

## Proposed Changes to Companion Policy 41-101CP

The following are proposed changes to Companion Policy 41-101CP to National Instrument 41-101 *General Prospectus Requirements*

### 1. Proposed changes to subsection 1.2(3)

#### Continuous disclosure (~~NI 51-102~~NI 51-103 and NI 81-106)

- (3) NI 51-102, NI 51-103, NI 81-106 and other securities legislation imposes ongoing disclosure and filing obligations on reporting issuers. The regulator may consider issues raised in the context of a continuous disclosure review when determining whether it is in the public interest to refuse to issue a receipt for a prospectus. Consequently, unresolved issues may delay or prevent the issuance of a receipt.

Reporting issuers are generally required to file periodic and timely disclosure documents under applicable securities legislation. Reporting issuers may also be required to file periodic and timely disclosure documents pursuant to an order issued by the securities regulatory authority or an undertaking to the securities regulatory authority. Failure to comply with any requirement to file periodic and timely disclosure documents could cause the regulator to refuse a receipt for the prospectus.

### 2. Proposed changes to subsection 3.6(3)

#### Contract of employment

- (3) Paragraph 9.3(2)(a) of the Instrument provides that a material contract with certain individuals is not eligible for the ordinary course of business exemption, unless it is a “contract of employment”. One way for issuers to determine whether a contract is a contract of employment is to consider whether the contract contains payment or other provisions that are required disclosure under Form 51-102F6 or Form 51-103F1, as applicable, as if the individual were a named executive officer or director of the issuer.

### 3. Proposed changes to section 3.8

- 3.8 Under subparagraph 9.2(a)(x) of the Instrument, an issuer must file an undertaking to file the periodic and timely disclosure of a credit supporter. For credit supporters that are reporting issuers with a current AIF (as defined in NI 44-101), the undertaking will likely be to continue to file the documents it is required to file under ~~NI 51-102~~NI 51-103, as applicable. For credit supporters registered under the 1934 Act, the undertaking will likely be to file the types of documents that would be required to be incorporated by reference into a Form S-3 or Form F-3 registration statement. For other credit supporters, the types of documents to be filed pursuant to the undertaking will be determined through discussions with the regulators on a case-by-case basis.

If an issuer, a parent credit supporter, and a subsidiary credit supporter satisfy the conditions of the exemption in section 34.3 of Form 41-101F1, **1 or section 34.2 of Form 41-101F4, as applicable**, an undertaking may provide that the subsidiary credit supporter will file periodic and timely disclosure if the issuer and the credit supporters no longer satisfy the conditions of the exemption in that section.

If an issuer and a credit supporter satisfy the conditions the exemption in section 34.4 of Form 41-101F1, **1 or section 34.3 of Form 41-101F4, as applicable**, an undertaking may provide that the credit supporter will file periodic and timely disclosure if the issuer and the credit supporter no longer satisfy the conditions of the exemption in that section.

For the purposes of such an undertaking, references to disclosure included in the prospectus should be replaced with references to the issuer or parent credit supporter's continuous disclosure filings. For example, if an issuer and subsidiary credit supporter(s) plan to continue to satisfy the conditions of the exemption in section 34.4 of Form 41-101F1, **101F1 or section 34.3 of Form 41-101F4, as applicable**, for continuous disclosure filings, the undertaking should provide that the issuer will file with its consolidated financial statements,

- (a) a statement that the financial results of the credit supporter(s) are included in the consolidated financial results of the issuer if
  - (i) the issuer continues to have limited independent operations, and
  - (ii) the impact of any subsidiaries of the issuer on a combined basis, excluding the credit supporter(s) but including any subsidiaries of the credit supporter(s) that are not themselves credit supporters, on the consolidated financial statements of the issuer continues to be minor, or
- (b) for any periods covered by issuer's consolidated financial statements, consolidating summary financial information for the issuer presented in the format set out in subparagraph 34.4(e)(ii) of Form 41-101F1, **1 or section 34.3 of Form 41-101F4, as applicable**.

