

# NATIONAL INSTRUMENT 51-102

## CONTINUOUS DISCLOSURE OBLIGATIONS

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**NATIONAL INSTRUMENT 51-102**  
**CONTINUOUS DISCLOSURE OBLIGATIONS**  
**PART 1**  
**DEFINITIONS AND INTERPRETATION**

**1.1 *Definitions and Interpretation***<sup>1</sup>

In this Instrument:

“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;

“AIF” means a completed Form 51-102F1 *Annual Information Form* or, in the case of an SEC issuer, either a completed Form 51-102F1 or an annual report or transition report under the 1934 Act on Form 10-K, Form 10-KSB or on Form 20-F;

“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”, in respect of a security, includes a series of a class;

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

“date of acquisition” means the date of acquisition as determined for accounting purposes under the Handbook;

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<sup>1</sup> National Instrument 14-101 *Definitions* defines certain terms that are used in more than one national or multilateral instrument.

“equity security” or “equity share” means any security or share, as the case may be, of a reporting issuer that carries a residual right to participate in earnings of the reporting issuer and, on the liquidation or winding-up of the reporting issuer, in its assets;

“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 at any time during the year was:

- (a) a chair of the reporting issuer, if that individual performed the functions of the office on a full-time basis;
- (b) a vice-chair of the reporting issuer, if that individual performed the functions of the office on a full-time basis;
- (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 person who performed a policy-making function in respect of the reporting issuer;

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

“group scholarship plan” means a scholarship plan the securities of which entitle the beneficiaries, who are designated in connection with the acquisition of the securities that have the same year of maturity, to a scholarship award proportionate to the value of the securities in respect of which they are designated, on or after maturity of the securities;

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

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

“informed person” means, in relation to a reporting issuer:

- (a) every director or executive officer of a reporting issuer;
- (b) every director or executive officer of a 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 voting securities of the reporting issuer for the time being outstanding other than voting securities held by the person or company as underwriter in the course of a distribution; and
- (d) a reporting issuer where it 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) a period commencing on the first day of a financial year and ending nine, six or three months before the end of a financial year, or
- (b) in the case of a reporting issuer’s transition year, a period commencing on the first day of the transition year and ending either:
  - (i) three, six, nine or twelve months, if applicable, after the end of its old financial year, or
  - (ii) twelve, nine, six or three months, if applicable, before the end of the transition year,

and in the case of (b)(ii), the first interim period must not exceed four months;

“investee” means an entity that the Handbook recommends be accounted for by the equity method or the proportionate consolidation method;

“investment fund” means a mutual fund, a non-redeemable investment fund or a group scholarship plan;

“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, when used in relation to a reporting issuer:

- (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 such other persons acting in a similar capacity is probable;

“MD&A” means a completed Form 51-102F2 *Management’s Discussion & Analysis* or, in the case of an SEC issuer, either a completed Form 51-102F2 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;

“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 its transition year;

“non-voting share” means a restricted share 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, an issuer:

- (a) whose primary purpose is to invest money provided by its securityholders;
- (b) that does not invest for the purpose of exercising effective control, seeking to exercise effective control or being actively involved in the management of the issuers in which it invests, other than mutual funds or other non-redeemable investment funds; and
- (c) that is not a mutual fund;

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

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

“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 underlying 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 share” means:

- (a) an equity share that is not a common share; and
- (b) a common share, if any of the following apply:
  - (i) there is another class of shares that, to a reasonable person, appears to carry a disproportionate vote per share relative to the common share;
  - (ii) the conditions of a class of common shares, the conditions of other classes of shares, or the reporting issuer’s constating documents have provisions that nullify or, to a reasonable person, appear to significantly restrict the voting rights of another class of equity shares; or

- (iii) there is a second class of equity shares that, to a reasonable person, appears to entitle the owner of shares of that second class to participate in the earnings or assets of the reporting issuer disproportionately relative to the common shares;

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

“restricted voting share” means a restricted share that carries a right to vote subject to a restriction on the number or percentage of shares that may be voted by one or more persons or companies, except to the extent the restriction is permitted or prescribed by statute and 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 where 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 in a reverse takeover;

