

**Sample Instrument 51-103 *Ongoing Governance and Disclosure
Requirements for Venture Issuers***

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The grey shaded text marked “Guidance” found within this Instrument is not legally binding and does not form part of the official version of the Instrument. The guidance provides cross-references to certain other provisions and, in some cases, clarification as to the intention or expectation of the securities regulatory authorities with respect to a particular legal requirement.

**Sample Instrument 51-103 Ongoing Governance and Disclosure
Requirements for Venture Issuers**

PART 1 DEFINITIONS, INTERPRETATION AND APPLICATION

1.1 Definitions

(1) In this Instrument,

“Annual Financial Statements” means

- (a) a statement of comprehensive income, a statement of changes in equity, and a statement of cash flows for
 - (i) the most recently completed financial year, and
 - (ii) the financial year immediately preceding the most recently completed financial year, if any;
- (b) if the Venture Issuer presents the components of profit or loss in a separate income statement, the separate income statement;
- (c) a statement of financial position as at the end of each of the periods referred to in paragraph (a);
- (d) a statement of financial position as at the beginning of the financial year immediately preceding the most recently completed financial year in the case of a Venture Issuer that discloses in its annual financial statements an explicit and unreserved statement of compliance with IFRS and that
 - (i) applies an accounting policy retrospectively in its annual financial statement,
 - (ii) makes a retrospective restatement of items in its annual financial statement, or
 - (iii) reclassifies items in its annual financial statements,
- (e) in the case of a Venture Issuer’s “first IFRS financial statements”, as that phrase is defined in Canadian GAAP, the opening IFRS statement of financial position at the “date of transition to IFRS”, as that phrase is defined in Canadian GAAP, and
- (f) notes to the financial statements;

“Annual Report” means a report prepared in accordance with Form 51-103F1 *Annual and Mid-Year Reports*, other than Part 8 of that form, or as otherwise permitted by this Instrument;

“Board” or “Board of Directors” includes, 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” has the same meaning as that term is used in Canadian GAAP;

“CEO” means the chief executive officer or the individual performing functions similar to a chief executive officer;

“CFO” means the chief financial officer or the individual performing functions similar to a chief financial officer;

“Combination Transaction” means:

- (a) a Reverse Takeover;
- (b) an amalgamation, merger, arrangement or reorganization;
- (c) a transaction or series of transactions involving a Venture Issuer acquiring assets and issuing securities that results in
 - (i) new securityholders owning or controlling more than 50% of the Venture Issuer’s outstanding voting securities, and
 - (ii) a new person or company, a new combination of persons or companies acting together, the vendors of the assets, or new management
 - (A) being able to materially affect the control of the Venture Issuer, or
 - (B) holding more than 20% of the outstanding voting securities of the Venture Issuer, unless there is evidence showing that the holding of those securities does not materially affect the control of the Venture Issuer;
- (d) a transaction that constitutes a Significant Transaction if any reference to “20%” in any provision of the definition of Significant Transaction is read as “100%”; or
- (e) any other transaction similar to the transactions listed in paragraphs (a) to (d),

but does not include a subdivision, consolidation, or other transaction that does not alter a securityholder’s proportionate interest in the Venture Issuer and the Venture Issuer’s proportionate interest in its assets;

“Convert” or “Converting” includes exercising, converting or exchanging a Convertible Security;

“Convertible Security” means a security that is exercisable, convertible or exchangeable into another security;

“Credit Support Issuer” has the same meaning as in National Instrument 51-102 *Continuous Disclosure Obligations*;

“Disclosable Event” means any one or more of the following:

- (a) a Significant Transaction;
- (b) a Material Related Entity Transaction;

- (c) a Combination Transaction;
- (d) the decision to re-file a document filed under either this Instrument or National Instrument 51-102 *Continuous Disclosure Obligations* or to restate financial information for comparative periods in financial statements for reasons other than retrospective application of a change in an accounting standard or policy or a new accounting standard and the information in the re-filed document or the restated financial information will differ materially from the information originally filed;

“Equity Investee” means a business that the Venture Issuer has invested in and accounted for using the equity method;

“Exchangeable Security Issuer” has the same meaning as in National Instrument 51-102 *Continuous Disclosure Obligations*;

“Executive Officer” means in respect of an issuer, an individual to which any one or more of the following applies,

- (a) is the chair, vice-chair, CEO, CFO or president,
- (b) is a vice-president in charge of a principal business unit, division or function, including sales, finance or production,
- (c) performs a policy-making function in respect of the issuer,
- (d) routinely performs functions substantially similar to those which would reasonably be expected to be performed by an individual referred to in (a) or (b),

“Founder” means a person or company that is a promoter that has been actively involved in the issuer’s business at any time within either or both of

- (a) the two most recently completed financial years,
- (b) the current financial year;

“Information Circular” means an information circular prepared in accordance with Form 51-103F4 *Information Circular* or as otherwise permitted by this Instrument;

“Issuer’s GAAP” has the same meaning as in National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*;

“Market Capitalization” means the sum of the aggregate market value of each class of equity securities of an issuer, where the market value of each class of securities is calculated by multiplying

- (a) if a class of equity securities are traded on a market that publishes closing prices (a “published market”),

- (i) the number of such class of securities that were outstanding immediately prior to the announcement of the Significant Transactionby
- (ii) the ten day volume weighted average closing price of those securities as reported by the published market on the trading day immediately prior to announcement of the Significant Transaction,
- (b) if a class of equity securities are not traded on a market that publishes closing prices but the Venture Issuer has made application to have that class of securities listed or quoted on such a market, the number of that class of securities that will be outstanding and available for trading on the published market once trading commences,
by
 - (i) if the Venture Issuer is conducting an initial public offering in connection with its application to list or quote the securities, the price per security at which the Board of Directors reasonably anticipates the securities will be issued on the initial public offering, or
 - (ii) if the Venture Issuer is not conducting an initial public offering in connection with its application to list or quote the securities, the price per security at which the Board of Directors reasonably anticipates the securities to commence trading;
- (c) if a class of equity securities do not trade on a published market and no application to list or quote that class of securities has been made,
 - (i) the number of that class of securities that were outstanding immediately before the announcement of the Significant Transaction,by
 - (ii) the fair market value of the outstanding securities of that class immediately prior to the announcement of the Significant Transaction;

“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;

“MD&A” means management’s discussion and analysis;

“Mid-Year Financial Statements” means

- (a) a statement of comprehensive income, a statement of changes in equity, and a statement of cash flows for
 - (i) the most recent Mid-Year Period, and
 - (ii) the immediately preceding Mid-Year Period, if any;
- (b) if the Venture Issuer presents the components of profit or loss in a separate income statement, the separate income statement;
- (c) a statement of financial position as at the end of each of
 - (i) the period referred to in paragraph (a)(i), and
 - (ii) the immediately preceding financial year
- (d) in the case of a Venture Issuer’s Mid-Year Financial Statements in the year of adopting IFRS, the opening IFRS statement of financial position at the “date of transition” to IFRS, as that phrase is defined in Canadian GAAP, and
- (e) notes to the financial statements;

“Mid-Year Period” means

- (a) in the case of a year other than a Transition Year, a period commencing on the first day of the financial year and ending six months before the end of the financial year;
- (b) in the case of a Transition Year, a period commencing on the first day of the Transition Year and ending
 - (i) six months and 12 months, if applicable, after the end of the old financial year, or
 - (ii) six months and 12 months, if applicable, before the end of the Transition Year;

“Mid-Year Report” means a report prepared in accordance with Part 8 of Form 51-103F1 *Annual and Mid-Year Reports* or as otherwise permitted by this Instrument;

“Principal Holder” means a person or company, other than an underwriter in the course of a distribution, that holds securities of a Venture Issuer carrying more than 10% of the voting rights

attached to any class of the Venture Issuer's outstanding voting securities, where securities are considered to be "held" if the person or company holds the securities by way of

- (a) beneficial ownership, or control or direction, directly or indirectly, or
- (b) a combination of beneficial ownership and control or direction, directly or indirectly;

"Principal Market" means in respect of a class of securities, the market on which the greatest volume of trading in securities of that class occurred during the 10 trading days before the announcement of a Significant Transaction;

"Proxy Form" means a form of proxy prepared in accordance with Form 51-103F3 *Proxy Form* or as otherwise permitted by this Instrument;

"Registered Securityholder" means a registered holder of voting securities of a Venture Issuer as indicated on the register of shareholders maintained by the Venture Issuer or its registrar and transfer agent;

"Related Assets" means two or more assets, to which one or more of the following apply

- (a) they were under common control or management before the acquisition,
- (b) the acquisition of one was conditional upon the acquisition of the other,
- (c) the acquisitions of which were contingent upon a single common event;

"Related Business" means a Business which, in relation to a second Business, one or more of the following apply