#### 4. Proposed changes to section 3.11

##### Reduced price distributions

- 3.11** Subsection 7.2(3) of the Instrument permits an issuer to reduce the offering price of the securities being distributed without filing an amendment to the prospectus if certain conditions are satisfied. Satisfying the conditions in this subsection means the underwriter's compensation should decrease by the amount that the aggregate price paid by purchasers for the securities is less than the gross proceeds paid by the underwriter to the issuer or selling securityholder. Section 20.8 of Form 41-101F1 **or Form 41-101F4, as applicable**, requires disclosure of this fact.

## 5. Proposed changes to section 4.2

### Pricing disclosure

- 4.2(1) If the offering price or the number of securities being distributed, or an estimate of the range of the offering price or the number of securities being distributed, has been publicly disclosed in a jurisdiction or a foreign jurisdiction as of the date of the preliminary long form prospectus, section 1.7 of Form 41-101F1 or Form 41-101F4, as applicable, requires the issuer to disclose that information in the preliminary long form prospectus. For example, if an issuer has previously disclosed this information in a public filing or a press release, in a foreign jurisdiction, the information must also be disclosed in the preliminary long form prospectus. If the issuer discloses this information in the preliminary long form prospectus, we will not consider a difference between this information and the actual offering price or number of securities being distributed to be, in itself, a material adverse change for which the issuer must file an amended preliminary long form prospectus.
- (2) No disclosure is required under section 1.7 of Form 41-101F1 or Form 41-101F4, as applicable, if the offering price or size of the offering has not been disclosed as of the date of the preliminary long form prospectus. However, given the materiality of pricing or offering size information, subsequent disclosure of this information on a selective basis could constitute conduct that is prejudicial to the public interest.

## 6. Proposed changes to section 4.3

### Principal purposes – generally

- 4.3(1) Subsection 6.3(1) of Form 41-101F1 or Form 41-101F4, as applicable, requires disclosure of each of the principal purposes for which the issuer will use the net proceeds. If an issuer has negative cash flow from operating activities in its most recently completed financial year for which financial statements have been included in the long form prospectus, the issuer should prominently disclose that fact in the use of proceeds section of the long form prospectus. The issuer should also disclose whether, and if so, to what extent, the issuer will use the proceeds of the distribution to fund any anticipated negative cash flow from operating activities in future periods. An issuer should disclose negative cash flow from operating activities as a risk factor under subsection 21.1(1) of Form 41-101F1 or Form 41-101F4, as applicable. For the purposes of this section, in determining cash flow from operating activities, the issuer must include cash payments related to dividends and borrowing costs.
- (2) For the purposes of the disclosure required under section 6.3 of Form 41-101F1 or Form 41-101F4, as applicable, the phrase “for general corporate purposes” is not generally sufficient.

## 7. Proposed changes to section 4.4

### MD&A

#### **Additional information for senior unlisted issuers, IPO venture issuers and venture issuers without significant revenue**

**4.4(1)** Section 8.6 of Form 41-101F1 or section 5.8 of 41-101F4, as applicable, requires certain senior unlisted issuers, IPO venture issuers and ~~IPO~~ venture issuers to disclose a breakdown of material costs whether expensed or recognized as assets. A component of cost is generally considered to be a material component if it exceeds the greater of

- (a) 20% of the total amount of the class, and
- (b) \$25,000.

#### **Disclosure of outstanding security data**

(2) Section 8.4 of Form 41-101F1 or section 11.2 of Form 41-101F4, as applicable, requires disclosure of information relating to the outstanding securities of the issuer as of the latest practicable date. The “latest practicable date” should be as close as possible to the date of the long form prospectus. Disclosing the number of securities outstanding at the most recently completed financial period is generally not sufficient to meet this requirement.

#### **Additional disclosure for issuers with significant equity investees**

(3) Section 8.8 of Form 41-101F1 or section 5.10 of Form 41-101F4, as applicable, requires issuers with significant equity investees to provide in their long form prospectuses summarized information about the equity investee. Generally, we will consider that an equity investee is significant if the equity investee would meet the thresholds for the significance tests in Item 35 of Form 41-101F1 or in the guidance provided under Item 20 in Form 51-103F1, as applicable, using the financial statements of the equity investee and the issuer as at the issuer’s financial year-end.

