

APPENDIX H

Schedule 1

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

1.1 National Instrument 51-102 *Continuous Disclosure Obligations* is amended by this Instrument.

1.2 Section 1.1 is amended by adding the following definition after “material change”:

“material contract” means any contract that an issuer or any of its subsidiaries is a party to, that is material to the issuer;

1.3 Section 8.4(5)(b) is amended by striking out “after the ending date’ and substituting “since the beginning”.

1.4 Section 8.10(3)(e)(ii) is amended by striking out “after the ending date” and substituting “since the beginning”.

1.5 Section 12.2 is repealed and the following is substituted:

- (1) Unless previously filed, a reporting issuer must file a copy of any material contract, other than a contract entered into in the ordinary course of business, that was entered into within the last financial year, or before the last financial year but is still in effect.
- (2) For the purposes of this Instrument, a “contract entered into in the ordinary course of business” does not include the following:
 - (a) any contract to which directors, officers or promoters are parties, unless the contracts are for the purchase or sale of current assets at fair value;
 - (b) any continuing contract to sell the major part of the reporting issuer’s products or services or to purchase the major part of the reporting issuer’s requirements of goods, services, or raw materials or any franchise or license or other agreement to use a patent, formula, trade secret, process or trade name upon which the reporting issuer’s business depends to a material extent;

- (c) any contract calling for the acquisition or sale of any property, plant or equipment for a consideration exceeding 20% of such fixed assets of the reporting issuer on a consolidated basis;
 - (d) any credit agreements;
 - (e) any management or administration agreements; and
 - (f) any contract on which the reporting issuer's business is substantially dependent.
- (3) A reporting issuer may omit or mark so as to be unreadable certain provisions of a contract referred to in subsection (1) or (2) if
- (a) an executive officer of the reporting issuer has reasonable grounds to believe that disclosure of those provisions would be seriously prejudicial to the interests of the reporting issuer or would violate confidentiality provisions,
 - (b) an executive officer of the reporting issuer has reasonable grounds to believe that those provisions do not contain information relating to the reporting issuer or its securities that would be necessary to understanding the contract, and
 - (c) in the copy of the material contract filed by the reporting issuer, immediately after a provision has been omitted or marked so as to be unreadable, the reporting issuer includes a description of the type of information that has been omitted or marked so as to be unreadable.
- (4) For the purposes of this Instrument, provisions that are "necessary to understanding the contract" include provisions disclosing the following:
- (a) the name or description of a material customer or a material supplier,
 - (b) interest rate and other similar terms in a material credit agreement,
 - (c) the duration and nature of all patents, trademarks, licenses, franchises and concessions held,

- (d) required disclosure in the MD&A section relating to loan arrangements and instalment payment obligations on debt,
 - (e) disclosure about related party transactions,
 - (f) material contingency, indemnification, anti-assignability, and take-or-pay clauses, and
 - (g) financial covenants in material financing or credit agreements.
- (5) Despite subsection (1), a reporting issuer is not required to file a material contract entered into before January 1, 2002.

1.6 Section 13.4 is amended

(a) **in subsection (1)**

(i) **in the definition of “designated credit support securities”**

A) **by adding “non-convertible” before “securities of the credit supporter” wherever it occurs;**

B) **by striking out “in respect of which a credit supporter has provided” and substituting “in respect of which a parent credit supporter has provided”;**

(ii) **by adding the following after the definition of “designated credit support securities”:**

“parent credit supporter” means a credit supporter of which the reporting issuer is a subsidiary;

“subsidiary credit supporter” means a credit supporter that is a subsidiary of the parent credit supporter;

(b) **in subsection (1.1)**

- (i) **in paragraph (b) by striking out** “of consolidating summary financial information”;
 - (ii) **by adding “parent” before “credit supporter” wherever it occurs;**
 - (iii) **by repealing paragraph (c) and substituting the following:**
 - (c) all subsidiary entity columns must account for investments in non-credit supporter subsidiaries under the equity method.
- (c) **in subsection (2)**
- (i) **by adding the heading** “ Issuer is wholly-owned subsidiary of parent credit supporter”;
 - (ii) **by striking out “subsection” and substituting “section”;**
 - (iii) **by adding “parent” before “credit supporter” wherever it occurs;**
 - (iv) **by striking out “and” at the end of paragraph (i), by adding “and” at the end of paragraph (j) and by adding the following after paragraph (j):**
 - (k) no person or company other than the parent credit supporter has provided a guarantee or alternative credit support for the payments to be made under any issued and outstanding securities of the credit support issuer.

