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

(1) Reporting issuers must file continuous disclosure documents under the Instrument only in the local jurisdictions in which they are a reporting issuer.

(2) In some circumstances, the Instrument permits an issuer to satisfy a filing requirement by filing a different document instead. If an issuer is relying on one of these sections, the issuer must file the substitute document in the appropriate filing category and type on SEDAR. For example, an exchangeable share issuer relying on section 13.3(2) that must file a copy of its parent issuer's annual financial statements must file those financial statements under the exchangeable share issuer's SEDAR profile in the "Annual Financial Statement" filing type.

1.3 Corporate Law Requirements

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

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", and "recognized quotation and trade reporting system" 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 1.8 of Companion Policy 44-101CP provides guidance for the definition of "asset-backed security".

(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". 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 (c) 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.

Similarly, the terms chief executive officer and chief financial officer should be read to include the individuals who have the responsibilities normally associated with these positions or act in a similar capacity. This determination should be made irrespective of an individual's corporate title or whether that individual is employed directly or acts pursuant to an agreement or understanding.

(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 tied to the concept for accounting purposes. For issuers that use Canadian GAAP, the Handbook defines what transactions an issuer must treat as a reverse takeover. Under the Handbook, although legally the enterprise~~includes reverse acquisitions as defined or interpreted in Canadian GAAP and any other transaction in which an issuer issues enough voting securities as consideration for the acquisition of an entity such that control of the issuer passes to the securityholders of the acquired entity (such as a Qualifying Transaction, as that term is defined in the TSX Venture Exchange policies). In a reverse acquisition, although legally the entity (the legal parent) that issued the securities is regarded as the parent ~~or continuing enterprise~~, the ~~enterprise~~entity (the legal subsidiary) whose former securityholders now control ~~(as that term is used in~~

~~the Handbook)~~ the combined ~~enterprise~~entity is treated as the acquirer for accounting purposes. As a result, for accounting purposes, the issuing ~~enterprise~~entity (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~~entity in consideration for the issue of capital.

(6) **Restructuring transaction** – A "restructuring transaction" includes a transaction in which a reporting issuer acquires assets, which may include assets that constitute a business, and issues securities resulting in

- new securityholders owning or controlling more than 50% of the reporting issuer's outstanding voting securities, and
- a new control person or company, or new control group.

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

The phrase "new securityholders" includes both beneficial owners who did not hold any of the reporting issuer's securities before the restructuring transaction, and beneficial owners that held some securities in the reporting issuer before the transaction, but who now, as a result of the transaction, own more than 50% of the outstanding voting securities.

(7) **Accounting terms** – The Instrument uses accounting terms that are defined, or referred to, in Canadian GAAP. In certain cases, some of those terms are defined differently in securities legislation. In deciding which meaning applies, you should consider that National Instrument 14-101 *Definitions* provides that 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 example, the term "associate" is defined in local securities statutes and Canadian GAAP. Securities regulatory authorities are of the view that the references to the term "associate" in the Instrument and its forms (e.g., item 7.1(g) of Form 51-102F5 *Information Circular*) should be given the meaning of the term under local securities statutes since the context does not indicate that the accounting meaning of the term should be used.

(8) **Acceptable accounting principles other than Canadian GAAP** – If an issuer is permitted under NI 52-107 to file financial statements in accordance with acceptable accounting principles other than Canadian GAAP, then the issuer may interpret any reference in the Instrument to a term or provision defined, or referred to, in Canadian

GAAP as a reference to the corresponding term or provision in the other acceptable accounting principles.

1.5 Plain Language Principles

You should apply plain language principles when you prepare your disclosure including:

- 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.

Question and answer bullet point formats are consistent with the disclosure requirements of the Instrument.

1.6 Signature and Certificates

Reporting issuers are not required by the Instrument to sign or certify documents filed under the Instrument. Certification requirements apply to some documents under National 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, the responsibilities of audit committees are set out in National Instrument 52-110 *Audit Committees*.

1.8 Acceptable Accounting Principles~~,~~ and 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")~~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) summarized financial information~~ as to~~, including the aggregated amounts of assets, liabilities, revenue and ~~results of operations~~profit or loss 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~~the use of accounting principles~~ and auditing standards~~ other than Canadian ~~accounting principles and~~GAAP or auditing standards other than Canadian Generally Accepted Auditing Standards (Canadian GAAS) in preparing or auditing financial statements.

1.9 Ordinary Course of Business

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

1.10 Material Deficiencies

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

issuer is expected to comply with the Instrument by filing an amended version of the materially deficient document.

PART 2 FOREIGN ISSUERS AND INVESTMENT FUNDS

2.1 Foreign Issuers

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

2.2 Investment Funds

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

PART 3 FINANCIAL STATEMENTS

3.1 Financial Year

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

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

3.2 Audit of Comparative Annual Financial Statements

Section 4.1 of the Instrument requires a reporting issuer to file annual financial statements that include comparative information for the immediately preceding financial year and that are audited. The auditor's report must cover both the most recently completed financial year and the comparative period, except if the issuer changed its auditor during the periods presented in the annual 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~~predecessor's auditor's report or the issuer would include the predecessor auditor's reissued report on the ~~comparative period and the former auditor's report would not be re-filed.~~ prior period's annual financial statements. This is consistent with ~~Assurance and Related Services Guideline AuG-8 Auditor's Report on~~Canadian Auditing Standard 710 *Comparative*

Information – Corresponding Figures and *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 annual financial statements.

