

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

**PART 1     DEFINITIONS AND INTERPRETATION**

**1.1     Definitions and Interpretation**

In this Instrument:

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

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

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

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

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

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

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

“class” includes a series of a class;

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

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

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

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

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

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

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

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

“informed person” means

- (a) a director or executive officer of a reporting issuer;
- (b) a director or executive officer of a person or company that is itself an informed person or subsidiary of a reporting issuer;
- (c) any person or company who beneficially owns, directly or indirectly, voting securities of a reporting issuer or who exercises control or direction over voting securities of a reporting issuer or a combination of both carrying more than 10 percent of the voting rights attached to all outstanding voting securities of the

reporting issuer other than voting securities held by the person or company as underwriter in the course of a distribution; and

- (d) a reporting issuer that has purchased, redeemed or otherwise acquired any of its securities, for so long as it holds any of its securities;

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

“interim period” means,

- (a) in the case of a year other than a transition year, a period commencing on the first day of the financial year and ending nine, six or three months before the end of the financial year; or
- (b) in the case of a transition year, a period commencing on the first day of the transition year and ending
  - (i) three, six, nine or twelve months, if applicable, after the end of the old financial year; or
  - (ii) twelve, nine, six or three months, if applicable, before the end of the transition year;

“investment fund” means a mutual fund or a non-redeemable investment fund;

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

“marketplace” means

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

- (d) a dealer that executes a trade of an exchange-traded security outside of a marketplace,

but does not include an inter-dealer bond broker;

“material change” means

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

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

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

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

“non-redeemable investment fund” means any issuer

- (a) where contributions of securityholders are pooled for investment;
- (b) where securityholders do not have day-to-day control over the management and investment decisions of the issuer, whether or not they have the right to be consulted or to give directions; and
- (c) whose securities do not entitle the securityholder to receive on demand, or within a specified period after demand, an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets of the issuer;

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

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

“principal obligor” means, for an asset-backed security, a person or company that is obligated to make payments, has guaranteed payments, or has provided alternative credit

support for payments, on financial assets that represent one-third or more of the aggregate amount owing on all of the financial assets servicing the asset-backed security;

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

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

“recognized exchange” means

- (a) in Ontario, an exchange recognized by the securities regulatory authority to carry on business as a stock exchange; and
- (b) in every other jurisdiction, an exchange recognized by the securities regulatory authority as an exchange, self-regulatory organization or self-regulatory body;

“recognized quotation and trade reporting system” means

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

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

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

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

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

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

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

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

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

“SEC issuer” means a reporting issuer that

- (a) has a class of securities registered under section 12 of the 1934 Act or is required to file reports under section 15(d) of the 1934 Act; and
- (b) is not registered or required to be registered as an investment company under the *Investment Company Act of 1940* of the United States of America, as amended;

“solicit”, in connection with a proxy, includes

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

but does not include

- (e) sending a form of proxy to a securityholder in response to a unsolicited request made by or on behalf of the securityholder; or



- (f) performing ministerial acts or professional services on behalf of a person or company soliciting a proxy;

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

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

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

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

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

“venture issuer” means a reporting issuer that, as at the applicable time, did not have any of its securities listed or quoted on any of the Toronto Stock Exchange, a U.S. marketplace or a marketplace outside of Canada and the United States of America; where the “applicable time” in respect of

- (a) Parts 4 and 5 of this Instrument and Form 51-102F1, is the end of the applicable financial period;
- (b) Parts 6 and 9 of this Instrument and Form 51-102F6, is the end of the most recently completed financial year;
- (c) Part 8 of this Instrument and Form 51-102F4, is the date of acquisition; and
- (d) section 11.3 of this Instrument, is the date of the meeting of the securityholders.

## **PART 2 APPLICATION**

### **2.1 Application**

This Instrument does not apply to an investment fund.

## **PART 3 LANGUAGE OF DOCUMENTS**

### **3.1 French or English**

- (1) A person or company must file a document required to be filed under this Instrument in French or in English.

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

## **PART 4 FINANCIAL STATEMENTS**

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

- (1) Subject to subsection 4.8(6), a reporting issuer must file annual financial statements that include
  - (a) an income statement, a statement of retained earnings, and a cash flow statement for
    - (i) the most recently completed financial year; and
    - (ii) the financial year immediately preceding the most recently completed financial year, if any;
  - (b) a balance sheet as at the end of each of the periods referred to in paragraph (a); and
  - (c) notes to the financial statements.
- (2) Annual financial statements filed under subsection (1) must be accompanied by an auditor's report.

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

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

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

- (ii) the date of filing, in a foreign jurisdiction, annual financial statements for its most recently completed financial year.

#### **4.3 Interim Financial Statements**

- (1) A reporting issuer must file,
  - (a) if it has not completed its first financial year, interim financial statements for the interim periods of the reporting issuer's current financial year other than a period that is less than three months in length; or
  - (b) if it has completed its first financial year, interim financial statements for the interim periods of the reporting issuer's current financial year.
- (2) Subject to subsections 4.7(4), 4.8(7) and 4.8(8), the interim financial statements required to be filed under subsection (1) must include
  - (a) a balance sheet as at the end of the interim period and a balance sheet as at the end of the immediately preceding financial year, if any;
  - (b) an income statement, a statement of retained earnings and a cash flow statement, all for the year-to-date interim period, and comparative financial information for the corresponding interim period in the immediately preceding financial year, if any;
  - (c) for interim periods other than the first interim period in a reporting issuer's financial year, an income statement and cash flow statement for the three month period ending on the last day of the interim period and comparative financial information for the corresponding period in the preceding financial year, if any; and
  - (d) notes to the financial statements.
- (3) **Disclosure of Auditor Review of Interim Financial Statements**
  - (a) If an auditor has not performed a review of the interim financial statements required to be filed under subsection (1), the interim financial statements must be accompanied by a notice indicating that the financial statements have not been reviewed by an auditor.
  - (b) If a reporting issuer engaged an auditor to perform a review of the interim financial statements required to be filed under subsection (1) and the auditor was unable to complete the review, the interim financial statements must be accompanied by a notice indicating that the auditor was unable to complete a review of the interim financial statements and the reasons why the auditor was unable to complete the review.

- (c) If an auditor has performed a review of the interim financial statements required to be filed under subsection (1) and the auditor has expressed a reservation in the auditor's interim review report, the interim financial statements must be accompanied by a written review report from the auditor.

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

If an SEC issuer

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

the SEC issuer must

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

**4.4 Filing Deadline for Interim Financial Statements**

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

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

**4.5 Approval of Financial Statements**

- (1) The financial statements a reporting issuer is required to file under section 4.1 must be approved by the board of directors before the statements are filed.

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

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

- (1) Subject to subsection (2), a reporting issuer must send annually a request form to the registered holders and beneficial owners of its securities, other than debt instruments, that the registered holders and beneficial owners may use to request a copy of the reporting issuer's annual financial statements and MD&A for the annual financial statements, the interim financial statements and MD&A for the interim financial statements, or both.
- (2) For the purposes of subsection (1), the reporting issuer must, applying the procedures set out in National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*, send the request form to the beneficial owners of its securities who are identified under that Instrument as having chosen to receive all securityholder materials sent to beneficial owners of securities.
- (3) If a registered holder or beneficial owner requests the reporting issuer's annual or interim financial statements, the reporting issuer must send a copy of the requested financial statements to the person or company that made the request, without charge, by the later of
  - (a) the filing deadline for the financial statements requested; and
  - (b) 10 calendar days after the issuer receives the request.
- (4) A reporting issuer is not required to send copies of annual or interim financial statements under subsection (3) that were filed more than two years before the issuer receives the request.
- (5) Subsection (1) and the requirement to send annual financial statements under subsection (3) do not apply to a reporting issuer that sends its annual financial statements to all its securityholders, other than holders of debt instruments.
- (6) If a reporting issuer sends financial statements under this section, the reporting issuer must also send, at the same time, the annual or interim MD&A relating to the financial statements.