Issuer is wholly-owned subsidiary of, and one or more subsidiary credit supporters controlled by, parent credit supporter

- (2.1) A credit support issuer satisfies the requirements of this Instrument where there is a parent credit supporter and one or more subsidiary credit supporters if
- (a) the conditions in paragraphs (2)(a) to (f), (i), and (j) are complied with;
 - (b) the parent credit supporter controls each subsidiary credit supporter and parent credit supporter has consolidated the financial statements of each subsidiary credit supporter into the parent credit

supporter's financial statements that are filed or referred to under paragraph (2)(d);

- (c) the credit support issuer files, in electronic format, in the notice referred to in clause (2)(d)(ii)(A) or in or with the copy of the interim and annual consolidated financial statements filed under subparagraph (2)(d)(i) or clause (2)(d)(ii)(B), for the periods covered by the interim or annual consolidated financial statements of the parent credit supporter filed, consolidating summary financial information for the parent credit supporter presented with a separate column for each of the following:
 - (i) the parent credit supporter;
 - (ii) the credit support issuer;
 - (iii) each subsidiary credit supporter on a combined basis;
 - (iv) any other subsidiaries of the parent credit supporter on a combined basis;
 - (v) consolidating adjustments; and
 - (vi) the total consolidated amounts;
- (d) no person or company, other than the parent credit supporter or a subsidiary credit supporter has provided a guarantee or alternative credit support for the payments to be made under the issued and outstanding designated credit support securities; and
- (e) the guarantees or alternative credit supports are joint and several.

(2.2) Despite paragraph (2.1)(c), the information set out in a column in accordance with

- (a) subparagraph (2.1)(c)(iv), may be combined with the information set out in accordance with any of the other columns in paragraph (2.1)(c); if each item of the summary financial information set out in a column in accordance with paragraph (2.1)(c)(iv) represents less than 3% of the corresponding items on the consolidated financial statements of the parent credit supporter being filed or referred to under paragraph (2)(d),

- (b) subparagraph (2.1)(c)(ii) may be combined with the information set out in accordance with any of the other columns in paragraph (2.1)(c); if the credit support issuer has minimal assets, operations, revenues or cash flows other than those related to the issuance, administration and repayment of the securities described in paragraph (2)(c).

- (d) **in subsection (3) by repealing paragraphs (a) to (e) and substituting the following:**
 - (a) the conditions in paragraphs (2)(a) to (c) are complied with;

 - (b) if the insider is not a credit supporter,
 - (i) the insider does not receive, in the ordinary course, information as to material facts or material changes concerning a credit supporter before the material facts or material changes are generally disclosed, and

 - (ii) the insider is not an insider of a credit supporter in any capacity other than by virtue of being an insider of the credit support issuer; and

 - (c) if the insider is a credit supporter, the insider does not beneficially own any designated credit support securities;.

- (e) **in subsection (4) by adding “parent” before “credit supporter” wherever it occurs.**

1.7 Effective Date - This Instrument comes into force on

APPENDIX H

Schedule 2

Amendments to Form 51-102F2 *Annual Information Form* of National Instrument 51-102 *Continuous Disclosure Obligations*

1.1 Form 51-102F2 *Annual Information Form* is amended by this Instrument.

1.2 Form 51-102F2 *Annual Information Form* is amended

- (a) **in item 5.2 by striking out** “Risks should be disclosed in the order of their seriousness” **and substituting** “Disclose the risks in order of seriousness from the most serious to the least serious. A risk factor should not be deemphasized by including excessive caveats or conditions.”;
- (b) **by adding the following after subsection 5.3(2):**
 - (2.1) If any of the information disclosed in accordance with subsection (2) has been audited, disclose the existence and results of the audit.
- (c) **in Item 6 by adding** “or distributions” **after** “dividends” **wherever it occurs and by striking out** “share” or “shares” **and substituting** “security” or “securities”;
- (d) **In subsection 8(2) by adding** “but is traded or quoted on a foreign marketplace” **after** “If a class of securities of your company is not traded or quoted on a Canadian marketplace,”.

(e) **by repealing item 9 and substituting the following:**

Item 9: Escrowed Securities and Securities Subject to Contractual Restriction on Transfer

9.1- Escrowed securities and securities subject to contractual restriction on transfer

- (1) State, in substantially the following tabular form, the number of securities of each class of your company held, to your company’s knowledge, in escrow or that are subject to a contractual restriction on transfer and the percentage that

number represents of the outstanding securities of that class for your company's most recently completed financial year.

ESCROWED SECURITIES AND SECURITIES SUBJECT TO CONTRACTUAL RESTRICTION ON TRANSFER

Designation of class	Number of securities held in escrow or that are subject to a contractual restriction on transfer	Percentage of class

(2) In a note to the table disclose the name of the depository, if any, and the date of and conditions governing the release of the securities from escrow or the date the contractual restriction on transfer ends, as applicable.