## 8. Proposed changes to subsection 4.6(1)

### **Distribution of derivatives and underlying securities**

**4.6(1)** Section 10.4 of Form 41-101F1 or Form 41-101F4, as applicable, specifies additional disclosure applicable to distributions of derivatives. This prescribed disclosure is formulated in general terms for issuers to customize appropriately in particular circumstances.

**9. Proposed changes to section 4.7**

**Restricted securities**

- 4.7** Section 10.6 of Form 41-101F1 or Form 41-101F4, as applicable, specifies additional disclosure for restricted securities, including a detailed description of any significant provisions under applicable corporate and securities law that do not apply to the holders of the restricted securities but do apply to the holders of another class of equity securities. An example of such provisions would be rights under takeover bids.

**10. Proposed changes to section 4.8**

**Credit supporter disclosure**

- 4.8** A long form prospectus must include, under Item 33 of Form 41-101F1 or Form 41-101F4, as applicable, disclosure about any credit supporters that have provided a guarantee or alternative credit support for all or substantially all of the payments to be made under the securities being distributed. Disclosure about a credit supporter may be required even if the credit supporter has not provided full and unconditional credit support.

**11. Proposed changes to section 4.9**

**Exemptions for certain issues of guaranteed securities**

- 4.9** Requiring disclosure about the issuer and any applicable credit supporters in a long form prospectus may result in unnecessary disclosure in some instances. Item 34 of Form 41-101F1 or Form 41-101F4, as applicable, provides exemptions from the requirement to include both issuer and credit supporter disclosure where such disclosure is not necessary to ensure that the long form prospectus includes full, true and plain disclosure of all material facts concerning the securities to be distributed.

These exemptions are based on the principle that, in these instances, investors will generally require issuer disclosure or credit supporter disclosure to make an informed investment decision. These exemptions are not intended to be comprehensive and issuers may apply for exemptive relief from the requirement to provide both issuer and credit supporter disclosure, as appropriate.

**12. Proposed changes to section 5.1.1**

**Presentation of Financial Results**

- 5.1.1** Canadian GAAP applicable to publicly accountable enterprises provides an issuer two alternatives in presenting its income: (a) in one single statement of comprehensive income, or (b) in a statement of comprehensive income with a separate income statement. If an issuer presents its income using the second alternative, both statements must be filed

to satisfy the requirements of this Instrument. (See subsections 32.2(1.1) and 32.3(3) of Form 41-101F1 or subsections 32.2(1.1) or 32.3(4) of Form 41-101F4, as applicable).

### 13. Proposed changes to section 5.2

#### General financial statement requirements

5.2 If an issuer has filed annual financial statements or an interim financial report for periods that are more recent than those that the issuer must otherwise include in a long form prospectus before it files the prospectus, sections 32.6 and 35.8 of Form 41-101F1 or sections 32.6 and 35.9 of Form 41-101F4, as applicable, require the issuer to include those financial statements in the long form prospectus. Issuers should update the disclosure in the prospectus accordingly in order to satisfy the requirement that the long form prospectus contain full, true and plain disclosure of all material facts relating to the securities being distributed. However, if historical financial information derived from more recent annual financial statements or interim financial report is released to the public by the issuer before the financial statements are filed, the prospectus should include the information included in the news release or public communication. There is no specific requirement in the Instrument to otherwise update the prospectus, or pro forma financial statements to reflect the more recent information.

We think the directors of an issuer should endeavor to consider and approve financial statements in a timely manner and should not delay the approval and filing of the financial statements for the purpose of avoiding their inclusion in a long form prospectus. Once the directors have approved an issuer's financial statements, the issuer should file them as soon as possible.

### 14. Proposed changes to subsection 5.3(1)

#### Interpretation of issuer – primary business

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5.3(1) An issuer is required to provide historical financial statements under Item 32 of Form 41-101F1 or Form 41-101F4, as applicable, for a business or related businesses that a reasonable investor would regard as the primary business of the issuer. Examples of when a reasonable investor would regard the primary business of the issuer to be the acquired business or related businesses are when the acquisition(s) was

- (a) a reverse takeover,
- (b) a qualifying transaction for a Capital Pool Company, or
- (c) an acquisition that is a significant acquisition at over the 100% level under subsection 35.1(4) of Form 41-101F1 or a major acquisition, as applicable.