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

- (1) Despite any provisions of this Part other than subsections (2), (3) and (4) of this section, the first annual and interim financial statements that a reporting issuer must file under sections 4.1 and 4.3 are the financial statements for the financial year and interim periods immediately following the periods for which financial statements were included in a document filed

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

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

- (1) **Exemption from Change in Year-End Requirements** – This section does not apply to an SEC issuer if
  - (a) it complies with the requirements of U.S. laws relating to a change of fiscal year; and
  - (b) it files a copy of all materials required by U.S. laws relating to a change of fiscal year at the same time as, or as soon as practicable after, they are filed with or furnished to the SEC and, in the case of financial statements, no later than the filing deadlines prescribed under sections 4.2 and 4.4.
- (2) **Notice of Change** – If a reporting issuer decides to change its financial year-end by more than 14 days, it must file a notice containing the information set out in subsection (3) as soon as practicable, and, in any event, not later than the earlier of

- (a) the filing deadline, based on the reporting issuer's old financial year-end, for the next financial statements required to be filed, either annual or interim, whichever comes first; and
  - (b) the filing deadline, based on the reporting issuer's new financial year-end, for the next financial statements required to be filed, either annual or interim, whichever comes first.
- (3) The notice referred to in subsection (2) must state
  - (a) that the reporting issuer has decided to change its year-end;
  - (b) the reason for the change;
  - (c) the reporting issuer's old financial year-end;
  - (d) the reporting issuer's new financial year-end;
  - (e) the length and ending date of the periods, including the comparative periods, of the interim and annual financial statements to be filed for the reporting issuer's transition year and its new financial year; and
  - (f) the filing deadlines, prescribed under sections 4.2 and 4.4, for the interim and annual financial statements for the reporting issuer's transition year.
- (4) **Maximum Length of Transition Year** – For the purposes of this section,
  - (a) a transition year must not exceed 15 months; and
  - (b) the first interim period after an old financial year must not exceed four months.
- (5) **Interim Period Ends Within One Month of Year-End** – Despite paragraph 4.3(1)(b), a reporting issuer is not required to file interim financial statements for any period in its transition year that ends within one month
  - (a) after the last day of its old financial year; or
  - (b) before the first day of its new financial year.
- (6) **Comparative Financial Information in Annual Financial Statements for New Financial Year** – If a transition year is less than nine months in length, the reporting issuer must include as comparative financial information to its financial statements for its new financial year
  - (a) a balance sheet and income statement, a statement of retained earnings and a cash flow statement for its transition year; and
  - (b) a balance sheet and income statement, a statement of retained earnings and a cash flow statement for its old financial year.

(7) **Comparative Financial Information in Interim Financial Statements if Interim Periods Not Changed in Transition Year** – If interim periods for the reporting issuer's transition year end three, six, nine or twelve months after the end of its old financial year, the reporting issuer must include

- (a) as comparative financial information in its interim financial statements during its transition year, the comparative financial information required by subsection 4.3(2), except if an interim period during the transition year is 12 months in length and the reporting issuer's transition year is longer than 13 months, the comparative financial information must be the balance sheet and income statement, statement of retained earnings and cash flow statement for the 12 month period that constitutes its old financial year; and
- (b) as comparative financial information in its interim financial statements during its new financial year
  - (i) a balance sheet as at the end of its transition year; and
  - (ii) the income statement, statement of retained earnings and cash flow statement for the periods in its transition year or old financial year, for the same calendar months as, or as close as possible to, the calendar months in the interim period in the new financial year.

(8) **Comparative Financial Information in Interim Financial Statements if Interim Periods Changed in Transition Year** – If interim periods for a reporting issuer's transition year end twelve, nine, six or three months before the end of the transition year, the reporting issuer must include

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



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

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

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

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

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

#### **4.10 Reverse Takeovers**

- (1) **Change in Year End** - If a reporting issuer must comply with section 4.9 because it was a party to a reverse takeover, the reporting issuer must comply with section 4.8 unless

- (a) the reporting issuer had the same year-end as the reverse takeover acquirer before the transaction; or
- (b) the reporting issuer changes its year-end to be the same as that of the reverse takeover acquirer.

- (2) **Financial Statements of the Reverse Takeover Acquirer for Periods Ending Before a Reverse Takeover** - If a reporting issuer completes a reverse takeover, it must

- (a) file financial statements for the reverse takeover acquirer for all annual and interim periods ending

- (i) after the date of the financial statements included in an information circular filed in connection with the transaction; and
  - (ii) before the date of the reverse takeover,

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

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

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

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

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

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

- (a) the application of accounting principles or policies to a transaction, whether or not the transaction is completed;
- (b) a report provided by an auditor on the reporting issuer’s financial statements;

- (c) scope or procedure of an audit or review engagement; or
- (d) financial statement disclosure;

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

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

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

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

“relevant information circular” means

- (a) if a reporting issuer’s constating documents or applicable law require holders of qualified securities to take action to remove the reporting issuer’s auditor or to appoint a successor auditor
  - (i) the information circular required to accompany or form part of every notice of meeting at which that action is proposed to be taken; or

- (ii) the disclosure document accompanying the text of the written resolution provided to holders of qualified securities; or
- (b) if paragraph (a) does not apply, the information circular required to accompany or form part of the first notice of meeting to be sent to holders of qualified securities following the preparation of a reporting package concerning a termination or resignation;

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

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

“reporting package” means

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

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

“successor auditor” means the person or company

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

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

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

- (a) the removal of its auditor before the expiry of the auditor’s term of appointment, the expiry of its auditor’s term of appointment without reappointment, or the appointment of a different person or company as its auditor upon expiry of its auditor’s term of appointment; and

- (b) the decision by the board of directors of the reporting issuer to propose to holders of its qualified securities that its auditor be removed before, or that a different person or company be appointed as its auditor upon, the expiry of its auditor's term of appointment;

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

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

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

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

- (a)
  - (i) a termination, or resignation, and appointment occur in connection with an amalgamation, arrangement, takeover or similar transaction involving the reporting issuer or a reorganization of the reporting issuer;
  - (ii) the termination, or resignation, and appointment have been disclosed in a news release that has been filed or in a disclosure document that has been delivered to holders of qualified securities and filed; and
  - (iii) no reportable event has occurred;
- (b) the change of auditor is required by the legislation under which the reporting issuer exists or carries on its activities; or
- (c) the change of auditor arises from an amalgamation, merger or other reorganization of the auditor.

- (4) **Exemption From Change of Auditor Requirements – SEC Issuers** - This section does not apply to an SEC issuer if it

- (a) complies with the requirements of U.S. laws relating to a change of auditor;
- (b) files a copy of all materials required by U.S. laws relating to a change of auditor at the same time as, or as soon as practicable after, they are filed with or furnished to the SEC;

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

- (ii) a summary of the contents of the reporting package with a cross-reference to the appendix.