“reverse takeover acquirer” means the legal subsidiary whose shareholders control the combined entity 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;

“significance tests” means the tests set out in subsections 8.2(2) and (4);

“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;

“subject securities” means shares that, if and when issued, will result in an existing class of outstanding equity shares being considered, for the purposes of this Instrument, restricted shares;

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

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

“US 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; 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, the New York Stock Exchange, the American Stock Exchange, the Pacific Exchange, the Nasdaq National Market, the Nasdaq SmallCap Market or a marketplace outside of Canada and the United States of America; where the “applicable time” in respect of:

- (a) Parts 4 and 6 of this Instrument and Form 51-102F2, is the end of the applicable financial period;
- (b) Parts 5 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 11.2 of this Instrument, is the date of the meeting of the securityholders.

## **PART 2**

### **APPLICATION**

#### **2.1 Application**

This Instrument does not apply to investment funds unless otherwise expressly stated.

**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 either French or in English.
- (2) Notwithstanding 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 *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 period covered by 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) Comparative 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 (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, the reporting issuer must disclose this in either:
    - (i) the notes to the interim financial statements; or

- (ii) its interim MD&A or its interim MD&A supplement if one is required under section 6.2.
- (b) If an auditor has performed a review of the interim financial statements required to be filed and the auditor has:
  - (i) expressed a qualified or adverse communication; or
  - (ii) denied any assurance,then the reporting issuer must include a written review report from the auditor accompanying the interim financial statements.
- (4) If an SEC issuer:
  - (a) previously 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 US GAAP as permitted by subsection 4.1(1) of NI 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*,then the SEC issuer must:
  - (c) restate the interim financial statements for the periods referred to in paragraph (a) to be prepared in accordance with US GAAP and to comply with the reconciliation requirements set out in Part 4 of NI 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 section 4.3 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 Review and Approval of Financial Statements**

The financial statements required to be filed under sections 4.1 and 4.3 must be reviewed by the audit committee, if any, of the board of directors of a reporting issuer and must be approved by the board of directors before the statements are filed.

#### **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 under which the registered holders and beneficial owners may 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 purpose of sending a request form to beneficial owners of its securities under 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 other than the beneficial owners that are identified under that instrument as having declined to receive materials.
- (3) If a registered holder or beneficial owner requests the reporting issuer's annual or interim financial statements in the request form required in subsection (1), the reporting issuer must send, without charge, a copy of the requested financial statements 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) If a reporting issuer is sending financial statements under this section, the reporting issuer must also send, at the same time, the annual or interim MD&A applicable to the financial statements.
- (5) A reporting issuer that complies with subsections (1) to (3) is exempt from the requirements of securities legislation in Québec to send its annual report and quarterly report to every registered holder of its securities, other than holders of debt securities, and to the securities regulatory authority.

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

- (1) Despite any other provisions of this Part and subject to subsections (2), (3) and (4), 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 subsection (1) requires a reporting issuer to file annual financial statements for a financial year that ended prior to the issuer becoming a reporting issuer, the financial statements must be filed on or before the later of 20 days after the issuer becomes a reporting issuer or the filing deadline in section 4.2.
- (3) If subsection (1) requires a reporting issuer to file interim financial statements for an interim period that ended prior to the issuer becoming a reporting issuer, the financial statements must be filed on or before the later of 10 days after the issuer became a reporting issuer or the filing deadline in section 4.4.
- (4) Despite subsection 4.3(2), a reporting issuer is not required to provide comparative interim financial information for periods that ended prior to the issuer becoming a reporting issuer if:
  - (a) 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 of Year-End Requirements** – An SEC issuer is not required to comply with this section if it:
  - (a) complies with the requirements of US federal securities law relating to a change of fiscal year; and
  - (b) files a copy of all filings made under requirements of US federal securities law relating to change of fiscal year promptly after they are filed with the SEC and, in the case of financial statements, no later than the filing deadlines specified in sections 4.2 and 4.4.
- (2) **Notice of Change** – If a reporting issuer changes 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 annual or interim financial statements, whichever comes first; or
  - (b) the filing deadline, based on the reporting issuer’s new financial year-end, for the next annual or interim financial statements, 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, specified in 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** – The length of a transition year cannot exceed 15 months.
- (5) **Interim Period Ends Within One Month of Year-End** – Despite subsection 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;
  - (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 have the effect of changing its continuous disclosure obligations under this Instrument, the issuer must, as soon as practicable, and in any event not later than the deadline for the first filing required by this Instrument following the transaction, deliver a notice stating:

- (a) the names of the parties to the transaction;
- (b) a description of the transaction;
- (c) the effective date of the transaction;
- (d) the names of each party that ceased to be a reporting issuer subsequent to the transaction;
- (e) the date of the reporting issuer’s first financial year-end subsequent to the transaction; and



- (f) the periods, including the comparative periods, if any, of the interim and annual financial statements to be filed for the reporting issuer's first financial year subsequent to the transaction.

#### **4.10 Reverse Takeovers**

If a reporting issuer must comply with section 4.9 because it was a party to a reverse takeover:

- (a) the reporting issuer must comply with section 4.8 unless:
  - (i) the reporting issuer had the same year-end as the reverse takeover acquirer prior to the transaction; or
  - (ii) the reporting issuer changes its year-end to be the same as that of the reverse takeover acquirer;
- (b) the reverse takeover acquirer's financial statements must be prepared as if the reverse takeover acquirer had always been the reporting issuer and must be filed for all periods subsequent to the date of the financial statements included in the information circular filed in connection with the transaction; and
- (c) the reverse takeover acquiree must file the financial statements required by sections 4.1 and 4.3 for all interim and annual periods ending prior to the date of the reverse takeover even if the filing deadline for those financial statements is after the date of the reverse takeover.

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

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

"appointment" means, in relation to a reporting issuer, the earlier to occur 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, whether or not in writing, to a reporting issuer during the relevant period by a successor auditor 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) an auditor's report on the reporting issuer's financial statements;
- (c) audit scope or procedure; 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 in order 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 clauses (5)(a)(i) and 6(a)(i);
- (b) the letter referred to in clause (5)(a)(ii)(B), if received by the reporting issuer; and,
- (c) the letter referred to in clause (6)(a)(ii)(B), if 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 to occur of:

- (a) the removal of its auditor before the expiration of the auditor’s term of appointment, the expiration of its auditor’s term of appointment without reappointment, or the appointment of a different person or company as its auditor upon expiration 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 expiration 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 audit reports of 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 these 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** - A reporting issuer is not required to comply with this section 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** - An SEC issuer is not required to comply with this section if it:
- (a) complies with the requirements of US federal securities law relating to a change of auditor;
  - (b) files a copy of all materials required by US federal securities law 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 each regulator or securities regulatory authority where it is a reporting issuer;
  - (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) deliver a copy of the change of auditor notice prepared in accordance with subsection (7) 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 subsection 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 subsection 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 letter referred to in clause 6(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 each regulator or securities regulatory authority where it is a reporting issuer;
  - (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.
- (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;
    - (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** - If the successor auditor becomes aware that the required disclosure under this Instrument has not been made 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**

### **ANNUAL INFORMATION FORM**

#### **5.1 Requirement to file an AIF**

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

#### **5.2 Filing Deadline for an AIF**

An AIF required to be filed under section 5.1 must be filed:

- (a) subject to paragraph (b), on or before the 90<sup>th</sup> day after the end of the reporting issuer's most recently completed financial year; and
- (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 date the reporting issuer would be required to file an AIF under paragraph (a); and
  - (ii) the date the reporting issuer files its Form 10-K, Form 10-KSB or Form 20-F with the SEC.

#### **5.3 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 6**

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

#### **6.1 Filing of MD&A**

- (1) Subject to section 6.2, a reporting issuer must file MD&A in respect of its annual and interim financial statements required under Part 4.
- (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.



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

- (1) An SEC issuer 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 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 6.1; 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 US GAAP; and
    - (ii) is required by subsection 4.1(2) 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 US GAAP; and
  - (b) would contain material differences if they were based on financial statements of the reporting issuer prepared in accordance with Canadian GAAP.

