

Notice and Request for Comment

Proposed Amendments to National Instrument 45-106 *Prospectus and Registration Exemptions*, Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers*, Form 45-106F3 *Offering Memorandum for Qualifying Issuers* and Companion Policy 45-106CP *Prospectus and Registration Exemptions*

Introduction

We, the Canadian Securities Administrators (CSA), except the Autorité des marchés financiers and the New Brunswick Securities Commission, are publishing for a 90 day comment period proposed amendments to:

- National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106),
- Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers* and Form 45-106F3 *Offering Memorandum for Qualifying Issuers* (collectively, the OM Forms) and
- Companion Policy 45-106CP *Prospectus and Registration Exemptions* (45-106CP).

This notice forms parts of a series of notices that address proposed changes to securities legislation arising from the upcoming changeover to International Financial Reporting Standards (IFRS).

Proposed Text

Appendix A provides a summary of certain proposed amendments, including a list of the changes to accounting terms and phrases as well as a summary of the main transition changes related to IFRS. Other proposed amendments are described in this notice.

Appendix B sets out the proposed amendments to NI 45-106 and 45-106CP.

Appendix C sets out a blackline showing proposed changes to the OM Forms from the versions of those documents currently in force.

We invite comment on the proposed amendments to NI 45-106, the OM Forms and 45-106CP (proposed amendments). As the proposed amendments relate to the upcoming changeover to IFRS in Canada and need to be in place before January 1, 2011, we are not inviting comment on the provisions of the rules and policies that will not be affected by the changeover to IFRS.

Background

NI 45-106 provides certain exemptions from the prospectus and registration requirements of Canadian securities legislation. NI 45-106 and the OM Forms refer to and rely on references to Canadian generally accepted accounting principles (GAAP), which are established by the Canadian Accounting Standards Board (AcSB) and published in the CICA (Canadian Institute of Chartered Accountants) Handbook. Following a period of public consultation, the AcSB adopted a strategic plan to move financial reporting for Canadian publicly accountable enterprises to IFRS as issued by the International Accounting Standards Board (IASB). For financial years beginning on or after January 1, 2011, Canadian GAAP for publicly accountable enterprises will be IFRS incorporated into the CICA Handbook.

Substance and Purpose of the Proposed Amendments

The purpose of these changes is to accommodate the transition to IFRS. We are proposing to update the accounting terms and references in NI 45-106, the OM Forms and 45-106CP to reflect the fact that, for financial years beginning on or after January 1, 2011, Canadian GAAP for publicly accountable enterprises will be IFRS incorporated into the CICA Handbook.

Summary of the Proposed Amendments

The proposed amendments are a result of amendments to National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (to be renamed *Acceptable Accounting Principles and Auditing Standards*) (NI 52-107) proposed to require domestic issuers to comply with IFRS. NI 52-107 sets out the accounting principles and auditing standards that apply to financial statements filed in a jurisdiction. We have also proposed amendments similar to those being proposed to National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) and National Instrument 41-101 *General Prospectus Requirements* (NI 41-101) to maintain the harmony between the general prospectus requirements, the prospectus and registration exemptions and the continuous disclosure and short form prospectus disclosure regimes. We refer you to our notice and request for comment on the proposed amendments to NI 51-102 and the notice and request for comment on the proposed amendments to NI 41-101. Where appropriate, we have also included a number of amendments that result from changes to other CSA rules because of the changeover to IFRS.

As we discuss below, the proposed amendments primarily relate to changes to accounting terms used in the OM Forms. In addition to the changes that we propose to the OM Forms, we propose to add a definition of “financial statements” to NI 45-106 to clarify that financial statements include interim financial reports.

The proposed amendments we are publishing for comment will:

- Replace Canadian GAAP terms and phrases with IFRS terms and phrases.
- Change disclosure requirements in instances where IFRS contemplates different financial statements than existing Canadian GAAP.

- Provide a 30 day extension to the deadline for reporting issuers to include in an offering memorandum the first interim financial report in the year of adopting IFRS in respect of an interim period beginning on or after January 1, 2011.
- Clarify an existing provision or amend or delete it where part or all of the provision is no longer accurate or appropriate.

Accounting Terms and Phrases

The proposed amendments include new terms and phrases that are consistent with those used in IFRS and replace terms and phrases used in existing Canadian GAAP.

The proposed amendments do not reflect the impact of exposure drafts or discussion papers from the IASB prior to their adoption into IFRS. The proposed definition of IFRS in National Instrument 14-101 *Definitions* (NI 14-101) would take into account amendments made from time to time.