(6) **Requirements upon Auditor Appointment** - Upon an appointment of a successor auditor, a reporting issuer must

- (a) within 10 days after the date of appointment
  - (i) prepare a change of auditor notice in accordance with subsection (7) and deliver it to the successor auditor and to the former auditor;
  - (ii) request the successor auditor to
    - (A) review the reporting issuer's change of auditor notice;
    - (B) prepare a letter addressed to the applicable regulator or securities regulatory authority, stating, for each statement in the change of auditor notice, whether the auditor
      - (I) agrees,
      - (II) disagrees, and the reasons why, or
      - (III) has no basis to agree or disagree; and
    - (C) deliver that letter to the reporting issuer within 20 days after the date of appointment; and
  - (iii) request the former auditor to, within 20 days after the date of appointment,
    - (A) confirm that the letter referred to in clause (5)(a)(ii)(B) does not have to be updated; or
    - (B) prepare and deliver to the reporting issuer an updated letter to replace the letter referred to in clause (5)(a)(ii)(B);
- (b) within 30 days after the date of appointment,
  - (i) have the audit committee of its board of directors or its board of directors review the letters referred to in clauses (6)(a)(ii)(B) and (6)(a)(iii)(B) if received by the reporting issuer, and approve the change of auditor notice;
  - (ii) file a copy of the reporting package with the regulator or securities regulatory authority;
  - (iii) deliver a copy of the reporting package to the successor auditor and to the former auditor; and

- (iv) if there are any reportable events, issue and file a news release disclosing the appointment of the successor auditor and either describing the information in the reporting package or referring to the news release required under subparagraph (5)(b)(iv).

(7) **Change of Auditor Notice Content** - A change of auditor notice must state

- (a) the date of termination or resignation;
- (b) whether the former auditor
  - (i) resigned on the former auditor's own initiative or at the reporting issuer's request;
  - (ii) was removed or is proposed to holders of qualified securities to be removed during the former auditor's term of appointment; or
  - (iii) was not reappointed or has not been proposed for reappointment;
- (c) whether the termination or resignation of the former auditor and any appointment of the successor auditor were considered or approved by the audit committee of the reporting issuer's board of directors or the reporting issuer's board of directors;
- (d) whether the former auditor's report on any of the reporting issuer's financial statements relating to the relevant period contained any reservation and, if so, a description of each reservation;
- (e) if there is a reportable event, the following information:
  - (i) for a disagreement,
    - (A) a description of the disagreement;
    - (B) whether the audit committee of the reporting issuer's board of directors or the reporting issuer's board of directors discussed the disagreement with the former auditor; and
    - (C) whether the reporting issuer authorized the former auditor to respond fully to inquiries by any successor auditor concerning the disagreement and, if not, a description of and reasons for any limitation;
  - (ii) for a consultation,
    - (A) a description of the issue that was the subject of the consultation;
    - (B) a summary of the successor auditor's oral advice, if any, provided to the reporting issuer concerning the issue;



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

## **PART 5 MANAGEMENT'S DISCUSSION & ANALYSIS**

### **5.1 Filing of MD&A**

- (1) A reporting issuer must file MD&A relating to its annual and interim financial statements required under Part 4.
- (2) Subject to section 5.2, the MD&A required to be filed under subsection (1) must be filed by the earlier of
  - (a) the filing deadlines for the annual and interim financial statements set out in sections 4.2, 4.4 and 4.7, as applicable; and
  - (b) the date the reporting issuer files the financial statements under subsections 4.1(1), 4.3(1) or 4.7(1), as applicable.

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

- (1) If an SEC issuer is filing its annual or interim MD&A prepared in accordance with Item 303 of Regulation S-K or Item 303 of Regulation S-B under the 1934 Act, then the SEC issuer must file
  - (a) that document on or before the earlier of
    - (i) the date the SEC issuer would be required to file that document under section 5.1; and
    - (ii) the date the SEC issuer files that document with the SEC; and
  - (b) at the same time, a supplement prepared in accordance with subsection (2) if the SEC issuer
    - (i) has based the discussion in the MD&A on financial statements prepared in accordance with U.S. GAAP; and
    - (ii) is required by subsection 4.1(1) of National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* to provide a reconciliation to Canadian GAAP.
- (2) A supplement required under subsection (1) must restate, based on financial information of the reporting issuer prepared in accordance with or reconciled to Canadian GAAP, those parts of the MD&A that
  - (a) are based on financial statements of the reporting issuer prepared in accordance with U.S. GAAP; and
  - (b) would contain material differences if they were based on financial statements of the reporting issuer prepared in accordance with Canadian GAAP.

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

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

- (e) any material costs, whether capitalized, deferred or expensed, not referred to in paragraphs (a) through (d);

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

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

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

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

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

- (1) The annual MD&A and any annual MD&A supplement that a reporting issuer is required to file under this Part must be approved by the board of directors before being filed.
- (2) The interim MD&A and any interim MD&A supplement that a reporting issuer is required to file under this Part must be approved by the board of directors before being filed.
- (3) In fulfilling the requirement in subsection (2), the board of directors may delegate the approval of the interim MD&A and any MD&A supplement required to be filed under this Part to the audit committee of the board of directors.

## **5.6 Delivery of MD&A**

- (1) If a registered holder or beneficial owner requests the reporting issuer's annual or interim MD&A, the reporting issuer must send a copy of the requested MD&A and any MD&A supplement required under section 5.2 to the person or company that made the request, without charge, by the later of
  - (a) the filing deadline for the MD&A requested; and
  - (b) 10 calendar days after the issuer receives the request.
- (2) A reporting issuer is not required to send copies of any MD&A or MD&A supplement under subsection (1) that was filed more than two years before the issuer receives the request.
- (3) The requirement to send annual MD&A and any related MD&A supplement under subsection (1) does not apply to a reporting issuer that sends its annual MD&A and any related MD&A supplement to all its securityholders, other than holders of debt instruments.
- (4) If a reporting issuer sends MD&A under this section, the reporting issuer must also send, at the same time, the annual or interim financial statements to which the MD&A relates.

# **PART 6 ANNUAL INFORMATION FORM**

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

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

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

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

- (a) subject to paragraph (b), on or before the 90th day after the end of the reporting issuer's most recently completed financial year; or

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

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

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

## **PART 7 MATERIAL CHANGE REPORTS**

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

- (1) Subject to subsection (2), if a material change occurs in the affairs of a reporting issuer, the reporting issuer must
  - (a) immediately issue and file a news release authorized by a senior officer disclosing the nature and substance of the change; and
  - (b) as soon as practicable, and in any event within 10 days of the date on which the change occurs, file a Form 51-102F3 Material Change Report with respect to the material change.
- (2) Subsection (1) does not apply if,
  - (a) in the opinion of the reporting issuer, and if that opinion is arrived at in a reasonable manner, the disclosure required by subsection (1) would be unduly detrimental to the interests of the reporting issuer; or
  - (b) the material change consists of a decision to implement a change made by senior management of the reporting issuer who believe that confirmation of the decision by the board of directors is probable, and senior management of the reporting issuer has no reason to believe that persons with knowledge of the material change have made use of that knowledge in purchasing or selling securities of the reporting issuer,

and the reporting issuer immediately files the report required under paragraph (1)(b) marked so as to indicate that it is confidential, together with written reasons for non-disclosure.

- (3) In Québec, subsection (1) does not apply to a reporting issuer in Québec if

- (a) senior management of the reporting issuer has reasonable grounds to believe that disclosure required by subsection (1) would be seriously prejudicial to the interests of the reporting issuer and that no trade in the securities of the reporting issuer has been or will be carried out on the basis of the information not generally known; and
  - (b) the reporting issuer immediately files the report required under paragraph (1)(b) marked so as to indicate that it is confidential, together with written reasons for non-disclosure.
- (4) If a reporting issuer relies on subsection (3), the reporting issuer must comply with subsection (1) when the circumstances that justify non-disclosure have ceased to exist.
- (5) If a report has been filed under subsection (2) or (3), the reporting issuer must advise the regulator or securities regulatory authority in writing if it believes the report should continue to remain confidential, within 10 days of the date of filing of the initial report and every 10 days thereafter until the material change is generally disclosed in the manner referred to in paragraph (1)(a), or, if the material change consists of a decision of the type referred to in paragraph (2)(b), until that decision has been rejected by the board of directors of the reporting issuer.
- (6) Despite subsection (5), in Ontario, the reporting issuer must advise the securities regulatory authority.
- (7) If a report has been filed under subsection (2) or (3), the reporting issuer must promptly generally disclose the material change in the manner referred to in paragraph (1)(a) upon the reporting issuer becoming aware, or having reasonable grounds to believe, that persons or companies are purchasing or selling securities of the reporting issuer with knowledge of the material change that has not been generally disclosed.