3.4 Auditor Involvement with an Interim Financial ~~Statements~~ Report

(1) The board of directors of a reporting issuer, in discharging its responsibilities for ensuring the reliability of an interim financial ~~statements~~report, should consider engaging an external auditor to carry out a review of the interim financial ~~statements~~report.

(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~~report, 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 an interim financial ~~statements~~report 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, an interim financial ~~statements~~report applying standards for a review of an interim financial ~~statements~~report 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, an interim financial ~~statements~~report 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 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. Section 4.10(3) of the Instrument provides a similar exemption for comparative financial information for a reverse takeover acquirer. These exemptions may, for example, apply to an issuer that was, before becoming a reporting issuer or before the reverse takeover, a private entity and that is unable to prepare the comparative financial information because it is impracticable to do so. The test of whether "to a reasonable person it is impracticable to present prior-period information on a basis consistent with subsection 4.3(2)" is objective, rather than subjective. Securities regulatory authorities are of the view that a reporting issuer can rely on the exemption only if it has made every reasonable effort to present prior-period information on a basis consistent with subsection 4.3(2) of the Instrument. We are of the view that an issuer should only rely on this exemption in unusual circumstances and generally not related solely to the cost or the time involved in preparing the financial statements.

3.7 Change in Year-End

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

3.8 Reverse Takeovers

(1) Following a reverse takeover, although the reverse takeover acquiree is the reporting issuer, from an accounting perspective, the financial statements will be those of the

reverse takeover acquirer. Those financial statements must be prepared and filed as if the reverse takeover acquirer had always been the reporting issuer.

(2) The reverse takeover acquiree must file its own financial statements required by sections 4.1 and 4.3 and the related MD&A for all interim and annual periods ending before the date of the reverse takeover, even if the filing deadline for those financial statements is after the date of the reverse takeover.

3.9 Change in Corporate Structure

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

(a) the material change report or news release contains all the information required in the notice; and

(b) the reporting issuer files the material change report or news release with the securities regulatory authority or regulator

(i) under the Change in Corporate Structure category on SEDAR, or

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

(2) If the transaction was a reverse takeover, the notice should state that fact and who the reverse takeover acquirer was ~~for accounting purposes~~.

(3) Under paragraph 4.9(h) of the Instrument, the issuer must state the periods of the interim financial reports and the annual financial statements it has to file for its first financial year. Issuers should explain how they determined the periods, particularly if section 4.7 of the Instrument applies.

3.10 Change of Auditor

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

Subsection 4.11(5) of the Instrument requires a reporting issuer, upon a termination or resignation of its auditor, to prepare a change of auditor notice, have the audit committee or board of directors approve the notice, file the reporting package with the 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 AND PRESENTATION OF FINANCIAL INFORMATION

4.1 Disclosure of Financial ~~Results~~Information

(1) Subsection 4.5(1) of the Instrument requires that annual financial statements be approved by the board of directors before filing. Subsections 4.5(2) and 4.5(3) of the Instrument require that each interim financial ~~statements~~report be 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 Canadian 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.

4.3 Presentation of Financial Information

Canadian GAAP provides an issuer two alternatives in presenting its income: (a) in one single statement of comprehensive income, or (b) in a statement of comprehensive income with a separate income statement. If an issuer presents its income using the second alternative, both statements must be filed to satisfy the requirements of this Instrument. (See subsections 4.1(3) and 4.3(2.1) of the Instrument).

PART 4A FORWARD-LOOKING INFORMATION

4A.1 Application

Section 4A.1 of the Instrument indicates that Part 4A applies to forward-looking information that is disclosed by a reporting issuer other than forward-looking information contained in oral statements. Reporting issuers should consider broadly the various instances of forward-looking information made available to the public in considering the scope of forward-looking information that is disclosed. This includes, but is not limited to:

- Information that a reporting issuer files with securities regulators
- Information contained in news releases issued by a reporting issuer
- Information published on a reporting issuer's website
- Information published in marketing materials or other similar materials prepared by a reporting issuer or distributed to the public by a reporting issuer.

4A.2 Reasonable Basis

Section 4A.2 of the Instrument requires a reporting issuer to have a reasonable basis for any forward-looking information it discloses. When interpreting "reasonable basis", reporting issuers should consider:

(a) the reasonableness of the assumptions underlying the forward-looking information; and

(b) the process followed in preparing and reviewing forward-looking information.

4A.3 Material Forward-Looking Information

Section 4A.3 and section 5.8 of the Instrument require a reporting issuer to include specified disclosure in material forward-looking information it discloses. Reporting issuers should exercise judgement when determining whether information is material. If a reasonable investor's decision whether or not to buy, sell or hold securities of the reporting issuer would be influenced or changed if the information were omitted or misstated, then the information is likely material~~. This concept of materiality is consistent with the one contained in the Handbook~~.

Section 1.1 contains definitions of the terms "financial outlook" and "FOFI." We consider FOFI and most financial outlooks to be material forward-looking information. Examples of financial outlooks include expected ~~revenues, net income~~revenue, profit or loss, earnings per share and R&D spending. A financial outlook relating to ~~earnings~~profit or loss is commonly referred to as "earnings guidance."