The proposed amendments are not intended to substantively alter securities law requirements. For example, we are proposing to replace the existing Canadian GAAP term “results of operations” with the corresponding IFRS term “financial performance”. This is intended to be a change in terminology only.

The proposed amendments also incorporate a number of new or revised definitions from NI 51-102. For example, we have incorporated a definition of “forward-looking information”. Currently, definitions of “forward-looking information” are found in the securities acts of the various provinces and territories. As all of the acts may not be amended prior to January 1, 2011 to reflect the changeover to IFRS, we have defined forward-looking information in a manner consistent with IFRS.

A detailed list of the changes to accounting terms and phrases is set out in Appendix A to this notice.

Changes to Financial Statement Requirements in Form 45-106F2

1. Reconciliations and transition opening statement of financial position required by IFRS 1 – First-time adoption of International Financial Reporting Standards

IFRS 1 requires the preparation of an opening IFRS statement of financial position at the date of transition to IFRS along with various reconciliations relating to the date of transition. We are requiring the opening IFRS statement of financial position to be presented in an issuer’s first IFRS interim financial report and first IFRS financial statements. We believe this disclosure is necessary to explain how the transition from previous GAAP to IFRS has affected an issuer’s reported financial position, financial performance and cash flows.

This disclosure may not be included in interim financial reports for the second and third quarters. However, an issuer may file an offering memorandum at a time when the second or third quarter interim financial report is required to be included in the offering

memorandum. To obtain consistent disclosure in all offering memoranda in the year of adopting IFRS, we have added a disclosure requirement to include these reconciliations and the date of transition opening statement of financial position in an issuer's offering memorandum.

2. Opening Statement of Financial Position

When an issuer applies an accounting policy retrospectively, makes a retrospective restatement of items in its financial statements or reclassifies items in its financial statements, IAS 1 *Presentation of Financial Statement* requires the disclosure of a statement of financial position as at the beginning of the earliest comparative period. Form 45-106F2 will require the disclosure of this opening statement of financial position in both annual financial statements and interim financial reports.

3. Presentation of Statement of Cash Flows

We have proposed amendments to reflect the financial statement presentation requirements in IFRS. Current Form 45-106F2 (and Canadian GAAP) requires issuers to present in their interim financial statements a cash flow statement for the three month period ending on the last day of the interim period and the corresponding comparative interim period and, for periods other than the first interim period, the year to date period. As IFRS requires only a statement of cash flows for the year to date period and the corresponding comparative period, we have proposed amendments to reflect this.

4. Presentation of Statement of Comprehensive Income

We added disclosure requirements in Form 45-106F2 for the statement of comprehensive income based on the presentation options available under IFRS. If a reporting issuer presents the components of profit or loss in a separate income statement, the separate income statement must be displayed immediately before the statement of comprehensive income.

Transition Provisions - Extension for Inclusion of First IFRS Interim Financial Report in Form 45-106F2

Part B, section 16 of Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers* includes transition provisions that provide reporting issuers with a 30 day extension for including in the offering memorandum the first IFRS interim financial report filed with an offering memorandum dated before June 29, 2012. We believe this extension should be provided, as the first IFRS interim financial report will be due not long after the filing of the Canadian GAAP annual financial statements. We recognize that boards of directors, audit committees, and in some cases auditors, will require additional time to review and approve the first set of IFRS financial statements. Other jurisdictions that transitioned to IFRS also granted filing extensions for the first IFRS filing, even though they only require issuers to file on a half-yearly basis.

We have not provided reporting issuers with an extension to the deadline for including in an offering memorandum subsequent IFRS interim financial reports or the first annual financial statements prepared in accordance with IFRS as we believe the deadlines

applicable to these financial statements are reasonable and appropriate after the initial changeover to IFRS.

The CSA regulators will generally not grant exemptive relief to an issuer to extend a deadline for including financial information in an offering memorandum. While we recognize that some issuers filing their offering memoranda may face difficulties in complying with the financial statement disclosure requirements as a result of the changeover to IFRS, we do not believe it is appropriate to grant exemptive relief to an issuer to allow it to proceed with an offering memorandum that does not include current financial information.

Amendments from NI 52-107

Proposed changes to other CSA rules, including NI 52-107 and NI 14-101, were published for comment on September 25, 2009.