- (a) it was under common control or management with the second Business before the acquisition,
- (b) the acquisition of one was conditional upon the acquisition of the other,
- (c) the acquisitions of both were contingent upon a single common event;

"Related Entity" of a Venture Issuer means a person or company that, at the relevant time, is one or more of the following

- (a) a "related party" as that term is defined in the Issuer's GAAP,
- (b) a Founder or insider of the Venture Issuer or a close member of the family (as defined under Canadian GAAP) of a Founder or insider,
- (c) a person or company of which a director, Executive Officer, or Founder of the Venture Issuer is a director, Executive Officer or Founder,
- (d) a director, Executive Officer or insider of the Venture Issuer or a close member of the family (as defined under Canadian GAAP) of a director, Executive Officer or insider,

- (e) a director, Executive Officer or insider of any other person or company referred to in paragraphs (b) or (c) of this definition,
- (f) an Affiliated Entity of any person or company referred to in any of paragraphs (b), (c) or (d) of this definition,
- (g) a person or company of which persons or companies described in any paragraph of this definition beneficially own, in the aggregate more than 50% of the securities of any class of equity securities;

“Related Entity Transaction” means one or more of the following:

- (a) a related party transaction as defined in Canadian GAAP,
- (b) an oral or written agreement or a transaction to which a Venture Issuer is directly or indirectly a party and to which a person or company that is a Related Entity of the Venture Issuer at the time the agreement is entered or the transaction is agreed to is also a party,
- (c) a Material amendment to an agreement referred to in (b);

“Restricted Security” has the same meaning as in National Instrument 51-102 *Continuous Disclosure Obligations*;

“Report of Material Change or Disclosable Event” means a report prepared in accordance with Form 51-103F2 *Report of Material Change or Disclosable Event* or as otherwise permitted by this Instrument;

“Reverse Takeover” means a reverse acquisition as defined in Canadian GAAP applicable to “publicly accountable enterprises” (as determined in accordance with the Handbook), or a transaction in which an issuer issues enough voting securities as consideration for the acquisition of an entity such that control of the issuer passes to the securityholders of the acquired entity;

“Reverse Takeover Acquirer” means the legal subsidiary in a Reverse Takeover;

“SEC Issuer” means a Venture Issuer

- (a) that 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) that 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, as amended;

“SEDAR” has the same meaning as in National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*;

“Significant Transaction” means any of the following

- (a) the acquisition, including by lease or option, by a Venture Issuer or one or more subsidiaries of the Venture Issuer, directly or indirectly, of an asset or Business or Related Assets or Related Businesses, if
 - (i) the value of the consideration transferred (as determined in accordance with the Issuer's GAAP, except previously held equity interests must not be remeasured) for a Business or Related Businesses equals 20% or more of the Market Capitalization of the Venture Issuer, or
 - (ii) the fair value of the consideration paid directly or indirectly by the Venture Issuer or any one or more of its subsidiaries for the asset or Related Assets equals 20% or more of the Market Capitalization of the Venture Issuer,
- (b) the disposition, including by lease or option, by a Venture Issuer or one or more subsidiaries of the Venture Issuer, directly or indirectly, of an asset or Business or Related Assets or Related Businesses where the fair value of the consideration received directly or indirectly by the Venture Issuer or any one or more of its subsidiaries for the asset or Related Assets or Business or Related Businesses equals 20% or more of the Market Capitalization of the Venture Issuer, or
- (c) the decision to exit from or terminate a Business that is Material to the Venture Issuer,

“Solicit” or “Solicitation” 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 is likely to result in the giving, withholding or revocation of a proxy, or
- (d) sending a form of proxy to a securityholder by management of a Venture 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,
- (f) performing ministerial acts or professional services on behalf of a person or company Soliciting a proxy,
- (g) sending, by an intermediary as defined in NI 54-101, of the documents referred to in NI 54-101,
- (h) soliciting by a person or company in respect of securities of which the person or company is the beneficial owner,
- (i) publicly announcing, by a securityholder, how the securityholder intends to vote and the reasons for that decision, if that public announcement is made by

- (i) a speech in a public forum, or
 - (ii) a press release, an opinion, a statement or an advertisement provided through a broadcast medium or by a telephonic, electronic or other communication facility, or appearing in a newspaper, a magazine or other publication generally available to the public;
- (j) communicating for the purposes of obtaining the number of securities required for a securityholder proposal under the laws under which the Venture Issuer is incorporated, organized or continued or under the Venture Issuer's constituting or establishing documents; or
- (k) communicating, other than a solicitation by or on behalf of the management of the Venture Issuer, to securityholders in the following circumstances:
- (i) by one or more securityholders concerning the business and affairs of the Venture Issuer, including its management or proposals contained in a management information circular, and no form of proxy is sent to those securityholders by the securityholder or securityholders making the communication or by a person or company acting on their behalf, unless the communication is made by
 - (A) a securityholder who is an officer or director of the Venture Issuer if the communication is financed directly or indirectly by the Venture Issuer,
 - (B) a securityholder who is a nominee or who proposes a nominee for election as a director, if the communication relates to the election of directors,
 - (C) a securityholder whose communication is in opposition to an amalgamation, arrangement, consolidation or other transaction recommended or approved by the Board of Directors of the Venture Issuer and who is proposing or intends to propose an alternative transaction to which the securityholder or an affiliate or associate of the securityholder is a party,
 - (D) a securityholder who, because of a Material interest in the subject-matter to be voted on at a securityholders' meeting, is likely to receive a benefit from its approval or non-approval, which benefit would not be shared pro rata by all other holders of the same class of securities, unless the benefit arises from the securityholder's employment with the Venture Issuer, or
 - (E) any person or company acting on behalf of a securityholder described in any of clauses (A) to (D);
 - (ii) by one or more securityholders and concerns the organization of a dissident's proxy solicitation, and no form of proxy is sent to those securityholders by the securityholder or securityholders making the communication or by a person or company acting on their behalf;
 - (iii) as clients, by a person or company who gives financial, corporate governance or proxy voting advice in the ordinary course of business and concerns proxy voting advice if

- (A) the person or company discloses to the securityholder any significant relationship with the Venture Issuer and any of its affiliates or with a securityholder who has submitted a matter to the Venture Issuer that the securityholder intends to raise at the meeting of securityholders and any Material interests the person or company has in relation to a matter on which advice is given,
 - (B) the person or company receives any special commission or remuneration for giving the proxy voting advice only from the securityholder or securityholders receiving the advice, and
 - (C) the proxy voting advice is not given on behalf of any person or company soliciting proxies or on behalf of a nominee for election as a director, or
- (iv) by a person or company who does not seek directly or indirectly the power to act as a proxyholder for a securityholder;

“SOX 302 Rules” means U.S. federal securities laws implementing the annual periodic certification requirements in section 302(a) of the *Sarbanes-Oxley Act of 2002* of the United States of America, as amended from time to time;

“Transition Year” means the financial year of a Venture Issuer or business in which the Venture Issuer or business changes its financial year-end;

“Venture Issuer” means an issuer to which this Instrument applies.

- (2) Terms that are used in this Instrument that are not defined in this Instrument have the meaning provided by securities legislation and National Instrument 14-101 *Definitions*.

Guidance:

- (1) Refer to the securities statute in the local jurisdiction for the definitions or meanings of “associate”, “control person”, “distribution”, “director”, “exchange contract”, “form of proxy”, “forward-looking information”, “insider”, “investment fund”, “issuer”, “material change”, “material fact”, “promoter”, “reporting issuer”, “security”, and “special relationship”.
- (2) Refer to National Instrument 14-101 *Definitions* for the definitions of “1933 Act”, “1934 Act”, “Canadian GAAP”, “Canadian GAAS”, “Handbook”, “IFRS”, “local jurisdiction”, “regulator”, “securities legislation”, and “securities regulatory authority”.
- (3) Securities legislation defines the term “person” and in Alberta, Saskatchewan, Manitoba and Nova Scotia also defines the term “company”. Where the phrase “person or company” is used in this Instrument, refer to National Instrument 14-101 *Definitions* for the meaning of that phrase in British Columbia and New Brunswick.
- (4) This Instrument uses accounting terms that are defined, or referred to, in Canadian GAAP. In certain cases, some of those terms are defined differently in securities legislation. In deciding which meaning applies, you should consider that National Instrument 14-101 *Definitions* provides that a term used in this Instrument that is defined in the securities statute of a local jurisdiction has the meaning given to it in the statute unless: (a) the definition in that statute is restricted to a specific portion of the statute that does not govern continuous disclosure; or (b) the context otherwise requires.

For example, the term “associate” is defined in both local securities statute and Canadian GAAP. Securities regulatory authorities think that the references to the term “associate” in the Instrument and its forms (e.g., item 3.1(2)(e) of Form 51-103F4 Information Circular) should be given the meaning of the term under local securities statutes since the context does not indicate that the accounting meaning of the term should be used. Where a term is used in this Instrument or one of its forms and you are required to use an accounting meaning rather than apply the definition found in securities legislation for that term, the Instrument or form indicates that.