## **PART 8 BUSINESS ACQUISITION REPORT**

### **8.1 Interpretation and Application**

- (1) In this Part,

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

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

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

“business” includes an interest in an oil and gas property.

- (2) This Part does not apply to an acquisition made by a reporting issuer if the reporting issuer files its own information circular or that of another person or company, or a filing statement prepared in accordance with the policies and requirements of the TSX Venture Exchange, and
  - (a) the information circular or filing statement either
    - (i) contains the information and financial statements that would be required by section 14.2 of Form 51-102F5 concerning the acquisition of the business or related businesses; or
    - (ii) is an information circular or filing statement prepared in connection with a Qualifying Transaction for an issuer that is a capital pool company under the TSX Venture Exchange’s policy on Capital Pool Companies, and the reporting issuer complies with the policies and requirements of the TSX Venture Exchange in respect of the Qualifying Transaction;
  - (b) the date of the acquisition is within nine months of the date of the information circular or filing statement; and
  - (c) between the date of the information circular or filing statement and the date of acquisition there has been no material change in the terms of the significant acquisition from those disclosed in the information circular or filing statement.

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

If a reporting issuer completes a significant acquisition, as determined under section 8.3, it must file a business acquisition report within 75 days after the date of acquisition.

## **8.3 Determination of Significance**

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

each of the reporting issuer and the business or the related businesses for the most recently completed financial year of each that ended before the date of the acquisition.

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



1. The reporting issuer's proportionate share of the consolidated income from continuing operations of the business or related businesses for the later of
  - (A) the most recently completed financial year of the business or related businesses, or
  - (B) the 12 months ended on the last day of the most recently completed interim period of the business or related businesses.
2. The reporting issuer's consolidated income from continuing operations for the later of
  - (A) the most recently completed financial year, without giving effect to the acquisition, or
  - (B) the 12 months ended on the last day of the most recently completed interim period of the reporting issuer, without giving effect to the acquisition.
- (5) If a reporting issuer re-calculates the significance of an acquisition of a business or of related businesses under subsection (4) and none of the significance tests in that subsection is met, the acquisition is not a significant acquisition for purposes of this Instrument.
- (6) Despite subsection (3), the significance of an acquisition of a business or related businesses may be re-calculated using financial statements for periods that ended after the date of acquisition only if, after the date of acquisition, the business or related businesses remained substantially intact and were not significantly reorganized, and no significant assets or liabilities were transferred to other entities.
- (7) **Application of the Income Test if a Loss Occurred** - For the purposes of paragraphs (2)(c) and (4)(c), if any of the reporting issuer, the business or the related businesses has incurred a loss, the significance test must be applied using the absolute value of the loss.
- (8) **Application of the Income Test if Lower Than Average Income for the Most Recent Year** - For the purposes of paragraph (2)(c) and clause (4)(c)2.(A), if the reporting issuer's consolidated income from continuing operations for the most recently completed financial year was
  - (a) positive; and
  - (b) lower by 20 percent or more than the average consolidated income from continuing operations of the reporting issuer for the three most recently completed financial years,

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

- (9) **Application of the Optional Income Test if Lower Than Average Income for the Most Recent Year** - For the purpose of clause (4)(c)2.(B) if the reporting issuer's consolidated income from continuing operations for the most recently completed 12-month period was

- (a) positive; and
- (b) lower by 20 percent or more than the average consolidated income from continuing operations of the reporting issuer for the three most recently completed 12-month periods,

then the average consolidated income for the three most recently completed 12-month periods may, subject to subsection (10), be substituted in determining whether the significance test set out in paragraph (4)(c) is satisfied.

- (10) **Lower than Average Income of the Issuer if a Loss Occurred** - If the reporting issuer's consolidated income from continuing operations for either of the two earlier financial periods referred to in subsections (8) and (9) is a loss, the reporting issuer's income from continuing operations for that period is considered to be zero for the purposes of calculating the average consolidated income for the three financial periods.

- (11) **Application of Significance Tests – Step-By-Step Acquisitions** - If a reporting issuer has made a “step-by-step” purchase as described in the Handbook, then for the purposes of applying subsections (2) and (4),

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

- (12) **Application of Significance Tests – Related Businesses** - In determining whether an acquisition of related businesses is a significant acquisition, related businesses acquired after the ending date of the most recently filed annual audited financial statements of the reporting issuer must be considered on a combined basis.
- (13) **Application of Significance Tests – Accounting Principles and Currency** - For the purposes of the significance tests in subsections (2) and (4), financial statements of the business or related businesses must be reconciled to the accounting principles used to prepare the reporting issuer's financial statements and translated into the same reporting currency as that used in the reporting issuer's financial statements.
- (14) **Application of Significance Tests – Use of Unaudited Financial Statements** - Despite subsections (2) and (4), the significance of an acquisition of a business or related businesses may be calculated using unaudited financial statements of the business or related businesses that comply with subsection 6.1(1) of National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* if the financial statements of the business or related businesses for the most recently completed financial year have not been audited.

#### **8.4 Financial Statement Disclosure for Significant Acquisitions**

- (1) **Annual Financial Statements** - If an acquisition of a business or related businesses is a significant acquisition under subsection 8.3(1) or 8.3(3), subject to sections 8.6 through 8.11, a business acquisition report must include the following financial statements of each business or related businesses:
  - (a) an income statement, a statement of retained earnings and a cash flow statement for the periods specified in section 8.5;
  - (b) a balance sheet as at the date on which each of the periods specified in section 8.5 ended;
  - (c) notes to the financial statements; and
  - (d) an auditor's report on the financial statements for each of the periods specified in section 8.5.
- (2) **Interim Financial Statements** - Subject to sections 8.6 through 8.11, if a reporting issuer must include financial statements in a business acquisition report under subsection (1), the business acquisition report must include interim financial statements for
  - (a) either
    - (i) the most recently completed interim period of the business that started the day after the balance sheet date specified in paragraph (1)(b) and ended before the date of acquisition; or

- (ii) the period that started the day after the balance sheet date specified in paragraph (1)(b) and ended on a day that is more recent than the ending date of the period in subparagraph (i) and is not later than the date of acquisition; and
  - (b) the comparable period in the preceding financial year of the business.
- (3) **Pro Forma Financial Statements Required in a Business Acquisition Report** - If a reporting issuer is required to include financial statements in a business acquisition report under subsection (1) or (2), the business acquisition report must include
- (a) a pro forma balance sheet of the reporting issuer as at the date of the reporting issuer's most recent balance sheet filed that gives effect, as if they had taken place as at the date of the pro forma balance sheet, to significant acquisitions that have been completed, but are not reflected in the reporting issuer's most recent annual or interim balance sheet;
  - (b) a pro forma income statement of the reporting issuer that gives effect to significant acquisitions completed after the ending date of the reporting issuer's most recently completed financial year for which financial statements are required to have been filed, as if they had taken place at the beginning of that financial year, for each of the following financial periods:
    - (i) the reporting issuer's most recently completed financial year for which financial statements are required to have been filed; and
    - (ii) the reporting issuer's most recently completed interim period that ended after the period in subparagraph (i) for which financial statements are required to have been filed;
  - (c) pro forma earnings per share based on the pro forma financial statements referred to in paragraph (b); and
  - (d) a compilation report accompanying the pro forma financial statements required under paragraphs (a) and (b) signed by the reporting issuer's auditor and prepared in accordance with the Handbook.
- (4) **Preparation of Pro Forma Financial Statements** - If a reporting issuer is required to include pro forma financial statements in a business acquisition report under subsection (3),
- (a) the reporting issuer must identify in the pro forma financial statements each significant acquisition, if the pro forma financial statements give effect to more than one significant acquisition;
  - (b) the reporting issuer must include in the pro forma financial statements a description of the underlying assumptions on which the pro forma financial statements are prepared, cross-referenced to each related pro forma adjustment;