## **6.3 Additional Disclosure for Venture Issuers Without Significant Revenues**

A reporting issuer that is a venture issuer and that has not had significant revenue from operations in either of the last two financial years, must disclose in its MD&A or in its MD&A supplement, if one is required under section 6.2, for each period covered by that MD&A or MD&A supplement, if such information is not already provided in the financial statements to which such MD&A or MD&A supplement relates, a breakdown of material components of:

- (a) exploration and development expenses;
- (b) research and development expenses;
- (c) administration expenses;
- (d) any material expenses not referred to in paragraphs (a) through (c); and
- (e) additions to deferred expenditures,

and if the reporting issuer's business primarily involves mineral projects, a breakdown of material components for each material property of the reporting issuer.

#### **6.4 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 6.2, the designation and number or principal amount of:
  - (a) each class and series of voting or equity securities of the reporting issuer that is outstanding;
  - (b) each class and series of securities of the reporting issuer that is outstanding and that 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 such 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 prepared by a reporting issuer under subsections (1) and (2) must be prepared as of the latest practicable date.

#### **6.5 Disclosure of Auditor Review of Interim Financial Statements**

If a reporting issuer is required under subsection 4.3(3) to disclose that an auditor has not reviewed its interim financial statements, and has not provided this disclosure in its interim financial statements, the reporting issuer must disclose this in its interim MD&A or in its interim MD&A supplement if one is required under section 6.2.

#### **6.6 Approval of MD&A**

The MD&A or MD&A supplement required to be filed under this Part must be reviewed by the audit committee, if any, of the board of directors of a reporting issuer and must be approved by the board of directors before being filed.

#### **6.7 Delivery of MD&A**

- (1) If a registered holder or beneficial owner requests the reporting issuer's MD&A for the financial statements in the request form required under subsection 4.6(1), the reporting issuer must send, without charge, a copy of the requested MD&A and any MD&A supplement 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) If a reporting issuer is sending MD&A under this section, the reporting issuer must also send, at the same time, the annual or interim financial statements applicable to the MD&A.

## PART 7

### MATERIAL CHANGE REPORTS

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

- (1) Subject to subsection (3), where a material change occurs in the affairs of a reporting issuer, the reporting issuer shall forthwith issue and file a news release authorized by a senior officer disclosing the nature and substance of the change.
- (2) Subject to subsection (3), the reporting issuer shall file a Form 51-102F3 *Material Change Report* of such material change, as soon as practicable, and in any event within 10 days of the date on which the change occurs.
- (3) Where:
  - (a) in the opinion of the reporting issuer, and if that opinion is arrived at in a reasonable manner, the disclosure required by subsections (1) and (2) 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,

the reporting issuer may, in lieu of compliance with subsection (1), forthwith file the report required under subsection (2) marked so as to indicate that it is confidential, together with written reasons for non-disclosure.

- (4) A reporting issuer is not required to issue a news release or file a material change report in Québec if senior management of the reporting issuer has reasonable grounds to believe that disclosure would be seriously prejudicial to the interests of the issuer and that no transaction in the securities of the issuer has been or will be carried out on the basis of the information not generally known. The reporting issuer must comply with subsections (1) and (2) when the circumstances that justify non-disclosure have ceased to exist.
- (5) Where a report has been filed under subsection (3), the reporting issuer shall advise the applicable regulator or securities regulatory authority in writing where 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 subsection (1), or, if the material change consists of a decision of the type referred to in paragraph 3(b), until that decision has been rejected by the board of directors of the reporting issuer.

- (6) Although a report has been filed under subsection (3), the reporting issuer shall promptly generally disclose the material change in the manner referred to in subsection (1) 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 *Obligation to File a Business Acquisition Report***

- (1) In addition to any obligations of reporting issuers under Part 7 of this Instrument, if a reporting issuer completes a significant acquisition it must file a business acquisition report within 75 days after the date of acquisition.
- (2) In this Part, the term “acquisition” includes an acquisition of an interest in a business accounted for using the equity method as defined in the Handbook or an acquisition of an interest in a joint venture.
- (3) In this Part, and in the definition of “acquisition of related businesses” in section 1.1, the term “business” or “businesses” includes an interest in an oil and gas property.
- (4) This Part does not apply to a significant acquisition made by the reporting issuer if the reporting issuer has filed an information circular (either of the issuer or of another person or company) that contains the information and financial statements required by section 14.2 of Form 51-102F5 concerning the acquisition of the business or related businesses, provided that:
  - (a) the date of acquisition is within 9 months from the date of the information circular; and
  - (b) between the date of the information circular and the date of acquisition there has been no material change in the terms of the significant acquisition from that disclosed in the information circular.