In addition, NI 52-107 proposes, except in Ontario, that acquisition statements in respect of probable and completed acquisitions be permitted to be prepared in accordance with Canadian GAAP applicable to private enterprises in certain circumstances. Changes are being made to Part 8 of NI 51-102 and 51-102CP to address this proposal. As a result, this option would be available to an offering memorandum filer in respect of financial statements included in the issuer's offering memorandum for probable and completed acquisitions. These proposed changes will apply to offering memoranda which include acquisition statements for any period relating to a financial year that begins on or after January 1, 2011.

Even though the proposed amendments replace existing Canadian GAAP terms and phrases with IFRS terms and phrases, the proposed amendments include references to "Canadian GAAP". This is because NI 14-101 will continue to define "Canadian GAAP" to mean generally accepted accounting principles determined with reference to the CICA Handbook. Once the AcSB incorporates IFRS into the Handbook, the Handbook will contain two versions of Canadian GAAP for publicly accountable enterprises:

- IFRS for financial years beginning on or after January 1, 2011 (the mandatory effective date) (proposed Part 1 of the Handbook), and
- the standards constituting Canadian GAAP before the mandatory effective date (proposed Part IV of the Handbook).

Certain offering memorandum filings require the presentation of both annual and interim financial information. During the IFRS transition period, we recognize that offering memoranda may contain financial information in respect of an issuer prepared using both existing Canadian GAAP and IFRS. For example, an offering memorandum filed in 2011 may include annual financial statements prepared in accordance with Canadian GAAP and an interim financial report that complies with IFRS.

Additional Amendments

The CSA's mandate in bringing forth the proposed amendments is to revise NI 45-106, the OM Forms and 45-106CP to accommodate the adoption of IFRS. Where appropriate, we have also proposed certain grammatical changes to NI 45-106.

Transition

After the IFRS changeover date on January 1, 2011, non calendar year-end issuers will continue to prepare financial statements in accordance with existing Canadian GAAP until the start of their new financial year. To accommodate for this, we are proposing to include transition provisions that provide that the proposed amendments only apply to an offering memorandum of an issuer which includes or incorporates by reference financial statements of the issuer in respect of periods relating to financial years beginning on or after January 1, 2011. Thus, during the transition period,

- issuers only including or incorporating by reference financial statements in an offering memorandum that are prepared in accordance with existing Canadian GAAP will be required to comply with the versions of NI 45-106 and the OM Forms that contain existing Canadian GAAP terms and phrases.
- issuers including or incorporating by reference financial statements in an offering memorandum that comply with IFRS will be required to comply with the versions of NI 45-106 and the OM Forms that contain IFRS terms and phrases.

After the transition period all issuers will be required to comply with the versions NI 45-106 and the OM Forms that contain IFRS terms and phrases.

To further assist issuers and their advisors and to increase transparency, during the transition period certain jurisdictions will post two different unofficial consolidations of NI 45-106, the OM Forms and 45-106CP on their websites:

- The existing versions of NI 45-106, the OM Forms and 45-106CP that contain existing Canadian GAAP terms and phrases, which apply to an offering memorandum of an issuer which includes or incorporates by reference financial statements of the issuer in respect of periods relating to financial years beginning before January 1, 2011.
- The new versions of NI 45-106, the OM Forms and 45-106CP that contain IFRS terms and phrases, which apply to an offering memorandum of an issuer which includes or incorporates by reference financial statements of the issuer in respect of periods relating to financial years beginning on or after January 1, 2011.

Alternatives Considered

Instead of proposing these amendments, we considered leaving the existing Canadian GAAP terms and references in NI 45-106 and issuing a notice to the effect that, if an issuer is required or permitted under NI 52-107 to include financial statements that comply with IFRS, then the issuer may interpret any reference in the rules to a term or

provision defined, or referred to, in existing Canadian GAAP as a reference to the corresponding term or provision in IFRS.

We decided not to proceed with this option for several reasons. Leaving the existing Canadian GAAP terms and phrases in the rules raises the potential for significant confusion as these terms will become less well known as time passes. In addition, the use of different terminology in securities legislation and accounting rules detracts from the goal of moving to a global accounting language.