- (c) if the financial year-end of the business differs from the reporting issuer's year-end by more than 93 days, for the purpose of preparing the pro forma income statement for the reporting issuer's most recently completed financial year, the reporting issuer must construct an income statement of the business for a period of 12 consecutive months ending no more than 93 days before or after the reporting issuer's year-end, by adding the results for a subsequent interim period to a completed financial year of the business and deducting the comparable interim results for the immediately preceding year;
  - (d) if a constructed income statement is required under paragraph (c), the pro forma financial statements must disclose the period covered by the constructed income statement on the face of the pro forma financial statements and must include a note stating that the financial statements of the business used to prepare the pro forma financial statements were prepared for the purpose of the pro forma financial statements and do not conform with the financial statements for the business included elsewhere in the business acquisition report;
  - (e) if a reporting issuer is required to prepare a pro forma income statement for an interim period required by subparagraph (3)(b)(ii), and the pro forma income statement for the most recently completed financial year includes results of the business which are also included in the pro forma income statement for the interim period, the reporting issuer must disclose in a note to the pro forma financial statements the revenue, expenses, gross profit and income from continuing operations included in each pro forma income statement for the overlapping period; and
  - (f) an audit report is not required for a constructed period referred to in paragraph (c).
- (5) **Financial Statements of Related Businesses** - If a reporting issuer is required under subsection (1) to include financial statements for more than one business because the significant acquisition involves an acquisition of related businesses, the financial statements required under subsection (1) must be presented separately for each business, except for the periods during which the businesses have been under common control or management, in which case the reporting issuer may present the financial statements of the businesses on a combined basis.

## 8.5 Reporting Periods

- (1) **Reporting Issuers that are not Venture Issuers** - The periods for which the financial statements are required under subsection 8.4(1) for a reporting issuer that is not a venture issuer as at the date of acquisition must be determined by reference to the significance tests set out in subsections 8.3(2) and 8.3(4) as follows:
  - 1. **Acquisitions significant between 20 percent and 40 percent** - If none of the significance tests is satisfied if "20 percent" is read as "40 percent", financial statements must be included for

- (A) the most recently completed financial year of the business ended more than 45 days before the date of acquisition; or
  - (B) if the business has not completed one financial year, or the business has completed its first financial year that ended 45 or fewer days before the date of acquisition, the financial period commencing on the date of formation and ending on a date not more than 45 days before the date of acquisition.
- 2. **Acquisitions significant over 40 percent** - If any of the significance tests are satisfied if “20 percent” is read as “40 percent”, financial statements must be included for
  - (A) each of the two most recently completed financial years of the business ended more than 45 days before the date of acquisition;
  - (B) if the business has not completed two financial years, any completed financial year ended more than 45 days before the date of acquisition; or
  - (C) if the business has not completed one financial year, or the business has completed its first financial year that ended 45 or fewer days before the date of acquisition, a financial period commencing on the date of formation and ending on a date not more than 45 days before the date of acquisition.
- (2) **Venture Issuers** - The period for which the financial statements are required under subsection 8.4(1) for a reporting issuer that is a venture issuer as at the date of acquisition is
  - (a) the most recently completed financial year of the business ended more than 45 days before the date of acquisition; or
  - (b) if the business has not completed one financial year, or the business has completed its first financial year that ended 45 or fewer days before the date of acquisition, the financial period commencing on the date of formation and ending on a date not more than 45 days before the date of acquisition.

## 8.6 Exemption for Significant Acquisitions Accounted for Using the Equity Method

A reporting issuer is exempt from the requirements in section 8.4 if

- (a) the acquisition is, or will be, an investment accounted for using the equity method;
- (b) the business acquisition report includes disclosure for the periods for which financial statements are otherwise required under subsection 8.4(1) that

- (i) summarizes information as to the assets, liabilities and results of operations of the business; and
  - (ii) describes the reporting issuer's proportionate interest in the business and any contingent issuance of securities by the business that might significantly affect the reporting issuer's share of earnings;
- (c) the financial information provided under paragraph (b) for any completed financial year
  - (i) has been derived from audited financial statements of the business; or
  - (ii) has been audited; and
- (d) the business acquisition report
  - (i) identifies the financial statements referred to in subparagraph (c)(i) from which the disclosure provided under paragraph (b) has been derived; or
  - (ii) discloses that the financial information provided under paragraph (b), if not derived from audited financial statements, has been audited; and
  - (iii) discloses that the audit opinion with respect to the financial statements referred to in subparagraph (i), or the financial information referred to in subparagraph (ii), was issued without a reservation.

## **8.7 Exemptions for Significant Acquisitions if More Recent Statements Included**

- (1) If under item 8.5(1)2. a reporting issuer is required to provide financial statements of a business for two completed financial years, the reporting issuer may omit the financial statements for the oldest financial year, if
  - (a) audited financial statements of the business are included for a financial year ended 45 days or less before the date of acquisition; or
  - (b)
    - (i) audited financial statements are included in the business acquisition report for a period of at least nine months commencing the day after the most recently completed financial year for which financial statements are required under item 8.5(1)2.;
    - (ii) the business is not seasonal; and
    - (iii) the reporting issuer has not included audited financial statements in the business acquisition report for a period of less than 12 months using the exemption set out in section 8.8.
- (2) A reporting issuer is exempt from the requirement in subsection 8.4(2) to provide interim financial statements if the reporting issuer includes annual audited or unaudited financial

statements of the business for a financial year ended 45 days or less before the date of acquisition.

## **8.8 Exemption for Significant Acquisitions if Financial Year End Changed**

If under section 8.5 a reporting issuer is required to provide financial statements for two completed financial years for a business acquired and the business changed its financial year end during either of the financial years required to be included, the reporting issuer may include financial statements for the transition year in satisfaction of the financial statements for one of the years, provided that the transition year is at least nine months.

## **8.9 Exemption from Comparatives if Financial Statements Not Previously Prepared**

A reporting issuer is not required to provide comparative information for interim financial statements required under subsection 8.4(2) for a business acquired if

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

## **8.10 Exemption for Acquisition of an Interest in an Oil and Gas Property**

A reporting issuer is exempt from the requirements in section 8.4 if

- (a) the significant acquisition is
  - (i) an acquisition of a business that is an interest in an oil and gas property; or
  - (ii) an acquisition of related businesses that are interests in oil and gas properties;
- (b) the reporting issuer is unable to provide the financial statements in respect of the significant acquisition otherwise required under this Part because those financial statements do not exist or because the reporting issuer does not have access to those financial statements;
- (c) the acquisition does not constitute a reverse takeover;
- (d) the business or related businesses did not, immediately before the time of completion of the acquisition, constitute a “reportable segment” of the vendor, as defined in the Handbook;



- (e) in respect of the business or related businesses, for each of the financial years for which financial statements would, but for this section, be required under section 8.4, the business acquisition report includes
  - (i) an operating statement, accompanied by a report of an auditor, presenting for the business or related businesses at least the following:
    - (A) gross revenue;
    - (B) royalty expenses;
    - (C) production costs; and
    - (D) operating income;
  - (ii) a description of the property or properties and the interest acquired by the reporting issuer; and
  - (iii) disclosure of the annual oil and gas production volumes from the business or related businesses; and
- (f) the business acquisition report discloses
  - (i) the estimated reserves and related future net revenue attributable to the business or related businesses, the material assumptions used in preparing the estimates and the identity and relationship to the reporting issuer or to the vendor of the person who prepared the estimates; and
  - (ii) the estimated oil and gas production volumes from the business or related businesses for the first year reflected in the estimates disclosed under subparagraph (f)(i).