An example of forward-looking information that is not a financial outlook or FOFI would be an estimate of future store openings by an issuer in the retail industry. This type of information may or may not be material, depending on whether a reasonable investor's decision whether or not to buy, sell or hold securities of that issuer would be influenced or changed if the information were omitted or misstated.

4A.4 Location of Disclosure

Section 4A.3 of the Instrument requires that any material forward-looking information include specified disclosure. This disclosure should be presented in a manner that allows an investor who reads the document or other material containing the forward-looking information to be able to readily:

(a) understand that the forward-looking information is being provided in the document or other material;

(b) identify the forward-looking information; and

(c) inform himself or herself of the material assumptions underlying the forward-looking information and the material risk factors associated with the forward-looking information.

4A.5 Disclosure of Cautionary Language and Material Risk Factors

(1) Paragraph 4A.3(b) of the Instrument requires a reporting issuer to accompany any material forward-looking information with disclosure that cautions users that actual results may vary from the forward-looking information and identifies material risk factors that could cause material variation. The material risk factors identified in the cautionary language should be relevant to the forward-looking information and the disclosure should not be boilerplate in nature.

(2) The cautionary statements required by paragraph 4A.3(b) of the Instrument should identify significant and reasonably foreseeable factors that could reasonably be expected to cause results to differ materially from those projected in the material forward-looking statement. Reporting issuers should not interpret this as requiring a reporting issuer to anticipate and discuss everything that could conceivably cause results to differ.

4A.6 Disclosure of Material Factors or Assumptions

Paragraph 4A.3(c) of the Instrument requires a reporting issuer to disclose the material factors or assumptions used to develop material forward-looking information. The factors or assumptions should be relevant to the forward-looking information. Disclosure of material factors or assumptions does not require an

exhaustive statement of every factor or assumption applied – a materiality standard applies.

4A.7 Date of Assumptions

Management of a reporting issuer that discloses material forward-looking information should satisfy itself that the assumptions are appropriate as of the date management discloses the material forward-looking information even though the material forward-looking information may have been prepared at an earlier time, and may be based on information accumulated over a period of time.

4A.8 Time Period

Paragraph 4B.2(2)(a) of the Instrument requires a reporting issuer to limit the period covered by FOFI or a financial outlook to a period for which the information can be reasonably estimated. In many cases that time period will not go beyond the end of the reporting issuer's next fiscal year. Some of the factors a reporting issuer should consider include the reporting issuer's ability to make appropriate assumptions, the nature of the reporting issuer's industry, and the reporting issuer's operating cycle.

~~4A.9 FOFI~~

~~Section 4250 *Future-Oriented Financial Information* (Section 4250) of the CICA Handbook is relevant to reporting issuers who disclose FOFI. If a reporting issuer determines that it has a reasonable basis for FOFI prepared using one or more hypotheses, as that term is defined in CICA Handbook Section 4250, the hypotheses should be consistent with the courses of action that the reporting issuer intends to adopt.~~

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~~financial report or annual financial statements), a breakdown of material costs whether ~~capitalized, deferred or~~ expensed or recognized as assets. A component of cost is generally considered to be a material component if it exceeds the greater of

(a) 20% of the total amount of the class; and

(b) $25,000.

5.3 Disclosure of Outstanding Share Data

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

5.4 Additional Disclosure for Equity Investees

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

5.5 Previously Disclosed Material Forward-Looking Information

(1) Subsection 5.8(2) of the Instrument requires a reporting issuer to discuss certain events and circumstances that occurred during the period to which its MD&A relates. The events to be discussed are those that are reasonably likely to cause actual results to differ materially from material forward-looking information for a period that is not yet complete. This discussion is only required if the reporting issuer previously disclosed the forward-looking information to the public. Subsection 5.8(2) also requires a reporting issuer to discuss the expected differences.

For example, assume that a reporting issuer published FOFI for the current year assuming no change in the prime interest rate, but by the end of the second quarter the prime interest rate went up by 2%. In its MD&A for the second quarter, the reporting issuer should discuss the interest rate increase and its expected effect on results compared to those indicated in the FOFI.

A reporting issuer should consider whether the events and circumstances that trigger MD&A ~~or MD&A supplement~~ disclosure under subsection 5.8(2) of the Instrument might also trigger material change reporting requirements under Part 7 of the Instrument.

(2) Subsection 5.8(4) of the Instrument requires a reporting issuer to disclose and discuss material differences between actual results for the annual or interim period to which

its MD&A ~~or MD&A supplement~~ relates and any FOFI or financial outlook for that period that the reporting issuer previously disclosed to the public. A reporting issuer should disclose and discuss material differences for material individual items included in the FOFI or financial outlook, including assumptions.

For example, if the actual dollar amount of revenue approximates forecasted revenue but the sales mix or sales volume differs materially from what the reporting issuer expected, the reporting issuer should explain the differences.