Impact on Investors

The proposed amendments will benefit investors in several respects:

- By replacing existing Canadian GAAP terms and phrases with IFRS terms and phrases, we expect that a more consistent interpretation will be given to the prospectus and registration exemptions rule than would be the case if the proposed amendments were not implemented. More consistent disclosure practices should increase transparency to the market and thereby benefit investors.
- IFRS 1 requires issuers to prepare an opening IFRS statement of financial position at the date of transition to IFRS along with various reconciliations relating to the date of transition. As we believe investors need this information to understand how the transition from previous GAAP to IFRS affected the issuer's reported financial position, financial performance and cash flows, we will require that this disclosure be included by all reporting issuers in their first IFRS interim financial report and first IFRS financial statements and all non-reporting issuers in their first, second and third IFRS interim financial reports and first IFRS financial statements.
- In certain instances, where an issuer applies an accounting policy retrospectively, makes a retrospective restatement of items in its financial statements or reclassifies items in its financial statements, IFRS requires the presentation of an opening statement of financial position. As we believe investors need this information to understand how the change affected the issuer's reported financial position, financial performance and cash flows, the OM Forms will require the presentation of this opening statement of financial position in both annual financial statements and interim financial reports.
- As a consequence of providing a 30 day extension to the disclosure deadline for the first IFRS interim financial report in respect of an interim period beginning on or after January 1, 2011, the financial disclosure in an offering memorandum filed during such period may be less current. However, we expect that by providing issuers with the additional time to review and approve their first IFRS financial report the quality of this disclosure will improve.

Anticipated Costs and Benefits

A description of the anticipated costs and benefits of adopting IFRS as the basis for financial reporting in Canada is included in the notice accompanying the proposed changes to NI 52-107 (the NI 52-107 notice).

NI 45-106, the OM Forms and 45-106CP refer to and rely on references to Canadian GAAP. For financial years beginning on or after January 1, 2011, Canadian GAAP for publicly accountable enterprises will be IFRS incorporated into the CICA Handbook. As a result, the proposed amendments are necessary to adapt our rules to the new IFRS environment.

Although there are costs contemplated under the NI 52-107 notice relating to the transition to IFRS, the preparation of all offering memoranda filings using the same terminology as used in the financial statements provides more meaningful information to investors. Issuers and their advisors will benefit by having exemptions rules that refer to current accounting terms.

Unpublished materials

In proposing the proposed amendments, we have not relied on any significant unpublished study, report, or other written materials.

Local Notices and Amendments

Certain jurisdictions will publish other information required by local securities legislation in Appendix D to this notice.

Publications in Quebec and New Brunswick

The Autorité des marchés financiers and the New Brunswick Securities Commission are publishing for comment today a staff notice that sets out the substantive proposed changes reflected in the proposed amendments published in the other CSA jurisdictions. Because of the legal obligation to publish amending instruments simultaneously in French and English in Québec and New Brunswick, and because the French IFRS terminology is still in a state of flux, publication for comment of proposed amendments in these provinces is presently not feasible. It is expected that the Autorité des marchés financiers and the New Brunswick Securities Commission will publish for comment corresponding proposed amendments, in French and in English, during the first quarter of 2010. However, market participants in Québec and New Brunswick are encouraged to comment on the substantive proposed changes presented in the staff notices and on the amendments published by the other CSA jurisdictions.

Comments

We request your comments on the proposed amendments outlined above. Please provide your comments in writing by January 18, 2010. If you are not sending your comments by email, an electronic file containing the submissions should also be provided (Windows format, Word).

Address your submission to the following Canadian securities regulatory authorities:

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

Deliver your comments **only** to the address that follows. Your comments will be distributed to the other participating CSA member jurisdictions.

Gordon Smith
Senior Legal Counsel, Corporate Finance
British Columbia Securities Commission
P.O. Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, BC, V7Y 1L2
Fax: (604) 899-6814
Email: gsmith@bcsc.bc.ca

Please note that comments received will be made publicly available and posted at www.osc.gov.on.ca and the websites of certain other securities regulatory authorities. We cannot keep submissions confidential because securities legislation in certain provinces requires that a summary of the written comments received during the comment period be published.

Questions

Please refer your questions to any of:

Gordon Smith
Senior Legal Counsel, Corporate Finance
British Columbia Securities Commission
(604) 899-6656
Toll free: 800 373-6393 (toll free across Canada)
gsmith@bcsc.bc.ca

Anita Cyr
Senior Securities Analyst, Corporate Finance
British Columbia Securities Commission
(604) 899-6579
Toll free: 800 373-6393 (toll free across Canada)
acyr@bcsc.bc.ca

Taryn Montgomery
Legal Counsel
Alberta Securities Commission
(403) 297-4968
Taryn.Montgomery@asc.ca

Tracy Clark
Legal Counsel
Alberta Securities Commission
(403) 355-4424
Tracy.Clark@asc.ca

