

## ANNEX E

### Proposed Changes to Companion Policy 51-102CP *Continuous Disclosure Obligations*

1. *Companion Policy 51-102CP Continuous Disclosure Obligations is changed by this Document.*
2. *Part 9 is changed by adding the following section:*

#### **Derivative Arrangements**

**9.4** Section 3.1 of National Policy 62-203 *Take-Over Bids, Issuer Bids and the Early Warning System* provides guidance for the definition of “equity equivalent derivative”. It also sets out when an investor must aggregate securities that it beneficially owns with reference securities underlying equity equivalent derivatives held by it for the purposes of early warning reporting.

The disclosure or use of equity equivalent derivatives in a manner that is abusive of the capital markets may engage securities regulatory authorities’ public interest jurisdiction. For example, we may have public interest concerns where investors do not clearly and accurately differentiate between beneficial ownership of securities and economic interests in their public disclosures and instead express them as an aggregate economic interest, which can generate confusion in the market. We may also have public interest concerns where equity equivalent derivatives are used in a deliberate effort to accumulate substantial economic positions in an issuer if the holder seeks to influence the outcome of a matter subject to securityholder approval by either exerting pressure on a counterparty or communicating expectations of commercial incentives or disincentives for the counterparty or its affiliates dependent on how or when the counterparty acquires, disposes of or votes securities of the issuer.

If a solicitation is made other than by or on behalf of management, items 6.7 and 6.8 of Form 51-102F5 *Information Circular* require a description of any past or present relationship between a person or company referred to in item 6.6 of Form 51-102F5 *Information Circular* and a counterparty, or an affiliate of the counterparty, that, to a reasonable person, could be perceived to affect that counterparty’s decision to acquire, dispose of or vote securities of the company, or, if there is no such relationship, a statement to that effect. Such relationships may include instances where a counterparty or an affiliate of the counterparty has a material financial interest in the person or company, has a material financial interest in future business involving the person or company, acts as a financial advisor to the person or company, or acts as a lead or co-lead lender or manager of a lending syndicate in connection with the solicitation. A relationship with a counterparty, or an affiliate of that counterparty, that terminated more than 24 months before a solicitation was commenced generally would not

have to be disclosed on the basis that it could not be perceived to affect the counterparty's decision to acquire, dispose of or vote securities of the company..

**Effective Date**

3. These changes become effective on [x].