(3) Subsection 5.8(5) of the Instrument addresses a reporting issuer's decision to withdraw previously disclosed material forward-looking information. The subsection requires the reporting issuer to disclose that decision and discuss the events and circumstances that led the reporting issuer to the decision to withdraw the material forward-looking information, including a discussion of the assumptions included in the material forward-looking information that are no longer valid. A reporting issuer should consider whether the events and circumstances that trigger MD&A ~~or MD&A supplement~~ disclosure under subsection 5.8(5) of the Instrument might also trigger material change reporting requirements under Part 7 of the Instrument. We encourage all reporting issuers to promptly communicate to the market a decision to withdraw material forward-looking information, even if the material change reporting requirements are not triggered.

PART 6 AIF

6.1 Additional and Supporting Documentation

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

If the reporting issuer incorporates a document, or a portion of a document, by reference into its AIF, and that document, or that portion of the document, as applicable, incorporates another document by reference, the issuer must also file the underlying document with its AIF.

6.2 AIF Disclosure of Asset-backed Securities

(1) **Factors to consider** – Issuers that have distributed asset-backed securities under a prospectus are required to provide disclosure in their AIF under section 5.3 of Form 51-102F2. Issuers of asset-backed securities must determine which other prescribed

disclosure is applicable and ought to be included in the AIF. Disclosure for a special purpose issuer of asset-backed securities will generally explain

- the nature, performance and servicing of the underlying pool of financial assets;
- the structure of the securities and dedicated cash flows; and
- any third party or internal support arrangements established to protect holders of the asset-backed securities from losses associated with non-performance of the financial assets or disruptions in payment.

The nature and extent of required disclosure may vary depending on the type and attributes of the underlying pool and the contractual arrangements through which holders of the asset-backed securities take their interest in such assets.

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

1. The extent of disclosure respecting an 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. Disclosure about the business and affairs of the issuer should relate to the financial assets underlying the asset-backed securities.

3. Disclosure about the originator or the seller of the underlying financial assets will often be relevant to investors in the asset-backed securities particularly where the originator or seller has an on-going involvement with the financial assets comprising the pool. For example, if asset-backed securities are serviced with the cash flows from a revolving pool of receivables, an evaluation of the nature and reliability of the future origination or the future sales of underlying assets by the seller to or through the issuer may be a critical aspect of an investor’s investment decision.

   To address this, the focus of disclosure respecting an originator or seller of the underlying financial assets should deal with whether there are current circumstances that indicate that the originator or seller will not generate adequate assets in the future to avoid an early liquidation of the pool and, correspondingly, an early payment of the asset-backed securities. Summary historical financial information respecting the originator or seller will ordinarily be adequate to satisfy the disclosure requirement applicable to the

originator or seller in circumstances where the originator or seller has an ongoing relationship with the assets comprising the pool.

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~~profit, 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 financial disclosure 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** – Reporting issuers are reminded that NI 52-107 prescribes the accounting principles, auditing standards and ~~reporting~~presentation currency that must be used to prepare and audit the financial statements required by Part 8 of the Instrument.

(4) **Acquisition of a Business** – A reporting issuer that has made a significant acquisition must include in its business acquisition report certain financial statements of each business acquired. The term "business" should be evaluated in light of the facts and circumstances involved. We generally consider that a separate entity, a subsidiary or a division is a business and that in certain circumstances a smaller component of a company may also be a business, whether or not the business previously prepared financial statements. In determining whether an acquisition constitutes the acquisition of a business, a reporting issuer should consider the continuity of business operations, including the following factors:

(a) whether the nature of the revenue producing activity or potential revenue producing activity will remain generally the same after the acquisition; and

(b) whether any of the physical facilities, employees, marketing systems, sales forces, customers, operating rights, production techniques or trade names are acquired by the reporting issuer instead of remaining with the vendor after the acquisition.

(5) **Acquisition by a Subsidiary** – If a reporting issuer's subsidiary, which is also a reporting issuer, has acquired a business, both the parent and subsidiary must test the significance of the acquisition. Even if the subsidiary files a business acquisition report, the parent must also file a business acquisition report if the acquisition is also significant for the parent.

8.2 Significance Tests

(1) **Nature of Significance Tests** – Subsection 8.3(2) of the Instrument sets out the required significance tests for determining whether an acquisition of a business by a reporting issuer is a "significant acquisition". The first test measures the assets of the acquired business against the assets of the reporting issuer. The second test measures the reporting issuer's investments in and advances to the acquired business against the assets of the reporting issuer. The third test measures the ~~income from continuing operations~~acquisition test profit or loss of the acquired business against the ~~income from continuing operations~~acquisition test profit or loss 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 date using the most recent ~~annual~~ audited annual 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 date, 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.

Subsection 8.12(2) provides an exemption from this reconciliation requirement if the business or related businesses prepared financial statements in accordance with Canadian GAAP applicable to private enterprises provided certain conditions are met. This exemption is not available in Ontario. The requirement in subsection 8.3(13) to translate the financial statements of the business or related businesses into the same presentation currency as the reporting issuer still applies.

(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 annual financial statements of the reporting issuer and the business acquired. However, if the annual 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 annual 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.

(3.1) **Application of Significance Tests for Business Combinations Achieved in Stages** – IFRS 3 (revised 2008) *Business Combinations*, requires that when a business combination is achieved in stages the acquirer's previously held equity interest in the acquiree is remeasured at its acquisition date fair value with any resulting gain or loss recognized in profit or loss. The remeasurement of the previously held equity interest should not be included in the asset or the investment test and the resulting gain or loss from remeasurement should not be included in the profit or loss test. (See subsection 8.3(4.1) of the Instrument).

