

# Corporate Finance Disclosure Report

	Glossary of terms	4
1.	The Alberta capital market	5
2.	Review process & outcomes	6
3.	Notable review observations	7
	3.1 CD filings	7
	A. Climate change-related disclosure	7
	B. Gender diversity	9
	C. MI 61-101 <i>Protection of Minority Security Holders in Special Transactions</i>	13
	D. CEO and CFO certifications	15
	E. Conditional agreements and letters of intent	16
	F. Information circulars	19
	G. Statement of cash flows	20
	H. Pro forma information	22
	I. Insider reporting requirements	26
	3.2 Offering documents	28
	A. Earnings coverage	28
	B. Non-GAAP financial measures	29
	C. Third-party information	30
4.	Resources available	31
5.	Contact personnel and other information	32

---

High-quality corporate reporting promotes investor confidence and is a building block for sound capital markets. Each year, the Alberta Securities Commission conducts both full and issue-oriented reviews of reporting issuers' disclosure. Along with the specific feedback we provide directly to issuers, we disseminate this summary review to the broader market. Our objectives are to ensure accurate, timely disclosure by highlighting practices that do, and do not, meet our expectations. We also identify common misconceptions and provide tips to enhance disclosure.

Evolving regulatory requirements and emerging issues mean that these reviews continue to have significant relevance. For example, this year we conducted an issue-oriented review focusing on climate change-related disclosure as part of a broader CSA project. While detailed results will be published in 2018, in this report we identify several items that issuers may immediately address in their upcoming year-end documents.

We also completed an assessment of compliance with amendments to annual disclosure requirements relating to the representation of women on boards and in executive officer roles. While satisfied overall with issuers' disclosure we provide further clarity on our expectations.

I hope you find this report useful. One of our overarching goals in the Corporate Finance division is to encourage and maintain open, two-way communications with reporting issuers. Please feel free to contact me or my colleagues with feedback or questions, and I look forward to seeing many of you at our information seminar in January.

Kind regards,

**Tom Graham**

Director, Corporate Finance

403.297.5355

tom.graham@asc.ca

*Each year the ASC issues four reports, created to provide timely and relevant information for market participants and reporting issuers. These reports include the annual report, the Alberta capital market report, the oil and gas review and the corporate finance disclosure review. These reports can be found on [www.albertasecurities.com](http://www.albertasecurities.com).*

*The following terms have the meanings set forth below unless otherwise indicated. Words importing the singular number include the plural, and vice versa.*

“**AIF**” means annual information form, specifically, a completed Form 51-102F2 *Annual Information Form (Form 51-102F2)*;

“**ASC**” means the Alberta Securities Commission;

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

“**CD**” means continuous disclosure;

“**CSA**” means the Canadian Securities Administrators;

“**FLI**” means forward-looking information, as that term is defined in National Instrument 51-102 *Continuous Disclosure Obligations (NI 51-102)*);

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

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

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

“**GAAP**” means generally accepted accounting principles;

“**IOR**” means issue-oriented review;

“**Issuer**” - Sections 1(cc) and 1(ccc) of the *Securities Act (Alberta)* provide the definition of issuer and reporting issuer (**RI**) respectively. Although most of this report is directed towards Alberta RIs, certain securities legislation addressed in this report applies to all issuers including RIs, in these instances “issuer” has a specific meaning in application and reference. The report refers to RI unless use of the term issuer is necessary to make the distinction.

“**MCR**” means material change report, specifically, a completed Form 51-102F3 *Material Change Report*;

“**MD&A**” means management’s discussion and analysis, specifically, a completed Form 51-102F1 *Management’s Discussion & Analysis (Form 51-102F1)*;

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

“**Non-venture RI**” means an RI that is not a venture RI;

“**TSX**” means Toronto Stock Exchange;

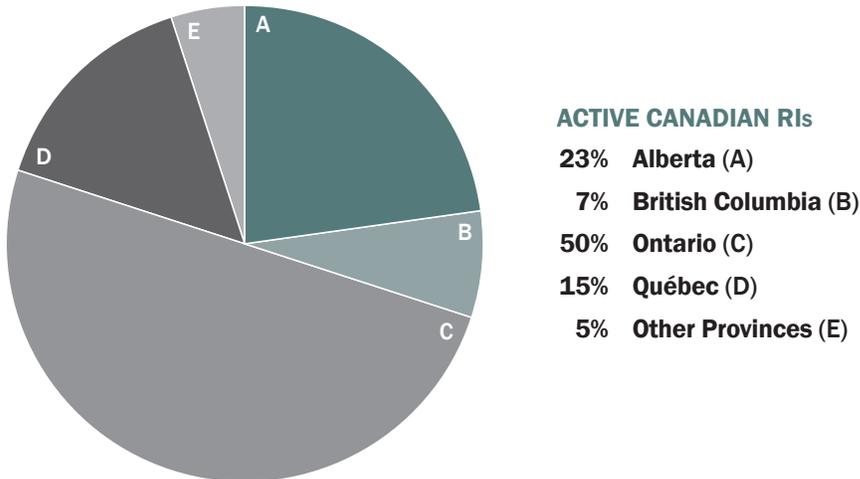
“**TSX-V**” means TSX Venture Exchange; and

“**Venture RI**” means venture issuer, as that term is defined in NI 51-102.

# 1. The Alberta capital market

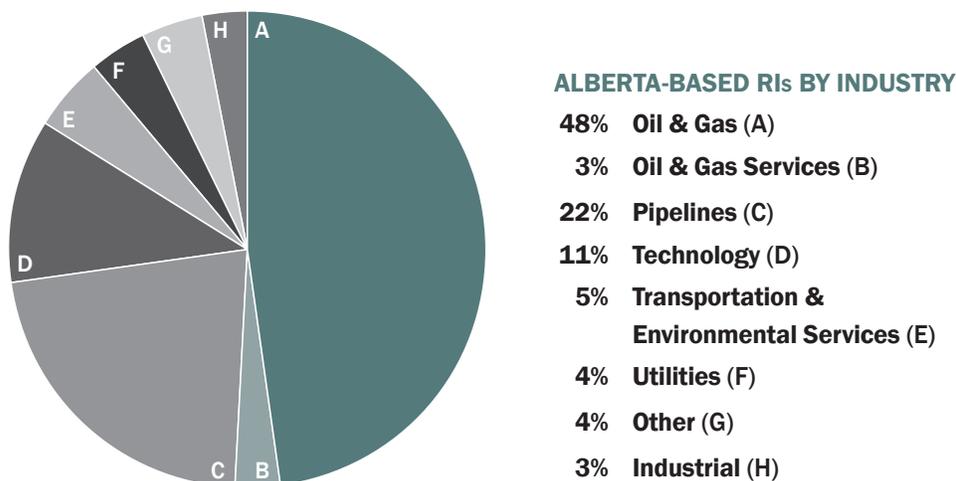
## Market capitalization

Alberta has the second largest capital market in Canada. The market capitalization of Alberta-based RIs constitutes approximately 23 per cent of active Canadian RIs<sup>1</sup>.



## ASC RIs by industry

The ASC is the principal regulator of 581 RIs<sup>2</sup> representing a diverse range of industries. The oil and gas industry (including oil & gas services) comprises the majority of RIs with 51 per cent of the total Alberta market capitalization.



