4, and 4.10 of NI 51-102 for interim periods in financial years beginning on or after January 1, 2004.

**3.5 DELIVERING FINANCIAL STATEMENTS – EXEMPTION**

Section 79 of the Act does not apply to a reporting issuer that complies with section 4.6 of NI 51-102 in the case of

(a) annual financial statements for financial years beginning on or after January 1, 2004; and

(b) interim financial statements for interim periods in financial years beginning on or after January 1, 2004.

### 3.6 MATERIAL CHANGE REPORTS – FORM

Except as otherwise provided in National Instrument 71-101 *The Multijurisdictional Disclosure System* and in National Instrument 71-102 *Continuous Disclosure and other Exemptions Relating to Foreign Issuers*, every report required under subsection 75(2) of the Act must be a completed Form 51-102F3 except that the reference in Item 3 of Form 51-102F3 to section 7.1 of NI 51-102 shall be read as referring to subsection 75(1) of the Act and references in Items 6 and 7 of Form 51-102F3 to subsections 7.1(2), 7.1(5) or 7.1(7) of NI 51-102 shall be read as referring to subsections 75(3), 75(4) or 75(5), respectively, of the Act.

### 3.7 ISSUANCE OF MATERIAL CHANGE NEWS RELEASE – EXEMPTION

Subsection 75(1) of the Act does not apply to a reporting issuer that complies with paragraph 7.1(1)(a) of NI 51-102.

### 3.8 FILING MATERIAL CHANGE REPORT – EXEMPTION

Subsection 75(2) of the Act does not apply to a reporting issuer that complies with paragraph 7.1(1)(b) of NI 51-102.

### 3.9 ANNUAL FILING – EXEMPTION

Reporting issuers are exempt from subsection 81(2) of the Act.

### 3.10 INFORMATION CIRCULARS – FORM

Except as otherwise provided in National Instrument 71-101 *The Multijurisdictional Disclosure System* and in National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*, an information circular referred to in clause (a) or (b) of subsection 86(1) of the Act must be a completed Form 51-102F5, from and after June 1, 2004.

### 3.11 FILING INFORMATION CIRCULAR – EXEMPTION

Subsection 81(1) of the Act does not apply to a reporting issuer that complies with the requirement in section 9.3 of NI 51-102 to file an information circular, from and after June 1, 2004.

### 3.12 SOLICITATION OF PROXIES – EXEMPTION

Section 85 of the Act does not apply to a reporting issuer that complies with subsection 9.1(1) of NI 51-102, from and after June 1, 2004.

### 3.13 SENDING INFORMATION CIRCULAR – EXEMPTION

Section 86 of the Act does not apply to a reporting issuer that complies with subsection 9.1(3) of NI 51-102, from and after June 1, 2004.

## PART 4 – REVOCATIONS AND AMENDMENTS OF RULES

### 4.1 ONTARIO SECURITIES COMMISSION RULE 51-501 *AIF & MD&A* (Rule 51-501).

(1) Rule 51-501 is amended by:

(a) adding subsection 1.2(3):

(3) "This Rule does not apply to financial years beginning on or after January 1, 2004 nor to interim periods in financial years beginning on or after January 1, 2004."

(b) in subsection 2.1(1) inserting "or Form 51-102F2" after "Form 44-101F1".

(2) Rule 51-501 is revoked effective May 19, 2005.

### 4.2 ONTARIO SECURITIES COMMISSION RULE 52-501 *FINANCIAL STATEMENTS* (Rule 52-501)

(1) Rule 52-501 is amended by adding the following as new subsection 1.2(3):

(3) "This Rule does not apply to:

a) annual financial statements for financial years of the issuer beginning on or after January 1, 2004;

b) interim financial statements for interim periods in financial years of the issuer beginning on or after January 1, 2004.

(2) Rule 52-501 is revoked effective May 19, 2005.

**4.3 ONTARIO SECURITIES COMMISSION RULE 54-501 *PROSPECTUS DISCLOSURE IN INFORMATION CIRCULARS* (Rule 54-501)**

Rule 54-501 is revoked effective June 1, 2004.

**4.4 ONTARIO SECURITIES COMMISSION RULE 56-501 *RESTRICTED SHARES* (Rule 56-501)**:

(1) Rule 56-501 is amended by:

(a) deleting subsection 1.2(2);

(b) deleting section 2.1; and

(c) deleting the words "and an information circular concerning a proposed reorganization" in subsection 2.3(1).

(2) This section applies from and after May 19, 2005.

**4.5 FORM 41-501F1 *INFORMATION REQUIRED IN A PROSPECTUS***

Item 8.5 of Form 41-501F1 is amended by:

(a) in subsection(1), deleting the words "Form 44-101F2" and substituting the following:

"(1) Form 51-102F1; or

(2) Form 51-102F1 or Form 44-102F2, if the financial statements relate to financial years beginning before January 1, 2004."

(b) deleting subsection (5) and substituting the following:

"(5) Include MD&A for the interim financial statements of the issuer included in the prospectus, prepared in accordance with:

(1) Form 51-102F1; or

(2) Form 51-102F1 or Rule 51-501 *AIF and MD&A*, if the financial statements relate to an interim period in a financial year beginning on or after January 1, 2004."

**PART 5 – EFFECTIVE DATE AND TRANSITION**

**5.1 EFFECTIVE DATE**

This Rule comes into force on March 30, 2004.

**5.2 TRANSITION**

(1) Despite section 5.1, sections 3.1, 3.3 and paragraph 3.5(a) apply for financial years beginning on or after January 1, 2004.

(2) Despite section 5.1, sections 3.2, 3.4 and paragraph 3.5(b) apply for interim periods in financial years beginning on or after January 1, 2004.

(3) Despite section 5.1, sections 3.10, 3.11, 3.12 and 3.13 apply from and after June 1, 2004.

(4) Despite section 5.1, subsections 4.1(2) and 4.2(2) are effective on May 19, 2005.

(5) Despite section 5.1, section 4.3 is effective on June 1, 2004.

(6) Despite section 5.1, section 4.4 applies from and after May 19, 2005.

## COMPANION POLICY 51-801CP – TO ONTARIO SECURITIES COMMISSION RULE 51-801 IMPLEMENTING NATIONAL INSTRUMENT 51-102 CONTINUOUS DISCLOSURE OBLIGATIONS

**1.1** **Introduction** – The purpose of this Companion Policy is to provide information relating to the manner in which the Ontario Securities Commission (The Commission") interprets or applies certain provisions of Commission Rule 51-801 Implementing National Instrument 51-102 *Continuous Disclosure Obligations* (the "Implementing Rule") and National Instrument 51-102 *Continuous Disclosure Obligations* ("NI 51-102")

**1.2** **Interrelationship between NI 51-102 and the Securities Act Ontario (the "Act") –** NI 51-102 is intended to provide a single source of harmonized continuous disclosure obligations for reporting issuers other than investment funds. As a result, NI 51-102 sometimes repeats (without any substantive change) certain requirements that are also dealt with in the Act under Part XVIII *Continuous Disclosure* and Part XIX *Proxies and Proxy Solicitation*. In addition NI 51-102, through the Implementing Rule, varies or adds to some of the requirements contained in Parts XVIII and XIX of the Act. The cumulative effect of NI 51-102 and the Implementing Rule is that NI 51-102 supersedes the requirements applicable to reporting issuers (other than investment funds) found in Parts XVIII and XIX (other than sections 76 and 87 of the Act, the subject matter of which are not dealt with in NI51-102). Reporting Issuers can and should therefore refer to NI 51-102 in place of the requirements contained in Parts XVIII and XIX of the Act (other than sections 76 and 87).