(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~~consideration transferred, measured in accordance with the issuer's GAAP, including any contingent 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 transferred 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. For purposes of the investment test, "consideration transferred" should be adjusted to exclude the carrying value of assets transferred by the reporting issuer to the business or related businesses that will remain with the business or related businesses after the acquisition.

(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 annual 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 annual 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(5) 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(7)(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 – 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). The optional significance tests under subsections 8.3(3) and (4) 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 filing a business acquisition report and the corresponding potential decline in significance of the acquisition to the reporting issuer.

(2) **Availability of the Optional Significance Tests** – The optional significance tests permitted under subsections 8.3(4) and (6) of the Instrument 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 under subsection 8.3(6).

(3) **Optional Investment Test** – 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 date and not as at the date of the reporting issuer's financial statements used to determine its consolidated assets for the optional investment test.

(4) **Optional ~~Income~~Profit or Loss Test based on Pro Forma Information** – A reporting issuer may apply the optional ~~income~~profit or loss test in subsection 8.3(11.1) of the Instrument based on more recent pro forma consolidated ~~income from continuing operations~~acquisition test profit or loss. By permitting reporting issuers to base the optional ~~income~~profit or loss test on pro forma consolidated ~~income from continuing operations~~acquisition test profit or loss, this test recognizes the possible growth of a reporting issuer as a result of acquisitions completed between its most recently completed year end and the date of filing a business acquisition report and the corresponding potential decline in significance of the acquisition to the reporting issuer.

8.4 Financial Statements of Related Businesses

Subsection 8.4(8) 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~~Multiple Investments in the Same Business

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~~has made multiple investments in the same business. If the reporting issuer acquired an interest in the business in a previous year and that interest is reflected in the most recent audited annual 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 annual 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~~ – A statement of financial position should include all assets and liabilities directly attributable to the business.

(ii) *Allocation of ~~Revenues~~Revenue and Expenses* ~~– Income statements~~ – Statements of comprehensive income should include all ~~revenues~~revenue 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 financial statements is to illustrate the impact of a transaction on a reporting issuer's financial position and ~~results of operations~~financial performance 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~~Statement of Financial Position** – Subsection 8.4(5) of the Instrument does not require a pro forma ~~balance sheet~~statement of financial position to be prepared to give effect to significant

acquisitions that are reflected in the reporting issuer's most recent annual or interim ~~balance sheet~~statement of financial position 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(7)(c) requires ~~an income~~a statement of comprehensive income 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~~acquisition date amounts of assets acquired and liabilities assumed arising from giving effect to the acquisition as if it occurred on the date of the reporting issuer's most recent ~~balance sheet~~statement of financial position filed.

(5) **Acceptable Adjustments** – Pro forma adjustments ~~should be~~are generally 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. See subsection (9) for other pro forma adjustments if the acquisition statements have been prepared using Canadian GAAP applicable to private enterprises.

(6) **Multiple Acquisitions** – If a reporting issuer has completed multiple acquisitions then, under subsection 8.4(5) of the Instrument, the pro forma financial statements must give effect to each acquisition completed since the beginning of the most recently completed financial year. 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.

(7) **Pro Forma Financial Statements Based on an Earlier Interim Financial ~~Statements~~ Report** – The pro forma financial statements are prepared on the basis of the financial statements included in the business acquisition report. As a result, if the reporting issuer relies on subsection 8.4(4) of the Instrument to include financial statements for an earlier interim period of the acquired business than would otherwise be required under subsection (3), the issuer uses its comparable interim period to prepare the pro forma financial statements.

(8) **Indirect Acquisitions** – Under the securities legislation of certain jurisdictions, it is generally an offence to make a statement in a document that is required to be filed under securities legislation, and that does not state a fact that is necessary to make the statement not misleading. When a reporting issuer acquires a business that has itself recently acquired another business or related businesses (an "indirect acquisition"), the reporting issuer should consider whether it needs to provide disclosure of the indirect acquisition in the business acquisition report, including historical financial statements, and whether the omission of these financial statements would cause the business acquisition report to be misleading, untrue or substantially incomplete. In making this determination, the reporting issuer should consider the following factors:

- if the indirect acquisition would meet any of the significance tests in section 8.3 of the Instrument when the reporting issuer applies each of those tests to its proportionate interest in the indirect acquisition of the business, and

- if the amount of time between the separate acquisitions is such that the effect of the first acquisition is not adequately reflected in the results of the business or related businesses the reporting issuer is acquiring.

(9) **Pro Forma Financial Statements where Acquisition Statements are Prepared in Accordance with Canadian GAAP applicable to Private Enterprises** – Except in Ontario, section 3.11 of NI 52-107 permits acquisition statements included in a business acquisition report to be prepared in accordance with Canadian GAAP applicable to private enterprises in certain circumstances. If an issuer includes acquisition statements prepared in accordance with Canadian GAAP applicable to private enterprises in a business acquisition report, then those acquisition statements do not have to be reconciled to the issuer's GAAP under subsection 3.11(6) of NI 52-107. However, section 3.14 of NI 52-107 requires that pro forma financial statements must be presented using principles that are consistent with the issuer's GAAP. To comply with this requirement, when preparing the pro forma financial statements, the issuer should consider disclosing the adjustments necessary to achieve consistency with the issuer's GAAP.