<sup>1</sup> RIs based in Canada that are listed on the TSX or TSX-V. Source: TMX Group, September 30, 2017

<sup>2</sup> Bloomberg, SEDAR, September 30, 2017

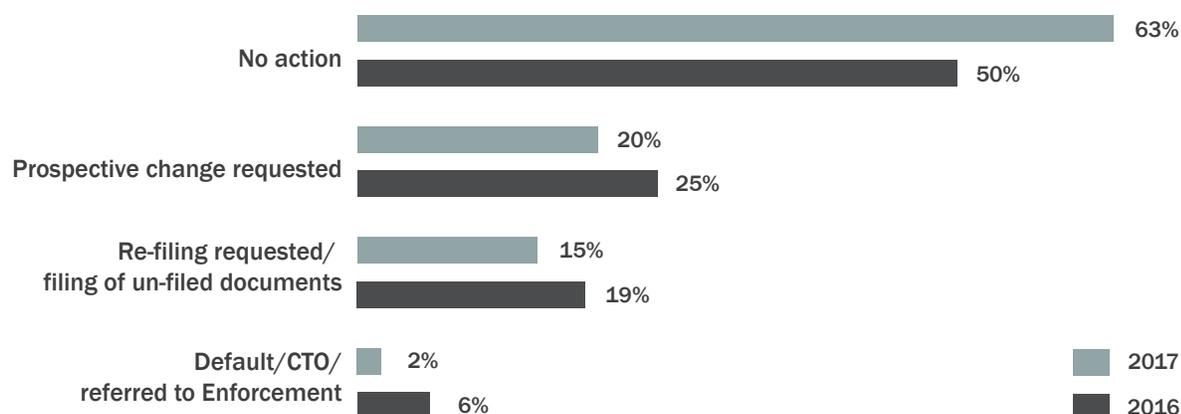
## 2. Review process & outcomes

The ASC CD review program is a key priority for the Corporate Finance division. We conduct CD reviews to ensure that RIs are in compliance with regulatory requirements and to provide direct feedback to RIs on how to improve their disclosure. Our program involves two types of CD reviews: full CD reviews and IORs.

The scope of our full CD reviews is broad and will usually include an assessment of an RI's financial reporting and other required disclosures for its most recently completed annual and interim periods, including: financial statements, MD&As, BARs, information circulars, news releases, MCRs, AIFs (if applicable) and other relevant disclosures. We may also review and assess other disclosures such as websites, webcasts and investor materials.

In conducting IORs, the scope of our review is on particular disclosures, issues or requirements. We conduct some IORs jointly with other members of the CSA, while other IORs are ASC-specific. This year's IORs included specific disclosure issues in news releases, investor presentations, information circulars, MD&As and financial statements. Two CSA IORs we conducted this year included the review of RIs' disclosure of climate change-related disclosures and the representation of women on boards of directors and in executive officer positions. We discuss some of our observations from these reviews in the climate change-related disclosure and gender diversity sections of this report.

### CD review outcomes<sup>3</sup>



As illustrated in the CD review outcomes chart, there was a decrease in the “prospective change requested”, “re-filing requested/filing of unfiled documents” and the “default/CTO<sup>4</sup>/referred to Enforcement” outcomes in 2017. This was mainly due to the increased proportion of IORs (as compared to full CD reviews) that were completed during the year. Specifically, the gender diversity IOR resulted in relatively few comment letters being sent out; as a result, these outcomes are categorized as “no action.” With respect to re-filings, there was an increase in re-filings related to financial statements and CEO/CFO certifications that were more than offset by the decreased

<sup>3</sup> 2017 (November 1, 2016 through October 31, 2017) and 2016 (November 1, 2015 through October 31, 2016)

<sup>4</sup> Cease trade order

re-filings of MD&As and other documents (such as oil and gas activity-related filings and material contracts). This report highlights some of the key deficiencies and observations that were noted in our reviews.

### 3. Notable review observations

#### 3.1 CD filings

##### A. Climate change-related disclosure

On March 21, 2017, the CSA announced a project to review the disclosure of risks and financial impacts to RIs associated with climate change. The ASC is co-chair of this project.

As part of the project, we performed an IOR to assess compliance with the relevant existing Canadian disclosure requirements, a voluntary and anonymous on-line survey of TSX-listed RIs, and consultations with RIs, investors and other stakeholders. We also researched climate change-related disclosure requirements in certain jurisdictions outside of Canada, and a selection of sustainability or climate change-related voluntary disclosure frameworks.

While the full results of our work will be communicated publicly in 2018, we noted that the RI survey revealed that many RIs are not familiar with CSA Staff Notice 51-333 *Environmental Reporting Guidance (SN 51-333)*. Published in October 2010, this notice remains relevant for our current discussions regarding climate change-related issues, and can be quite useful for RIs in assessing and disclosing climate change-related (as well as other environmental) risks, trends, risk oversight and governance.

SN 51-333 provides guidance with respect to the environmental information that is required to be disclosed in RIs' CD filings<sup>5</sup>; namely, information regarding material environmental risks and related matters, and risk oversight and management.

##### Environmental risks and related matters

Some of the key disclosure requirements that relate to climate change matters include discussions around material risks, trends and uncertainties.

As a result of the IOR we completed on Alberta-based RIs, we observed that many RIs included risk factor disclosure (in their MD&As and AIFs) related to climate or environmental matters; however, these disclosures could be improved by clarifying the link between general risks and the incremental impact of climate change, and by tailoring the disclosure to be more entity-specific. Further, when material environmental risks are identified, a qualitative and quantitative discussion (where reasonably available) of the current and anticipated impact could provide valuable insight to readers.

---

<sup>5</sup> Based on the relevant disclosure requirements in NI 51-102, NI 58-101 and National Instrument 52-110 *Audit Committees*.

One area where we would expect to see more quantitative disclosure is the impact of current regulations. As noted in SN 51-333, Item 5.1(1)(k) of Form 51-102F2 requires an RI to disclose the material financial and operational effects of environmental protection requirements on the RI's capital expenditures, earnings and competitive position in the current financial year and the expected effect in future years.

The following chart provides key risks outlined in the notice that could be material to RIs, as well as some examples of resulting impacts for those risks.

RISKS	POTENTIAL IMPACTS
<p><b>Physical</b></p> <p><u>Acute</u> – increased frequency or severity of extreme weather events</p> <p><u>Chronic</u> – longer-term changes in climate patterns (e.g., sustained higher temperatures, rising sea levels)</p>	<ul style="list-style-type: none"> <li>• Asset damage (write-offs)</li> <li>• Operational disruptions</li> <li>• Supply-chain disruptions</li> <li>• Restriction of licences (e.g., availability and use of water sources)</li> </ul>
<p><b>Regulatory</b></p> <p>Current/changing regulations and policies</p>	<ul style="list-style-type: none"> <li>• Costs of compliance</li> <li>• Costs/consequences of non-compliance</li> <li>• Restriction of licences (availability and use)</li> </ul>
<p><b>Reputational</b></p> <p>External attitudes towards the RI/industry</p>	<ul style="list-style-type: none"> <li>• Reduced capital available (increased cost of capital)</li> <li>• Reduced demand for goods/services</li> </ul>
<p><b>Business Model</b></p> <p>Technological, scientific and/or political developments related to the RI's products/services</p>	<ul style="list-style-type: none"> <li>• Changes in demand (and related revenues)</li> <li>• Costs of transition</li> </ul>

SN 51-333 highlights that the determining factor in considering whether information is required to be disclosed is materiality; as such, the notice also provides some guidance around the determination of materiality in the context of environment-related issues.

### Risk oversight and management

The disclosure requirements related to risk oversight and management focus on the following:

- Environmental policies fundamental to operations (Section 5.1(4) of Form 51-102F2)
  - Including disclosure of the steps it has taken to implement them, the impact or potential impact on the RI's operations (costs, etc.) and the risk(s) that the policies are meant to address.
- Board mandate and committees<sup>6</sup>
  - In order to understand how the board and committees manage risk, including environmental or climate change-related risks.

<sup>6</sup> Section 3.4 of National Policy 58-201 *Corporate Governance Guidelines* suggests that the board of directors should adopt a written mandate, acknowledging its responsibility for the stewardship of the RI. Item 2 of Form 58-101F1 requires non-venture RIs to disclose the text of the board's written mandate, or if the board does not have a written mandate, to describe how the board delineates its role and responsibilities.

## B. Gender diversity

Staff completed an IOR to assess compliance with the amendments to NI 58-101 and Form 58-101F1 relating to the representation of women on boards of directors and in executive officer positions, which the ASC implemented effective December 31, 2016. The scope of the IOR included 148 Alberta non-venture RIs with year-ends from December 31, 2016 to March 31, 2017.