#### **8.2 *Determination of Significance***

- (1) **Significant Acquisitions** - Subject to subsection (3), for the purposes of this Instrument, an acquisition of a business or related businesses is a significant acquisition:
  - (a) for a reporting issuer other than 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** - 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 other than a venture issuer may re-calculate the significance using the optional significance tests in subsection (4); or
  - (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) 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 clause (i) exceeds 20 percent of the income from continuing operations calculated under the following clause (ii):
- (i) 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.
  - (ii) 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 subsequent to the date of acquisition only if, subsequent to the date of acquisition, the business or related businesses remained substantially intact, 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 paragraphs (2)(c) and clause (4)(c)(ii)(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 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)(ii)(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 such that it increases its investment in a business, 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, then the reporting issuer must apply the significance tests 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, then the reporting issuer must apply the significance tests 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.

(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.

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

(1) **Annual Financial Statements** - If an acquisition of a business or related businesses is a significant acquisition under subsections 8.2(1) or 8.2(3), subject to sections 8.5 through 8.9, 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 8.4;
- (b) a balance sheet as at the date on which each of the periods specified in section 8.4 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 8.4.

(2) **Interim Financial Statements** - Subject to sections 8.5 through 8.9, 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 paragraph (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 -**

- (a) If a reporting issuer must include financial statements in a business acquisition report under subsection (1) or (2), the business acquisition report must include:
- (i) 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;
  - (ii) 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:
    - (A) the reporting issuer's most recently completed financial year for which financial statements are required to have been filed; and
    - (B) the reporting issuer's most recently completed interim period that ended after the period in clause (A) for which financial statements are required to have been filed;
  - (iii) pro forma earnings per share based on the pro forma financial statements referred to in clause (ii);
  - (iv) a compilation report accompanying the pro forma financial statements required under clauses (i) and (ii) signed by the reporting issuer's auditor and prepared in accordance with the Handbook;
- (b) where a reporting issuer must include pro forma financial statements under paragraph (a), the following provisions apply:
- (i) if the pro forma financial statements give effect to more than one significant acquisition, the pro forma financial statement must separately identify each significant acquisition;
  - (ii) 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;
  - (iii) if the financial year-end of the business differs from the reporting issuer's year-end by more than 93 days, then for purposes of preparing the pro forma income statement for the reporting issuer's most recently completed financial year, an income statement of the business must be constructed 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;

- (iv) an audit report is not required for a constructed period referred to in clause (iii);
- (v) where a constructed period is required under clause (iii), the pro forma financial statements must clearly disclose the constructed period 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 formas and do not conform with the financial statements for the business included elsewhere in the business acquisition report;
- (vi) if a reporting issuer is required to prepare a pro forma income statement for an interim period required by clause (3)(a)(ii)(B), 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, a note to the pro forma financial statements must disclose the revenue, expenses, gross profit and income from continuing operations included in each pro forma income statement for the overlapping period.

- (4) **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.

#### **8.4 Reporting Periods**

- (1) **Reporting Issuers that are not Venture Issuers** - The periods for which the financial statements are required under subsection 8.3(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 8.2(2) and 8.2(4) as follows:
- (a) **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:
    - (i) the most recently completed financial year of the business ended more than 45 days before the date of acquisition; or
    - (ii) 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.

- (b) **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:
  - (i) each of the two most recently completed financial years of the business ended more than 45 days before the date of acquisition;
  - (ii) if the business has not completed two financial years, any completed financial year ended more than 45 days before the date of acquisition; or
  - (iii) 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 periods for which the financial statements are required under subsection 8.3(1) for a reporting issuer that is a venture issuer as at the date of acquisition are as follows:
  - (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.