The issuer should consider the facts of each situation to determine whether a reasonable investor would regard the primary business of the issuer to be the acquired business or related businesses.

## 15. Proposed changes to section 5.4

### Interpretation of issuer – predecessor entity

5.4(1) An issuer is required to provide historical financial statements under Item 32 of the Form 41-101F1 or Form 41-101F4, as applicable, for any predecessor entity. This includes financial statements of acquired businesses that are unrelated and not otherwise individually significant, but together form the basis of the business of the issuer. In these circumstances, the issuer should consider including pro forma financial statements in the prospectus giving effect to the recently completed or proposed acquisition of a predecessor entity.

## 16. Proposed changes to section 5.5

### Sufficiency of financial history included in a long form prospectus

5.5(1) Item 32 of Form 41-101F1 or Form 41-101F4, as applicable, prescribes the issuer financial statements that must be included in a long form prospectus. We recognize that an issuer, at the time of filing a long form prospectus, may have been in existence for less than one year. We expect that in many situations the limited historical financial statement information that is available for such an issuer may be adequately supplemented by other relevant information disclosed in the long form prospectus. However, if the issuer cannot provide financial statements for a period of at least 12 months and the long form prospectus does not otherwise contain information concerning the business conducted or to be conducted by the issuer that is sufficient to enable an investor to make an informed investment decision, a securities regulatory authority or regulator may consider this a key factor when deciding whether it should refuse to issue a receipt for the long form prospectus.

(2) A reference to a prospectus includes a preliminary prospectus. Consequently, the time references in sections 32.2, 32.3, 35.5 and 35.6 of Form 41-101F1 or Form 41-101F4, as applicable, should be considered as at the date of the preliminary long form prospectus and again at the date of the final long form prospectus for both the issuer and any business acquired or to be acquired. Depending on the period of time between the dates of the preliminary and final long form prospectuses, an issuer may have to include more recent financial statements.

(3) An issuer is subject to certain additional disclosure requirements when it discloses an interim financial report for a period in the year of adopting IFRS, as set out in subparagraph 32.3(2)(e) and subsection 32.3(4) of Form 41-101F1 or subparagraph 32.3(2)(e) and subsection 32.3(5) of Form 41-101F4, as applicable. These requirements only apply to interim financial reports relating to periods in the year of

adopting IFRS and therefore do not apply if the prospectus includes annual financial statements prepared in accordance with IFRS.

An issuer is required to provide an opening IFRS statement of financial position at the date of transition to IFRS. An issuer with, for example, a year-end of December 31, 2010 that files a prospectus for which it must include its first interim financial report in the year of adopting IFRS for the period ended March 31, 2011, must generally provide an opening IFRS statement of financial position at January 1, 2010.

An issuer must also include various reconciliations required by IFRS 1 to explain how the transition from previous GAAP to IFRS has affected its reported financial position, financial performance and cash flows. In the first interim period IFRS 1 requires certain additional reconciliations which relate to annual periods and the date of transition to IFRS. Where an issuer that was not a reporting issuer in at least one jurisdiction immediately before filing the prospectus includes an interim financial report in respect of the second or third interim period in the year of adopting IFRS, subsection 32.3(4) of Form 41-101F1 **or subsection 32.3(5) of Form 41-101F4, as applicable**, requires these additional reconciliations to be included in the prospectus. Alternatively, pursuant to subsection 32.3(4) of Form 41-101F1, **or subsection 32.3(5) of Form 41-101F4, as applicable**, the issuer may include the first interim financial report in the year of adopting IFRS as this report includes the required reconciliations.

These additional reconciliations may be summarized as follows:

- reconciliations of the issuer's equity presented in accordance with previous GAAP to its equity in accordance with IFRS for the date of transition to IFRS (January 1, 2010 in the above-noted example);
- reconciliations of the issuer's equity presented in accordance with previous GAAP to its equity in accordance with IFRS for the end of the latest period presented in the issuer's most recent annual financial statements in accordance with previous GAAP (December 31, 2010 in the above-noted example); and
- a reconciliation of the issuer's total comprehensive income (or total profit or loss) presented in accordance with previous GAAP to its total comprehensive income in accordance with IFRS for the latest period in the issuer's most recent annual financial statements presented in the prospectus in accordance with previous GAAP (year ended December 31, 2010 in the above-noted example).