In general, we were satisfied with the disclosure as we noted compliance rates well over 90 per cent for most of the Form 58-101F1 disclosure requirements. We did, however, note some key areas for improvement.

### Policies regarding the representation of women

RIs are required to disclose whether or not they have adopted a written policy relating to the identification and nomination of women directors. While 77 per cent of RIs clearly disclosed whether they did or did not have a policy, one percent provided no disclosure and the remaining 22 per cent only disclosed a general diversity policy.

From a compliance perspective, disclosure of a general diversity policy is insufficient to meet this requirement. Several RIs suggested that their general diversity policy related to the representation of women; however, based on the description of the policy and related disclosures regarding its implementation and effectiveness, this did not appear to be the case, as the policy did not have specific provisions related to the identification and nomination of women.

#### *EXAMPLE THAT DID NOT MEET OUR EXPECTATIONS*

##### **Excerpt from an RI's 2016 annual management information circular:**

The Board Diversity and Renewal Policy as adopted by our Board addresses the identification and nomination of women as directors of our company. The main principle of the Board Diversity and Renewal Policy as adopted by our Board is that Board nominations should be made on the basis of the skills, knowledge, experience and character of individual candidates and the requirements of our Board at the time. Our Board is committed to a meritocracy and believes that considering a diverse group of individuals who have the skills, knowledge, experience and character required to provide leadership needed to achieve our business objectives, without reference to their age, gender, race, ethnicity or religion, is in the best interests of our company and all of our stakeholders.

**This RI did not comply with the requirement - although they disclosed they had adopted a policy regarding the representation of women on the board, the policy did not have specific provisions relating to the identification and nomination of women. Had the RI clearly stated it had not adopted a policy regarding the representation of women on the board, it would have been in compliance with the requirement.**

*EXAMPLE THAT MET OUR EXPECTATIONS***Excerpt from an RI's 2016 annual management information circular:**

While the Board has not adopted a specific policy relating to the identification and nomination of women directors, the Company has adopted an Employment Equity and Diversity Policy that recognizes employment equity and diversity as values that are important to the Company as a community leader and as an industry leading employer and that policy is also applicable to the identification and nomination of women directors.

**This RI clearly confirms that it has not adopted a specific policy relating to the identification and nomination of women directors, while acknowledging that there is a general diversity policy applicable to its board member nomination process.**

**Consideration of the representation of women**

Less than 80 per cent of RIs provided disclosure as to whether or not consideration is given to the level of representation of women on the board in identifying and nominating candidates for election on the board (79 per cent) or in executive officer positions in making executive officer appointments (74 per cent).

Of the RIs that disclosed that they do consider the level of women representation, many did not properly describe the process of consideration as required. Specifically, of the RIs that disclosed they consider the level of representation of women on boards (Item 12 of Form 58-101F1), only 51 per cent disclosed how they consider it. Similarly, of the RIs that disclosed they consider the level of representation of women in executive positions (Item 13 of Form 58-101F1), only 48 per cent disclosed how they consider it.

*EXAMPLE THAT MET OUR EXPECTATIONS***Excerpts from the RI's 2016 annual management information circular:**

The Board has ensured that the Diversity Policy will be effectively implemented by embedding it into its policy for the selection process for new Board members (the "Selection Process Policy"). The Selection Process Policy requires the Governance Committee to conduct periodic assessments to consider the level of representation on the Board of the various attributes enumerated in the Diversity Policy, including the number of women on the Board.

The Governance Committee has emphasized the Board's commitment to the recruitment of women in recent years by making the identification of candidates who are women a key search criterion in the director selection and nomination processes it has undertaken. The Board members also have the opportunity to evaluate, on an annual basis, the effectiveness of the director selection and nomination process, including compliance with the Diversity Policy, through the Evaluation Process.

[...]

The Corporation recognizes the value of ensuring that the Corporation's employees have diverse attributes, including that it has a substantial number of employees who are women. The Corporation has developed an execution plan to work towards increasing the number of employees who are women throughout the organization, including in leadership positions. One of the objectives of this plan is to ensure there will be highly qualified women within the Corporation available to fill

vacancies in executive officer and other leadership positions. A particular focus of this work has been to increase the representation of women in operations and maintenance roles, two areas in which women have been traditionally underrepresented in the Corporation's industry.

In appointing individuals to its senior leadership team, which is comprised of the Corporation's executive officers and senior leaders reporting directly to executive officers, the Corporation weighs a number of factors, including the skills and experience required for the position and the personal attributes of the candidates. The level of representation of women in senior leadership roles is also considered as one such factor.

Instead of adopting a target, the Corporation believes the most effective way to achieve its goal of increasing the representation of women in leadership roles at all levels of the organization is to identify high-potential women within the Corporation and work with them to ensure they develop the skills, acquire the experience and have the opportunities necessary to become effective leaders. This includes regularly assessing formal processes to identify and remove barriers to women's advancement, as well as taking action to build a culture of inclusion throughout the organization.

### **Director term limits and other mechanisms of board renewal**

We noted several instances where the disclosure relating to mechanisms of board renewal was technically compliant but investors could benefit from additional detail.

#### *EXAMPLES THAT DID NOT MEET OUR EXPECTATIONS*

##### **Excerpts from four RIs' 2016 annual management information circulars – regarding other board renewal mechanisms:**

- “The Board periodically conducts both formal and informal reviews of the effectiveness of the Board and individual Board members.”
- “The Governance & Compensation Committee, in proposing nominees to the Board, will take into consideration whether any Board renewal is necessary.”
- “As part of the annual evaluation of the performance and effectiveness of the Board and its committees, the Reserves & Governance Committee will consider the benefits of regular renewal in the context of the needs of the Board and the Company at the time.”
- “The Compensation and Corporate Governance Committee has the mandate and responsibility to ensure that a process is in place for the annual review of the performance of individual directors, the Board as a whole and the committees of the Board.”

**Each of the RIs cited above had disclosed adoption of other mechanisms for board renewal; however, the disclosure is vague in that it does not describe the actual mechanism.**

*EXAMPLE THAT MET OUR EXPECTATIONS***Excerpt from an RI's 2016 annual management information circular:**

The Company's framework for Board succession planning and renewal is focused on achieving an appropriate mix of skills, experience, competencies, tenure and diversity. To this end, we have continued to advance our Board assessment process and associated skills matrix<sup>7</sup> as tools to support Board effectiveness and guide succession planning. The result is an approach to Board renewal that is governed by a qualitative analysis of Board composition which informs our director nominee selection process.

[...]

Formal Evaluation Process

The Compensation and Governance Committee has endorsed an annual review process that includes a written evaluation. The written evaluation process is seen as an opportunity to review past performance, recognize successes and identify areas for improvement for the Board, its committees and individual directors.

This year, the written evaluation process asked directors to evaluate overall Board and committee performance, to self-assess their individual skills and contributions and to reflect on the skills and contributions of the other directors, through a series of open-ended questions focused on five key areas, as described below:

1. Board Impact: Input on the most significant decisions and contributions of the Board, and factors that had the biggest influence on Board performance.
2. Board Priorities: Input on the Board's most important priorities over the next 6, 12 and 18 months, the major risks facing the Company over the short, medium and long term, and the role of the Board in providing strategic direction.
3. Board and Committee Composition: Input on the Board succession planning, including level of diversity (in terms of background, skills, experience, knowledge and perspective in light of the Company's business, our strategic direction and the environment in which we operate), the additional skills or backgrounds from which the Board could benefit, and each director's short and medium term plans with respect to the Board.
4. Board Relationships: Input on the relationships between the Board and the Chief Executive Officer, the level of engagement between the Board and management, the relationship among directors, and individual effectiveness of the Board and committees.
5. Individual Assessment: Each director was asked to reflect on their own performance, their contribution to the Board, their professional development plans and their plans with respect to the Board over the next one to five years.

As the final component of the written evaluation, directors are asked to review the Company's skills matrix and to identify the key skills they believe they bring to the Board.

<sup>7</sup> The Company also disclosed a skills and competencies matrix, not reproduced in the report.