If an issuer is permitted under National Instrument 52-107 Acceptable Accounting Principles, Auditing Standards and Reporting Currency to file financial statements in accordance with acceptable accounting principles other than Canadian GAAP, then the issuer should interpret any reference in the Instrument to a term or provision defined, or referred to, in Canadian GAAP as a reference to the corresponding term or provision in the other acceptable accounting principles.

1.2 Interpretation

(1) In this Instrument

- (a) an issuer is referred to as an “Affiliated Entity” of another issuer if one of them is the Subsidiary Entity of the other or if each of them is Controlled by the same person or company,
- (b) an issuer is considered “Controlled” by another person or company if person or company has or shares the power to govern the financial and operating policies of the Venture Issuer so as to obtain benefits from its activities,
- (c) an issuer is referred to as a “Subsidiary Entity” of another issuer if it is Controlled by that other issuer,

- (2) When disclosure is required of a “Material” relationship, transaction, agreement, plan or other information, disclosure is required if disclosing, omitting or misstating the relationship, transaction, agreement, plan or other information would likely influence or change a reasonable investor’s decision as to whether or not to buy, sell or hold a security in the capital of the Venture Issuer. This interpretation of “Material” does not apply to the terms “material fact” or “material change”.

1.3 Application

- (1) This Instrument applies to a reporting issuer if a class of its equity securities are listed or quoted on, or application has been made and conditional approval has been given to permit trading of a reporting issuer’s securities on, one or more of the following:
 - (a) the TSX Venture Exchange,
 - (b) the Canadian National Stock Exchange,
 - (c) the Alternative Investment Market of the London Stock Exchange,
 - (d) the PLUS markets operated by PLUS Markets Group plc,

- (e) the Alternative Market of the New Zealand Stock Exchange,
 - (f) the Bolsa de Valores de Lima/Lima Stock Exchange in Peru.
- (2) This Instrument applies to a reporting issuer if its equity securities are publicly traded in Canada.
- (3) Despite subsections (1) and (2) this Instrument does not apply to a reporting issuer if any one or more of the following applies:
- (a) it is an investment fund;
 - (b) a class of its equity securities are listed or quoted on one or more of the following
 - (i) the Toronto Stock Exchange,
 - (ii) an exchange registered as a “national securities exchange” under section 6 of the 1934 Act,
 - (iii) a Marketplace outside of Canada or the United States, other than a Marketplace referred to in subsection (1);
 - (c) BC Instrument 51-509 *Issuers Quoted in the U.S. Over-the-Counter Markets* applies to the issuer.

Guidance:

- (1) *Unless subsection 1.3(3) applies, this Instrument applies to reporting issuers whose securities trade over-the-counter.*
- (2) *For the purpose of subsection 1.3(2), we would not consider securities that are traded under exemptions from the prospectus requirement to be “publicly traded”.*
- (3) *Some examples of exchanges registered as a “national securities exchange” under section 6 of the 1934 Act include:*

- *Chicago Stock Exchange, Inc.,*
- *NASDAQ OMX BX, Inc. (formerly the Boston Stock Exchange),*
- *NASDAQ OMX PHLX, Inc. (formerly the Philadelphia Stock Exchange),*
- *The Nasdaq Stock Market LLC,*
- *NYSE Amex LLC (formerly the American Stock Exchange), and*
- *NYSE Arca, Inc.*

The SEC website provides a list of that identifies each exchange registered as a “national securities exchange”.

- (4) *In determining whether or not a reporting issuer’s securities are listed or quoted on a “Marketplace” outside of Canada or the United States, consider whether the securities are “listed or quoted”, as opposed to merely admitted for trading. Refer also to the definition of “Marketplace”.*

(5) *The following instruments contain exemptions exempting from their application Venture Issuers subject to this Instrument:*

- *National Instrument 51-102 Continuous Disclosure Obligations;*
- *National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings;*
- *National Instrument 52-110 Audit Committees; and*
- *National Instrument 58-101 Disclosure of Corporate Governance Practices.*

Note to Reader: If this proposal proceeds to the rule-making phase, we anticipate that both this Sample Instrument and the instruments referred to in the guidance note above would be revised to clarify precisely the time at which an issuer would be considered a Venture Issuer and when it would not. This would be relevant to an issuer moving between the venture and senior markets and to an issuer that is a new reporting issuer.

PART 2 DISCLOSURE RESPONSIBILITIES

2.1 General Disclosure Standard

- (1) A Venture Issuer must not make or authorize the making of a statement required or permitted by this Instrument, whether oral or written, that in any material respect and at the time and in the light of the circumstances in which it is made, alone, or when taken in conjunction with one or more other statements made or authorized by the Venture Issuer
 - (a) is false or misleading, or
 - (b) does not state a fact that is required to be stated or that is necessary to make the statement not misleading.
- (2) If an Executive Officer or director of a Venture Issuer authorizes, permits or acquiesces to the Venture Issuer contravening subsection (1), the Executive Officer or director also contravenes subsection (1).

2.2 Consistency of Disclosure

A Venture Issuer must take steps reasonably designed to ensure that statements, whether oral or written, made by or on its behalf, including on its website or by other electronic means, are consistent in all material respects with the corresponding statements, if any, contained in the Venture Issuer's most recently filed Annual Report and any subsequently filed Mid-Year Report, except to the extent that the statement has been supplemented or superseded by a subsequently filed document.

2.3 Defences

No person or company is guilty of breaching section 2.1 or section 2.2 if the person or company, as the case may be, did not know, and in the exercise of reasonable diligence would not have known, that the statement, in a material respect, in light of the circumstances in which it was made, alone or when taken in conjunction with one or more other statements made or authorized

by the Venture Issuer was false or misleading or did not state a fact that was required to be stated or that was necessary to make the statement not misleading.

Guidance:

For a Venture Issuer to comply with sections 2.1 or 2.2, it is important that, through its directors and management, it take reasonable steps to ensure that the disclosure made or authorized by it is not misleading. Under subsection 2.1(2) directors and Executive Officers of Venture Issuers may also be liable if they authorize, acquiesce to or permit disclosure that contravenes section 2.1(1). Accordingly, directors and Executive Officers should exercise diligence with respect to the accuracy and completeness of the disclosure made or authorized by the Venture Issuer.

Securities legislation in some jurisdictions also prohibits making misrepresentations and misleading statements and may make a contravention an offence, punishable by significant fines and/or imprisonment.

Further, investors may have the ability to bring a legal action in court if there is a misrepresentation or misleading statement. The securities statutes of some jurisdictions provide investors with statutory rights that may make it easier to sue in court for a misrepresentation.

Note to Reader: If this proposal proceeds to the rule-making phase, the above provisions of Part 2 would likely be pursued as statutory amendments rather than as part of a regulatory instrument. For simplicity, for the purposes of consultation, the provisions have been included in this part of the Sample Instrument.

PART 3 GOVERNANCE RESPONSIBILITIES

3.1 Directors' and Executive Officers' Duties of Honesty and Good Faith

The directors and Executive Officers of a Venture Issuer owe a duty to the Venture Issuer to act honestly and in good faith with a view to the best interests of the Venture Issuer.

3.2 Directors' and Executive Officers' Standard of Care

The directors and Executive Officers of a Venture Issuer owe a duty to the Venture Issuer to exercise the care, diligence and skill that a reasonably prudent person acting for a Venture Issuer would exercise in comparable circumstances.

Guidance:

The duty of honesty and good faith owed by the directors and Executive Officers under this Instrument are intended to be substantially the same as those owed by corporate directors and officers under business corporation law in Canada.

The duty of care owed by the directors and Executive Officers under this Instrument is intended to be very similar to that owed by corporate directors and officers under business corporation law in Canada. However, the standard of care is qualified to clarify that the standard is that expected of a reasonably prudent person acting for a Venture Issuer.

These provisions are not intended to create duties to any person or company other than the Venture Issuer.

Any defences available under similar business corporation law would be expected to apply in this context as well.

Note to Reader: If this proposal proceeds to the rule-making phase, the above provisions of Part 3 might be pursued as statutory amendments rather than as part of a regulatory instrument. However, for ease of reference, for the purposes of consultation, they have been included in this part of the Sample Instrument.

3.3 Conflicts of Interest and Material Related Entity Transactions

- (1) The directors of a Venture Issuer must take steps reasonably designed to ensure that they are made aware of and have an opportunity to discuss and consider in a timely fashion, having regard to the best interests of the Venture Issuer,
 - (a) each conflict of interest between the Venture Issuer and any of its directors or Executive Officers, and
 - (b) each proposed Material Related Entity Transaction and the consideration to be paid or received by the Venture Issuer.
- (2) The directors may delegate its responsibility under subsection (1) to a committee of the Board comprising at least three directors.