The reconciliations summarized above must give sufficient detail to enable investors to understand the material adjustments to the statement of financial position, statement of comprehensive income and statement of cash flows.



**17. Proposed changes to section 5.6**

**Applications for exemption from requirement to include financial statements of the issuer**

**5.6(1)** We believe investors should receive in a long form prospectus for an IPO under Form 41-101F1 no less than three years of audited historical financial statements and under Form 41-101F4 no less than two years of audited historical financial statements and that relief from the financial statements requirements should be granted only in unusual circumstances and generally not related solely to the cost or the time involved in preparing and auditing the financial statements.

**18. Proposed changes to subsection 5.8(2)**

**(2)** NI 52-107 requires that financial statements, other than acquisition statements, that are required to be audited by securities legislation, such as this Instrument, be accompanied by an auditor's report that expresses an unmodified opinion if they were audited in accordance with Canadian GAAS or International Standards on Auditing, or contain an unqualified opinion if they were audited in accordance with U.S. PCAOB GAAS. This requirement applies to all financial statements included in the long form prospectus under Item 32 of Form 41-101F4, 1 or Form 41-101F4, as applicable, including financial statements from entities acquired or to be acquired that are the primary business or the predecessor of the issuer. For greater clarity, subsections 3.12(3) and 4.12(6) of NI 52-107 only apply to financial statements included in the long form prospectus pursuant to Item 35 of Form 41-101F4, 1 or Form 41-101F4, as applicable. Relief may be granted to non-reporting issuers in appropriate circumstances to permit the auditor's report on financial statements to contain a qualified opinion relating to opening inventory if there is a subsequent audited period of at least six months on which the auditor's report expresses an unmodified opinion and the business is not seasonal. Issuers requesting this relief should be aware that NI 51-102 or NI 51-103, as applicable, requires an issuer's comparative financial statements be accompanied by an auditors' report that expresses an unmodified opinion.

**19. Proposed changes to section 5.9**

**Financial statement disclosure for significant acquisitions and major acquisitions**

**Applicable principles in NI 51-102 and NI 51-103**

**5.9(1)** Generally, it is intended that the disclosure requirements set out in Item 35 of Form 41-101F1 for significant acquisitions or Form 41-101F4 for major acquisitions, as applicable, follow the requirements in Part 8 of NI ~~51-102~~ 102 or in section 22 of NI 51-103, as applicable.

**(1.1)** The guidance in Part 8 of the companion policy to NI 51-102 ("51-102CP") apply to any disclosure of a significant business acquisition in a long form prospectus required by Item 35 of Form 41-101F1, except

- (a) any headings in Part 8 of 51-102CP should be disregarded,
- (b) subsections 8.1(1), 8.1(5), 8.7(8), and 8.10(2) of 51-102CP do not apply,
- (c) other than in subsections 8.3(4) and 8.7(7) of 51-102CP, any references to a “reporting issuer” should be read as an “issuer”,
- (d) any references to the “Instrument” should be read as “NI 51-102”,
- (e) any references to a provision in NI 51-102 in 51-102CP should be read to include the following “as it applies to a long form prospectus pursuant to Item 35 of Form 41-101F1”,
- (f) any references to “business acquisition report” should be read as “long form prospectus”,
- (g) in subsection 8.1(2) of 51-102CP, the term “file a copy of the documents as its business acquisition report” should be read as “include that disclosure in its long form prospectus in lieu of the significant acquisition disclosure required under Item 35 of Form 41-101F1”,
- (h) in subsection 8.2(1) of 51-102CP,
  - (i) the term “The test” should be read as “For any completed acquisition, the test”,
  - (ii) the sentence “For any proposed acquisition of a business or related businesses by an issuer that has progressed to a state where a reasonable person would believe that the likelihood of the issuer completing the acquisition is high, the test must be applied using the financial statements included in the long form prospectus.” should be added after “the business.”, and
  - (iii) the term “business acquisition report will be required to be filed” should be read as “disclosure regarding the significant acquisition is required to be included in the issuer’s long form prospectus”,
- (i) in subsection 8.3(1) of 51-102CP, the term “filing a business acquisition report” should be read as “the financial statements used for the optional tests”,
- (j) in section 8.5, and subsection 8.7(4), of 51-102CP, the term “filed” wherever it occurs, should be read as “included in the long form prospectus”,
- (k) in subsection 8.7(1) of 51-102CP, the term “as already filed” should be read as “included in the long form prospectus”,