Dean Murrison
Deputy Director, Legal/Registration
Securities Division
Saskatchewan Financial Services Commission
(306) 787-5879
Dean.Murrison@gov.sk.ca

Chris Besko
Legal Counsel - Deputy Director
The Manitoba Securities Commission
(204) 945-2561
cbesko@gov.mb.ca

Jo-Anne Matear
Assistant Manager, Corporate Finance Branch
Ontario Securities Commission
(416) 593-2323
jmatear@osc.gov.on.ca

Jason Koskela
Legal Counsel, Corporate Finance
Ontario Securities Commission
(416) 595-8922
jkoskela@osc.gov.on.ca

Shirley Lee
Director, Policy and Market Regulation
Nova Scotia Securities Commission
(902) 424-5441
leesp@gov.ns.ca

Steve Dowling
Superintendent of Securities
Prince Edward Island
(902) 368-4552
sddowling@gov.pe.ca

Don Boyles
Program & Policy Development
Securities Commission of Newfoundland and Labrador
Government of Newfoundland & Labrador
(709) 729-4501
dboyles@gov.nl.ca

Louis Arki, Director, Legal Registries
Department of Justice, Government of Nunavut
(867) 975-6587
larki@gov.nu.ca

Donn MacDougall
Deputy Superintendent, Legal & Enforcement
Office of the Superintendent of Securities
Government of the Northwest Territories
PO Box 1320
Yellowknife, NT X1A 2L9
Tel: (867) 920-8984
Fax: (867) 873-0243
E-mail: donald_macdougall@gov.nt.ca

Frederik J. Pretorius
Manager Corporate Affairs (C-6)
Dept of Community Services
Government of Yukon
(867) 667-5225
Fred.Pretorius@gov.yk.ca

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Appendix A

Summary of Changes to Accounting Terms and Phrases and Other Changes for National Instrument 45-106 *Prospectus and Registration Exemptions* and Companion Policy

A. TERMINOLOGY CHANGES

Accounting Terms or Phrases

We replaced the following terms and phrases used in the prospectus and registration exemption rule with comparable IFRS terms or phrases.

| Original Term or Phrase | IFRS Term or Phrase |
|--------------------------------|-----------------------------------|
| balance sheet | statement of financial position |
| cash flow statement | statement of cash flows |
| date of acquisition | acquisition date |
| earnings | profit or loss (as appropriate) |
| income statement | statement of comprehensive income |
| interim financial statements | interim financial report |
| sales/operating revenues | revenue (as appropriate) |
| statement of retained earnings | statement of changes in equity |

Amendments to Definitions

| Defined Term | Amendment to Definition |
|---------------------------------|--|
| date of transition to IFRS | As a definition of “date of transition to IFRS” was added to NI 51-102, a reference to the definition was added to Form 45-106F2. |
| financial statements | We added a definition of “financial statements” to NI 45-106 to clarify that financial statements includes interim financial reports. |
| first IFRS financial statements | As a definition of “first IFRS financial statements” was added to NI 51-102, a reference to the definition was added to Form 45-106F2. |
| forward-looking information | As a definition of “forward-looking information” was added to NI 51-102, a reference to the definition was added to Form 45-106F2. |
| operating income | As a definition of “operating income” was added to NI 51-102, a reference to the definition was added to Form 45-106F2. |

Other Changes to Accounting Terms or Phrases

| Term | Explanation of Change |
|--|--|
| business acquisitions | Section C.2(b) in Form 45-106F2 was revised to refer to NI 51-102 for changes to how the investment test is performed as a result of the transition to IFRS. |
| debt | We clarified that the reference to “debt” in Form 45-106F2 should have the legal meaning by revising the term to “debt securities”. |
| financial information related to an investment accounted for using the equity method | We revised the language describing the disclosure requirements for summarized financial information for an investment that will be accounted for using the equity method to be consistent with IFRS terminology. Refer to Form 45-106F2, sections B.1 and D.3 |
| comparative financial information exemption | Language was added to Form 45-106F2 to clarify that an issuer cannot rely on the exemption from comparative financial information if the issuer previously prepared financial statements in accordance with a prior GAAP. Refer to section B.8 Financial Statements – General in Form 45-106F2. |
| net income | As the offering memorandum purchaser could be an individual or a company, the term “profit” was added to section 3.8 of 45-106CP to be consistent with IFRS terminology. |
| Section 1701 of the CICA Handbook | We removed subsection 4(c) of Part D because this condition is not necessary in order for the alternative oil and gas disclosure to be appropriate business acquisition disclosure. As a result, there is no longer a reference in subsection 4(c) of Part D to section 1701 of the CICA Handbook. |