Guidance:

We consider a “conflict of interest” to be one which a reasonable person would consider might conflict with the ability of a director or Executive Officer to act honestly and in good faith with a view to the best interests of the Venture Issuer.

The Board of Directors should develop the policies and processes that it thinks are appropriate to accomplish the purposes described in section 3.3.

Boards might wish to consider having policies and processes in place that:

- (a) *are implemented through written corporate policies or by way of conditions of employment or retention included as part of employment and consulting agreements;*
- (b) *describe the circumstances under which directors and Executive Officers of the Venture Issuer would be expected to disclose conflicts of interest to the Board of Directors;*
- (c) *describe the circumstances under which directors and Executive Officers would be expected to disclose proposed Related Entity Transactions to the Board;*
- (d) *assist the Board in determining whether directors and Executive Officers are aware of the Venture Issuer’s policies on conflicts of interest and Related Entity Transactions;*
- (e) *describe what disclosure and reporting to the Board is expected and when it is required in order to ensure the Board of Directors gets sufficient information and has an opportunity to consider the nature, effect and significance of the actual or perceived conflict of interest or Material Related Entity Transaction; and*

(f) *the process the Board would use to review and assess the disclosure and reporting it has received.*

3.4 Audit Committees

- (1) The Board of Directors of a Venture Issuer must appoint an audit committee composed of at least three directors a majority of whom are not Executive Officers or employees of the Venture Issuer or an Affiliated Entity of the Venture Issuer.
- (2) The audit committee of a Venture Issuer must
 - (a) oversee the process of selecting and appointing an auditor,
 - (b) oversee the audit services provided to the Venture Issuer by the auditor and the auditor's relationship with the Venture Issuer's management, including by
 - (i) monitoring any services provided by the auditor which are beyond the scope of the Venture Issuer's audit and the amount of fees charged for those services relative to the fees charged for the audit services,
 - (ii) meeting annually with the auditors, independent of the Executive Officers of the Venture Issuer, prior to the Board of Directors review and approval of the Annual Financial Statements, to determine whether there have been any disagreements or contentious issues between the auditor and the Venture Issuer's Executive Officers relating to the Venture Issuer's disclosure and whether those issues have been resolved to the satisfaction of the auditor,
 - (iii) meeting with the auditor at such other times as reasonably necessary, and
 - (iv) reviewing and approving the hiring policies regarding employees and consultants previously employed by the Venture Issuer's auditor,
 - (c) review the Annual Financial Statements, the auditor's report relating to those Annual Financial Statements and the associated MD&A contained in the Annual Report, and make a recommendation to the Board of Directors regarding whether to approve that disclosure,
 - (d) review the financial statements and associated MD&A contained in the Mid-Year Report and either, if authorized to do so, approve that disclosure or make a recommendation to the Board of Directors regarding whether to approve that disclosure,
 - (e) review each news release containing financial information derived from the Annual Financial Statements or Mid-Year Financial Statements prior to the news release being issued, and
 - (f) establish procedures reasonably designed to ensure each of the following

- (i) they receive and have an opportunity to consider and address each complaint or concern regarding questionable accounting, internal accounting controls and auditing matters,
- (ii) complaints and concerns can be submitted to a non-management member of the audit committee or another individual designated by the audit committee who is not a member of management or a family member of management, and
- (iii) that employees and consultants of the Venture Issuer can submit such complaints or concerns on a confidential and no-names basis.

Guidance:

Section 4.1(2) requires that the Board of Directors approve the Annual Report. Section 4.3(3) requires that either the Board of Directors or the audit committee approve the Mid-Year Report.

3.5 Trading Policies

- (1) A Venture Issuer must take steps reasonably designed to deter persons and companies who are in a special relationship with the Venture Issuer, when they have knowledge of a material fact or material change with respect to the Venture Issuer that has not been generally disclosed, from
 - (a) buying or selling or otherwise entering into a transaction with respect to a prescribed security,
 - (b) except as necessary in the course of business, informing (“tipping”) another person or company of the material fact or material change, and
 - (c) recommending or encouraging another person or company to buy, sell or otherwise enter into a transaction with respect to a prescribed security,
- (2) For the purposes of this section and section 7.2 of Form 51-103F1, a prescribed security means any of the following
 - (a) a security issued by the Venture Issuer,
 - (b) a put, call, option or other right or obligation to buy or sell a security of the Venture Issuer,
 - (c) an instrument, agreement, security or exchange contract, the value, market price or payment obligations of which are derived from, referenced to or based on the value, market price or payment obligations of a security of the Venture Issuer, or
 - (d) any other instrument, agreement or understanding that affects, directly or indirectly, the economic interest of a person or company in respect of a security or an exchange contract of the Venture Issuer.

Guidance:

- (1) *The Board of Directors should develop the policies and processes it thinks necessary and appropriate to comply with section 3.5.*

Establishing certain policies and procedures could significantly assist the Board in complying with section 3.5, for example, policies and procedures that:

- (a) *are designed to ensure directors, Executive Officers, employees and consultants are aware of the Venture Issuer's trading policies and the securities law prohibitions on insider trading, tipping and recommending, when a person or company is in possession of undisclosed Material information;*
- (b) *assist the Board in determining who typically has access to undisclosed material information;*
- (c) *establish certain black-out periods during which trading by persons or companies with access to undisclosed Material information is prohibited, for example, during the preparation of and for some specified period (perhaps two trading days) after filing of the Annual Report, Mid-Year Report or a news release containing Material information;*
- (d) *set out procedures for limiting the persons or companies who have access to Material undisclosed information prior to it being properly disclosed; and*
- (e) *enable the Board and management to become aware on a timely basis that undisclosed Material information exists or is expected to become known within the Venture Issuer so that appropriate steps can be taken to deal with it.*

Policies and processes can be implemented in a variety of ways, for example, by formally adopting corporate policies or by including them as terms of employment and consulting agreements.

Part 5 of National Policy 51-201 Disclosure Standards provides guidance on establishing corporate disclosure policies and insider trading policies and other useful disclosure practices.

- (2) *Part 3 of National Policy 51-201 Disclosure Standards provides additional guidance on the meanings of "special relationship" and "necessary in the course of business". Part 4 provides guidance on assessing materiality.*

PART 4 PERIODIC FINANCIAL DISCLOSURE

4.1 Approval and Filing of Annual Report

- (1) A Venture Issuer must file an Annual Report for each financial year ended after becoming a Venture Issuer.
- (2) A Venture Issuer must file an Annual Report on or before the 120th day after the end of its most recently completed financial year.
- (3) The Board of Directors of the Venture Issuer must approve the Annual Report before it is filed.

Guidance:

Under subsection 3.4(2), the audit committee is required to first make a recommendation to the Board of Directors regarding whether to approve the Annual Financial Statements, applicable auditor's report and associated MD&A forming part of the Annual Report.

4.2 Annual Report and Annual Financial Statements

- (1) A Venture Issuer must prepare an Annual Report in accordance with Form 51-103F1 *Annual and Mid-Year Reports*.
- (2) A Venture Issuer's Annual Financial Statements must be audited.
- (3) If a Venture Issuer has outstanding Restricted Securities, or securities that are directly or indirectly Convertible into Restricted Securities or securities that will, when issued, result in an existing class of outstanding securities being considered Restricted Securities, the Venture Issuer must comply with Part 10 of National Instrument 51-102 *Continuous Disclosure Obligations* and include the disclosure required by Part 10 of that instrument in the Annual Report.

Guidance:

- (1) *Form 51-103F1 Annual and Mid-Year Reports, requires that the Venture Issuer's Annual Financial Statements and the associated auditor's report be included in the Annual Report. Part 10 of that Form also requires that the Annual Report be certified by the CEO, CFO and two directors (other than the CEO and CFO) or if there are not two other directors, by the entire Board.*
- (2) *Because the definition of Annual Financial Statements in this Instrument includes both the financial statements for the most recently completed financial year and the corresponding statements for the financial year immediately preceding the most recently completed financial year, a Venture Issuer will generally be required to include audited financial statements for the two most recently completed financial years.*

4.3 Approval and Filing of Mid-Year Report

- (1) A Venture Issuer must file a Mid-Year Report for each Mid-Year Period ended after becoming a Venture Issuer.
- (2) A Venture Issuer must file a Mid-Year Report, on or before the 60th day after the end of its most recently completed Mid-Year Period.
- (3) The Board of Directors or the audit committee of the Venture Issuer, must approve the Mid-Year Report before it is filed.

4.4 Contents of Mid-Year Report

A Venture Issuer must prepare its Mid-Year Report in accordance with Form 51-103F1 *Annual and Mid-Year Reports*.