- (l) in subsection 8.7(2) of 51-102CP, the term “filed under the Instrument” should be read as “included in the long form prospectus”,
- (m) in subsection 8.7(4) of 51-102CP, the term “presented” should be read as “for which financial statements are included in the prospectus”,
- (n) in subsection 8.7(6) of 51-102CP, the term “for which financial statements are included in the long form prospectus” should be added after “financial year”,
- (o) in paragraph 8.8(a) of 51-102CP, the term “prior to the deadline for filing the business acquisition report” should be read as “using the pre-filing procedures referred to in section 5.1 of this Policy”,
- (p) in subsection 8.9(1) of 51-102CP, the term “before the filing deadline for the business acquisition report and before the closing date of the transaction, if applicable. Reporting issuers are reminded that many securities regulatory authorities and regulators do not have the power to grant retroactive relief” should be read as “using the pre-filing procedures referred to in section 5.1 of this Policy”, ~~and~~
- (q) in subparagraphs 8.9(4)(a)(i) and 8.9(4)(b)(i) of 51-102CP, the term “no later than the time the business acquisition report is required to be filed” wherever it occurs should be read as “using the pre-filing procedures referred to in section 5.1 of this Policy”, ~~and~~
- (r) in subparagraph 8.10(1) of 51-102CP, the term “but must be reviewed” should be added after “may be unaudited”.

**Completed significant acquisitions and major acquisitions and the obligation to provide business acquisition report or Report of Material Change, Material Related Entity Transaction or Major Acquisition level disclosure for a non-reporting issuer**

- (2) For an issuer that is not a reporting issuer in any jurisdiction immediately before filing the long form prospectus (a “non-reporting issuer”), the long form prospectus disclosure requirements for a significant acquisition or a major acquisition, as applicable, are generally intended to mirror those for reporting issuers subject to Part 8 of NI 51-102. 102 or section 22 of NI 51-103, as applicable. To determine whether an acquisition is a significant acquisition or a major acquisition, as applicable, non-reporting issuers would first look to the guidance under section 8.3 of NI 51-102. ~~The~~102 or to the definition of "major acquisition" in NI 51-103, as applicable.

**For other than venture issuers and IPO venture issuers, the** initial test for significance would be calculated based on the financial statements of the issuer and acquired business or related businesses for the most recently completed financial year of each that ended before the acquisition date.

~~To~~**For other than venture issuers and IPO venture issuers, to** recognize the possible growth of a non-reporting issuer between the date of its most recently completed year end and the acquisition date and the corresponding potential decline in significance of the acquisition to the issuer, issuers should refer to the guidance in paragraph 35.1(4)(b) of Form 41-101F1 to perform the optional test. The applicable time period for this optional test for the issuer is the most recently completed interim period or financial year for which financial statements of the issuer are included in the prospectus and for the acquired business or related businesses is the most recently completed interim period or financial year ended before the date of the long form prospectus

The significance thresholds for IPO ~~ventures~~**senior unlisted** issuers are identical to the significance thresholds for ~~ventures~~**senior unlisted** issuers- **in the case of NI 51-102.**

The timing of the disclosure requirements set out in subsection 35.3(1) of Form 41-101F1 **or subsection 35.4(1) of Form 41-101F4, as applicable,** are based on the principles under section 8.2 of NI 51-~~102~~**102 or section 21 of NI 51-103.** For reporting issuers, subsection 8.2(2) of NI 51-102 **or paragraph 21(2)(b) of NI 51-103, as applicable,** sets out the timing of disclosures for significant acquisitions **or major acquisitions, as applicable,** where the acquisition occurs within 45 days after the year end of the acquired business. However, for IPO **senior unlisted issuers and IPO** venture issuers, paragraph 35.3(1)(d) ~~imposes~~**of Form 41-101F1 and paragraph 35.4(1)(d) of Form 41-101F4, respectively, impose** a disclosure requirement for all significant acquisitions completed more than 90 days before the date of the long form prospectus, where the acquisition occurs within 45 days after the year end of the acquired business.