The results of these questionnaires are reviewed by the Chair and the Independent Lead Director and may also be reviewed by the Chair of the Compensation and Governance Committee. The Chair, in consultation with the Independent Lead Director, is responsible for following up on the results as appropriate and scheduling meetings with each individual director to discuss the results of the feedback. The results of this evaluation process are used to explore opportunities for enhancing the effectiveness of the Board, to guide the Company's director recruitment process, as well as to identify opportunities to maintain or enhance governance practices and Board effectiveness. A summary of the results of the assessment process, highlighting key themes, is circulated to the entire Board.

### **Number of women in executive officer positions**

RIs are required in Item 15(b) of Form 58-101F1 to disclose the number and proportion (percentage) of executive officers who are women. While 89 per cent of RIs included both figures, seven per cent disclosed the number only, and four per cent disclosed neither figure. Disclosure of both figures is especially important with respect to executive officer positions; the proportion of women in executive officer positions is more difficult for the reader to derive as many RIs do not explicitly disclose their total number of executive officers.

### **C. MI 61-101 *Protection of Minority Security Holders in Special Transactions* (MI 61-101)**

MI 61-101 is meant to provide additional investor protection to equity security holders in the face of conflicts of interest that arise in the context of:

- insider bids: take-over bids made by certain parties such a director, senior officer or 10 per cent security holder of an issuer;
- issuer bids: offers by an issuer to buy back its own securities;
- business combinations: certain transactions such as a stock consolidation, amendments to the terms of equity securities, amalgamations, plans of arrangement and other transactions where the interest of an equity security holder may be cancelled without the holder's consent if a related party is involved and receives preferential treatment; and
- related party transactions: certain transactions involving a related party, such as a sale, lease or acquisition of an asset; the release, forgiveness, assumption or amendment of a liability; the borrowing of money; or the providing of a guarantee.

In order to provide this investor protection, the regulation requires additional disclosure, formal independent valuations, approval by a majority of the minority security holders, and, for insider bids, an independent committee of the board. MI 61-101 applies to RIs, but the provisions respecting insider bids and issuer bids also apply to issuers that are not RIs.

MI 61-101 was adopted in Alberta effective July 31, 2017; however, issuers listed on the TSX, Aequitas NEO Exchange Inc. and the Canadian Securities Exchange have been subject to the instrument for many years by virtue of being reporting issuers in Ontario, and issuers listed on the

TSX-V have been subject to it as a result of TSX-V Policy 5.9 *Protection of Minority Security Holders in Special Transactions*.

MI 61-101 contains a number of exemptions from the valuation and minority approval requirements. For example, an issuer engaging in a related party transaction is exempt from the formal valuation requirement where it is insolvent or in serious financial difficulty. An issuer is similarly exempt if the fair market value of the asset being acquired, or the consideration paid to related parties is not more than 25 per cent of the issuer's market capitalization. Valuation exemptions are also available to venture RIs.

#### PRACTICE TIPS

- Have a comprehensive process for dealing with conflicts of interest and disclose details of that process.
- Although not mandated other than for insider bids, active involvement in evaluating the transaction - and potential alternatives - by a committee of independent directors is encouraged. This would include engagement in selecting and supervising a party retained to provide a valuation or fairness opinion and ensuring meaningful disclosure of that valuation or fairness opinion is provided.

Staff are conducting real-time reviews of transactions to assess compliance with MI 61-101. We will also assess compliance through our CD review process.

To date, most MI 61-101 issues have arisen in the context of private placements where a director, senior officer or insider has subscribed for shares. The most common deficiencies we have noted are:

- in news releases, failure to state the minority approval and valuation exemptions that were relied on and the facts supporting such reliance; and
- in material change reports:
  - failure to include a discussion of the review and approval process adopted by the board of directors or special committee for the transaction; and
  - failure to provide an explanation as to why the material change report was filed less than 21 days before the expected date of closing of the transaction.

Multilateral CSA Staff Notice 61-302 *Staff Review and Commentary on Multilateral Instrument 61-101 Protection of Minority Shareholders in Special Transactions*, issued on July 27, 2017, highlights problems that OSC and AMF staff have identified including:

- inadequate disclosure of the context and background to a proposed transaction;
- failure to provide a meaningful discussion of the board's or special committee's process and their rationale for supporting a proposed transaction;
- failure to provide disclosure of dissenting views of directors in respect of a transaction; and
- overly one-sided disclosure regarding a recommended transaction that does not identify potential concerns with the transaction or available alternatives to the transaction.

## D. CEO and CFO certifications

The level of compliance with the requirements of NI 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (NI 52-109) is generally quite high; however, we still note some areas that need improvement.

### Venture RI certifications

Venture RIs are required to file Form 52-109FV1 – *Certification of Annual Filings Venture Issuer – Basic Certificate* (Form 52-109FV1) with their annual CD filings (and Form 52-109FV2 – *Certification of Interim Filings Venture Issuer – Basic Certificate* with their interim filings). These certificates include a “Note to Reader” that clarifies that the certifying officers are not making any representations relating to the establishment or maintenance of disclosure controls and procedures (DC&P) and internal controls over financial reporting (ICFR). This is a critical part of the venture RI certificate as it points to the limitations and additional risks involved. We have noted that a few RIs have omitted this note from their certificates, and have generally required re-filing of the certificate to remedy this omission.

In addition, we have noted several instances where venture RIs have filed the basic venture certificates, which include the Note to Reader, but also include disclosure in their corresponding MD&As that includes evaluations of operating effectiveness of DC&P and ICFR. This is inappropriate as the MD&A disclosure is inconsistent with the certification filed. As outlined in the Companion Policy to NI 52-109, a venture RI may elect to file the non-venture certificates (Forms 52-109F1 and F2), which include representations regarding the establishment, maintenance, design and effectiveness of DC&P and ICFR. This would be appropriate in cases where the RI has evaluated and concluded on their design and effectiveness.

#### EXAMPLE THAT DID NOT MEET OUR EXPECTATIONS

##### **An excerpt from an RI's annual MD&A – the RI filed an accompanying Form 52-109FV1:**

An evaluation of the effectiveness of the design and operation of disclosure controls and procedures was conducted as of December 31, 2016, by and under the supervision of the CEO and CFO. Based on this evaluation, the CEO and CFO have concluded that the disclosure controls and procedures, as defined in Canada by Multilateral Instrument 52-109, Certification of Disclosure in Issuers' Annual and Interim Filings, are effective to ensure that (i) information required to be disclosed in reports that are filed or submitted under Canadian securities legislation and the Exchange Act is recorded, processed, summarized and reported within the time periods specified in those rules and forms; and (ii) material information relating to the Company is accumulated and communicated to the Company's management, including the CEO and CFO, or persons performing similar functions.

**In this example, the venture RI included in its MD&A a statement regarding the effectiveness of DC&P. In the course of our CD review, the RI confirmed that no such evaluation was performed. As a result, the RI was required to remove the disclosure from its next MD&A filing.**

### Non-venture RI certifications

We also noted that some non-venture RIs are not using the appropriate certification forms after an event such as an initial public offering, certain reverse takeovers, or becoming a non-venture RI.

Parts 4 and 5 of NI 52-109<sup>8</sup> allow RIs to use an alternative form of certificate (Form 52-109F1 IPO/RTO - *Certification of Annual Filings Following an Initial Public Offering, Reverse Takeover or Becoming a Non-Venture Issuer* or Form 52-109F2 IPO/RTO - *Certification of Interim Filings Following an Initial Public Offering, Reverse Takeover or Becoming a Non-Venture Issuer* (**Form 52-109F2 IPO/RTO**)) for the first financial period (i.e., the first interim or annual period, as defined in NI 52-109) that ends after the completion of the relevant event.

The alternative form does not include representations relating to the establishment and maintenance of DC&P and ICFR, and as such, is meant to provide a transition period for the RI. Use of the alternative form of certificate is inappropriate beyond the first financial period.