Guidance:

Form 51-103F1 Annual and Mid-Year Report, requires that the Venture Issuer's Mid-Year Financial Statements be included in the Mid-Year Report. Part 10 of that Form also requires that the Mid-Year

Report be certified by the CEO, CFO and two members of the Board of directors (other than the CEO and CFO) or if there are not two other directors, by the entire Board.

4.5 First Financial Statement After Becoming a Reporting Issuer

- (1) Despite any provisions of this Part, a Venture Issuer after becoming a reporting issuer must file the financial statements for the financial year and Mid-Year Period immediately following the periods covered by the financial statements of the Venture Issuer in the document filed
 - (a) that resulted in the Venture Issuer becoming a reporting issuer, or
 - (b) in respect of a transaction that resulted in the Venture Issuer becoming a reporting issuer.
- (2) If subsection (1) requires a Venture Issuer to file financial statements for a period that ended on or before the Venture Issuer became a reporting issuer, those financial statements must be filed by the later of
 - (a) in the case of Annual Financial Statements,
 - (i) the 20th day after the Venture Issuer became a reporting issuer, and
 - (ii) the filing deadline in section 4.1.
 - (b) in the case of Mid-Year Financial Statements,
 - (i) the 10th day after the Venture Issuer became a reporting issuer, and
 - (ii) the filing deadline in section 4.3.
- (3) A Venture Issuer is not required to provide comparative financial information for Mid-Year Periods that ended before the Venture Issuer became a reporting issuer if
 - (a) the Board of Directors or audit committee, acting reasonably, determines that it is impracticable to present prior-period information on a basis consistent with the requirements for Mid-Year Financial Statements,
 - (b) the prior-period information that is available is presented, and
 - (c) the notes to the Mid-Year Financial Statements disclose the fact that the prior-period information has not been prepared on a basis consistent with the most recent Mid-Year Financial Statements.
- (4) Annual Financial Statements filed under this Part must be audited.

Guidance:

Securities regulatory authorities are of the view that it is only “impracticable to present prior-period information” if the Venture Issuer has made every reasonable effort to present prior-period information on a basis consistent with the Mid-Year Financial Statements. We are of the view that an issuer should only rely on this exemption in unusual circumstances and generally not for reasons related solely to the cost or the time involved in preparing the financial statements.

4.6 Delivery Options for an Annual Report or Mid-Year Report

A Venture Issuer must send its Annual Report and Mid-Year Report to each Registered Securityholder using one of the methods described in paragraphs (a) to (c), below:

- (a) the procedures set out in section 4.6 of National Instrument 51-102 *Continuous Disclosure Obligations*;
- (b) any delivery method to which the Registered Securityholder consents;
- (c) the notice and access procedures set out below
 - (i) the Venture Issuer must issue a news release disclosing the filing of each Annual Report and Mid-Year Report as soon as reasonably practicable, and in any event within three business days of the filing,
 - (ii) the news release must
 - A. provide the address of the SEDAR website and the specific address and/or a link to the specific page on another website, at which the Annual Report or Mid-Year Report, as applicable, can be viewed electronically,
 - B. disclose that a Registered Securityholder may request from the Venture Issuer a copy of the most recently filed Annual Report or Mid-Year Report, as applicable, free of charge, and
 - C. disclose contact details including at least a toll-free phone number, which may be a number that permits collect calls, through which the request can be made, and
 - (iii) if a Registered Securityholder of the Venture Issuer requests a copy of an Annual Report or Mid-Year Report, the Venture Issuer must send the most recently filed Annual Report or Mid-Year Report, as applicable, to the Registered Securityholder, without charge, as soon as reasonably practicable following the request and, in any event, within three business days of the request by either
 - A. sending a paper copy by pre-paid mail, courier or another method that provides delivery within an equivalent time period, or
 - B. any other method to which the Registered Securityholder consents.

Guidance:

- (1) *Section 4.6 of this Instrument permits use of a notice and access system as an alternative to mailing the Annual Report and Mid-Year Report. However, applicable corporate law or the legal documents creating or establishing the issuer may impose a requirement that the financial statements be placed before or sent to the securityholders.*
- (2) *This Instrument only addresses the notification and delivery requirements for Registered Securityholders. National Instrument 54-101 Communication with Beneficial Owners of*

Securities of a Reporting Issuer addresses delivery obligations with respect to beneficial securityholders.

- (3) *References to “interim financial statements” and “interim MD&A” as used in section 4.6 of National Instrument 51-102 Continuous Disclosure Obligations mean, in the context of this Instrument, the Mid-Year Report.*

PART 5 PROXY SOLICITATION AND INFORMATION CIRCULARS

5.1 Requirements for Proxy Form and Information Circular

- (1) If management of a Venture Issuer gives notice to Registered Securityholders of a meeting of securityholders, management must, at or before the time of giving that notice, send to each Registered Securityholder who is entitled to notice of the meeting
- (a) a Proxy Form, and
 - (b) an Information Circular.
- (2) If a person or company, other than management of a Venture Issuer, Solicits proxies from Registered Securityholders of a Venture Issuer, the person or company must, at or before the time of Solicitation, send to each Registered Securityholder of the Venture Issuer, other than itself, whose proxy is Solicited, an Information Circular.
- (3) A Proxy Form required to be filed or sent under this Part must comply with Form 51-103F3 *Proxy Form*.
- (4) An Information Circular required to be filed or sent under this Part must comply with Form 51-103F4 *Information Circular*.
- (5) A person or company required to send a document under this Part, must promptly file
- (a) a copy of that document, and
 - (b) all other material sent to Registered Securityholders in connection with the applicable meeting.

5.2 Delivery Options for Proxy Form

A person or company required to send a Proxy Form to a Registered Securityholder under this Part must use one of the methods described below:

- (a) send paper copies by prepaid mail, courier or another method that provides for delivery in an equivalent time period, or
- (b) in respect of a Registered Securityholder of the Venture Issuer, any delivery method to which that Registered Securityholder consents.

5.3 Delivery Options for Information Circular and Proxy Related Material

A person or company required to send an Information Circular or any other proxy related material to a Registered Securityholder under this Part must use one of the methods below:

- (a) send paper copies by prepaid mail, courier or another method that provides for delivery in an equivalent time period,
- (b) any delivery method to which the Registered Securityholder of the Venture Issuer consents,
- (c) the notice and access procedures as set out below
 - (i) at least 30 days before the date fixed for the meeting, send, at no cost to a Registered Securityholder, in one of the methods described in paragraphs (1)(a) or (b), a document (the “access document”) containing all of the following information:
 - A. the date, time and location of the Venture Issuer’s securityholder meeting,
 - B. a summary of the matters to be voted on,
 - C. an explanation of how to electronically access the Information Circular and other proxy-related materials, including both the SEDAR website and the specific location on another website or a link to the specific page on another website, where the Information Circular and other proxy-related materials are located,
 - D. a reminder to review the Information Circular before voting,
 - E. an explanation of how to obtain a paper copy of the Information Circular from the person or company, and
 - F. an explanation of how the Registered Securityholder is to execute and return the Proxy Form, including any deadline for return of proxies, and
 - (ii) in the case of a Solicitation by or on behalf of management of the Venture Issuer, at least 30 days before the date fixed for the meeting, issue a news release containing the following:
 - A. the information required in the access document;
 - B. if management is using the procedures in this paragraph (1)(c) only in respect of certain Registered Securityholders, an explanation of this decision;
 - (iii) from the day the person or company Soliciting proxies sends the documents required by paragraph (a) until at least the date of the meeting for which proxies are being Solicited

- A. provide public electronic access, to the extent reasonably practicable, through a website, other than SEDAR, to the Information Circular and all other proxy-related material in a format that permits a person or company with a reasonable level of computer skill and knowledge to access, read, search, download and print the document, and
 - B. maintain a toll-free telephone number that can be used by Registered Securityholders to request a paper copy of the Information Circular and other proxy-related materials;
- (iv) if a request is received by a Registered Securityholder for a paper copy of the Information Circular or other proxy-related materials, send the Information Circular or other proxy-related materials, as applicable, to the Registered Securityholder in a method described in paragraph (a) or (b) no later than three business days after the request is received; and
 - (v) in the case of a solicitation by or on behalf of management of a Venture Issuer, where management sends paper copies of the Information Circular to other Registered Securityholders, send the paper copies to those other Registered Securityholders on the same day as they are sent under paragraph (a).

