

## **APPENDIX H**

### **Schedule 3**

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

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

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

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

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

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

**Contracts entered into in the ordinary course of business**

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

Section 12.2 of the Instrument requires the issuer to file any material contract, other than a contract entered into in the ordinary course of business. Whether a contract was entered into in the ordinary course of business is a question of fact. It must be considered in the context of the issuer’s business and industry.

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

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

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

### **Management or administration agreements**

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

- (a) ordinary purchase and sales agency agreements;
- (b) agreements with managers of stores in a chain organization or similar organization;

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

### **Omission or redaction**

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