The pro forma statement of financial position should present the following information:

(i) the statement of financial position of the reporting issuer prepared in accordance with the issuer's GAAP,

(ii) the balance sheet of the acquired business or related businesses prepared in accordance with Canadian GAAP applicable to private enterprises,

(iii) pro forma adjustments attributable to the specific acquisition transaction that reflect the reporting issuer's accounting for the acquisition that includes new values for the business' assets and liabilities, and

(iv) a pro forma statement of financial position combining items (i) through (iii).

The pro forma income statement should present the following information:

(i) the income statement of the reporting issuer prepared in accordance with the issuer's GAAP,

(ii) the income statement of the acquired business or related businesses prepared in accordance with Canadian GAAP applicable to private enterprises,

(iii) pro forma adjustments attributable to the specific acquisition transaction and other adjustments relating to the acquired business to adjust amounts from Canadian GAAP applicable to private enterprises to the issuer's GAAP, and

(iv) a pro forma income statement combining items (i) through (iii).

The phrase "pro forma adjustments attributable to the specific acquisition transaction" in this subsection are the types of adjustments described in subsection (5).

8.7.1 Financial Year End Changed

If the transition year of the acquired business is less than 9 months, the issuer may be required to include financial statements for the transition year of the acquired business in addition to financial statements for the two financial years required by subsection 8.4(1) of the Instrument. The transition year may or may not be audited, but at minimum, the most recently completed financial year must be audited in accordance with subsection 8.4(2).

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

The securities regulatory authority or regulator may exempt a reporting issuer from the requirement to audit the operating statements referred to in section 8.10 of the Instrument if, during the 12 months preceding the ~~date of the~~ acquisition date, 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 annual financial statements of an acquired business or related businesses, conditions will likely be imposed, such as a requirement to include audited divisional or partial statements of comprehensive income ~~statements~~ or divisional statements of cash ~~flow~~flows, 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) Relief may be granted from the requirement to include certain financial statements of an acquired business or related businesses 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; or

(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 required to be filed that the reporting issuer has made every reasonable effort to obtain access to, or copies of, the historical accounting records necessary to prepare and audit the financial statements but that such efforts were unsuccessful; and

(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.

8.10 Audits and Auditor Review of Financial Statements of an Acquired Business

(1) **Unaudited Comparatives in Annual Financial Statements of an Acquired Business** –Subsection 8.4(1) requires a reporting issuer to include comparative financial information of the business in the business acquisition report. This comparative financial information may be unaudited.

(2) **Auditor Review of an Interim Financial ~~Statements~~Report of an Acquired Business** – An issuer does not have to engage an auditor to review the interim financial ~~statements~~report of an acquired business included in a business acquisition report. However, if the issuer later incorporates the business acquisition report into a prospectus, the interim financial ~~statements~~report will have to be reviewed in

accordance with the requirements relating to financial statements included in a prospectus.

PART 9 PROXY SOLICITATION AND INFORMATION CIRCULARS

9.1 Beneficial Owners of Securities

Reporting issuers are reminded that NI 54-101 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.

9.2 Prospectus-level Disclosure in Certain Information Circulars

Section 14.2 of Form 51-102F5 *Information Circular* requires an issuer to provide prospectus-level disclosure about certain entities if securityholder approval is required in respect of a significant acquisition under which securities of the acquired business are being exchanged for the issuer's securities or in respect of a restructuring transaction under which securities are to be changed, exchanged, issued or distributed.

Section 14.2 provides that the disclosure must be the disclosure (including financial statements) prescribed by the form of prospectus that the entity 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.

For example, if disclosure was required in an information circular of Company A for both Company A (an issuer that was only eligible to file a long form prospectus) and Company B (an issuer that was eligible to file a short form prospectus), the disclosure for Company A would be that required by the long form prospectus rules and the disclosure for Company B would be that required by the short form prospectus rules. Any information incorporated by reference in the information circular of Company A would have to comply with paragraph (c) of Part 1 of Form 51-102F5 and be filed under Company A's profile on SEDAR.

9.3 Proxy Solicitations Made to the Public by Broadcast, Speech or Publication

Subsection 9.2(4) of the Instrument provides an exemption from the proxy solicitation and information circular requirements for certain proxy solicitations made to the public by broadcast, speech or publication. The exemption permits securityholders to solicit proxies by public means, including a speech or broadcast, through a newspaper advertisement or over the Internet (provided that the solicitation contains certain information and that information is filed on SEDAR).

The exemption will only apply if the proxy solicitation is made to the public. Securities regulatory authorities generally consider a solicitation to be made to the public if it is disseminated in a manner calculated to effectively reach the marketplace. A solicitation to the public would generally include a solicitation that is made by:

(a) a speech in a public forum; or

(b) a press release, a statement or an advertisement provided through a broadcast medium or by a telephone conference call or electronic or other communication facility generally available to the public, or appearing in a newspaper, a magazine, a website or other publication generally available to the public.

A proxy solicitation to the public would generally not include a solicitation made by phone, mail or email to only a select group of securityholders of a reporting issuer.