Guidance:

- (1) *Section 5.3 of this Instrument permits use of a notice and access system as an alternative to mailing an Information Circular. However, applicable corporate law or constating documents may impose a mailing requirement.*
- (2) *This Instrument only addresses the notification and delivery requirements for Registered Securityholders. National Instrument 54-101 Communication with Beneficial Owners of Securities of a Reporting Issuer addresses delivery obligations with respect to beneficial securityholders.*

5.4 Dissident Proxy Solicitations

- (1) Despite subsection 5.1(2), a person or company, other than management of a Venture Issuer or a person or company acting on behalf of management, may Solicit proxies from Registered Securityholders of a Venture Issuer without sending an Information Circular if
 - (a) the Solicitation is made to the public by broadcast, speech or publication, in a manner legally permitted by the laws under which the Venture Issuer is incorporated, organized or continued,
 - (b) in the case of a Solicitation that occurs in connection with a Combination Transaction,
 - (i) the following information is contained in the broadcast, speech or publication:
 - A. the name and address of the Venture Issuer to which the Solicitation relates,

- B. the information required by sections 2.2 and 6.1(b) and (d) of Form 51-103F4 *Information Circular*,
 - C. whether the person or company giving a proxy has the right to revoke it and, if so, a description of any limitations on or conditions to the right to revoke, and
 - D. a statement identifying the document referred to in paragraph (b)(ii)A and indicating that it is or will be available at www.sedar.com, and
- (ii) the following documents are filed:
- A. a document containing the information required by subparagraph (b)(i), other than (b)(i)D,
 - B. any information required to be disclosed or sent to securityholders by the laws under which the Venture Issuer is incorporated, organized or continued, and
 - C. any communication to be published or sent to securityholders, or
- (c) in the case of a Solicitation that occurs in connection with the nomination of a director,
- (i) a document containing the information required by Part 3 of Form 51-103F4 *Information Circular* is filed, and
 - (ii) the broadcast, speech or publication indicates that the Solicitation is made in connection with the nomination of a director, identifies the document in paragraph (c)(i) and indicates that it is or will be available at www.sedar.com.
- (2) A Solicitation under section (1) will not be considered to be made to the public unless it is disseminated in a manner calculated to be reasonably effective in reaching the marketplace for the Venture Issuer's voting securities by way of one or more of the following:
- (a) a speech in a public forum that is generally accessible, or
 - (b) a news release, statement or advertisement provided through a news wire, broadcast medium, magazine or newspaper of general and widespread circulation, telephone conference call, webcast or similar communication facility that is generally accessible.
- (3) Subsection (1) does not apply to a person or company that is proposing, at the time of the Solicitation, a Significant Transaction or Combination Transaction involving the Venture Issuer and the person or company, under which the securities of the person or company, or securities of an Affiliated Entity of the person or company, are to be changed, exchanged, issued or distributed unless

- (a) the person or company has filed an Information Circular or other document containing the information required Form 51-103F4 *Information Circular* in respect of either or both of a Significant Transaction and Combination Transaction, as applicable, and
 - (b) the Solicitation refers to that Information Circular or other document and discloses that the Information Circular or other document is available on SEDAR.
- (4) Subsection (1) does not apply to a person or company that is nominating or proposing to nominate, at the time of the Solicitation, an individual, including himself or herself, for election as a director of the reporting issuer, unless
- (a) the person or company has filed an Information Circular or other document containing the information required by of Form 51-103F4 *Information Circular* in respect of the proposed nominee, and
 - (b) the Solicitation refers to that Information Circular or other document and discloses that the Information Circular or other document is available on SEDAR.

Guidance:

The definition of Solicit and Solicitation in this Instrument may differ from applicable corporate law or the issuer's constating documents. For example, corporate law may impose additional obligations or restrictions on persons or companies soliciting proxies in connection with a dissident information circular.

5.5 Other Exemptions

- (1) Section 5.1(2) does not apply if the total number of securityholders whose proxies are Solicited is not more than 15, where joint Registered Securityholders are counted as a single Registered Securityholder.
- (2) Sections 5.1 to 5.4 do not apply to a reporting issuer, or a person or company that solicits proxies from Registered Securityholders if
 - (a) the Venture Issuer or other person or company complies with the requirements of the laws relating to solicitation of proxies under which the Venture Issuer is incorporated, organized or continued,
 - (b) those requirements are substantially similar to the requirements of this Part, and
 - (c) the Venture Issuer or other person or company promptly files a copy of each form of proxy, information circular or other document that contains substantially similar disclosure, sent by the person or company in connection with the meeting.

PART 6 MATERIAL CHANGES AND DISCLOSABLE EVENTS

6.1 Material Change or Disclosable Event Disclosure

Promptly following either or both of a material change or a Disclosable Event occurring, a Venture Issuer must issue and file a news release disclosing each material change and Disclosable Event.

6.2 Filing Deadline for Report of Material Change or Disclosable Event

As soon as practicable but in any case by the 10th day after either or both of a material change or Disclosable Event occurring, a Venture Issuer must file a Report of Material Change or Disclosable Event, disclosing each material change and Disclosable Event.

6.3 Contents of Report of Material Change or Disclosable Event

A Venture Issuer must prepare a Report of Material Change or Disclosable Event either

- (a) in accordance with Form 51-103F2 *Report of Material Change or Disclosable Event*, or
- (b) as a news release which
 - (i) contains the information required by Form 51-103F2 *Report of Material Change or Disclosable Event*, other than that relating to a prior news release, and
 - (ii) in the title of the news release identifies whether the report is a report of a material change or a Disclosable Event.

Guidance:

If a Report of Material Change or Disclosable Event is prepared in the form of a news release under subsection 6.3(b) and filed in the SEDAR category for reports of material change, it does not need to also be filed as a news release.

6.4 Unduly Detrimental Disclosure

- (1) Despite section 6.1, a Venture Issuer may temporarily delay publicly disclosing a material change or Disclosable Event if,
 - (a) in the opinion of the Board of Directors, acting reasonably, the disclosure required by section 6.1 would be unduly detrimental to the legitimate interests of the Venture Issuer, and
 - (b) senior management has no reason to believe that any person or company with knowledge of the material change or Disclosable Event has made use of that knowledge in buying or selling securities of the Venture Issuer.
- (2) A Venture Issuer can no longer rely on subsection (1) and must promptly comply with sections 6.1, 6.2 and 6.3 if
 - (a) the circumstances in paragraphs 1(a) and 1(b) cease to exist, or

- (b) the Venture Issuer becomes aware, or has reasonable grounds to believe, that any person or company has bought or sold or is buying or selling securities of the Venture Issuer with knowledge of the undisclosed material change or Disclosable Event.

PART 7 OTHER REQUIRED DISCLOSURE

7.1 Disclosure Made in Other Jurisdictions or Sent to Securityholders

- (1) A Venture Issuer must concurrently file any disclosure document, other than one filed in connection with a distribution, that contains Material information that has not previously been filed if any one or more of the following applies, it
 - (a) sends it to its securityholders,
 - (b) files it with a securities regulatory authority or securities regulator, in another province or territory,
 - (c) in the case of an SEC Issuer, files it with or furnishes it to the SEC under the 1934 Act, including Material information filed as an exhibit to another document, that has not been included in a document already filed by the SEC Issuer in a jurisdiction, or
 - (d) files it with a foreign securities regulatory authority.
- (2) Despite subsection (1) if a concurrent filing is not reasonably practicable, the Venture Issuer must file the disclosure document as soon as it is reasonably practicable.

Guidance:

National Instrument 52-107 Acceptable Accounting Principles, Auditing Standards and Reporting Currency requires that, subject to certain exceptions, all financial statements “filed” be prepared in accordance with Canadian GAAP and all auditors’ reports be prepared in accordance with Canadian GAAS. Accordingly, if a financial statement and/or auditors’ report is required to be filed because of section 7.1, it must comply with National Instrument 52-107 Acceptable Accounting Principles, Auditing Standards and Reporting Currency.

7.2 Change of Reporting Issuer Status or Name

- (1) A Venture Issuer must file a notice in each of the following circumstances:
 - (a) promptly after it becomes a reporting issuer, other than by filing a prospectus,
 - (b) promptly after it changes its name,
 - (c) promptly after ceasing to be a reporting issuer.
- (2) Disclose in the notice the significant terms of any transaction that occurred in connection with the change of status.

- (3) This section does not apply if the Venture Issuer has disclosed the change of status or change of name as a material change under Part 6 and files a copy of the Report of Material Change or Disclosable Event in the SEDAR category for changes in status.