## **8.11 Exemption for Step-By-Step Acquisitions**

Despite section 8.4, a reporting issuer is exempt from the requirements to file financial statements for an acquired business, other than the pro forma financial statements required by subsection 8.4(3), in a business acquisition report if the reporting issuer has made a “step-by-step” purchase as described in the Handbook and the acquired business has been consolidated in the reporting issuer's most recent annual financial statements that have been filed.

# **PART 9 PROXY SOLICITATION AND INFORMATION CIRCULARS**

## **9.1 Sending of Proxies and Information Circulars**

- (1) If management of a reporting issuer gives notice of a meeting to its registered holders of voting securities, management must, at the same time as or before giving that notice, send to each registered holder of voting securities who is entitled to notice of the meeting a form of proxy for use at the meeting.

- (2) Subject to section 9.2, a person or company that solicits proxies from registered holders of voting securities of a reporting issuer must,
  - (a) in the case of a solicitation by or on behalf of management of a reporting issuer, send an information circular with the notice of meeting to each registered securityholder whose proxy is solicited; or
  - (b) in the case of any other solicitation, concurrently with or before the solicitation, send an information circular to each registered securityholder whose proxy is solicited.
- (3) In Québec, subsections (1) and (2) apply, adapted as required, to a meeting of holders of debt securities of an issuer that is a reporting issuer in Québec, whether called by management of the reporting issuer or by the trustee of the debt securities.

## **9.2 Exemptions from Sending Information Circular**

- (1) Subsection 9.1(2) does not apply to a solicitation by a person or company in respect of securities of which the person or company is the beneficial owner.
- (2) Paragraph 9.1(2)(b) does not apply to a solicitation if the total number of securityholders whose proxies are solicited is not more than 15.
- (3) For the purposes of subsection (2), two or more persons or companies who are joint registered owners of one or more securities are considered to be one securityholder.

## **9.3 Filing of Information Circulars and Proxy-Related Material**

A person or company that is required under this Instrument to send an information circular or form of proxy to registered securityholders of a reporting issuer must promptly file a copy of the information circular, form of proxy and all other material required to be sent by the person or company in connection with the meeting to which the information circular or form of proxy relates.

## **9.4 Content of Form of Proxy**

- (1) A form of proxy sent to securityholders of a reporting issuer by a person or company soliciting proxies must indicate in bold-face type whether or not the proxy is solicited by or on behalf of the management of the reporting issuer, provide a specifically designated blank space for dating the form of proxy and specify the meeting in respect of which the proxy is solicited.
- (2) An information circular sent to securityholders of a reporting issuer or the form of proxy to which the information circular relates must
  - (a) indicate in bold-face type that the securityholder has the right to appoint a person or company to represent the securityholder at the meeting other than the person or company if any, designated in the form of proxy; and

- (b) contain instructions as to the manner in which the securityholder may exercise the right referred to in paragraph (a).
- (3) If a form of proxy sent to securityholders of a reporting issuer contains a designation of a named person or company as nominee, it must provide an option for the securityholder to designate in the form of proxy some other person or company as the securityholder's nominee.
- (4) A form of proxy sent to securityholders of a reporting issuer must provide an option for the securityholder to specify that the securities registered in the securityholder's name will be voted for or against each matter or group of related matters identified in the form of proxy, in the notice of meeting or in an information circular, other than the appointment of an auditor and the election of directors.
- (5) A form of proxy sent to securityholders of a reporting issuer may confer discretionary authority with respect to each matter referred to in subsection (4) as to which a choice is not specified if the form of proxy or the information circular states in bold-face type how the securities represented by the proxy will be voted in respect of each matter or group of related matters.
- (6) A form of proxy sent to securityholders of a reporting issuer must provide an option for the securityholder to specify that the securities registered in the name of the securityholder must be voted or withheld from voting in respect of the appointment of an auditor or the election of directors.
- (7) An information circular sent to securityholders of a reporting issuer or the form of proxy to which the information circular relates must state that
  - (a) the securities represented by the proxy will be voted or withheld from voting in accordance with the instructions of the securityholder on any ballot that may be called for; and
  - (b) if the securityholder specifies a choice under subsection (4) or (6) with respect to any matter to be acted upon, the securities will be voted accordingly.
- (8) A form of proxy sent to securityholders of a reporting issuer may confer discretionary authority with respect to
  - (a) amendments or variations to matters identified in the notice of meeting; and
  - (b) other matters which may properly come before the meeting,if,
  - (c) the person or company by whom or on whose behalf the solicitation is made is not aware within a reasonable time before the time the solicitation is made that any of those amendments, variations or other matters are to be presented for action at the meeting; and

- (d) a specific statement is made in the information circular or in the form of proxy that the proxy is conferring such discretionary authority.
- (9) A form of proxy sent to securityholders of a reporting issuer must not confer authority to vote
  - (a) for the election of any person as a director of a reporting issuer unless a bona fide proposed nominee for that election is named in the information circular; or
  - (b) at any meeting other than the meeting specified in the notice of meeting or any adjournment of that meeting.

## **9.5 Exemption from Part 9**

This Part does not apply to a reporting issuer that complies with the requirements of the laws of the jurisdiction in which it is incorporated, organized or continued, if the requirements are substantially similar to the requirements of this Part.

## **PART 10 RESTRICTED SECURITY DISCLOSURE**

### **10.1 Restricted Security Disclosure**

- (1) Except as otherwise provided in section 10.3, if a reporting issuer has outstanding restricted securities, or securities that are directly or indirectly convertible into or exercisable or exchangeable for restricted securities or securities that will, when issued, result in an existing class of outstanding securities being considered restricted securities, each document referred to in subsection (2) must
  - (a) refer to restricted securities using a term that includes the appropriate restricted security term;
  - (b) not refer to securities by a term that includes “common”, or “preference” or “preferred”, unless the securities are common shares or preference shares, respectively;
  - (c) describe any restrictions on the voting rights of restricted securities;
  - (d) describe the rights to participate, if any, of holders of restricted securities if a takeover bid is made for securities of the reporting issuer with voting rights superior to those attached to the restricted securities;
  - (e) state the percentage of the aggregate voting rights attached to the reporting issuer’s securities that are represented by the class of restricted securities; and
  - (f) if holders of restricted securities have no right to participate if a takeover bid is made for securities of the reporting issuer with voting rights superior to those attached to the restricted securities, contain a statement to that effect in bold-face type.

- (2) Subsection (1) applies to the following documents except as provided in subsections (3) and (6):
- (a) an information circular;
  - (b) a document required by this Instrument to be delivered upon request by a reporting issuer to any of its securityholders; and
  - (c) an AIF prepared by a reporting issuer.
- (3) Despite subsection (2), annual financial statements, interim financial statements and MD&A or other accompanying discussion by management of those financial statements are not required to include the details referred to in paragraphs (1)(c), (d), (e) and (f).
- (4) Each reference to restricted securities in any document not referred to in subsection (2) that a reporting issuer sends to its securityholders must include the appropriate restricted security term.
- (5) A reporting issuer must not refer, in any of the documents described in subsection (4), to securities by a term that includes “common” or “preference” or “preferred”, unless the securities are common shares or preference shares, respectively.
- (6) Despite paragraph (1)(b) and subsection (5), a reporting issuer may, in one place only in a document referred to in subsection (2) or (4), describe the restricted securities by the term used in the constating documents of the reporting issuer, to the extent that term differs from the appropriate restricted security term, if the description is not on the front page of the document and is in the same type face and type size as that used generally in the document.