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 Notice 11-201 *Relating to 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 DISCLOSURE REQUIREMENTS

11.1 Additional Filing Requirements

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

11.2 Re-filing Documents or Re-stating Financial Information

If a reporting issuer decides to re-file a document, or re-state financial information for comparative periods in financial statements for reasons other than retroactive application of a change in an accounting standard or policy or a new accounting standard, and the re-filed or re-stated information is likely to differ materially from the information originally filed, the issuer should disclose in the news release required by section 11.5 of the Instrument when it makes that decision

(a) the facts underlying the changes,

(b) the general impact of the changes on previously filed information, and

(c) the steps the issuer would take before filing an amended document, or filing re-stated financial information, if the issuer is not filing amended information immediately.

PART 12 FILING OF CERTAIN DOCUMENTS

12.1 Statutory or Regulatory Instruments

Paragraph 12.1(1)(a) of the Instrument requires reporting issuers to file copies of their articles of incorporation, amalgamation, continuation or any other constating or establishing documents, unless the document is a statutory or regulatory instrument. This carve out for a statutory or regulatory instrument is very narrow. For example, the carve out 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 copies of contracts that can reasonably be regarded as materially affecting the rights of their 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 under this paragraph.

12.3 Material Contracts

(1) **Definition** – Under subsection 1.1(1) of the Instrument, a material contract is defined as a contract that a reporting issuer or any of its subsidiaries is a party to, that is material to the reporting issuer. A material contract generally includes a schedule, side letter or exhibit referred to in the material contract and any amendment to the material contract. The redaction and omission provisions in subsections 12.2(3) and (4) of the Instrument apply to these schedules, side letters, exhibits or amendments.

(2) **Filing Requirements** – Subject to the exceptions in paragraphs 12.2(2)(a) through (f) of the Instrument, subsection 12.2(2) of the Instrument provides an exemption from the filing requirement for a material contract entered into in the ordinary course of business. Whether a reporting issuer entered into a contract in the ordinary course of business is a question of fact that the reporting issuer should consider in the context of its business and industry.

Paragraphs 12.2(2)(a) through (f) of the Instrument describe specific types of material contracts that are not eligible for the ordinary course of business exemption. Accordingly, if subsection 12.2(1) of the Instrument requires a reporting issuer to file a material contract of a type described in these paragraphs, the reporting issuer must file that material contract even if the reporting issuer entered into it in the ordinary course of business.

(3) **Contract of Employment** – Paragraph 12.2(2)(a) of the Instrument provides that a material contract with certain individuals is not eligible for the ordinary course of business exemption, unless it is a "contract of employment". One way for reporting issuers to determine whether a contract is a contract of employment is to consider whether the contract contains payment or other provisions that are required disclosure under Form 51-102F6 as if the individual were a named executive officer or director of the reporting issuer.

(4) **External Management and External Administration Agreements** – Under paragraph 12.2(2)(e) of the Instrument, external management and external administration agreements are not eligible for the ordinary course of business exemption. External management and external administration agreements include agreements between the reporting issuer and a third party, the reporting issuer's parent entity, or an affiliate of the reporting issuer, under which the latter provides management or other administrative services to the reporting issuer.

(5) **Material Contracts on which the Reporting Issuer's Business is Substantially Dependent** – Paragraph 12.2(1)(f) of the Instrument provides that a material contract on which the "reporting issuer's business is substantially dependent" is not eligible for the ordinary course of business exemption. Generally, a contract on which the reporting issuer's business is substantially dependent is a contract so significant that the reporting issuer's business depends on the continuance of the contract. Some examples of this type of contract include:

(a) a financing or credit agreement providing a majority of the reporting issuer's capital requirements for which alternative financing is not readily available at comparable terms;

(b) a contract calling for the acquisition or sale of substantially all of the reporting issuer's property, plant and equipment, long-lived assets, or total assets; and

(c) an option, joint venture, purchase or other agreement relating to a mining or oil and gas property that represents a majority of the reporting issuer's business.

(6) **Confidentiality Provisions** – Under subsection 12.2(3) of the Instrument, a reporting issuer may omit or redact a provision of a material contract that is required to be filed if an executive officer of the reporting issuer has reasonable grounds to believe that disclosure of the omitted or redacted provision would violate a confidentiality

provision. A provision of the type described in paragraphs 12.2(4)(a), (b) or (c) of the Instrument may not be omitted or redacted even if disclosure would violate a confidentiality provision, including a blanket confidentiality provision covering the entire material contract.

When negotiating material contracts with third parties, reporting issuers should consider their disclosure obligations under securities legislation. A regulator or securities regulatory authority may consider granting an exemption to permit a provision of the type listed in subsection 12.2(4) of the Instrument to be redacted if:

(a) the disclosure of that provision would violate a confidentiality provision; and

(b) the material contract was negotiated before the adoption of the exceptions in subsection 12.2(4) of the Instrument.

The regulator may consider the following factors, among others, in deciding whether to grant an exemption:

(c) whether an executive officer of the reporting issuer reasonably believes that the disclosure of the provisions would be prejudicial to the interests of the reporting issuer; and

(d) whether the reporting issuer is unable to obtain a waiver of the confidentiality provision from the other party.