#### **8.5 Exemption from Disclosure Requirements for Significant Acquisitions Accounted for Using the Equity Method**

A reporting issuer is exempt from the requirements in section 8.3 if:

- (a) the acquisition is, or will be, an investment accounted for using the equity method, as that term is defined in the Handbook;
- (b) the business acquisition report includes disclosure for the periods for which financial statements are otherwise required under subsection 8.3(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 clause (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 clause (i), or the financial information referred to in clause (ii), was issued without a reservation.

**8.6 Exemptions from Disclosure Requirements for Significant Acquisitions if More Recent Statements Included**

- (1) If under paragraph 8.4(1)(b) a reporting issuer is required to provide financial statements of a business for two completed financial years, a reporting issuer may omit the financial statements for the oldest financial year, if audited financial statements of the business are included for a financial year ended 45 days or less before the date of acquisition.
- (2) If under paragraph 8.4(1)(b) a reporting issuer is required to provide financial statements of a business for two completed financial years, a reporting issuer may omit the financial statements for the oldest financial year if:
  - (a) 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 paragraph 8.4(1)(b);
  - (b) the business is not seasonal; and
  - (c) 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 8.7.
- (3) A reporting issuer is exempt from the requirement in subsection 8.3(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.

**8.7 Exemption from Disclosure Requirements for Significant Acquisitions if Financial Year End Changed**

If under section 8.4 a reporting issuer is required to provide financial statements of a business acquired for two completed financial years 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 period in satisfaction of the financial statements for one of the years, provided that the transition period is at least nine months.

### **8.8 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 8.3(2) for the business acquired if:

- (a) 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.

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

A reporting issuer is exempt from the requirements in section 8.3 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 clause (f)(i).

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

Despite section 8.4, a reporting issuer is exempt from the requirements to file financial statements, other than pro forma financial statements, in a business acquisition report if the reporting issuer has made a step-by-step acquisition 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 or intends to give 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) Subsection (1) applies, adapted as required, to a meeting of holders of debt securities of a reporting issuer in Québec, whether called by management of the reporting issuer or by the trustee of the debt securities.
- (3) 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 with the notice of meeting to each registered securityholder whose proxy is solicited an information circular; 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.

## **9.2 Exemptions**

- (1) Subsection 9.1(3) 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(3)(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) and notwithstanding the provisions in Québec, 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**

Every 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) Every form of proxy sent or delivered 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) Either 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 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 so 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 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) Either 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 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 prior to the time the solicitation is made that any such 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) No form of proxy of a reporting issuer may 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 such 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 thereof.

## **PART 10**

### **RESTRICTED SHARE DISCLOSURE REQUIREMENTS**

#### **10.1 *Content and Dissemination of Disclosure Documentation***

- (1) Except as otherwise provided in this Instrument, if a reporting issuer has outstanding restricted shares, or securities that are directly or indirectly convertible into or



exercisable or exchangeable for restricted shares or subject securities, each document referred to in subsection (2) must:

- (a) refer to restricted shares using a term that includes the appropriate restricted share term;
  - (b) not refer to shares by a term that includes “common”, or “preference” or “preferred”, unless the shares are common shares or preference shares, respectively;
  - (c) describe any restrictions on the voting rights of restricted shares;
  - (d) describe the rights to participate, if any, of holders of restricted shares if a takeover bid is made for securities of the reporting issuer with voting rights superior to those attached to the restricted shares;
  - (e) state the percentage of the aggregate voting rights attached to the reporting issuer’s securities that are represented by the class of restricted shares; and
  - (f) if holders of restricted shares 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 shares, 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 (8):
- (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) and (f).
- (4) Each reference to restricted shares in any document not referred to in subsection (2) that a reporting issuer sends to its securityholders must include the appropriate restricted share term.
- (5) A reporting issuer must not refer, in any of the documents described in subsection (4), to shares by a term that includes “common” or “preference” or “preferred”, unless the shares are common shares or preference shares, respectively.
- (6) If a reporting issuer sends a document to all holders of any class of its equity shares the document must also be sent by the reporting issuer at the same time to the holders of its restricted shares.