## **10.2 Dissemination of Disclosure Documents to Holder of Restricted Securities**

- (1) If a reporting issuer sends a document to all holders of any class of its equity securities the document must also be sent by the reporting issuer at the same time to the holders of its restricted securities.
- (2) A reporting issuer that is required by this Instrument to arrange for, or voluntarily makes arrangements for, delivery of the documents referred to in subsection (1) to the beneficial owners of any securities of a class of equity securities registered in the name of a registrant, must make similar arrangements for delivery of the documents to the beneficial owners of securities of a class of restricted securities registered in the name of the registrant.

## **10.3 Exemptions for Certain Reporting Issuers**

The provisions of sections 10.1 and 10.2 do not apply to

- (a) securities that carry a right to vote subject to a restriction on the number or percentage of securities that may be voted or owned by persons or companies that

are not citizens or residents of Canada or that are otherwise considered as a result of any law applicable to the reporting issuer to be non-Canadians, but only to the extent of the restriction; and

- (b) securities that are subject to a restriction, imposed by any law governing the reporting issuer, on the level of ownership of the securities by any person, company or combination of persons or companies, but only to the extent of the restriction.

## **PART 11 ADDITIONAL FILING REQUIREMENTS**

### **11.1 Additional Filing Requirements**

- (1) A reporting issuer must file a copy of any disclosure material
  - (a) that it sends to its securityholders; or
  - (b) in the case of an SEC issuer, that it files with or furnishes to the SEC, including material filed as exhibits to other documents, if the material contains information that has not been included in disclosure already filed in a jurisdiction by the SEC issuer.
- (2) A reporting issuer must file the material referred to in subsection (1) on the same date as, or as soon as practicable after, the earlier of
  - (a) the date on which the reporting issuer sends the material to its securityholders; and
  - (b) the date on which the reporting issuer files or furnishes the material to the SEC.

### **11.2 Change of Status Report**

A reporting issuer must file a notice promptly after the occurrence of either of the following:

- (a) the reporting issuer becomes a venture issuer; or
- (b) the reporting issuer ceases to be a venture issuer.

### **11.3 Voting Results**

A reporting issuer that is not a venture issuer must, promptly following a meeting of securityholders at which a matter was submitted to a vote, file a report that discloses, for each matter voted upon

- (a) a brief description of the matter voted upon and the outcome of the vote; and

- (b) if the vote was conducted by ballot, including a vote on a matter in which votes are cast both in person and by proxy, the number or percentage of votes cast for, against or withheld from the vote.

#### **11.4 Financial Information**

A reporting issuer must file a copy of any news release issued by it that discloses information regarding its historical or prospective results of operations or financial condition for a financial year or interim period.

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

#### **12.1 Filing of Documents Affecting the Rights of Securityholders**

- (1) A reporting issuer must file copies of the following documents, and any amendments to the following documents, unless previously filed:
  - (a) articles of incorporation, amalgamation, continuation or any other constating or establishing documents of the issuer, unless the constating or establishing document is a statutory or regulatory instrument;
  - (b) by-laws or other corresponding instruments currently in effect;
  - (c) any securityholder or voting trust agreement that the reporting issuer has access to and that can reasonably be regarded as material to an investor in securities of the reporting issuer;
  - (d) any securityholders' rights plans or other similar plans; and
  - (e) any other contract of the issuer or a subsidiary of the issuer that creates or can reasonably be regarded as materially affecting the rights or obligations of its securityholders generally.
- (2) A document required to be filed under subsection (1) may be filed in paper format if
  - (a) it is dated before March 30, 2004; and
  - (b) it does not exist in an acceptable electronic format under National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*.

#### **12.2 Filing of Other Material Contracts**

- (1) Unless previously filed, a reporting issuer must file a copy of any contract that it or any of its subsidiaries is a party to, other than a contract entered into in the ordinary course of business, that is material to the issuer and was entered into within the last financial year, or before the last financial year but is still in effect.

- (2) If an executive officer of the reporting issuer has reasonable grounds to believe that disclosure of certain provisions of a contract required by subsection (1) to be filed would be seriously prejudicial to the interests of the reporting issuer, or would violate confidentiality provisions, the reporting issuer may file the contract with those certain provisions omitted or marked so as to be unreadable.
- (3) Despite subsection (1), a reporting issuer is not required to file a contract entered into before January 1, 2002.

### **12.3 Time for Filing of Documents**

The documents required to be filed under sections 12.1 and 12.2 must be filed no later than the time the reporting issuer files a material change report in Form 51-102F3, if the making of the document constitutes a material change for the issuer, and

- (a) no later than the time the reporting issuer's AIF is filed under section 6.1, if the document was made or adopted before the date of the issuer's AIF; or
- (b) if the reporting issuer is not required to file an AIF under section 6.1, within 120 days after the end of the issuer's most recently completed financial year, if the document was made or adopted before the end of the issuer's most recently completed financial year.

## **PART 13 EXEMPTIONS**

### **13.1 Exemptions from this Instrument**

- (1) The regulator or securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.
- (2) Despite subsection (1), in Ontario only the regulator may grant such an exemption.

### **13.2 Existing Exemptions**

- (1) A reporting issuer that was entitled to rely on an exemption, waiver or approval granted to it by a regulator or securities regulatory authority relating to continuous disclosure requirements of securities legislation or securities directions existing immediately before this Instrument came into force is exempt from any substantially similar provision of this Instrument to the same extent and on the same conditions, if any, as contained in the exemption, waiver or approval.
- (2) A reporting issuer must, at the time that it first intends to rely on subsection (1) in connection with a filing requirement under this Instrument, inform the securities regulatory authority in writing of
  - (a) the general nature of the prior exemption, waiver or approval and the date on which it was granted; and



- (b) the requirement under prior securities legislation or securities directions in respect of which the prior exemption, waiver or approval applied and the substantially similar provision of this Instrument.

### **13.3 Exemption for Certain Exchangeable Security Issuers**

- (1) In this section:

“designated exchangeable security” means an exchangeable security which provides the holder of the security with economic and voting rights which are, as nearly as possible except for tax implications, equivalent to the underlying securities;

“exchangeable security” means a security of an issuer that is exchangeable for, or carries the right of the holder to purchase, or of the parent issuer to cause the purchase of, an underlying security;

“exchangeable security issuer” means a person or company that has issued an exchangeable security;

“parent issuer”, when used in relation to an exchangeable security issuer, means the person or company that issues the underlying security; and

“underlying security” means a security of a parent issuer issued or transferred, or to be issued or transferred, on the exchange of an exchangeable security.

- (2) Except as provided in this subsection, this Instrument does not apply to an exchangeable security issuer if
  - (a) the parent issuer is the direct or indirect beneficial owner of all the issued and outstanding voting securities of the exchangeable security issuer;
  - (b) the parent issuer is an SEC issuer with a class of securities listed or quoted on a U.S. marketplace;
  - (c) the exchangeable security issuer does not issue any securities, other than
    - (i) designated exchangeable securities;
    - (ii) securities issued to the parent issuer; or
    - (iii) debt securities issued to banks, loan corporations, trust corporations, treasury branches, credit unions, insurance companies or other financial institutions;
  - (d) the exchangeable security issuer files copies of all documents the parent issuer is required to file with the SEC, at the same time as, or as soon as practicable after, the filing by the parent issuer of those documents with the SEC;