Guidance:

- (1) *If an issuer that ceases to be a reporting issuer fails to file the applicable notice, securities regulators will not receive notice to update their records and may continue to report the issuer on a list of defaulting issuers.*
- (2) *National Instrument 51-102 Continuous Disclosure Obligations requires a notice to be filed when a Venture Issuer ceases to be a Venture Issuer.*

7.3 Securityholder Documents

A Venture Issuer must file the following documents as soon as practicable after becoming a reporting issuer or in the case of a Venture Issuer that is already a reporting issuer within 10 days of approving or adopting, as applicable, such document or any Material amendment to such document:

- (a) the constating documents establishing the Venture Issuer, including any articles or memorandum of incorporation, association, amalgamation or continuation;
- (b) the Venture Issuer's existing by-laws or similar instruments;
- (c) any Material securityholder or voting trust agreement that the Venture Issuer has access to; and
- (d) any Material securityholders' rights plan or similar plan or contract of the Venture Issuer or a subsidiary of the Venture Issuer that significantly affects the rights or obligations of securityholders;

7.4 Change of Auditor

- (1) This section does not apply to a change of auditor required by legislation or resulting from a take-over, reorganization, merger or amalgamation unless one of the principal purposes of that transaction is to avoid making the disclosure required by this section.
- (2) A Venture Issuer that changes its auditor must, as soon as practicable following the change,
 - (a) prepare and deliver to its former and successor auditors a report describing the reasons for and circumstances surrounding the change, including details of any disagreement or reason related to the content or presentation of the Venture Issuer's financial statements, any modified opinion related to the Venture Issuer's financial statements, and the nature and extent of discussions between the Venture Issuer's former auditor and its audit committee or Board of Directors, and
 - (b) file a notice disclosing the change of auditor.

- (3) If a former or successor auditor concludes that the Venture Issuer's report fails to fairly and fully provide the information required by paragraph 7.4(2)(a), it must deliver a letter notifying the securities regulator of the deficiency.

Guidance:

Form 51-103F4 Information Circular requires that the report referred to in paragraph 7.4(2)(a) be included in the next information circular that is sent and filed in connection with a meeting at which securityholders will be asked to appoint an auditor.

7.5 Financial News Release

If a Venture Issuer issues a news release disclosing information about its financial performance or financial condition for any financial period for which the Venture Issuer has prepared financial statements, the Venture Issuer must promptly file that news release.

Guidance:

Section 3.4 requires that the news release be approved by the audit committee prior to public disclosure.

7.6 Forward-Looking Information, FOFI and Financial Outlooks

- (1) This section does not apply to oral statements and subsections (2) and (3) do not apply to disclosure
 - (a) subject to the requirements of either or both of National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* and National Instrument 43-101 *Standards of Disclosure for Mineral Projects*, or
 - (b) that has previously been exempted from the applicable requirements of paragraph (3)(a) provided that that exemption has not been removed.
- (2) A Venture Issuer that discloses Material forward-looking information ("FLI"), must have a reasonable basis for that FLI, and must, in connection with disclosing the Material FLI,
 - (a) identify the statements that contain the Material FLI,
 - (b) caution users of the Material FLI that actual results may vary from the Material FLI and identify Material known and reasonably foreseeable risk factors that could cause actual results to differ materially from the Material FLI,
 - (c) state the Material factors or assumptions used to develop the Material FLI, and
 - (d) describe any policy of the Venture Issuer for updating Material FLI, beyond that which is required by section 2.8 of Form 51-103F1 *Annual and Mid-Year Reports*.
- (3) A Venture Issuer may only disclose Material FLI about prospective financial performance, financial position or cash flows that is based on assumptions about future economic conditions and courses of action, (regardless of whether it is presented in the format of a historical statement of financial position, statement of comprehensive income or statement of cash flows, that is, as "future oriented financial information" or "FOFI", or presented in some other manner as a "financial outlook") if

- (a) at the time of disclosure, the assumptions are reasonable in the circumstances,
 - (b) such information is limited to a period for which it can be reasonably estimated, and
 - (c) the Venture Issuer uses the accounting policies it expects to use to prepare its historical financial statements for the period covered by such information.
- (4) A Venture Issuer that discloses information described in subsection (2) must, in addition to making the disclosure required by paragraph (1),
- (a) state the date management approved the information unless the document in which the information is disclosed is dated, and
 - (b) explain the purpose of the information and provide a caution to readers that the information may not be appropriate for other purposes.

Guidance:

In addition to the provisions in this Instrument dealing with forward-looking information, the securities legislation in certain jurisdictions contains secondary market civil liability provisions which create a statutory right of action on the part of persons or companies who relied on the forward-looking information if the forward-looking information contains a misrepresentation.

Securities legislation may provide a defence to liability where there was a reasonable basis for drawing the conclusions or making the forecasts or projections set out in the forward-looking information and there is a statement proximate to the forward looking information which contains reasonable cautionary language identifying the forward-looking information and the material factors that could cause results to differ materially from it as well as a statement of material factors or assumptions that were applied in drawing the conclusion or marking the forecast or project set out in the forward-looking information.

7.7 Change in Year End

- (1) A Venture Issuer that decides to change its financial year-end must promptly file a notice disclosing
- (a) that it has decided to change its year-end and the reason for the change,
 - (b) its old financial year-end and new financial year-end,
 - (c) the length and ending date of the periods and comparative periods of the Mid-Year and Annual Financial Statements to be filed for its Transition Year and new financial year, and
 - (d) the filing deadlines, respectively, for the Mid-Year Report and Annual Report for its Transition Year.
- (2) For the purposes of this section,
- (a) a Transition Year must not exceed 15 months; and

- (b) the first Mid-Year Period after an old financial year must not exceed seven months.
- (3) Despite section 4.3, a Venture Issuer is not required to file a Mid-Year Report for any period in its Transition Year that ends not more than one month
 - (a) after the last day of its old financial year; or
 - (b) before the first day of its new financial year.
- (4) If a Transition Year is less than nine months in length, the Venture Issuer must include as comparative financial information to its annual financial statements for its new financial year
 - (a) a statement of financial position, a statement of comprehensive income, a statement of changes in equity, a statement of cash flows and notes to the financial statements for its Transition Year,
 - (b) a statement of financial position, a statement of comprehensive income, a statement of changes in equity, a statement of cash flows, and notes to its financial statements for its old financial year,
 - (c) a statement of financial position as at the beginning of the old financial year, in the case of a Venture Issuer that discloses in its Annual Financial Statements an explicit and unreserved statement of compliance with IFRS and that
 - (i) applies an accounting policy retrospectively in its Annual Financial Statements,
 - (ii) makes a retrospective restatement of items in its Annual Financial Statements, or
 - (iii) reclassifies items in its Annual Financial Statements.
- (5) If the Mid-Year Period for the Venture Issuer's Transition Year ends six or 12 months after the end of its old financial year, the Venture Issuer must include as comparative financial information in its Mid-Year Financial Statements
 - (a) during its Transition Year, a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the corresponding Mid-Year Period in the immediately preceding financial year, except if a Mid Year Period during the Transition Year is 12 months in length and the Venture Issuer's Transition Year is longer than 13 months, the comparative financial information must be the statement of financial position, statement of comprehensive income, statement of changes in equity and statement of cash flows for the 12 month period that constitutes its old financial year; and
 - (b) during its new financial year
 - (i) a statement of financial position as at the end of its Transition Year, and

- (ii) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows 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 Mid-Year Period in the new financial year, and
 - (c) a statement of financial position as at the beginning of the earliest comparative period in the case of a Venture Issuer that discloses in its Mid-Year Financial Statements a statement of compliance with International Accounting Standard 34 *Interim Financial Reporting* and that
 - (i) applies an accounting policy retrospectively in its annual financial statement,
 - (ii) makes a retrospective restatement of items in its annual financial statement, or
 - (iii) reclassifies items in its annual financial statements.
- (6) If the Mid-Year Period for a Venture Issuer's Transition Year ends six or 12 months before the end of the Transition Year, the Venture Issuer must include
 - (a) as comparative financial information in its interim financial reports during its Transition Year
 - (i) a statement of financial position as at the end of its old financial year, and
 - (ii) the statement of comprehensive income, statement of changes in equity and statement of cash flows for periods in its old financial year, for the same calendar months as, or as close as possible to, the calendar months in the Mid-Year Period in the Transition Year; and
 - (b) as comparative financial information in its Mid-Year Financial Statements during its new financial year
 - (i) a statement of financial position as at the end of its Transition Year, and
 - (ii) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows 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 Mid-Year period in the new financial year;
 - (c) in the case of a Venture Issuer that discloses in its Mid-Year Financial Statements a statement of compliance with International Accounting Standard 34 *Interim Financial Reporting*, a statement of financial position as at the beginning of the earliest comparative period if the Venture Issuer
 - (i) applies an accounting policy retrospectively in its Mid Year Financial Statements,

- (ii) makes a retrospective restatement of items in its Mid-Year Financial Statements, or
- (iii) reclassifies items in its Mid-Year Financial Statements.