For example, one RI (with a December 31 year-end) became a non-venture RI in February of 2016. The Q1, Q2 and Q3 interim certificates filed were all in the form of Form 52-109F2 IPO/RTO. Since Q1 was the first financial period ended after the RI became a non-venture RI, use of the alternative form was appropriate; however, for the Q2 and Q3 interim periods, the required form was the standard Form 52-109F2. Further, the alternative form of annual certificate would not be appropriate for the year ended December 31, 2017, since that is not the first financial period that ended after the RI became a non-venture RI.

## E. Conditional agreements and letters of intent

Many MD&As and other CD documents include disclosure of conditional agreements and letters of intent relating to projects, service or supply contracts as they often represent trends, demands, commitments, events or uncertainties that are reasonably likely to have an effect on the company's business. However, we have noted a few common deficiencies with these disclosures.

### Insufficient information

Disclosure may be considered misleading and/or promotional when insufficient details are disclosed regarding conditional agreements and letters of intent. Where appropriate, staff have referred these matters to enforcement. RIs should provide any material facts or information necessary for an investor to understand the nature, timing and associated commitments or obligations related to the conditional agreement or letter of intent.

---

<sup>8</sup> Sections 4.3, 4.4 and 4.5 of NI 52-109 refer to the alternative form of annual certificate, and section 5.3, 5.4 and 5.5 of NI 52-109 refer to the alternative form of interim certificate.

**EXAMPLE THAT DID NOT MEET OUR EXPECTATIONS****A sample of one RI's disclosure regarding projects and letters of intent:**

**As background, this RI had no historical revenues, was operating in a deficit position, and had minimal assets. Accordingly, all of the following developments were material.**

“We are discussing \$200 million of projects in various countries around the world and we anticipate this figure could increase.”	<b>There was no support or further details relating to the progress, likelihood (how preliminary the “discussions” were), timing, costs, etc. of any of these projects.</b>
“\$105 million letter of intent with Company A to develop upstream and downstream energy projects in Country X.”	<b>It was unclear what the dollar amount actually represented (anticipated RI revenue, capital contribution from Company A, etc.) and there was no indication of timing.</b>
“\$10 million letter of intent with Bank M to fund a project in Country Z.”	<b>There were no details as to the material terms and conditions of the funding or of the project.</b>

**Each of these statements was considered too vague to enable an investor to understand the timing and effect on the RI's future performance and financial position.**

We have also noted that some RIs provide an extensive list of all letters of intent and conditional agreements to which they are party, to support their growth potential; however, this disclosure should be limited to those agreements that are reasonably likely to occur.

**Deficient FLI disclosure**

As these disclosures often include anticipated actions and results, they generally include FLI and financial outlooks, and as such, Parts 4A and 4B of NI 51-102 apply.

Part 4A – *Forward-Looking Information* of NI 51-102 includes the requirements to:

- caution users of FLI that actual results may vary from the FLI and identify material risk factors that could cause actual results to differ materially from the FLI; and
- state the material factors or assumptions used to develop FLI.

Part 4B – *FOFI and Financial Outlooks* of NI 51-102 includes additional requirements, including disclosure that explains the purpose of the future-oriented financial information (**FOFI**) or financial outlooks and cautions readers that the information may not be appropriate for other purposes. An RI must not disclose FOFI or financial outlooks unless it is based on assumptions that are reasonable in the circumstances; as such, the FOFI or financial outlooks must be limited to a period for which the information can be reasonably estimated.

*EXAMPLE THAT DID NOT MEET OUR EXPECTATIONS***An RI's investor presentation discussed "Over \$500 million worth of Potential Contracts in the Pipeline" (this amount was material for the RI) as follows:**

- The RI noted over 40 potential contracts being pursued with various countries
- Each potential contract disclosed estimated earnings (in millions of dollars)
- The majority were still in the "qualified leads" or "technical discussions" phase (i.e., had not yet progressed to actual contract negotiations)
- There was no indication of timeline – neither with respect to the finalization of the contracts, nor when the earnings potential was expected to be realized

**The RI's presentation included a vague FLI disclaimer that did not disclose the material risk factors that could cause actual results to differ materially from the FLI, or the factors and assumptions used to develop the FLI.**

**In addition, given the early stage of many of the potential contracts, and the lack of details around these contracts, it was questionable whether the RI had a reasonable basis for presenting this FLI.**

**Progress updates and milestones**

Once a new conditional contract or letter of intent is disclosed, RIs should be diligent in providing updates in subsequent CD filings. We have seen examples where RIs simply copied the previous period's disclosure, without disclosing any progress (or lack thereof) towards milestones and completion. This is especially important for transactions or projects that are not progressing according to plan, and end up being abandoned or terminated. Disclosure of updates should be timely and provide the reader with an understanding of the impact on the RI's financial results and condition.

*EXAMPLE THAT DID NOT MEET OUR EXPECTATIONS*

An RI with significant liquidity risks (reporting net losses, negative cash flow) announced the award of a material project (over 20 times the RI's annual revenue) and commencement of the related contracting process in 2015. The RI provided progress updates (at least quarterly) on this project leading up to finalizing and signing the conditional contract in Q2 2016.

A material condition of the agreement was that the project was subject to the client finalizing a financing facility. Once this condition was waived, product and service delivery were scheduled to commence in the third quarter of 2016.

- Early Q3 2016 a news release reiterated the RI's expectation to commence the project in that quarter, once project financing was completed by the client.
- Late Q3 2016 a news release stated that the project financing was in its final phase.
- Early Q4 2016 a news release suggested the client was negotiating the final financing terms.

In early 2017, Staff questioned the RI as to the lack of any updates since the previous news releases had suggested imminent commencement of the project. Following Staff's comments, the RI issued a new release stating that there had been no further developments.

When another six months passed without any updates, Staff reiterated that the RI needed to provide further information to investors with respect to the conditional contract's status.

The RI then filed a news release that stated that, although the conditional contract had not been terminated by the client, due to the passage of time and certain circumstances out of the RI's control (described in the release), it was now highly unlikely that the client would be able to satisfy its financing condition such that the conditional agreement could proceed.

Section 5.8 *Disclosure Relating to Previously Disclosed Material Forward-Looking Information* of NI 51-102 includes the requirements to discuss in the MD&A:

- events and circumstances that occurred during the period that are reasonably likely to cause actual results to differ materially from FLI; and
- material differences between actual results for the period and any FOFI or financial outlooks previously disclosed.

## F. Information circulars

A few RIs have filed information circulars that contained insufficient financial statement disclosure in respect of a significant acquisition or a restructuring transaction (as those terms are defined/determined in NI 51-102). Item 14—*Particulars of Matters to be Acted Upon* of Form 51-102F5 – *Information Circular* requires a brief description of the substance of any matters to be acted upon submitted to the meeting of securityholders (other than the approval of annual financial statements). Section 14.2 requires further disclosure if the action is in respect of a significant acquisition or a restructuring transaction, specifically:

“The disclosure for the company<sup>9</sup>, business<sup>10</sup> or entity<sup>11</sup> must be the disclosure (including financial statements) prescribed under securities legislation and described in the form of prospectus that the company, business or entity, respectively, would be eligible to use immediately prior to the sending and filing of the information circular in respect of the significant acquisition or restructuring transaction, for a distribution of securities in the jurisdiction [*emphasis and footnotes added*].”

<sup>9</sup> Company means the RI, if the RI has not filed all documents required under NI 51-102.

<sup>10</sup> Business means the business being acquired, if the matter is a significant acquisition.

<sup>11</sup> Entity means each entity, other than the company, whose securities are being changed, exchanged, issued or distributed, if (i) the matter is a restructuring transaction, and (ii) the company's current securityholders will have an interest in that entity after the restructuring transaction is completed; AND each entity that would result from the significant acquisition or restructuring transaction, if the company's securityholders will have an interest in that entity after the significant acquisition or restructuring transaction is completed.