(7) **Disclosure Seriously Prejudicial to Interests of Reporting Issuer** – Under subsection 12.2(3) of the Instrument, a reporting issuer may omit or redact certain provisions of a material contract that is required to be filed if an executive officer of the reporting issuer reasonably believes that disclosure of the omitted or redacted provision would be seriously prejudicial to the interests of the reporting issuer. One example of disclosure that may be seriously prejudicial to the interests of the reporting issuer is disclosure of information in violation of applicable Canadian privacy legislation. However, in situations where securities legislation requires disclosure of the particular type of information, applicable privacy legislation generally provides an exemption for the disclosure. Generally, disclosure of information that a reporting issuer or other party has already publicly disclosed is not seriously prejudicial to the interests of the reporting issuer.

(8) **Terms Necessary for Understanding Impact on Business of Reporting Issuer** – A reporting issuer may not omit or redact a provision of a type described in paragraph 12.2(4)(a), (b), or (c) of the Instrument. Paragraph 12.2(4)(c) of the Instrument provides that a reporting issuer may not omit or redact "terms necessary for understanding the impact of the material contract on the business of the reporting issuer". Terms that may be necessary for understanding the impact of the material contract on the business of the reporting issuer include the following:

(a) the duration and nature of a patent, trademark, license, franchise, concession, or similar agreement;

(b) disclosure about related party transactions; and

(c) contingency, indemnification, anti-assignability, take-or-pay clauses, or change-of-control clauses.

(9) **Summary of Omitted or Redacted Provisions** – Under subsection 12.2(5) of the Instrument, a reporting issuer must include a description of the type of information that has been omitted or redacted in the copy of the material contract filed by the reporting issuer. A brief one-sentence description immediately following the omitted or redacted information is generally sufficient.

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, Corporate Finance

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
500 - 400 St. Mary Avenue

Winnipeg, Manitoba
R3C 4K5
Attention: Corporate Finance

New Brunswick Securities Commission
85 Charlotte Street, Suite 300
Saint John, N.B.
E2L 2J2
Attention: Corporate Finance

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

Department of Justice, Northwest Territories
~~Legal Registries~~
Securities Office
P.O. Box 1320
1st Floor, 5009-49th Street
Yellowknife, NWT X1A 2L9
Attention: ~~Director, Legal Registries~~Superintendent of Securities

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~~Superintendent of Securities

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

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

Saskatchewan Financial Services Commission – Securities Division
Suite 601
1919 Saskatchewan Drive
Regina, SK S4P 4H2
Attention: Deputy Director, Corporate Finance

~~Registrar~~Superintendent of Securities, Government of Yukon
Corporate Affairs J-9
P.O. Box 2703
Whitehorse, Yukon
Y1A 5H3
Attention: ~~Registrar of Securities~~ Superintendent of Securities

PART 14 TRANSITION

14.1 Transition – Application of Amendments

The amendments to this Policy which came into effect on January 1, 2011 only apply to periods relating to financial years beginning on or after January 1, 2011.

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 6 months ended 8/31/X1 9 months ended 11/30/X1	3 months ended 6/30/X0 6 months ended 9/30/X0 9 months ended 12/31/X0
Or							
14 months ended 2/28/X2	12 months ended 12/31/X0	2/28/X3	14 months ended 2/28/X2	3 months ended 3/31/X1 6 months ended 6/30/X1 9 months ended 9/30/X1 12 months ended 12/31/X1	3 months ended 3/31/X0 6 months ended 6/30/X0 9 months ended 9/30/X0 12 months ended 12/31/X0	3 months ended 5/31/X2 6 months ended 8/31/X2 9 months ended 11/30/X2	3 months ended 6/30/X1 6 months ended 9/30/X1 9 months ended 12/31/X1
				or			
				2 months ended 2/28/X1 5 months ended 5/31/X1 8 months ended	3 months ended 3/31/X0 6 months ended 6/30/X0 9 months ended	3 months ended 5/31/X2 6 months ended 8/31/X2 9 months ended	3 months ended 6/30/X1 6 months ended 9/30/X1 9 months ended

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
				8/31/X1 11 months ended 11/30/X1	9/30/X0 12 months ended 12/31/X0	11/30/X2	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 6 months ended 12/31/X1 9 months ended 3/31/X2	3 months ended 9/30/X0 6 months ended 12/31/X0 9 months ended 3/31/X1
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 6 months ended 1/31/X2 9 months ended 4/30/X2	3 months ended 9/30/X0 6 months ended 12/31/X0 9 months ended 3/31/X1
				Or			
				4 months ended 4/30/X1	3 months ended 3/31/X0	3 months ended 10/31/X1 6 months ended 1/31/X2 9 months ended 4/30/X2	3 months ended 9/30/X0 6 months ended 12/31/X0 10 months ended 4/30/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 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 6 months ended 6/30/X1	3 months ended 3/31/X0 6 months ended 6/30/X0	3 months ended 1/31/X2 6 months ended 4/30/X2 9 months ended 7/31/X2	3 months ended 12/31/X0 6 months ended 3/31/X1 9 months ended 6/30/X1
				or			
				4 months ended 4/30/X1 7 months ended 7/31/X1	3 months ended 3/31/X0 6 months ended 6/30/X0	3 months ended 1/31/X2 6 months ended 4/30/X2 9 months ended 7/31/X2	3 months ended 12/31/X0 6 months ended 3/31/X1 9 months ended 6/30/X1

* ~~Balance sheet~~Statement of financial position required only at the transition year end date