# Continuous Disclosure and Other Exemptions Relating to Foreign Issuers

**NOTICE OF RULE**
**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***

**Introduction**

We, the Canadian Securities Administrators (CSA), have developed a nationally harmonized set of continuous disclosure (CD) requirements for reporting issuers, other than investment funds. The Notice of Rule - National Instrument 51-102 *Continuous Disclosure Obligations* provides information about the rule (the CD Rule).

Concurrently, we developed a nationally harmonized set of exemptions from certain CD and other requirements for foreign reporting issuers. A foreign reporting issuer is a reporting issuer, other than an investment fund, that is incorporated outside of Canada, unless the issuer has more than 50 percent of its voting shares held in Canada and one or more of the following is true: the majority of its directors and officers are Canadian residents, more than 50 percent of its assets are in Canada, or the business is principally administered in Canada. These exemptions are intended to ease compliance for foreign issuers and increase their access to Canadian capital markets.

The exemptions are contained in National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (the Instrument). Companion Policy 71-102CP *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (the Policy) provides guidance on interpreting the Instrument.

The Instrument has been made or is expected to be made by each member of the CSA, and will be implemented as

- a rule in each of Alberta, Manitoba, Ontario and Nova Scotia;
- an exemption order in British Columbia;
- a regulation in Saskatchewan and Québec; and
- a policy in all other jurisdictions represented by the CSA.

We also expect that the Policy will be adopted in all jurisdictions.

In Ontario, the Instrument has been made and the Policy has been adopted. The Instrument and other required materials were delivered to the Minister of Finance on December 19, 2003. If the Minister does not approve or reject the Instrument or return it for further consideration, it will come into force on March 30, 2004.

In Québec, the Instrument is a regulation made under section 331.1 of the Act and must be approved, with or without amendment, by the Minister of Finance. The Instrument will come into force on the date of its publication in the Gazette officielle du Québec or on any later date specified in the regulation. It must also be published in the Bulletin.

Provided all necessary ministerial approvals are obtained, the Instrument will come into force on March 30, 2004. The Policy will come into effect at the same time as the Instrument.

**Substance and Purpose**

The Instrument provides broad relief from most of the requirements in the CD Rule for two sub-categories of foreign reporting issuers - SEC foreign issuers and designated foreign issuers - on the condition that they comply with the CD requirements of the SEC or a designated foreign jurisdiction. It also exempts SEC foreign issuers and designated foreign issuers from certain other requirements of provincial and territorial securities legislation, including insider reporting and early warning, that are not contained in the CD Rule.

The substance and purpose of the Policy is to state our views on the interpretation and application of the Instrument.

**Background**

We first published the Instrument for comment on June 21, 2002. After considering the comments, we revised the Instrument and published the revised version for comment on June 20, 2003. For additional background and the summary of comments received during the first publication period, please refer to the notice we published on June 20, 2003.

**Summary of Written Comments Received by the CSA**

During the last comment period, we received submissions from two commenters on the Instrument. We have considered the comments received and thank all the commenters. The names of the commenters and a summary of the comments on the Instrument, together with our responses, are contained in Appendix A to this notice. The comments and our responses relating to the CD Rule are set out as an appendix to the Notice of Rule – *National Instrument 51-102 Continuous Disclosure Obligations*.

After considering the comments, we have made amendments to the Instrument and Policy. However, as these changes are not material, we are not republishing the Instrument or Policy for a further comment period.

**Summary of Changes to the Proposed Instrument/Policy**

This section describes the noteworthy changes made to the Instrument and Policy since the versions published for comment on June 20, 2003.

***The Instrument***

*Part 1 Definitions*

- The definition of *equity security* has been deleted. This term is defined in National Instrument 14-101 *Definitions*.
- The definition of *executive officer* has been revised to delete the requirement that, to be an executive officer, a person must be the chair or vice-chair on a full-time basis. This provision was inconsistent with paragraph (f) of the definition, which is not based on whether the person performs a policy-making function on a full- or part-time basis.
- We have deleted the definition of *group scholarship plan*, as this definition is no longer required.

*Part 3 Filing and Sending of Documents*

- We have revised the requirement to send documents to Canadian securityholders so the documents must be sent at the same time, or as soon as practicable after, the documents are sent under foreign securities laws. This will permit issuers to take any administrative steps necessary to complete the mail-out in Canada. We also now require foreign issuers to send copies to the Canadian securityholders in the same manner as they are sent to the foreign securityholders.

*Part 4 SEC Foreign Issuers*

- SEC foreign issuers are no longer required to issue a news release in Canada to rely on the exemption from material change reporting. We agreed with commenters that suggested this requirement was too onerous. It is sufficient that the foreign news release is filed in Canada.
- We have clarified certain of the exemptions to specifically exempt SEC foreign issuers from the requirements in the CD Rule relating to approval of certain CD documents. It was unclear from the original language that the exemptions extended to the approval requirements.
- We have deleted the exemption for annual reports. There is no longer a need for this exemption, as no Canadian jurisdictions require annual reports to be prepared or filed.
- We have deleted the exemption from the requirement to disclose outstanding share data. This exemption was unnecessary because the disclosure requirement is part of the MD&A disclosure, which SEC foreign issuers are already exempted from.
- In response to comments we received, we have added exemptions from the requirements to disclose voting results and file news releases containing financial information. The exemptions are subject to the SEC foreign issuer complying with its foreign obligations and filing a copy of any document filed with the SEC.

- In response to comments we received, we have added an exemption from the requirement to file copies of documents affecting the rights of securityholders and material contracts not entered into in the ordinary course of business. This exemption is not subject to any conditions. We do not require SEC foreign issuers to file copies of any documents filed with the SEC. Many of the documents will be filed in any event, when the issuer files copies of its Form 10-K in Canada. We decided the benefits of having the documents filed did not justify the potential costs to SEC foreign issuers.

- We have removed the condition in the insider reporting exemption that an insider of an SEC foreign issuer file copies of the insider reports it files with the SEC. We decided that the paper filing of foreign insider reports was too onerous a requirement, and noted that the corresponding exemption in the multijurisdictional disclosure system (MJDS) does not require insiders to file copies of their foreign insider reports.

- We have added an exemption from the change of auditor requirements for SEC foreign issuers. SEC foreign issuers were already able to rely on a similar exemption in the CD Rule, but the new exemption is less onerous. This is appropriate, given the SEC foreign issuer's limited connection to Canada.

*Part 5 Designated Foreign Issuers*

- Designated foreign issuers are no longer required to issue a news release in Canada to rely on the exemption from material change reporting. We agreed with commenters that suggested this requirement was too onerous. It is sufficient that the foreign news release is filed in Canada.

- We have clarified certain of the exemptions to specifically exempt designated foreign issuers from the requirements in the CD Rule relating to approval of certain CD documents. It was unclear from the original language that the exemptions extended to the approval requirements.

- We have deleted the exemption for annual reports. There is no longer a need for this exemption, as no Canadian jurisdictions require annual reports to be prepared or filed.

- We have deleted the exemption from the requirement to disclose outstanding share data. This exemption was unnecessary because the disclosure requirement is part of the MD&A disclosure, which designated foreign issuers are already exempted from.

- In response to comments we received, we have added exemptions from the requirements to disclose voting results and file news releases containing financial information. The exemptions are subject to the designated foreign issuer complying with its foreign obligations and filing a copy of any document filed with its foreign regulatory authority.