## PRACTICE TIP

**Disclosure considerations may include:**

Who are the relevant parties involved?	RI, acquired business(es), other entities
What form of prospectus would establish the disclosure requirements for <u>each</u> party?	Each of the RI, business or entity would be assessed for the form of prospectus it was eligible to use immediately prior to the sending or filing of the information circular. The eligible prospectus form would be either Form 41-101F1 or Form 44-101F1. For example, the RI may be eligible for Form 44-101F1 and the other entity eligible for Form 41-101F1.
What financial statement disclosure is required if the business or other party is considered eligible for the Form 41-101F1?	Item 32— <i>Financial Statement Disclosure for Issuers</i> of Form 41-101F1 ( <b>Item 32</b> ).
What are the key considerations for the business or other party?	Number of years, format (e.g., full financial statements, carve-out statements, operating statements, pro forma statements), acceptable accounting principles and auditing requirements. In addition, MD&A disclosure would be required if in Item 32.

## G. Statement of cash flows

We noted an increase in issues related to cash flow presentation matters, including material deficiencies resulting in restatement or restatement of comparatives.

The most common presentation issue relates to the misclassification of adjustments/line items within the Statement of Cash Flows (i.e., among operating, investing and financing activities). As noted in International Accounting Standard 7 *Statement of Cash Flows (IAS 7)*, “an entity presents its cash flows from operating, investing and financing activities in a manner which is most appropriate to its business. Classification by activity provides information that allows users to assess the impact of those activities on the financial position of the entity and the amount of its cash and cash equivalents. This information may also be used to evaluate the relationships among those activities.” IAS 7 also provides numerous examples of cash flows that would generally comprise operating, investing and financing activities, respectively, to assist RIs in making appropriate classifications. As cash flows from operating activities is often a key measure for RIs, misclassification can lead to a material deficiency.

For example, one RI added back \$25 million of exploration and evaluation expenditures when reconciling its net loss to cash flows from operating activities, and increased the total property expenditures presented in the investing activities by the same amount. Given that these exploration costs were expensed as per the RI’s accounting policy and did not result in a recognized asset, their presentation as an investing activity was not appropriate. This \$25 million adjustment had the

effect of overstating the RI's cash flows from operating activities to the point where the RI's negative operating cash flow position turned into positive operating cash flow. As cash flows from (used in) operating activities was a key measure for this RI, the RI was required to restate its comparatives and provide International Accounting Standard 8 *Accounting Policies, Changes in Accounting Estimates and Errors* disclosure to reflect the correction of this prior period error.

*EXAMPLE THAT DID NOT MEET OUR EXPECTATIONS*

**Selected line items from an RI's Statement of Cash Flows**

(millions of \$)

<u>Operating Activities</u>	
Net Income	XX,XXX
Proceeds on Sale of Rental Fleet	XXX,XXX
Depreciation of Rental Fleet	X,XXX
Stock-based Compensation	XX
Income Tax expense	X,XXX
Cash Provided by Operating Activities	<u>XXX,XXX</u>
<u>Investing Activities</u>	
Purchase of Rental Fleet	(XXX,XXX)
Purchase of Property and Equipment	(XX,XXX)
Cash used in Investing Activities	<u>(XXX,XXX)</u>
<u>Financing Activities</u>	
Finance Expense Paid	(XX,XXX)
Cash used in Financing Activities	<u>(XX,XXX)</u>
Decrease in Cash and Cash Equivalents	(XX,XXX)
Cash and Cash Equivalents, Beginning of year	XXX,XXX
Cash and Cash Equivalents, End of year	<u><u>XX,XXX</u></u>

**The RI is in the business of renting out assets included in its rental fleet, but it is also customary for the RI to sell these assets after a certain time. The RI included cash flows from 'Proceeds on Sale of Rental Fleet' within operating activities but included cash flows from the 'Purchase of Rental Fleet' within investing activities which created a mismatch in cash-flows.**

**This treatment was contrary to IAS 7.14, which indicates that cash payments to acquire assets held for rental to others and subsequently held for sale are cash flows from operating activities.**

We noted another common issue with the presentation and disclosure of non-cash transactions. IAS 7.43 states that investing and financing transactions that do not require the use of cash or cash equivalents shall be excluded from a statement of cash flows and that such transactions shall be disclosed elsewhere in the financial statements in a way that provides all relevant information about these investing and financing activities. For example, one RI disclosed the common shares issued in exchange for accounts payable in its financial statement notes; however, the RI incorrectly added this non-cash amount to its share capital proceeds reported in financing activities. A corresponding amount was not deducted in calculating the change in accounts payable reported in operating activities. As a result, the cash flows from operating activities were understated and the cash flows from financing activities were overstated.

**REMINDER**

We have noted that a few RIs presented unlabelled subtotal lines in their Statement of Cash Flows. This presentation is not appropriate and can create confusion for investors. We remind RIs to either label relevant subtotals in a way which describes their composition or remove these additional subtotals.

## H. Pro forma information

We generally see pro forma information in regulatory filings where it is required to illustrate the impact of an acquisition on an RI's financial position and results of operations (i.e., in BARs, prospectuses, and information circulars). As such, there are detailed requirements and guidance related to each of these filings with respect to the pro forma financial statements that can or must be disclosed, including how they should be presented, what needs to be included, and what types of adjustments are considered appropriate. We have seen some deviations from these requirements during the year in the following areas:

### Presentation in other filings

When pro forma information is disclosed voluntarily in a filing where it would not normally be required (e.g., news release, corporate presentation), RIs should consider whether the presentation of this information is appropriate.

The requirements and guidance noted above relate to pro forma financial statements (including pro forma statements of financial position, pro forma income statements and pro forma operating statements). If an RI presents stand alone, selected pro forma information rather than pro forma financial statements, the sources of information and material factors and assumptions need to be clearly disclosed and reasonably based, and the RI should be mindful of FLI and non-GAAP financial measure<sup>12</sup> disclosure requirements.

<sup>12</sup> Outlined in CSA Staff Notice 52-306 (Revised) *Non-GAAP Financial Measures* (SN 52-306)

**EXAMPLE THAT DID NOT MEET OUR EXPECTATIONS**

One RI presented a 'Pro Forma Summary' in a news release announcing a business acquisition. The summary included, among several other pro forma financial and operating metrics, pro forma 'Annualized Adjusted EBITDA<sup>13</sup>' (which was calculated by multiplying the Q1 adjusted EBITDA by 4). We questioned the appropriateness of this disclosure given:

<p><b>The presentation was not in accordance with the non-GAAP measure disclosure guidance in SN 52-306</b></p>	<ul style="list-style-type: none"> <li>• The closest GAAP measure was not presented</li> <li>• There was no reconciliation to the closest GAAP measure</li> <li>• Adjusted EBITDA had never been disclosed in the RI's CD filings, and the RI confirmed it did not intend to disclose it in future filings, as such the stated usefulness and purpose of inclusion was questioned</li> </ul>
<p><b>The presentation was not in accordance with the FLI requirements in Parts 4A and 4B of NI 51-102</b></p>	<ul style="list-style-type: none"> <li>• No material risk factors were disclosed</li> <li>• No factors and assumptions used to develop the information were disclosed</li> <li>• The financial outlook did not appear to meet the "reasonable basis" requirement – we questioned how it was appropriate to simply multiply the first quarter measure by 4</li> </ul>

We also identified several other metrics for which the source of the information was not evident or verifiable, as well as inappropriate pro forma oil and gas reserves related information (discussed further, subsequent pages).

As a result of our review, the RI was required to file a revised news release with the Pro Forma Summary removed and an explanation of why that information was removed.

<sup>13</sup> Earnings before Interest, Taxes, Depreciation and Amortization

### Pro forma operating statements

Section 8.10 *Acquisition of an interest in an Oil and Gas Property* of NI 51-102 provides an exemption from the financial statement disclosure requirements in a BAR, if the acquisition meets certain criteria<sup>14</sup>. An RI relying on this exemption must provide alternative disclosure, including operating statement(s)<sup>15</sup>, pro forma operating statement(s), and certain disclosures regarding the oil and gas property (or properties) acquired.