7.8 Reverse Takeovers

- (1) If a Venture Issuer's year end will change in connection with a Reverse Takeover to which it is a party, the Venture Issuer must provide the disclosure for the Reverse Takeover Acquirer required by section 7.7 unless
 - (a) the Venture Issuer and the Reverse Takeover Acquirer had the same year end before the transaction, or
 - (b) the Venture Issuer changes its year end to be the same as that of the Reverse Takeover Acquirer.
- (2) A Venture Issuer that completes a Reverse Takeover, must file the following financial statements for the Reverse Takeover Acquirer, unless the financial statements have already been filed:
 - (a) audited Annual Financial Statements for all financial years and Mid-Year Financial Statements for all Mid-Year Periods ending before the date of the Reverse Takeover and after the date of the financial statements included in
 - (i) an Information Circular or similar document, or
 - (ii) under section 2.6 of Form 51-103F2 *Report of Material Change or Disclosable Event*,

prepared in connection with the Reverse Takeover; or
 - (b) if the Venture Issuer did not file a document referred to in paragraph (a) or the document did not include the financial statements of the Reverse Takeover Acquirer that would be required to be included in a prospectus, the financial statements that the Reverse Takeover Acquirer would be required to provide in the form of a prospectus the Reverse Takeover Acquirer was eligible to file immediately prior to the Reverse Takeover.
- (3) The Annual Financial Statements required by subsection (2) must be filed by the later of
 - (a) the 20th day after the date of the Reverse Takeover, and
 - (b) the 120th day after the end of the financial year.
- (4) The Mid-Year Financial Statements required by subsection (2) must be filed by the later of
 - (a) the 10th day after the date of the Reverse Takeover,
 - (b) the 60th day after the end of the Mid-Year Period, and

- (c) the filing deadline in subsection (3).
- (5) A Venture Issuer is not required to provide comparative Mid-Year Period financial information in the financial statements of the Reverse Takeover Acquirer for periods that ended before the date of a Reverse Takeover if it is impracticable. If applicable, the notes to the Mid-Year Financial Statements must disclose that the prior period information was not prepared on the same basis as the most recent Mid-Year Financial Statements.

Guidance:

See the guidance following subsection 4.5 of this Instrument regarding the meaning of the word “impracticable”.

PART 8 EXEMPTIONS

8.1 Discretionary Exemptions

Note to reader: This section will provide the authority or otherwise indicate the basis on which a discretionary exemption may be granted.

8.2 SEC Issuers

- (1) A Venture Issuer that is an SEC Issuer satisfies the requirements of section 4.2 with respect to the contents of an Annual Report for a financial year if it
 - (a) files an annual report or transition report prepared under the 1934 Act on Form 10-K or Form 20-F for that financial year,
 - (b) files concurrently with or as soon as reasonably practicable after the filing of the report referred to in (a), the information required by Item 402 “Executive Compensation” of Regulation S-K under the 1934 Act other than, as a foreign private issuer, by providing the information required by Items 6.B “Compensation” and 6.E.2 “Share Ownership” of Form 20-F under the 1934 Act, prepared for the financial year referred to in paragraph (a),
 - (c) is in compliance with the SOX 302 Rules, and files the signed certificates required by the SOX 302 Rules relating to the report referred to in paragraph (a) together or concurrently with the filing of that report,
 - (d) discloses in the report referred to in paragraph (a) or files together or concurrently with that report a document which includes the disclosure required by the following items of Form 51-103F1 *Annual and Mid-Year Reports*
 - (i) subsections 2.4(3) to (6) (MD&A disclosure for Venture Issuers without significant revenues),
 - (ii) section 2.5 Objectives, Performance Targets and Milestones,
 - (iii) section 2.7 Significant Equity Investees,

- (iv) section 2.8 Forward-Looking Information, FOFI and Financial Outlooks,
 - (v) section 3.1 Outstanding, Escrowed and Fully-Diluted Securities
 - (vi) section 3.2 Trading Price and Volume
 - (vii) section 4.2, Directors' and Executive Officers' Biographical Information and Securityholdings, but only as it relates to securityholdings, and
 - (viii) section 4.3 Summary of Securities Transactions by Reporting Insiders,
- (e) files together or concurrently with the report referred to in paragraph (a) the certificates required by
- (i) paragraph 10.3(2) and 10.4 of Form 51-103F1 *Annual and Mid-Year Report*, and
 - (ii) if the disclosure required by either or both of paragraphs (b) and (d) are not included in the report referred to in (a), the certificates required by paragraph 10.3(1) of Form 51-103F1 *Annual and Mid-Year Report* modified as necessary to indicate that the certification applies to the disclosure required by paragraphs (b) and (d).
- (2) A Venture Issuer that is an SEC Issuer satisfies the requirements of section 4.3 with respect to a Mid-Year Report for a Mid-Year Period if it
- (a) files each Form 6-K required under the 1934 Act that was prepared for an interim period ending during the Mid-Year Period and containing the Venture Issuer's quarterly financial statements and MD&A,
 - (b) is in compliance with the SOX 302 Rules and files the signed certificates required by the SOX 302 Rules relating to the report referred to in paragraph (a) together or concurrently with that report, and
 - (c) discloses in the report referred to in paragraph (a) prepared for an interim period ending at the end of the Venture Issuer's Mid-Year Period, or files together with or concurrently with that report, a document which includes the disclosure required by the following items of Form 51-103F1 *Annual and Mid-Year Reports*
 - (i) subsections 2.4(3) to (6) (MD&A disclosure for Venture Issuers without significant revenues),
 - (ii) section 2.7 Significant Equity Investees,
 - (iii) section 2.8 Forward-Looking Information, FOFI and Financial Outlooks,
 - (iv) section 4.3 Summary of Securities Transactions by Reporting Insiders, and
 - (v) section 8(3) (financial statement requirements for a Mid-Year Report),

- (d) files together or concurrently with the report referred to in paragraph (a) prepared for an interim period ending at the end of the Venture Issuer’s Mid-Year Period, the certificates required by
 - (i) paragraph 10.3(2) and 10.4 of Form 51-103F1 *Annual and Mid-Year Report*, and
 - (ii) if the disclosure required by paragraph (c) is filed separately from the report referred to in (a), the certificates required by paragraph 10.3(1) of Form 51-103F1 *Annual and Mid-Year Report* modified as necessary to indicate that the certification applies to the disclosure required by paragraph (c).
- (3) Section 5.3(c) does not apply to a Venture Issuer that is an SEC Issuer if it uses the procedures in Rule 14a-16 under the 1934 Act to deliver proxy-related materials to a Registered Securityholder.
- (4) An SEC Issuer satisfies the requirements of section 7.7 if:
 - (a) it complies with the requirements of U.S. federal securities laws relating to a change of fiscal year; and
 - (b) it files a copy of all materials required by U.S. laws relating to a change of fiscal year at the same time as, or as soon as practicable after, they are filed with or furnished to the SEC and, in the case of Annual and Mid-Year Reports, no later than the filing deadlines prescribed under sections 4.1 and 4.3.

Guidance:

Section 7.1(1)(c) of this Instrument requires that the documents referred to in this section, if they are filed with or furnished to the SEC must be concurrently filed with the securities regulator.

8.3 Exemptions for Exchangeable Security Issuers, Credit Support Issuers and Foreign Issuers

- (1) An Exchangeable Security Issuer satisfies the requirements of this Instrument if it qualifies under and complies with section 13.3 of National Instrument 51-102 *Continuous Disclosure Obligations*.
- (2) A Credit Support Issuer satisfies the requirements of this Instrument if it qualifies under and complies with section 13.4 of National Instrument 51-102 *Continuous Disclosure Obligations*.

Note to Reader: If this proposal proceeds to the rule-making phase, we contemplate that National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* would provide exemptions for Venture Issuers that are “SEC foreign issuers” or “designated foreign issuers” as defined in that instrument.

8.4 Existing Exemptions

- (1) A Venture Issuer that was entitled to rely on an exemption, waiver or approval granted to it by a securities regulator or securities regulatory authority relating to continuous disclosure requirements of securities legislation or securities directions under one of the following instruments, is exempt from each substantially similar provision of this Instrument to the same extent and on the same conditions, if any, as contained in the exemption, waiver or approval:
 - (a) National Instrument 51-102 *Continuous Disclosure Obligations*;
 - (b) National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*;
 - (c) National Instrument 52-110 *Audit Committees*; and
 - (d) National Instrument 58-101 *Disclosure of Corporate Governance Practices*.
- (2) The Venture Issuer must deliver a notice to the regulator advising of its intent to rely on an exemption, waiver or approval referred to in subsection (1) together with a copy of such exemption, waiver or approval.

PART 9 EFFECTIVE DATE AND TRANSITION

9.1 Effective Date

This Instrument comes into force on •

9.2 Transition

Note to Reader: This section intentionally left blank in consultation draft.
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PART 10 LANGUAGE OF DOCUMENTS

- (1) A document required to be filed under this Instrument must be filed in English or French.
- (2) Despite subsection (1) if a person or company files a document only in English or French 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) If a person or company files a document under this Instrument that is a translation of a document prepared in a language other than English or French, the person or company must
 - (a) attach a certificate as to the accuracy of the translation to the filed document; and
 - (b) make a copy of the document in the original language available to a registered

holder or beneficial owner of its securities, on request.