- We have removed the condition in the insider reporting exemption that an insider of a designated foreign issuer file copies of the insider reports it files with the foreign regulatory authority. We decided that the paper filing of foreign insider reports was too onerous a requirement.

- In response to comments we received, we have added an exemption from the requirement to file copies of documents affecting the rights of securityholders and material contracts not entered into in the ordinary course of business. This exemption is not subject to any conditions. We did not require designated foreign issuers to file copies of any documents filed with its foreign regulatory authority. We determined it would be too onerous to require designated foreign issuers whose documents will often not be in French or English to have these documents translated. We decided the benefits of having the documents filed did not justify the potential costs to designated foreign issuers, particularly given their limited connection to Canada.

***The Policy***

- We have updated the Policy, as necessary, to reflect the changes to the Instrument discussed above.

- In response to comments, we have clarified in the Policy that, in determining the percentage of assets located in Canada, the issuer should look to the value of the assets recorded in its most recent consolidated financial statements, either annual or interim.

- We have clarified in the Policy that foreign issuers do not have to file multiple copies of their foreign disclosure documents. If the document is filed once, the issuer can then just cross-reference that filing to satisfy the conditions of other exemptions.

- We have revised the Policy to specify all of the requirements in the CD Rule that SEC foreign issuers and designated foreign issuers are not exempted from in the Instrument. This will make it easier for those issuers to determine what their CD obligations are.

**Questions**

Please refer your questions to any of:

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**National Instrument**

The text of the Instrument follows, except in British Columbia.

December 19, 2003.

## Appendix A
## Summary of Comments and CSA Responses

### Part I Background

On June 20, 2003 the CSA published for comment, revised versions of the CD Rule and the Instrument. The comment period expired on August 19, 2002. The CSA received submissions relating to the Instrument from the two commenters identified in Schedule 1.

The CSA have considered the comments received and thank all commenters for providing their comments.

### Part II Comments on the Instrument

**General**

One commenter supported the goal of developing and implementing exemptions for foreign issuers.

*No response required.*

One commenter suggested foreign issuers that previously obtained discretionary relief should be fully grandfathered, and all new provisions in the CD Rule should not apply to them. The commenter suggested this is particularly the case where the Québec Securities Commission required certain parent companies of exchangeable share issuers to become reporting issuers, then granted continuous disclosure relief.

*Response: Under section 13.2 of the CD Rule, foreign issuers may rely on prior relief obtained in a jurisdiction, if the prior relief was granted by the jurisdiction from a provision substantially similar to the CD Rule. When discretionary relief is granted, each jurisdiction considers if it is appropriate to grant relief from the requirements that actually exist in that jurisdiction. The conditions to the relief reflect this. It would not be appropriate, and is in fact beyond the legislative authority in some jurisdictions, to retroactively extend the relief to areas that did not exist at the time the order was originally granted. We also note that the Instrument provides exemptions from most of the requirements of the CD Rule for SEC foreign issuers and designated foreign issuers, provided certain conditions are met. The exemptions in the Instrument reflect the CSA's current position on when it is appropriate for foreign issuers to not have to comply with the CD obligations in the CD Rule.*

One commenter said sections 4.9 and 4.10, and Parts 8, 11, and 12 of the CD Rule should not apply to foreign public companies. With regard to the notice of a restructuring under section 4.9 of the CD Rule, the commenter said foreign issuers will often not consult Canadian counsel in connection with foreign transactions, and interested securityholders can readily find the information they want to know about the foreign issuer.

*Response: The CSA agree that SEC foreign issuers and designated foreign issuers should be given exemptions from sections 11.3 and 11.4 of the CD Rule relating to disclosing voting results, and filing news releases containing financial information. We have added these exemptions, subject to the issuer complying with its foreign obligations and filing a copy of any document filed with its foreign regulatory authority. The CSA also agree that an exemption should be provided from Part 12 of the CD Rule. The benefit of having these documents filed does not justify the burden for SEC foreign issuers and designated foreign issuers.*

*The Instrument already substantially provides exemptions from section 4.10 and Part 8 of the CD Rule. For example, designated foreign issuers are exempt from the change in year-end requirements under section 5.16. SEC foreign issuers can rely on the exemption from the change in year-end requirements for SEC issuers in the CD Rule. SEC foreign issuers and designated foreign issuers are exempt from the financial statement requirements under sections 4.3 and 5.4 of the Instrument. These financial statement exemptions apply to financial statements filed after a reverse takeover. In addition, a new exemption has been added for SEC foreign issuers from the change of auditor requirements in the CD Rule. This exemption is broader than the exemption provided to SEC issuers under the CD Rule, and is more consistent with the general approach to foreign issuers under the Instrument.*

*We disagree that exemptions should be provided from the other sections named by the commenter. In the case of sections 4.9 and 11.2, it is important for both the regulatory authorities and Canadian securityholders to know if there has been a change in the nature or reporting obligations of the reporting issuer. Filing this information will ensure that Canadian securityholders know when and how to obtain the reporting issuer's documents, and that the regulatory authorities are able to respond accurately to their reporting issuers. In the case of section 11.1, the requirement to file documents sent to public securityholders ensures that the documents are available to all Canadian securityholders.*

*It would not be appropriate to extend these exemptions to any foreign public issuer. Unless a reporting issuer can meet the tests set out in the definitions of SEC foreign issuer and designated foreign issuer, it is appropriate for the reporting issuer to comply with the reporting obligations set out in the CD Rule.*

One commenter said exemptions should be given to foreign companies from the takeover bid and issuer bid requirements, as the current limits in securities legislation are too low, and these transactions are like going private transactions. The commenter suggested a complete exemption may be appropriate in most cases.

*Response: The Instrument is intended to address continuous disclosure and periodic filing obligations by reporting issuers and insiders. Exemptions from the takeover bid and issuer bid requirements are beyond the scope of this project. These areas, and the exemptions currently in securities legislation, are currently being reviewed in the context of the CSA's Uniform Securities Law project.*

One commenter said early warning, insider reports, outstanding share reports, and so on, should not be required to be filed in Canada under the exemptions. Canada is a minor player in the international capital markets, and filing obligations alone will dissuade further access into the market. In general, the commenter said foreign filing requirements should be minimized or avoided wherever possible.

*Response: We agree that compliance with CD requirements for SEC foreign issuers and designated foreign issuers should be made as simple as possible. This goal must be balanced, though, with the rights of Canadian securityholders of reporting issuers to have easy access to information. The conditions in the Instrument that foreign reporting issuers file copies of their foreign documents to rely on the exemptions, achieve this balance. We have, though, revised the insider reporting exemption so insiders will not be required to file copies of the insider reports they file in their foreign jurisdiction.*

**Part 1 Definitions**

One commenter questioned, in the definition of *eligible foreign reporting issuer,*

- what are the assets or business of a holding entity that has subsidiaries or investees
- how one determines the location of securities
- if the 50% asset test is to be based on book or estimated market value.

The commenter also suggested the term *senior officer*, rather than *executive officer*, should be used in the definition, as it is less broad.