B. TRANSITION CHANGES

| Item | Explanation of Change | Reference |
|---|---|--|
| IAS 1 opening statement of financial position | In certain instances, where an issuer applies an accounting policy retrospectively, makes a retrospective restatement of items in its financial statements or reclassifies items in its financial statements, IAS 1 <i>Presentation of Financial Statements</i> requires the presentation of an opening statement of financial position. Form 45-106F2 will require the disclosure of this opening statement of financial position in both annual financial statements and interim financial reports. | Form 45-106F2, Part B, paragraph 4(c) Annual Financial Statements Form 45-106F2, Part B, paragraph 5(d) Interim Financial Reports |

| Item | Explanation of Change | Reference |
|--|---|--|
| IFRS 1 opening statement of financial position | IFRS 1 requires the preparation of an opening statement of financial position at the date of transition to IFRS. We are requiring the IFRS 1 opening statement of financial position to be presented in an issuer's first IFRS interim financial report and first IFRS annual financial statements. This opening statement of financial position is the starting point for an issuer's accounting under IFRS and provides meaningful information to investors. | Form 45-106F2, Part B, paragraph 4(d) Annual Financial Statements Form 45-106F2, Part B, paragraph 5(e) Interim Financial Reports |
| IFRS 1 reconciliations | <p>IFRS 1 requires interim and annual reconciliations to be included in an issuer's first IFRS interim financial report and first IFRS annual financial statements. IFRS 1 only requires interim reconciliations for subsequent quarters in the first year of IFRS adoption. The annual IFRS reconciliations are key to describing the impact of the IFRS transition to investors.</p> <p>Since an issuer may file an offering memorandum at a time when the second or third quarter interim financial report is required to be included in the offering memorandum, and the first quarter interim financial report is no longer required to be included in the offering memorandum, we have added a disclosure requirement to include these reconciliations and the IFRS 1 opening statement of financial position in an issuer's offering memorandum.</p> | Form 45-106F2, Part B, paragraph 5(f) |
| presentation of statement of cash flows | <p>Currently, Form 45-106F2 and existing Canadian GAAP require issuers to present an interim cash flow statement for the current interim period and the year-to-date interim period (e.g., 3 months ending June 30 and 6 months ending June 30).</p> <p>IFRS only requires the presentation of a statement of cash flows for the year-to-date interim period (e.g., 6 months ending June 30).</p> <p>We have revised Form 45-106F2 to eliminate the requirement to include in an offering memorandum, a statement of cash flows for the most recent interim period (i.e., 3 months ending June 30) because it is not required in IFRS.</p> | Form 45-106F2, Part B, paragraph 5(a) Interim Financial Reports Form 45-106F2, Part C, paragraph 4(b)(ii) Interim Financial Reports |

| Item | Explanation of Change | Reference |
|---|--|---|
| presentation of statement of comprehensive income | We added disclosure requirements for the statement of comprehensive income based on the presentation options available under IFRS. If an issuer presents the components of profit or loss in a separate income statement, the separate income statement must be displayed immediately before the statement of comprehensive income. | Form 45-106F2, Part B, section 4.1 Annual Financial Statements Form 45-106F2, Part B, section 5.1 Interim financial report |
| extension for first IFRS interim financial report | <p>Paragraph B.16 of Form 45-106F2 includes transition provisions that provide reporting issuers with a 30 day extension to the deadline for including in an offering memorandum the first IFRS interim financial report in respect of an interim period beginning on or after January 1, 2011. This extension applies only to reporting issuers.</p> <p>We believe this extension should be provided as the first IFRS interim financial report will be due not long after Canadian GAAP annual financial statements are required to be included in the offering memorandum. We recognize that boards of directors, audit committees, and auditors, will require additional time to review and approve the first set of IFRS financial statements. It should also be noted that other jurisdictions which transitioned to IFRS also granted filing extensions for the first IFRS filing, even though they only require issuers to file on a half-yearly basis.</p> <p>We have not provided reporting issuers with an extension to the deadline for including in a offering memorandum, subsequent IFRS interim financial reports or the first IFRS annual financial statements as we believe the filing deadlines applicable to financial statements are reasonable and appropriate after the initial changeover to IFRS.</p> | Form 45-106F2, section B.16 |