- (e) the exchangeable security issuer concurrently sends to all holders of designated exchangeable securities, in the manner and at the time required by U.S. laws and the requirements of any U.S. marketplace on which securities of the parent issuer are listed or quoted, all disclosure materials that are sent to holders of the underlying securities;
  - (f) the parent issuer is in compliance with U.S. laws and the requirements of any U.S. marketplace on which the securities of the parent issuer are listed or quoted in respect of making public disclosure of material information on a timely basis, and immediately issues in Canada and files any news release that discloses a material change in its affairs;
  - (g) the exchangeable security issuer issues in Canada a news release and files a material change report in accordance with Part 7 of this Instrument for all material changes in respect of the affairs of the exchangeable security issuer that are not also material changes in the affairs of its parent issuer; and
  - (h) the parent issuer includes in all mailings of proxy solicitation materials to holders of designated exchangeable securities a clear and concise statement that
    - (i) explains the reason the mailed material relates solely to the parent issuer;
    - (ii) indicates that the designated exchangeable securities are the economic equivalent to the underlying securities; and
    - (iii) describes the voting rights associated with the designated exchangeable securities.
- (3) The insider reporting requirement and the requirement to file an insider profile under National Instrument 55-102 *System for Electronic Disclosure by Insiders* does not apply to any insider of an exchangeable security issuer in respect of securities of the exchangeable security issuer so long as
- (a) the insider does not receive, in the ordinary course, information as to material facts or material changes concerning the parent issuer before the material facts or material changes are generally disclosed;
  - (b) the insider is not an insider of the parent issuer in any capacity other than by virtue of being an insider of the exchangeable security issuer;
  - (c) the parent issuer is the direct or indirect beneficial owner of all of the issued and outstanding voting securities of the exchangeable security issuer;
  - (d) the parent issuer is an SEC issuer; and
  - (e) the exchangeable security issuer has not issued any securities, other than
    - (i) designated exchangeable securities;

- (ii) securities issued to the parent issuer; or
- (iii) debt securities issued to the parent issuer or to banks, loan corporations, trust corporations, treasury branches, credit unions, insurance companies or other financial institutions.

#### **13.4 Exemption for Certain Credit Support Issuers**

- (1) In this section:

“credit support issuer” means an issuer of securities for which a credit supporter has provided a guarantee;

“credit supporter” means a person or company that provides a guarantee for any of the payments to be made by an issuer of securities as stipulated in the terms of the securities or in an agreement governing rights of, or granting rights to, holders of the securities;

“designated credit support securities” means

- (a) non-convertible debt that has an approved rating; or
- (b) non-convertible preferred shares that have an approved rating,

in respect of which a credit supporter has provided a full and unconditional guarantee of the payments to be made by the credit support issuer, as stipulated in the terms of the securities or in an agreement governing the rights of holders of the securities, that results in the holder of such securities being entitled to receive payment from the credit supporter within 15 days of any failure by the credit support issuer to make a payment;

“SEC MJDS issuer” means an issuer that

- (a) is incorporated or organized under the laws of the United States of America or any state or territory of the United States of America or the District of Columbia;
- (b) either
  - (i) has a class of securities registered under section 12(b) or 12(g) of the 1934 Act, or
  - (ii) is required to file reports under section 15(d) of the 1934 Act;
- (c) has filed with the SEC all 1934 Act filings for a period of 12 calendar months immediately before the date on which the person or company seeks to rely on the exemptions in subsections (2) or (3);
- (d) is not registered or required to be registered as an investment company under the *Investment Company Act of 1940* of the United States of America, as amended; and

- (e) is not an issuer formed and operated for the purpose of investing in commodity futures contracts, commodity futures, related products, or a combination of them.
- (2) Except as provided in this subsection, this Instrument does not apply to a credit support issuer if,
- (a) the credit supporter is the direct or indirect beneficial owner of all the issued and outstanding voting securities of the credit support issuer;
  - (b) the credit supporter is an SEC MJDS issuer;
  - (c) the credit support issuer does not issue any securities, other than
    - (i) designated credit support securities;
    - (ii) securities issued to the credit supporter or an affiliate of the credit supporter; or
    - (iii) debt securities issued to banks, loan corporations, trust corporations, treasury branches, credit unions, insurance companies or other financial institutions;
  - (d) the credit support issuer files copies of all documents the credit supporter is required to file with the SEC, at the same time or as soon as practicable after the filing by the credit supporter of those documents with the SEC;
  - (e) the credit supporter is in compliance with the requirements of U.S. laws and any U.S. marketplace on which securities of the credit supporter are listed or quoted in respect of making public disclosure of material information on a timely basis and immediately issues in Canada and files any news release that discloses a material change in its affairs;
  - (f) the credit support issuer issues in Canada a news release and files a material change report in accordance with Part 7 of this Instrument for all material changes in respect of the affairs of the credit support issuer that are not also material changes in the affairs of the credit supporter;
  - (g) in the case of a credit support issuer that has operations, other than minimal operations, that are independent of the credit supporter, the credit support issuer files, in electronic format,
    - (i) annual comparative financial information, derived from the credit support issuer's audited consolidated financial statements for its most recently completed financial year, that is accompanied by a specified procedures report of the auditors to the credit support issuer and that includes the following line items for the most recently completed financial year and the financial year immediately preceding the most recently completed financial year:

- (A) sales/revenues;
- (B) net earnings from continuing operations before extraordinary items;
- (C) net earnings;
- (D) current assets;
- (E) non-current assets;
- (F) current liabilities; and
- (G) non-current liabilities; and

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

- (A) sales/revenues;
- (B) net earnings or loss from continuing operations before extraordinary items;
- (C) net earnings or loss;
- (D) current assets;
- (E) non-current assets;
- (F) current liabilities; and
- (G) non-current liabilities;

(h) in the case of designated credit support securities that include debt, the credit support issuer concurrently sends to all holders of such securities, in the manner and at the time required by U.S. laws and any U.S. marketplace on which securities of the credit supporter are listed or quoted, all disclosure materials that are sent to holders of non-convertible debt of the credit supporter that has an approved rating; and

(i) in the case of designated credit support securities that include preferred shares, the credit support issuer concurrently sends to all holders of such securities, in the manner and at the time required by U.S. laws and any U.S. marketplace on which securities of the credit supporter are listed or quoted, all disclosure materials that

are sent to holders of non-convertible preferred shares of the credit supporter that have an approved rating.

- (3) The insider reporting requirement and the requirement to file an insider profile under National Instrument 55-102 *System for Electronic Disclosure by Insiders* do not apply to an insider of a credit support issuer in respect of securities of the credit support issuer so long as
- (a) the insider does not receive, in the ordinary course, information as to material facts or material changes concerning the credit supporter before the material facts or material changes are generally disclosed;
  - (b) the insider is not an insider of the credit supporter in any capacity other than by virtue of being an insider of the credit support issuer;
  - (c) the credit supporter is the direct or indirect beneficial owner of all the issued and outstanding voting securities of the credit support issuer;
  - (d) the credit supporter is an SEC MJDS issuer; and
  - (e) the credit support issuer has not issued any securities, other than
    - (i) designated credit support securities;
    - (ii) securities issued to the credit supporter or an affiliate of the credit supporter; or
    - (iii) debt securities issued to banks, loan corporations, trust corporations, treasury branches, credit unions, insurance companies or other financial institutions.

## **PART 14 EFFECTIVE DATE AND TRANSITION**

### **14.1 Effective Date**

This Instrument comes into force on March 30, 2004.

### **14.2 Transition**

Despite section 14.1, the provisions of this Instrument, including Part 10, concerning

- (a) annual financial statements or MD&A relating to those financial statements, except sections 4.8 to 4.11, apply for financial years beginning on or after January 1, 2004;
- (b) interim financial statements or MD&A relating to those financial statements, except sections 4.8 to 4.11, apply for interim periods in financial years beginning on or after January 1, 2004;

- (c) AIFs apply in respect of financial years beginning on or after January 1, 2004;
- (d) business acquisition reports apply to significant acquisitions if the initial legally binding agreement relating to the acquisition was entered into on or after March 30, 2004;
- (e) proxy solicitation and information circulars apply from and after June 1, 2004; and
- (f) filing of documents under Part 12 apply in respect of financial years beginning on or after January 1, 2004.