*Response: The definition of* eligible foreign reporting issuer *[now* foreign reporting issuer*] has been revised to clarify that it is the consolidated assets of the issuer that must be considered when applying the definition. We have also clarified in the Policy that the asset test is based on the value recorded in the most recent consolidated financial statements, either annual or interim, of the issuer. An issuer must consider its specific circumstances in determining the location of its assets. For example, if an issuer holds securities in another company, and the investment is accounted for by the cost method, or is marked to market, the issuer may consider the location of the other company's head office for the purpose of determining the location of that investment.*

*We have not replaced the reference to* executive officer *in the definition with* senior officer*. The definition is intended to test whether the reporting issuer is carrying on business predominantly outside of Canada. Part of this is ensuring that the issuer's decisions are being made, and operations directed, from outside of Canada. As a result, it is the location of the chair, vice-chair, president, vice-president, and other people performing policy-making functions, that is relevant, not the location of the issuer's five highest paid employees.*

One commenter said the definition of *equity security* should not include securities that have a residual right to participate in earnings. Instead, it should be limited to a security that carries a residual right to participate in the assets of an issuer on the liquidation or winding-up of the reporting issuer.

*Response: We have deleted the definition of* equity security *in the Instrument as the term is already defined in National Instrument 14-101* Definitions*. That definition refers back to the definition of equity security in securities legislation. It would not be appropriate to change that definition, which has been used for many purposes in many different national and multilateral instruments, in this Instrument.*

One commenter noted the definition of *exchange-traded security*

- excludes all foreign-listed or quoted securities,
- in provinces other than Ontario, appears to exclude TSX listed securities, and,
- in Ontario, excludes TSX Venture listed securities.

*Response: The term is only used in the definition of marketplace. As the definition of marketplace also encompasses exchanges and quotation systems, regardless of where they are located, the limitations to the definition of exchange-traded security suggested by the commenter are irrelevant.*

One commenter suggested paragraphs (e) or (f) of the definition of *executive officer* may be over-broad, as there could be a large number of policy-making personnel (for example, in respect of the privacy policy, or the environmental policy) that should not be considered "executive officers". The terms *senior officer* or *officer* would be more appropriate.

*Response: We disagree. The definition of executive officer is designed to capture persons that are directing the operations of the reporting issuer and making its significant decisions. This includes the people responsible for approving a policy direction and ensuring the policy is implemented and followed (that is, the making of the policy for the issuer). This group is distinct from those personnel that simply develop the policies for consideration. Given this distinction, we do not agree that the definition is too broad.*

**Part 3 Filing and Sending of Documents**

One commenter said the requirement to send documents to Canadian securityholders should permit the sending to be done promptly after the documents are sent under U.S. federal securities law or the laws or requirements of a designated foreign jurisdiction. The commenter noted additional administrative steps will likely be required for many foreign issuers to send the materials into Canada.

*Response: We agree that it may be difficult for SEC foreign issuers and designated foreign issuers to mail documents to their Canadian securityholders at the same time they mail them to their foreign securityholders. We have revised the wording in section 3.2 to require the mailing at the same time as, or as soon as practicable after, the document is sent to the foreign securityholders. This is consistent with the timing for filing copies of documents that are filed or furnished to the SEC or a foreign regulatory authority in section 3.1.*

**Part 4 SEC Foreign Issuers**

One commenter said the material change reporting exemption should not require the issuer to issue and file a press release or other document in Canada, as it is costly, and Canadian securityholders can instead access the information on the internet.

*Response: We agree that SEC foreign issuers should not be required to issue in Canada their foreign news releases relating to material changes. We have removed this condition from the exemption. We do not agree that the news release should not have to be filed here. Under the Instrument, Canadian securityholders should have access to the same information about SEC foreign issuers as securityholders in the issuer's local jurisdiction. That information is made available by the issuer filing it with the appropriate securities regulatory authorities.*

Two commenters said that the insider reporting exemption should be available even if the SEC foreign issuer is a SEDI issuer. The commenters suggested the exemption currently discourages issuers from becoming electronic filers under National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)* (NI 13-101). One commenter said the requirement that the issuer not be a SEDI issuer is inconsistent with the approach in the Instrument that compliance with foreign laws will in most circumstances be sufficient.

*Response: We have not revised the exemption as suggested. As SEDI has made filing and retrieving insider reports easier for insiders and investors, we do not agree that it is necessary, or appropriate, to extend the exemption at this time. Although the Instrument provides that compliance with foreign laws will in most circumstances be sufficient, this is based on the issuer's foreign disclosure documents being filed in Canada. The system for filing insider reports electronically through SEDI does not, however, permit the filing of foreign documents, and paper insider filings would not provide useful, accessible disclosure, If an issuer in an electronic filer on SEDAR, its insiders should file on SEDI.*

One commenter suggested the exemption for going private transactions and related party transactions should conform to section 5.12 of proposed Ontario Securities Commission Rule 71-802 [now the Instrument], as U.S. issuers should not be treated worse than those of other countries.

*Response: SEC foreign issuers are not treated worse than those of other countries in the exemption for going private transactions and related party transactions. To rely on the exemption, SEC foreign issuers cannot have more than 20% of its equity securities held by Canadian residents. Designated foreign issuers, by definition, cannot have more than 10% of their equity securities held by Canadians. Further, the exemption in the Instrument is consistent with similar treatment of U.S. issuers under MJDS.*

One commenter noted that staff of the Ontario Securities Commission have proposed changes to the term *going private transaction* which should be monitored for consistency with the Instrument.

*Response: We have reviewed the proposed and confirmed that changes are not required to the Instrument as a result of the revisions.*

**Part 5 Designated Foreign Issuers**

One commenter said the material change reporting exemption should not require the issuer to issue and file a press release or other document in Canada, as it is costly, and Canadian securityholders can instead access the information on the internet.

*Response: We agree that designated foreign issuers should not be required to issue in Canada their foreign news releases relating to material changes. We have removed this condition from the exemption. We do not agree that the news release should not have to be filed here. Under the Instrument, Canadian securityholders should have access to the same information about designated foreign issuers as securityholders in the issuer's local jurisdiction. That information is made available by the issuer filing it with the appropriate securities regulatory authorities.*

Two commenters said that the insider reporting exemption should be available even if the designated foreign issuer is a SEDI issuer. The commenters suggested the exemption currently discourages issuers from becoming electronic filers under NI 13-101. One commenter said the requirement that the issuer not be a SEDI issuer is inconsistent with the approach in the Instrument that compliance with foreign laws will in most circumstances be sufficient.

*Response: We have not revised the exemption as suggested. As SEDI has made filing and retrieving insider reports easier for insiders and investors, we do not agree that it is necessary, or appropriate, to extend the exemption at this time. Although the Instrument provides that compliance with foreign laws will in most circumstances be sufficient, this is based on the issuer's foreign disclosure documents being filed in Canada. They system for filing insider reports electronically through SEDI does not, however, permit the filing of foreign documents, and paper insider filings would not provide useful, accessible disclosure, If an issuer in an electronic filer on SEDAR, its insiders should file on SEDI.*

**Schedule 1 to Appendix A**
**List of Commenters**

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August 11, 2003

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

**Table of Contents**

**PART 7 EFFECTIVE DATE**

7.1 Effective Date

**NATIONAL INSTRUMENT 71-102**
***CONTINUOUS DISCLOSURE AND OTHER EXEMPTIONS RELATING TO FOREIGN ISSUERS***

## 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 foreign 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;

"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;

"convertible security" means a security of an issuer that is convertible into, or carries the right of the holder to acquire, or of the issuer to cause the acquisition of, a security of the same issuer;

"designated foreign issuer" means a foreign reporting issuer

(a) that does not have a class of securities registered under section 12 of the 1934 Act and is not required to file reports under section 15(d) of the 1934 Act;