INSTRUCTION

For purposes of this item, escrow includes securities subject to a pooling agreement.

(f) in item 15.1

(i) by repealing subsection (1) and substituting the following:

(1) Give particulars of every material contract, other than a contract entered into in the ordinary course of business, that was entered into within the most recently completed financial year, or before the most recently completed financial year but is still in effect.

(ii) by repealing subparagraph (i) of the Instruction.

APPENDIX H

Schedule 3

Amendments to Companion Policy 51-102CP to National Instrument 51-102 *Continuous Disclosure Obligations*

1.1 Companion Policy 51-102CP to NI 51-102 Continuous Disclosure Obligations is amended

(a) **by adding the following after subsection Section 8.7(7):**

(8) When a reporting issuer acquires a business that has itself recently acquired another business or related businesses (an “indirect acquisition”), the reporting issuer should consider including disclosure of the indirect acquisition in the business acquisition report, including historical financial statements, if the omission of these statements would cause the business acquisition report to be misleading, untrue or substantially incomplete. In making this determination, the reporting issuer should consider the following factors:

- if the indirect acquisition would meet any of the significance tests in section 8.3 of NI 51-102 when the reporting issuer applies each of those tests to its proportionate interest in the indirect acquisition of the business, and
- if the amount of time between the separate acquisitions is such that the effect of the first acquisition is not adequately reflected in the results of the business or related businesses the reporting issuer is acquiring.

(b) **by repealing section 12.3 and substituting the following:**

Contracts entered into in the ordinary course of business

12.3(1) The filing requirement only applies to material contracts. There is no requirement to file a contract if it is not material.

Section 12.2 of the Instrument requires the issuer to file any material contract, other than a contract entered into in the ordinary course of business. Whether a contract was entered into in the ordinary course of

business is a question of fact. It must be considered in the context of the issuer's business and industry.

Subsection 12 (1.1) of the Instrument describes specific types of contracts that are not considered to be contracts entered into in the ordinary course of business. The exemption from the requirement to file material contracts for contracts entered into in the ordinary course of business is not available for any contract of the type described in this subsection. Accordingly, such a material contract must be filed under section 12.2 of the Instrument.

Under paragraph 12.2(1.1)(f) of the Instrument, any contract on which the issuer's business is substantially dependent is also considered not to be a contract entered into in the ordinary course of business. These contracts include contracts not otherwise described in paragraphs 12.2(1.2)(a) through (e) of the Instrument.

We expect that the contracts filed under section 12.2 of the Instrument to be filed by a reporting issuer will generally be the same contracts the reporting issuer is required to provide disclosure of under section 15.1 of Form 51-102F2. The exemption in subsection 12.2(1.2) of the Instrument does not affect the reporting issuer's obligation in item 15.1 of Form 51-102F2 to disclose the particulars of the material contracts including particulars of material contracts referred to in subsection 12.2(1.1).

Management or administration agreements

(2) Under paragraph 12.2(2)(e) of the Instrument, management or administration agreements are considered not to be contracts entered into in the ordinary course of business. Management or administration agreements include any management contract or any compensatory plan, contract or arrangement including but not limited to plans relating to options, warrants or rights, pension, retirement or deferred compensation or bonus, incentive or profit sharing in which any director or any of the named executive officers of the company participates, other than the following:

(a) ordinary purchase and sales agency agreements;

- (b) agreements with managers of stores in a chain organization or similar organization;
- (c) contracts providing for labour or salesperson's bonuses or payments to a class of security holders, as such;
- (d) any compensatory plan, contract or arrangement which pursuant to its terms is available to employees, officers or directors generally and which in operation provides for the same method of allocation of benefits between management and non-management participants.

Omission or redaction

- (3) Paragraph 12.2(3) of the Instrument permits certain provisions of a material contract that is required to be filed to be omitted or marked so as to be unreadable subject to three conditions.
 - (a) An executive officer of the reporting issuer has reasonable grounds to believe that disclosure of any omitted or redacted provisions would be seriously prejudicial to the interests of the issuer or would violate confidentiality provisions. A boilerplate blanket confidentiality provision covering the entire contract would not satisfy this condition.
 - (b) An executive officer of the reporting issuer has reasonable grounds to believe that any omitted or redacted provisions do not contain information relating to the issuer or its securities that would be necessary to understanding the contract. Provisions that are necessary to understanding the contract include provisions disclosing the information listed in subsection 12.2(3) of the Instrument.
 - (c) The reporting issuer must include a description of the type of information that has been omitted or redacted in the copy of the

material contract filed by the reporting issuer. A brief one-sentence description immediately following the omitted or redacted information would be sufficient in most cases.