This differs from the **deadlines for filing a** business acquisition report ~~filing deadline for~~ **senior unlisted** issuers under paragraph 8.2(2)(b) of NI 51-102 ~~where their~~ **financial statements in a material change report for venture issuers under section 21 of NI 51-103, as applicable. The** business acquisition report deadline for any significant acquisition where the acquisition occurs within 45 days after the year end of the acquired business is within 120 days after the acquisition date. **For a venture issuer, the deadline for filing financial statements under a Report of Material Change, Material Related Entity Transaction or Major Acquisition is the same.**

### **Probable acquisitions**

- (3) When interpreting the phrase “where a reasonable person would believe that the likelihood of the acquisition being completed is high”, it is our view that the following factors may be relevant in determining whether the likelihood of an acquisition being completed is high:
  - (a) whether the acquisition has been publicly announced;
  - (b) whether the acquisition is the subject of an executed agreement;

- (c) the nature of conditions to the completion of the acquisition including any material third party consents required.

The test of whether a proposed acquisition “has progressed to a state where a reasonable person would believe that the likelihood of the acquisition being completed is high” is an objective, rather than subjective, test in that the question turns on what a “reasonable person” would believe. It is not sufficient for an officer of an issuer to determine that he or she personally believes that the likelihood of the acquisition being completed is or is not high. The officer must form an opinion as to what a reasonable person would believe in the circumstances. In the event of a dispute, an objective test requires an adjudicator to decide whether a reasonable person would believe in the circumstances that the likelihood of an acquisition being completed was high. By contrast, if the disclosure requirement involved a subjective test, the adjudicator would assess an individual’s credibility and decide whether the personal opinion of the individual as to whether the likelihood of the acquisition being completed was high was an honestly held opinion. Formulating the disclosure requirement using an objective test rather than a subjective test strengthens the basis upon which the regulator may object to an issuer’s application of the test in particular circumstances.

We generally presume that the inclusion of financial statements or other information is required for all acquisitions that are, or would be, significant under Part 8 of NI 51-~~102-102~~ **or in the definition of "major acquisition" in NI 51-103, as applicable.** Reporting issuers can rebut this presumption if they can provide evidence that the financial statements or other information are not required for full, true and plain disclosure.

#### **Satisfactory alternative financial statements or other information**

- (4) Issuers must satisfy the disclosure requirements in section 35.5 or section 35.6 of Form 41-101F1 **or sections 35.6 and 35.7 of Form 41-101F4, as applicable,** by including either:
  - (i) the financial statements or other information that would be required by Part 8 of NI 51-102 **or section 22 of NI 51-103, as applicable;** or
  - (ii) satisfactory alternative financial statements or other information.

Satisfactory alternative financial statements or other information may be provided to satisfy the requirements of subsection 35.5(3) or subsection 35.6(3) of Form 41-101F1 **or subsection 35.6(3) or subsection 35.7(3) of Form 41-101F4, as applicable,** when the financial statements or other information that would be required by Part 8 of NI 51-102 **or section 22 of NI 51-103, as applicable,** relate to a financial year ended within 90 days before the date of the long form prospectus or an interim period ended within 60 days before the date of the long form prospectus for issuers that are **senior unlisted issuers or a mid-year period ended within 60 days before the date of the long form prospectus for issuers that are** venture issuers, and 45 days for issuers that are not **senior unlisted**

issuers or venture issuers. In these circumstances, we believe that satisfactory alternative financial statements or other information would not have to include any financial statements or other information for the acquisition or probable acquisition related to:

- (a) a financial year ended within 90 days before the date of the long form prospectus; or;
- (b) for issuers that are senior unlisted issuers, an interim period ended within 60 days before the date of the long form prospectus ~~for issuers that are venture issuers, and 45 days.~~
- (c) for issuers that are venture issuers, a mid-year period ended within 60 days before the date of the long form prospectus.
- (d) for issuers that are IPO venture issuers, a mid-year period ended within 45 days before the date of the long form prospectus; or
- (e) for issuers that are not ~~venture issuers.~~ senior unlisted issuers, venture issuers or IPO venture issuers an interim period ended within 45 days before the date of the long form prospectus.