(b) that is subject to foreign disclosure requirements; and

(c) for which the total number of equity securities owned, directly or indirectly, by residents of Canada does not exceed 10 per cent, on a fully-diluted basis, of the total number of equity securities of the issuer, calculated in accordance with sections 1.2 and 1.3;

"designated foreign jurisdiction" means Australia, France, Germany, Hong Kong, Italy, Japan, Mexico, the Netherlands, New Zealand, Singapore, South Africa, Spain, Sweden, Switzerland or the United Kingdom of Great Britain and Northern Ireland;

"exchangeable security" means a security of an issuer that is exchangeable for, or carries the right of the holder to acquire, or of the issuer to cause the acquisition of, a security of another issuer;

"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;

"foreign disclosure requirements" means the requirements to which a foreign reporting issuer is subject concerning the disclosure made to the public, to securityholders of the issuer or to a foreign regulatory authority

(a) relating to the foreign reporting issuer and the trading in its securities; and

(b) that is made publicly available in the foreign jurisdiction under

(i) the securities laws of the foreign jurisdiction in which the principal trading market of the foreign reporting issuer is located; or

(ii) the rules of the marketplace that is the principal trading market of the foreign reporting issuer;

"foreign regulatory authority" means a securities commission, exchange or other securities market regulatory authority in a designated foreign jurisdiction;

"foreign reporting issuer" means a reporting issuer, other than an investment fund, that is incorporated or organized under the laws of a foreign jurisdiction, unless

(a) outstanding voting securities carrying more than 50 per cent of the votes for the election of directors are owned, directly or indirectly, by residents of Canada; and

(b) any one or more of the following is true:

(i) the majority of the executive officers or directors of the issuer are residents of Canada;

(ii) more than 50 per cent of the consolidated assets of the issuer are located in Canada; or

(iii) the business of the issuer is administered principally in Canada;

"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 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

(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;

"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;

"MD&A" means a completed Form 51-102F1 *Management's Discussion & Analysis* or, in the case of an SEC foreign 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;

"multiple convertible security" means a security of an issuer that is convertible into, or exchangeable for, or carries the right of the holder to acquire, or of the issuer to cause the acquisition of, a convertible security, an exchangeable security or another multiple convertible security;

"Nasdaq" means Nasdaq National Market and Nasdaq SmallCap Market;

"NI 52-107" means National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*;

"non-redeemable investment fund" means any issuer

(a) where contributions of securityholders are pooled for investment;

(b) where securityholders do not have day-to-day control over the management and investment decisions of the issuer, whether or not they have the right to be consulted or to give directions; and

(c) whose securities do not entitle the securityholder to receive on demand, or within a specified period after demand, an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets of the issuer;

"old financial year" means the financial year of a reporting issuer that immediately precedes its transition year;

"principal trading market" means the published market on which the largest trading volume in the equity securities of the issuer occurred during the issuer's most recent financial year that ended before the date the determination is being made;

"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;

"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;

"SEC foreign issuer" means a foreign reporting 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;

"SEDI issuer" has the meaning ascribed to that term in National Instrument 55-102 *System for Electronic Disclosure by Insiders (SEDI)*;

"transition year" means the financial year of reporting issuer in which the issuer changes its financial year-end;

"TSX" means the Toronto Stock Exchange;

"underlying security" means a security issued or transferred, or to be issued or transferred, in accordance with the terms of a convertible security, an exchangeable security or a multiple convertible security;

"U.S. market" means an exchange in the United States of America or Nasdaq; and

"U.S. market requirements" means the requirements of the U.S. market on which the reporting issuer's securities are listed or quoted.

**1.2 Determination of Canadian Shareholders**

(1) For the purposes of section 4.14 and paragraph (c) of the definition of "designated foreign issuer", a reference to equity securities owned, directly or indirectly, by residents of Canada, includes

(a) the underlying securities that are equity securities of the foreign reporting issuer; and

(b) the equity securities of the foreign reporting issuer represented by an American depositary receipt or an American depositary share issued by a depositary holding equity securities of the foreign reporting issuer.

(2) For the purposes of paragraph (a) of the definition of "foreign reporting issuer", securities represented by American depositary receipts or American depositary shares issued by a depositary holding voting securities of the foreign reporting issuer must be included as outstanding in determining both the number of votes attached to securities owned, directly or indirectly, by residents of Canada and the number of votes attached to all of the issuer's outstanding voting securities.

**1.3 Timing for Calculation of Designated Foreign Issuer and Foreign Reporting Issuer**

For the purposes of paragraph (c) of the definition of "designated foreign issuer", paragraph (a) of the definition of "foreign reporting issuer" and section 4.14, the calculation is made,

(a) if the issuer has not completed a financial year since becoming a reporting issuer, at the date that the issuer became a reporting issuer; and

(b) for all other issuers,

(i) for the purpose of financial statement and MD&A filings under this Instrument, on the first day of the most recent financial year or year-to-date interim period for which operating results are presented in the financial statements or MD&A; and

(ii) for the purpose of other continuous disclosure filing obligations under this Instrument, on the first day of the issuer's current financial year.

**PART 2 LANGUAGE OF DOCUMENTS**

**2.1 French or English**

(1) A person or company must file a document required to be filed under this Instrument in either French or English.

(2) Notwithstanding subsection (1), if a person or company files a document only in French or only in English but delivers to securityholders of an issuer 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.

**2.2 Filings Prepared in a Language other than French or English**

(1) If a person or company files a document that is required to be filed under this Instrument that is a translation of a document prepared in a language other than French or English, the person or company must file the document upon which the translation was based.

(2) A foreign reporting issuer filing a document upon which the translation was based under subsection (1) must attach to the document a certificate as to the accuracy of the translation.

## PART 3 FILING AND SENDING OF DOCUMENTS

### 3.1 Timing of Filing of Documents

A person or company filing a document under this Instrument must file the document at the same time as, or as soon as practicable after, the filing or furnishing of the document to the SEC or to a foreign regulatory authority.

### 3.2 Sending of Documents to Canadian Securityholders

If a person or company sends a document to holders of securities of any class under U.S. federal securities law, or the laws or requirements of a designated foreign jurisdiction, and that document is required to be filed under this Instrument, then the document must be sent in the same manner and at the same time, or as soon as practicable after, to holders of securities of that class in the local jurisdiction.

## PART 4 SEC FOREIGN ISSUERS

### 4.1 Amendments and Supplements

Any amendments or supplements to disclosure documents filed by an SEC foreign issuer under this Instrument must also be filed.

### 4.2 Material Change Reporting

An SEC foreign issuer is exempt from securities legislation requirements relating to disclosure of material changes if the issuer

(a) complies with the U.S. market requirements for making public disclosure of material information on a timely basis;

(b) complies with foreign disclosure requirements for making public disclosure of material information on a timely basis, if securities of the issuer are not listed or quoted on a U.S. market;

(c) promptly files each news release issued by it for the purpose of complying with the requirements referred to in paragraph (a) or (b);

(d) complies with the requirements of U.S. federal securities law for filing or furnishing current reports to the SEC; and

(e) files the current reports filed with or furnished to the SEC.

### 4.3 Financial Statements

An SEC foreign issuer satisfies securities legislation requirements relating to the preparation, approval, filing and delivery of its interim financial statements, and annual financial statements and auditor's reports on annual financial statements if it

(a) complies with the requirements of U.S. federal securities law relating to interim financial statements, annual financial statements and auditor's reports on annual financial statements;

(b) complies with the U.S. market requirements relating to interim financial statements and annual financial statements, if securities of the issuer are listed or quoted on a U.S. market;

(c) files the interim financial statements, annual financial statements and auditor's reports on annual financial statements filed with or furnished to the SEC or a U.S. market;

(d) complies with section 3.2 of this Instrument; and

(e) complies with NI 52-107 as it relates to financial statements of the issuer that are included in any documents specified in paragraph (c).