The accepted disclosure practice with respect to pro forma operating statements is to combine an RI's operating statement (derived from its financial statements) with an operating statement for the acquired oil and gas property and any appropriate pro forma adjustments.

However, questions with respect to appropriate presentation have arisen in situations where the pro forma incorporates multiple significant acquisitions and at least one of those acquisitions qualified for the exemption under section 8.10 (and only presented operating statements), while at least one of those acquisitions was a business that did not qualify for the exemption (thus included full financial statements).

In this situation, it is acceptable (and in fact, preferred<sup>16</sup>) to provide a pro forma income statement that combines the income statements of the RI and the business acquisition, with the operating statement of the oil and gas property. However, a subtotal for 'pro forma operating income (loss)' MUST be disclosed to clearly delineate the acquisition(s) for which only operating statements have been included. Absent that distinction, the pro forma income statement could be confusing or misleading, as readers may not appreciate that the line items below 'Operating Income' for the oil and gas property are not applicable/available, rather than nil.

---

<sup>14</sup> Section 32.9 *Exemption from financial statement disclosure for oil & gas acquisitions* of Form 41-101F1 sets out a comparable exemption and the related disclosure requirements with respect to financial statement requirements in a prospectus.

<sup>15</sup> Operating statements (prepared in accordance with subsection 3.11(5) of NI 52-107 *Acceptable Accounting Principles and Auditing Standards*) include very limited line items, as compared to a full Statement of Profit or Loss and Comprehensive Income.

<sup>16</sup> Rather than a pro forma operating statement for the RI and all acquisitions, given the benefit of presenting the additional line items from the full income statements, where available.

## SAMPLE DISCLOSURE

**XYZ Resources Inc.**  
**Pro Forma Consolidated Statement of Income**  
**For the Twelve Months Ended December 31, 2016**  
(\$thousands)

	XYZ Resources Inc.	Business A Acquisition	Oil & Gas Property Acquisition	Pro Forma Adjustments	Pro Forma XYZ Resources Inc.
Gross Sales	XX	XX	XX	-	XX
Royalties	(XX)	(XX)	(XX)	-	(XX)
Total Revenue	XX	XX	XX	-	XX
Production Costs	XX	XX	XX	XX	XX
<b>Operating Income</b>	<b>XX</b>	<b>XX</b>	<b>XX</b>	<b>XX</b>	<b>XX</b>
Financing	XX	XX		XX	XX
General and Administrative	XX	XX		XX	XX
Depletion and depreciation	XX	XX		-	XX
Profit (loss) before taxes	XX	XX		XX	XX
Income Tax Expense	XX	XX		XX	XX
<b>Profit (loss) and comprehensive income (loss)</b>	<b>XX</b>	<b>XX</b>		<b>XX</b>	<b>XX</b>

The unaudited pro forma consolidated statement of income has been prepared from the following:

- The audited consolidated financial statements of XYZ Resources Inc. for the year ended December 31, 2016;
- The audited financial statements of Business A for the year ended December 31, 2016; and,
- The audited operating statement for the Oil & Gas Property for the year ended December 31, 2016.

### Pro forma oil and gas information

We have also noted an increase in the pro forma oil and gas activity-related information being presented, such as pro forma reserves data and pro forma net present value of future net revenues.

Presentation of pro forma reserve information could be misleading. For example, when the sources of the information (i.e., the respective Form 51-101F1 *Statement of Reserves Data and Other Oil and Gas Information* of each business (**Reserves Report**)) have different effective dates, the underlying assumptions to each Reserves Report could be materially different; this is because volumes and values of reserves are estimated using forward-looking assumptions at a particular effective date.

EXAMPLE THAT *DID NOT MEET OUR EXPECTATIONS***Excerpt from an RI's MCR announcing an acquisition of oil and gas assets:**

SUMMARY OF OIL AND GAS RESERVES  
**As of December 31, 2016 (RI's QRE<sup>17</sup>); June 30, 2017 (target's QRE)**  
 FORECAST PRICES AND COSTS  
 ALL PROPERTIES

Reserves Category	Light and Medium Crude Oil (Mbbbl)		Conventional Natural Gas (Bcf)		Liquids/NGLs (Mbbbl)		Total (MMBOE)	
	Gross	Net	Gross	Net	Gross	Net	Gross	Net
PROVED								
Developed Producing								
TOTAL PROVED								
TOTAL PROBABLE								
TOTAL PROVED PLUS PROBABLE								

**In this example, the RI presented the Summary of Oil and Gas Reserves for the RI and the target separately (not shown), and then a pro forma summary that simply added the reserves information of the two entities together.**

**The effective dates differed between the two Reserves Reports used. As the material underlying assumptions were not aligned, the RI was required to file a revised MCR with the pro forma Summary of Oil and Gas Reserves removed and an explanation of why that information can no longer be relied upon.**

## I. Insider reporting requirements

RI insiders are required by NI 55-104 *Insider Reporting Requirements and Exemptions (NI 55-104)* to file certain insider reports in accordance with National Instrument 55-102 *System for Electronic Disclosure by Insiders (SEDI)*. While these requirements are not new, we have noted certain recurring deficiencies in the past year with respect to RIs failing to keep their SEDI records up to date and accurate.

<sup>17</sup> Qualified Reserves Evaluator (QRE)

## Current

We have identified several RIs whose insider shareholdings disclosures in their CD filings, namely their information circulars, did not correspond to the insiders' SEDI records. Based on correspondence with the RIs, certain reporting insiders had not filed all of their required reports, and were required to rectify this oversight immediately.

We remind RIs that the filing deadlines for these reports are in NI 55-104, and that the potential consequences of non-compliance with the requirements in NI 55-104 are outlined in Part 10 *Contravention of Insider Reporting Requirements* of the Companion Policy to NI 55-104 (**55-104CP**).

## Accurate

Insider reporting requirements specifically capture "beneficial ownership, control or direction over, whether direct or indirect," securities of the RI. The reporting insider is responsible for making the relevant assessment as to whether a certain transaction qualifies. 55-104CP clarifies the meanings of beneficial ownership and control or direction.

### REMINDERS

- Consider the definition of 'reporting insider' in NI 55-104
- Initial report (upon becoming a reporting insider) filing deadline is within 10 days
- Subsequent report (following changes in a reporting insider's beneficial ownership/ interest/ control/ direction over securities of the RI) filing deadline is within 5 days
- Consider the reporting exemptions available

## 3.2 Offering documents

### A. Earnings coverage

Disclosure of earnings coverage ratios is required in prospectuses offering debt securities with a term to maturity in excess of one year and/or preferred shares (Item 9 of Form 41-101F1 and Item 6 of Form 44-101F1).

Earnings coverage is calculated by dividing an entity's profit or loss attributable to the owners of the parent (numerator) by its borrowing costs and dividend obligations (the denominator<sup>18</sup>.)

We have noted the following common errors in the calculation and presentation of earnings coverage.

#### Numerator

Minority Interest – The numerator of the ratio should be calculated using the consolidated profit or loss attributable to owners of the parent before borrowing costs and income taxes. Some RIs did not back out/add back the minority interest portion of the consolidated profit/loss (instruction 3(a) to Item 9 of Form 41-101F1<sup>19</sup>.)

#### Denominator

Issuances or redemptions – Some RIs did not reflect the issuance, repurchase, redemption or other retirement of all preferred shares and/or financial liabilities (as applicable) since the date of the annual financial statements or interim financial report for which the earnings coverage ratios are being calculated (sections 9.1(2)(b), (c) and (d) of Form 41-101F1<sup>20</sup>.)

Capitalized Interest – Some RIs failed to add any borrowing costs that may have been capitalized during the relevant period (instruction 3(d) to Item 9 of Form 41-101F1<sup>21</sup>.)

#### Earnings coverage ratio less than one-to-one

Section 1.14 of Form 41-101F1<sup>22</sup> requires that if any of the earnings coverage ratios required to be disclosed under Item 9 of Form 41-101F1 is less than one-to-one, this fact be disclosed in boldface type on the cover page of the prospectus. However, we would also expect that the cover page discloses the actual ratio; some RIs have omitted this disclosure. Further, section 9.1(4) of Item 9 of Form 41-101F1<sup>23</sup> also requires disclosure in the prospectus of the dollar amount of the numerator required to achieve a ratio of one-to-one.