- (7) 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 (6) to the beneficial owners of any shares of a class of equity shares registered in the name of a registrant, must make similar arrangements for delivery of the documents to the beneficial owners of shares of a class of restricted shares registered in the name of a registrant.
- (8) 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 shares by the term used in the constating documents of the reporting issuer, to the extent that term differs from the appropriate restricted share 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 Exemptions for Certain Reporting Issuers**

- (1) The provisions of section 10.1 do not apply to:
  - (a) shares that carry a right to vote subject to a restriction on the number or percentage of shares 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) shares that are subject to a restriction, imposed by any law governing the reporting issuer, on the level of ownership of the shares 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 material:
  - (a) that it sends to more than 50% of the securityholders of a class of securities held by more than 50 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; or
  - (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, the number or percentage of votes cast (which includes votes cast both in person and by proxy) for, against or withheld from each such vote.

### **11.4 *Financial Information***

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

## **PART 12**

### **FILING OF MATERIAL DOCUMENTS**

#### **12.1 *Filing of Certain Material Documents***

- (1) Unless previously filed, a reporting issuer must file copies of the following documents, and any amendments to the following documents:
- (a) articles of incorporation, amalgamation, continuation or any other constating or establishing documents of the issuer;
  - (b) by-laws or other corresponding instruments currently in effect;

- (c) any shareholder or voting trust agreements that can reasonably be regarded as material to an investor in securities of the reporting issuer;
  - (d) any shareholders' rights plans or other similar plans; and
  - (e) any other contracts including indentures, excluding contracts entered into in the ordinary course of business, of the issuer or a subsidiary of the issuer that create or materially affect the rights or obligations of securityholders where the class of security is held by more than 50 securityholders, if those contracts can reasonably be regarded as material to an investor in securities of the reporting issuer.
- (2) The documents required in subsection (1) must be filed:
- (a) either:
    - (i) as an attachment to the reporting issuer's AIF required to be filed under section 5.1, if the document was made or adopted prior to the date of the issuer's AIF; or
    - (ii) if the reporting issuer is not required to file an AIF under section 5.1, as a separate filing to be made within 120 days after the end of the issuer's most recently completed financial year, if the document was made or adopted prior to the end of the issuer's most recently completed financial year; and
  - (b) as an attachment to the reporting issuer's material change report in Form 51-102F3 if the making of the document constitutes a material change for the issuer.

## **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 eligible 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 entitled to rely upon such exemption, waiver or approval from any substantially similar provision of this Instrument to the same extent

and on the same conditions, if any, as contained in the earlier 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 such security with economic and voting rights which are, as nearly as practicable (except for tax implications), equivalent to those provided by the underlying security;

“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 an issuer of exchangeable securities;

“parent issuer” in relation to an exchangeable security issuer means the issuer of the underlying securities; 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) The requirements of this Instrument do not apply to an exchangeable security issuer so long as:
  - (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:
    - (i) 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
    - (ii) 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;
  - (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 the parent issuer or 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, concurrently with such filing by the parent issuer;
  - (e) the exchangeable security issuer concurrently sends, or causes to be concurrently sent, to all holders of designated exchangeable securities, in the manner and at the time required by U.S. federal securities laws and any 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 the requirements of U.S. federal securities laws and any 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 press release that discloses a material change in its affairs;
  - (g) the exchangeable security issuer issues in Canada a press 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 explaining the reason for the mailed material relating solely to the parent issuer and the statement indicates that the designated exchangeable securities are the economic equivalent to the underlying securities and 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* will 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:

- (i) 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
  - (ii) 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; and
- (e) 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 the parent issuer or 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 ●, 2004.

#### **14.2 Transition**

Unless otherwise stated, the provisions of this Instrument concerning:

- (a) annual financial statements and MD&A, apply for financial years beginning on or after ●, 2004<sup>2</sup>;
- (b) interim financial statements and MD&A, apply for interim periods in financial years beginning on or after ●, 2004;
- (c) AIFs, apply in respect of financial years beginning on or after ●, 2004;
- (d) all other disclosure obligations under this Instrument, apply from and after ●, 2004; and
- (e) business acquisition reports, apply to significant acquisitions if the initial legally binding agreement relating to the acquisition was entered into on or after ●, 2004.

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<sup>2</sup> The date this Instrument is expected to become effective.