**4.4 AIFs and MD&A**

An SEC foreign issuer satisfies securities legislation requirements relating to the preparation, approval, filing and delivery of AIFs and MD&A if it

(a) complies with the requirements of U.S. federal securities law relating to annual reports, quarterly reports, current reports and management's discussion and analysis;

(b) files each annual report, quarterly report, current report and management's discussion and analysis filed with or furnished to the SEC;

(c) complies with section 3.2 of this Instrument; and

(d) complies with NI 52-107 as it relates to financial statements of the issuer that are included in any documents specified in paragraph (b).

**4.5 Business Acquisition Reports**

An SEC foreign issuer satisfies securities legislation requirements relating to the preparation and filing of business acquisition reports if it

(a) complies with the requirements of U.S. federal securities law relating to business acquisition reports;

(b) files each business acquisition report filed with or furnished to the SEC;

(c) complies with section 3.2 of this Instrument; and

(d) complies with NI 52-107 as it relates to financial statements that are included in any documents specified in paragraph (b).

**4.6 Proxies and Proxy Solicitation by the Issuer and Information Circulars**

An SEC foreign issuer satisfies securities legislation requirements relating to information circulars, proxies and proxy solicitation if it

(a) complies with the requirements of U.S. federal securities law relating to proxy statements, proxies and proxy solicitation;

(b) files all material relating to a meeting of securityholders that is filed with or furnished to the SEC;

(c) sends each document filed under paragraph (b) to securityholders in the local jurisdiction in the manner and at the time required by U.S. federal securities laws and U.S. market requirements; and

(d) complies with NI 52-107 as it relates to financial statements of the issuer that are included in any documents specified in paragraph (b).

**4.7 Proxy Solicitation by Another Person or Company**

(1) A person or company, other than the SEC foreign issuer, satisfies securities legislation requirements relating to information circulars, proxies and proxy solicitation with respect to an SEC foreign issuer if the person or company complies with the requirements of subsection 4.6.

(2) If a proxy solicitation is made with respect to an SEC foreign issuer by a person or company other than the SEC foreign issuer and the person or company soliciting proxies lacks access to the relevant list of securityholders of the SEC foreign issuer, the exemption in subsection (1) is not available, if

(a) the aggregate published trading volume of the class on the TSX and the TSX Venture Exchange exceeded the aggregate published trading volume of the class on all U.S. markets

(i) for the 12 calendar month period before commencement of the proxy solicitation, if there is no other proxy solicitation for securities of the same class in progress, or

(ii) for the 12 calendar month period before commencement of the first proxy solicitation, if another proxy solicitation for securities of the same class is already in progress;

(b) the information disclosed by the SEC foreign issuer in its most recent Form 10-K, Form 10-KSB or Form 20-F filed with the SEC under the 1934 Act demonstrated that paragraph (a) of the definition of "foreign reporting issuer" applied to the SEC foreign issuer; or

(c) the person or company soliciting proxies reasonably believes that paragraph (a) of the definition of "foreign reporting issuer" applies to the SEC foreign issuer.

**4.8 Disclosure of Voting Results**

An SEC foreign issuer is exempt from securities legislation requirements relating to disclosure of securityholder voting results if the issuer

(a) complies with the requirements of U.S. federal securities law relating to disclosure of securityholder voting results; and

(b) files a copy of all disclosure of securityholder voting results filed with or furnished to the SEC.

**4.9 Filing of Certain News Releases**

An SEC foreign issuer is exempt from securities legislation requirements relating to the filing of news releases that disclose information regarding its results of operations or financial condition if the issuer

(a) complies with the requirements of U.S. federal securities laws relating to the filing of news releases disclosing financial information; and

(b) files a copy of each news release disclosing financial information that is filed with or furnished to the SEC.

**4.10 Filing of Certain Documents**

An SEC foreign issuer is exempt from securities legislation requirements relating to the filing of documents affecting the rights of securityholders and the filing of material contracts.

**4.11 Early Warning**

A person or company is exempt from the early warning requirements and acquisition announcement provisions of securities legislation in respect of securities of an SEC foreign issuer that has a class of securities registered under section 12 of the 1934 Act if the person or company

(a) complies with the requirements of U.S. federal securities law relating to the reporting of beneficial ownership of equity securities of the SEC foreign issuer; and

(b) files each report of beneficial ownership that is filed with or furnished to the SEC.

**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

(a) the SEC foreign issuer is not a SEDI issuer; and

(b) the insider complies with the requirements of U.S. federal securities law relating to insider reporting.

**4.13 Communication with Beneficial Owners of Securities**

An SEC foreign issuer that has a class of securities registered under section 12 of the 1934 Act satisfies securities legislation requirements relating to communications with, delivery of materials to and conferring voting rights upon non-registered holders of its securities who hold their interests in the securities through one or more intermediaries if the issuer

(a) complies with the requirements of Rule 14a-13 under the 1934 Act for any depositary and any intermediary whose last address as shown on the books of the issuer is in Canada; and

(b) complies with the requirements of National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* with respect to fees payable to intermediaries, for any depositary and any intermediary whose last address as shown on the books of the issuer is in Canada.

**4.14 Going Private Transactions and Related Party Transactions**

Securities legislation requirements relating to going private transactions and related party transactions, as those terms are used in securities legislation of the local jurisdiction, do not apply to an SEC foreign issuer carrying out a going private transaction or related party transaction if the total number of equity securities of the SEC foreign issuer owned, directly or indirectly, by residents of Canada, does not exceed 20 per cent, on a diluted basis, of the total number of equity securities of the SEC foreign issuer.

**4.15 Change of Auditor**

An SEC foreign issuer satisfies securities legislation requirements relating to a change of auditor if the issuer

(a) complies with the requirements of U.S. federal securities laws relating to a change of auditor; and

(b) files a copy of all materials relating to a change of auditor that are filed with or furnished to the SEC.

**4.16 Restricted Securities**

(1) Securities legislation continuous disclosure requirements relating to restricted securities do not apply in respect of SEC foreign issuers.

(2) Securities legislation minority approval requirements relating to restricted securities do not apply in respect of SEC foreign issuers.

**PART 5 DESIGNATED FOREIGN ISSUERS**

**5.1 Amendments and Supplements**

Any amendments or supplements to disclosure documents filed by a designated foreign issuer under this Instrument must also be filed.

**5.2 Mandatory Annual Disclosure by Designated Foreign Issuer**

To rely on this Part, a designated foreign issuer must, at least once a year, disclose in, or as an appendix to, a document that it is required by foreign disclosure requirements to send to its securityholders and that it sends to its securityholders in Canada

(a) that it is a designated foreign issuer as defined in this Instrument;

(b) that it is subject to the foreign regulatory requirements of a foreign regulatory authority; and

(c) the name of the foreign regulatory authority referred to in paragraph (b).

**5.3 Material Change Reporting**

A designated foreign issuer is exempt from securities legislation requirements relating to disclosure of material changes if the issuer

(a) complies with foreign disclosure requirements for making public disclosure of material information on a timely basis;

(b) promptly files each news release issued by it for the purpose of complying with the requirements referred to in paragraph (a); and

(c) files the documents disclosing the material information filed with or furnished to the foreign regulatory authority or disseminated to the public or securityholders of the issuer.