<sup>18</sup> Instruction 2 to Item 9 of Form 41-101F1, and to Item 6 of Form 44-101F1

<sup>19</sup> Instruction 3(a) to Item 6 of Form 44-101F1

<sup>20</sup> Sections 6.1(2)(b), (c) and (d) of Form 44-101F1

<sup>21</sup> Instruction 3(d) to Item 6 of Form 44-101F1

<sup>22</sup> Section 1.13 of Form 44-101F1

<sup>23</sup> Section 6.1(4) of Item 6 of Form 44-101F1

This additional disclosure should not include inappropriate caveats. For example, one RI stated on its prospectus cover page: “If adjusted to exclude the Company’s non-cash impairment charges... such earnings coverage ratios would be greater than one-to-one”; the RI was required to remove this statement.

### Supplementary disclosure

Instruction 8 to Item 9 of Form 41-101F1<sup>24</sup> allows other earnings coverage calculations to be included as supplementary disclosure to the required earnings coverage calculations as long as their derivation is disclosed and they are not given greater prominence than the required earnings coverage calculations. However, we have noted issues with the prominence of the supplementary calculations.

#### *EXAMPLES THAT DID NOT MEET OUR EXPECTATIONS*

##### **Two RIs provided the following descriptions for the numerator of the earnings coverage calculation [emphasis added]:**

- The EBIT<sup>25</sup> numerator excludes the gain on conveyance of exploration and evaluation assets of US\$340.5 million, net of tax of US\$71.8 million for the year-ended December 31, 2016
- The numerator included distribution income net of total expenses, excluding gains and losses, available for the payment of distributions on the Preferred Units

**Given the adjustments to the numerators, these earnings coverage ratios should be identified as supplementary disclosures; however, these RIs did not do so, and also failed to present the required earnings coverage calculations (i.e., before any additional adjustments). As a result, the RIs were required to provide the required calculations, with greater prominence than the supplemental disclosures, in their final prospectuses.**

## B. Non-GAAP financial measures

The presentation and disclosure requirements outlined in SN 52-306 apply to all non-GAAP measures disclosed by an RI. These requirements were discussed at length in last year’s report.

We have seen increased prevalence of non-GAAP deficiencies in marketing materials filed in relation to offering documents. The most common deficiencies that we have noted relate to prominence and the omission of required accompanying disclosure (e.g., explanation of usefulness, reconciliation to the most directly comparable GAAP measure).

Prominence of non-GAAP measures is a common issue with investor reports. One RI disclosed Adjusted EBITDA, a non-GAAP measure, throughout its corporate presentation; however, the most comparable GAAP measure, net income (loss) was not disclosed at all. The requirement is to present

<sup>24</sup> Instruction 9 to Item 6 of Form 44-101F1

<sup>25</sup> Earnings before Interest and Taxes

it with equal or greater prominence than the non-GAAP measure. This RI was required to update its corporate presentation by adding disclosure of net income (loss), and file updated marketing materials to reflect the change.

## C. Third-party information

We have noted issues related to third-party source disclosures. Some of the common problems within prospectuses and marketing materials include missing, vague or inaccurate references to the original source and inappropriate disclaimers.

### Source references

We remind RIs that third-party information should include a reference to the third-party source (including disclosures that rely on management's use of third-party information – such as an RI recalculating its market share based on internal information and external sources).

We have also seen examples where an RI cited an external source for certain disclosure in its prospectus. Staff noted that the RI had used third-party information as an input in combination with internal information when it prepared the disclosure. In this case, it is important that the RI clearly distinguish between disclosure that is purely externally sourced, and disclosure that includes some inputs from third-party sources, but is prepared internally.

### Disclaimer language

When a document discloses third-party source information, issuers often include a general disclaimer related to the accuracy and reliability of that information. While issuers may disclose that they have not verified the accuracy of the third-party information, statements that attempt to limit the issuer's liability for misrepresentation are not considered to be appropriate. The RI is responsible for the presentation and assessment of the reasonableness and appropriateness of its inclusion.

#### LANGUAGE THAT IS NOT APPROPRIATE

- “The Company cannot, and does not, provide any representation or assurance as to the accuracy or completeness of the information or data, or the appropriateness of the information or data for any particular analytical purpose.”
- “Accordingly, the Company disclaims any liability in relation to such information and data.”
- “The information should not be unduly relied upon.”

Securities legislation makes an issuer liable for any misrepresentation in (or incorporated by reference in) a prospectus, even if the misrepresentation in the prospectus is based upon information included from a reliable third-party source. The only defence to a misrepresentation claim available to an issuer is that the investor making the claim was aware of the misrepresentation at the time of purchase. As issuers are unable to completely disclaim liability for third-party

information in a prospectus, we will generally request that such disclaimers and cautionary language regarding undue reliance be removed.

## 4. Resources available

Listed below are some commonly used regulations to assist RIs in understanding the requirements and where to find them. In the online version of this report, the list provides links directly to our website.

To keep up to date on recent and upcoming changes, please subscribe to our updates<sup>26</sup> or follow us on Twitter @ASCUpdates.

<b>Continuous Disclosure Rules</b>	NI 51-102
Financial Statements	Part 4
Forward-Looking Information	Part 4A & 4B
MD&A	Part 5
Business Acquisitions	Part 8
Material Contracts	Part 12
<b>Continuous Disclosure Forms</b>	
MD&A	Form 51-102F1
AIF	Form 51-102F2
BAR	Form 51-102F4
Executive Compensation Non-Venture Issuers	Form 51-102F6
Executive Compensation Venture Issuers	Form 51-102F6V
<b>Interpretation and Guidance</b>	
Understanding Interpretations of the NI 51-102 Rules	51-102CP
Disclosure Standards	NP 51-201
Non-GAAP Financial Measures	CSA SN 52-306 (Revised)
Environmental Reporting Guidance	CSA SN 51-333
Corporate Governance Guidelines	NP 58-201
<b>Corporate Governance</b>	
Audit Committees Rules	NI 52-110
Non-Venture Issuers	Form 52-110F1
Venture Issuers	Form 52-110F2
Corporate Governance Disclosure	NI 58-101
Non-Venture Issuers	Form 58-101F1
Venture Issuers	Form 58-101F2
Certification of Disclosure	NI 52-109

<sup>26</sup> <http://www.albertasecurities.com/news-and-publications/Pages/subscribe-to-updates.aspx>

## 5. Contact personnel and other information

### Feedback on the Report and other Corporate Finance matters

We welcome comments on this Report and other Corporate Finance matters. Comments may be directed to any of the individuals listed below:

**Cheryl McGillivray, CA**  
**Manager, Corporate Finance**  
(403) 297-3307  
cheryl.mcgillivray@asc.ca

**Anne Marie Landry, CA**  
**Senior Securities Analyst**  
(403) 297-7907  
annemarie.landry@asc.ca

**Monika Meyler, CA**  
**Securities Analyst**  
(403) 297-4776  
monika.meyler@asc.ca

### Upcoming presentations

From time to time, the ASC hosts webinars and in-person seminars on various topics related to securities requirements including CD matters. Information sessions related to this report and other topics are scheduled for Calgary on January 24, 2018 at the Westin Calgary and for Edmonton on January 25, 2018 at the Sutton Place Hotel (pending adequate registration). A related webinar is scheduled for January 24, 2018. If anyone planning on attending one of the above seminars or webinars has a specific topic or question that they would like us to address at an upcoming session, we would be pleased to consider your request. Please submit your topic or question to [cf-report@asc.ca](mailto:cf-report@asc.ca) by January 12, 2018. We will consider submissions after this date for potential future presentations. Information about future seminars and webinars can be found on the ASC website at [www.albertasecurities.com](http://www.albertasecurities.com). Archived presentation slides and related reference materials from past seminars are also available on the ASC website.