An example of satisfactory alternative financial statements or other information that we will generally find acceptable would be:

- (~~ef~~) comparative annual financial statements or other information for the acquisition or probable acquisition for at least the number of financial years as would be required under Part 8 of NI 51-102 or section 22 of NI 51-103 that ended more than 90 days before the date of the long form prospectus, audited for the most recently completed financial period in accordance with section 4.2 of the Instrument, and reviewed for the comparative period in accordance with section 4.3 of the Instrument;
- (~~dg~~) a comparative interim financial report or other information for the acquisition or probable acquisition for
  - (i) any interim period ended subsequent to the latest annual financial statements included in the long form prospectus and more than 60 days before the date of the long form prospectus for issuers that are ~~venture~~ senior unlisted issuers; and 45 days for issuers that are not senior unlisted issuers, venture issuers or IPO venture issuers reviewed in accordance with section 4.3 of the Instrument; ~~and~~ or
  - (ii) any mid-year period ended subsequent to the latest annual financial statements included in the long form prospectus and more than 60 days before the date of the long form prospectus for issuers that are venture issuers and 45 days for issuers that are IPO venture issuers reviewed in accordance with section 4.3 of the Instrument; and

- (e) — **h) for issuers that are not venture issuers or IPO venture issuers,** pro forma financial statements or other information required under Part 8 of NI 51-102.

If the issuer intends to include financial statements as set out in the example above as satisfactory alternative financial statements, we ask that this be highlighted in the cover letter to the long form prospectus. If the issuer does not intend to include financial statements or other information, or intends to file financial statements or other information that are different from those set out above, the issuer should use the pre-filing procedures in NP 11-202.

### **Acquired business has recently completed an acquisition**

- (5) When an issuer acquires a business or related businesses that has itself recently acquired another business or related businesses (an “indirect acquisition”), the issuer should consider whether long form prospectus disclosure about the indirect acquisition, including historical financial statements, is necessary to satisfy the requirement that the long form prospectus contain full, true and plain disclosure of all material facts relating to the securities being distributed. In making this determination, the issuer should consider the following factors:
- if the indirect acquisition would meet any of the significance tests in section 35.1(4) of Form 41-101F1 **or in the definition of "major acquisition" in NI 51-103, as applicable,** when the issuer applies each of those tests to its proportionate interest in the indirect acquisition of the business;
  - if the amount of time between the separate acquisitions is such that the effect of the first acquisition is not adequately reflected in the results of the business or related businesses the issuer is acquiring.

### **Financial statements or other information**

- (6) Paragraphs 35.5(2)(b) and 35.6(2)(b) **of Form 41-101F1 and paragraphs 35.6(2)(b) and 35.7(2)(b) of Form 41-101F4, as applicable,** discuss financial statements or other information for the acquired business or related businesses. This “other information” is intended to capture the financial information disclosures required under Part 8 of NI 51-~~102-102~~ **and section 22 of NI 51-103, as applicable,** other than financial statements. An example of “other information” would include the operating statements, property descriptions, production volumes and reserves disclosures described under section 8.10 of NI 51-~~102-102~~ **or section 29 of NI 51-103, as applicable.**
- (7) Section 3.11 of NI 52-107 permits acquisition statements included in a business acquisition report **under NI 51-102 or financial statements in a material change report under NI 51-103, as applicable,** or prospectus to be prepared in accordance with Canadian GAAP applicable private enterprises in certain circumstances. The ability to

present acquisition statements using Canadian GAAP applicable to private enterprises would not extend to a situation where an entity acquired or to be acquired is considered the primary business or the predecessor of the issuer.