**5.4 Financial Statements**

A designated foreign issuer satisfies securities legislation requirements relating to the preparation, approval, filing and delivery of its interim financial statements, annual financial statements and auditor's reports on annual financial statements if it

(a) complies with the foreign disclosure requirements relating to interim financial statements, annual financial statements and auditor's reports on annual financial statements;

(b) files the interim financial statements, annual financial statements and auditor's reports on annual financial statements required to be filed with or furnished to the foreign regulatory authority;

(c) complies with section 3.2 of this Instrument; and

(d) complies with NI 52-107 as it relates to financial statements of the issuer that are included in any documents specified in paragraph (b).

**5.5 AIFs & MD&A**

A designated foreign issuer satisfies securities legislation requirements relating to the preparation, approval, filing and delivery of AIFs and MD&A if it

(a) complies with the foreign disclosure requirements relating to annual reports, quarterly reports and management's discussion and analysis;

(b) files each annual report, quarterly report and management's discussion and analysis required to be filed with or furnished to the foreign regulatory authority;

(c) complies with section 3.2 of this Instrument; and

(d) complies with NI 52-107 as it relates to financial statements of the issuer that are included in any documents specified in paragraph (b).

**5.6 Business Acquisition Reports**

A designated foreign issuer satisfies securities legislation requirements relating to the preparation and filing of business acquisition reports if it

(a) complies with the foreign disclosure requirements relating to business acquisitions;

(b) files each report in respect of a business acquisition required to be filed with or furnished to the foreign regulatory authority;

(c) complies with section 3.2 of this Instrument; and

(d) complies with NI 52-107 as it relates to financial statements that are included in any documents specified in paragraph (b).

**5.7 Proxies and Proxy Solicitation by the Issuer and Information Circulars**

A designated foreign issuer satisfies securities legislation requirements relating to information circulars, proxies and proxy solicitation if it

(a) complies with the foreign disclosure requirements relating to proxy statements, proxies and proxy solicitation;

(b) files all material relating to a meeting of securityholders that is filed with or furnished to the foreign regulatory authority;

(c) complies with section 3.2 of this Instrument; and

(d) complies with NI 52-107 as it relates to financial statements of the issuer that are included in any documents specified in paragraph (b).

**5.8 Proxy Solicitation by Another Person or Company**

(1) A person or company, other than the designated foreign issuer, satisfies securities legislation requirements relating to information circulars, proxies and proxy solicitation with respect to a designated foreign issuer if the person or company satisfies the requirements of section 5.7.

(2) If a proxy solicitation is made with respect to a designated foreign issuer by a person or company other than the designated foreign issuer and the person or company soliciting proxies lacks access to the relevant list of securityholders of the designated foreign issuer, the exemption in subsection (1) is not available, if

(a) the aggregate published trading volume of the class on the TSX and the TSX Venture Exchange exceeded the aggregate trading volume on securities marketplaces outside Canada

(i) for the 12 calendar months before commencement of the proxy solicitation, if there is no other proxy solicitation for securities of the same class in progress, or

(ii) for the 12 calendar month period before the commencement of the first proxy solicitation, if another proxy solicitation for securities of the same class is already in progress;

(b) the information disclosed by the designated foreign issuer in a document filed within the previous 12 months with a foreign regulatory authority, demonstrated that paragraph (a) of the definition of "foreign reporting issuer" applied to the designated foreign issuer; or

(c) the person or company soliciting proxies reasonably believes that paragraph (a) of the definition of "foreign reporting issuer" applies to the designated foreign issuer.

**5.9 Disclosure of Voting Results**

A designated foreign issuer is exempt from securities legislation requirements relating to disclosure of securityholder voting results if the issuer

(a) complies with the foreign disclosure requirements relating to disclosure of securityholder voting results; and

(b) files each report disclosing securityholder voting results that is filed with or furnished to a foreign regulatory authority.

**5.10 Filing of Certain News Releases**

A designated foreign issuer is exempt from securities legislation requirements relating to the filing of news releases that disclose information regarding its results of operations or financial condition if the issuer

(a) complies with the foreign disclosure requirements relating to the filing of news releases disclosing financial information; and

(b) files a copy of each news release disclosing financial information that is filed with or furnished to a foreign regulatory authority.

**5.11 Filing of Certain Documents**

A designated foreign issuer is exempt from securities legislation requirements relating to the filing of documents affecting the rights of securityholders and the filing of material contracts.

**5.12 Early Warning**

A person or company is exempt from the early warning requirements and acquisition announcement provisions of securities legislation in respect of securities of a designated foreign issuer if the person or company

(a) complies with the foreign disclosure requirements relating to reporting of beneficial ownership of equity securities of the designated foreign issuer; and

(b) files each report of beneficial ownership that is filed with or furnished to the foreign regulatory authority.

**5.13 Insider Reporting**

The insider reporting requirement does not apply to an insider of a designated foreign issuer if

(a) the designated foreign issuer is not a SEDI issuer; and

(b) the insider complies with the foreign disclosure requirements relating to insider reporting.

**5.14 Communication with Beneficial Owners of Securities**

A designated foreign issuer satisfies securities legislation requirements relating to communications with, delivery of materials to and conferring voting rights upon non-registered holders of its securities who hold their interests in the securities through one or more intermediaries if the issuer

(a) complies with foreign disclosure requirements relating to communication with beneficial owners of securities; and

(b) complies with the requirements of National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* with respect to fees payable to intermediaries, for any depositary and any intermediary whose last address as shown on the books of the issuer is in Canada.

**5.15 Going Private Transactions and Related Party Transactions**

Securities legislation requirements relating to going private transactions and related party transactions, as those terms are used in securities legislation of the local jurisdiction, do not apply to a designated foreign issuer carrying out a going private transaction or related party transaction.

**5.16 Change in Year-End**

A designated foreign issuer satisfies securities legislation requirements relating to a change in year-end if the issuer

(a) complies with foreign disclosure requirements relating to a change in year-end; and

(b) files a copy of all filings made under foreign disclosure requirements relating to the change in year-end.

**5.17 Change of Auditor**

A designated foreign issuer satisfies securities legislation requirements relating to a change of auditor if the issuer

(a) complies with foreign disclosure requirements relating to a change of auditor; and

(b) files a copy of all filings made under foreign disclosure requirements relating to the change of auditor.

**5.18 Restricted Securities**

(1) Securities legislation continuous disclosure requirements relating to restricted securities do not apply in respect of designated foreign issuers.

(2) Securities legislation minority approval requirements relating to restricted securities do not apply in respect of designated foreign issuers.

**PART 6 FOREIGN TRANSITION ISSUERS**

**6.1 Application**

This Part only applies in Ontario.

**6.2 Definition**

In this section, “foreign transition issuer” means an issuer

(a) that is not incorporated or organized under the laws of Canada or a jurisdiction of Canada;

(b) that is not an SEC foreign issuer or a designated foreign issuer;

(c) that became a reporting issuer solely by listing securities on the TSX before March 30, 2004;

(d) of which the total number of securities of the class listed on the TSX registered in the names of residents of Canada does not exceed 5 per cent of the total number of issued and outstanding securities of the class; and

(e) of which the total number of holders of securities of the class listed on the TSX registered in the names of residents of Canada does not exceed 300.

**6.3 Transitional Exemptions**

Until January 1, 2005, a foreign transition issuer is exempt from

(a) securities legislation requirements to file business acquisition reports, AIFs and MD&A;

(b) securities legislation requirements relating to the preparation, approval and filing of annual financial statements and auditor's reports thereon if the annual financial statements are

(i) prepared in compliance with the laws of the foreign jurisdiction of incorporation or organization of the issuer; and

(ii) filed not later than the earlier of

(A) promptly after they are filed with any other governmental agency or securities market regulatory authority; and

(B) 140 days after the end of the financial year; and

(c) securities legislation requirements relating to the preparation, approval and filing of interim financial statements, if the interim financial statements are

(i) prepared in compliance with the laws of the foreign jurisdiction of incorporation or organization of the issuer; and

(ii) filed not later than the earlier of

(A) promptly after they are filed with any other governmental agency or securities market regulatory authority; and

(B) 60 days after the end of the interim period.

**PART 7 EFFECTIVE DATE**

**7.1 Effective Date**

This Instrument comes into force on March 30, 2004.

# Companion Policy 71-102CP
## Continuous Disclosure and Other Exemptions Relating to Foreign Issuers

**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).

**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 the 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

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

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 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 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.

## 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.

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# Implementing Rule

**NOTICE**
**OF**
**RULE 71-802 *IMPLEMENTING NATIONAL INSTRUMENT 71-102***
***CONTINUOUS DISCLOSURE AND OTHER***
***EXEMPTIONS RELATING TO FOREIGN ISSUERS***

**AND**

**RESCISSION OF COMMISSION POLICY 7.1 *APPLICATION OF***
***REQUIREMENTS OF THE SECURITIES ACT TO CERTAIN REPORTING ISSUERS***

**AND**

**REGULATION AMENDING REGULATION 1015 OF R.R.O. 1990**

**Implementing Rule**

The Commission has, under section 143 of the Act, made Rule 71-802 *Implementing National Instrument* 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (the Implementing Rule). The Implementing Rule and other required materials were delivered to the Minister of Finance on December 19, 2003. If the Minister does not approve or reject the Implementing Rule or return it for further consideration, it will come into force on March 30, 2004**.**

**Rescission of Policy**

The Commission has rescinded, effective March 30, 2004, Commission Policy 7.1 *Application of Requirements of the Securities Act to Certain Reporting Issuers*.

**Regulation Amending Regulation 1015 of R.R.O. 1990**

Concurrently with making National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (NI 71-102) and the Implementing Rule, the Commission has made a regulation that amends a provision of Regulation 1015 of R.R.O. 1990 (the Regulation). This regulation is necessary or advisable to effectively implement NI 71-102 and the Implementing Rule. The regulation is subject to the approval of the Minister of Finance. This regulation makes the following amendment to the Regulation:

> Amends section 161 to refer to NI 71-102 rather than the Rule entitled “In the Matter of Certain Reporting Issuers”, [1980] OSCB 166.

If approved by the Minister of Finance, this regulation will come into force on the day NI 71-102 comes into force.

**Substance and Purpose**

The Implementing Rule is a local Ontario rule implementing National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (NI 71-102) in Ontario. The Implementing Rule also contains exemptions from certain provisions of the *Securities Act* (Ontario) (the Act) and rules made under the Act that are necessary in order to implement NI 71-102.

The rescission of Commission Policy 7.1 *Application of Requirements of the Securities Act to Certain Reporting Issuers* is being made because its subject matter is addressed by NI 71-102.

**Background**

On June 21, 2002 we published for comment the first version of NI 71-102 and the Implementing Rule (the 2002 Proposal). After considering the comments received on NI 71-102, we published revised versions of NI 71-102 and the Implementing Rule for comment on June 20, 2003 (the 2003 Proposal). The comment period expired in August, 2003. For additional background information on the 2002 Proposal and 2003 Proposal, as well as a detailed summary of their contents, please refer to the notices that were published with those versions.

On the same date as publication of this Notice, the Canadian Securities Administrators (CSA) are publishing a Notice of the making of NI 71-102. For a summary of the changes made to NI 71-102, please refer to that CSA Notice.

**Comments**

We received no comments on the Implementing Rule in the 2002 Proposal or the 2003 Proposal.

**No Material Changes to the Implementing Rule**

No material changes have been made to the Implementing Rule.

**Questions may be referred to any of:**

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**Text of Rule**

The text of the Implementing Rule follows.

**ONTARIO SECURITIES COMMISSION**
**RULE 71-802**

**IMPLEMENTING**
**NATIONAL INSTRUMENT 71-102**
**CONTINUOUS DISCLOSURE AND OTHER EXEMPTIONS**
**RELATING TO FOREIGN ISSUERS**

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## PART 1 DEFINITIONS AND INTERPRETATION

### 1.1 Definitions and Interpretation

(1) In this Rule

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

"NI 62-103" means National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues*;

"NI 71-102" means National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*;

"Rule 51-801" means Rule 51-801 *Implementing National Instrument 51-102 Continuous Disclosure Obligations*; and

"Rule 56-501" means Rule 56-501 *Restricted Shares*.

(2) Each term used in this Rule that is defined or interpreted in Part 1 of NI 71-102 has the meaning ascribed to it in that Part.

## PART 2 SEC FOREIGN ISSUERS

**2.1 Material Change Reporting** - Section 7.1 and paragraph 12.1(1)(b) of NI 51-102 and section 3.4 of Rule 51-801 do not apply to an SEC foreign issuer that complies with section 4.2 of NI 71-102.

**2.2 Annual Reports, AIFs, Business Acquisition Reports and MD&A** - Subsection 12.1(1) of NI 51-102 does not apply to an SEC foreign issuer that complies with section 4.4 of NI 71-102.

**2.3 Early Warning** - A person or company is exempt from sections 101 and 102 of the Act and the requirements of NI 62-103 in respect of securities of an SEC foreign issuer if the person or company complies with section 4.8 of NI 71-102.

### 2.4 Going Private Transactions and Related Party Transactions

(1) Rule 61-501 *Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions* does not apply to an SEC foreign issuer carrying out a going private transaction or related party transaction if the total number of equity securities of the SEC foreign issuer owned, directly or indirectly by residents of Canada does not exceed 20 per cent, on a diluted basis, of the total number of equity securities of the SEC foreign issuer as at the first day of its current financial year.

(2) Despite subsection (1), if the SEC foreign issuer has not completed a financial year since becoming a reporting issuer, the calculation in subsection (1) is made at the date that the issuer became a reporting issuer.

**2.5 Restricted Shares**- Section 10.1 of NI 51-102 and Part 3 of Rule 56-501 do not apply in respect of an SEC foreign issuer.

## PART 3 DESIGNATED FOREIGN ISSUERS

**3.1 Material Change Reporting** - Section 7.1 and paragraph 12.1(1)(b) of NI 51-102 and section 3.4 of Rule 51-801 do not apply to a designated foreign issuer that complies with section 5.3 of NI 71-102

**3.2 Annual Reports, AIFs, Business Acquisition Reports and MD&A** - Subsection 12.1(1) of NI 51-102 does not apply to a designated foreign issuer that complies with section 5.5 of NI 71-102.

**3.3** **Early Warning** - A person or company is exempt from sections 101 and 102 of the Act and the requirements of NI 62-103 in respect of securities of a designated foreign issuer if the person or company complies with section 5.9 of NI 71-102.

**3.4** **Restricted Shares** - Section 10.1 of NI 51-102 and Part 3 of Rule 56-501 do not apply in respect of a designated foreign issuer.

**PART 4 EFFECTIVE DATE**

**4.1** **Effective Date** - This Rule comes into force on the date NI 71-102 comes into force.

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