

Unofficial consolidation for financial years beginning *before* January 1, 2011 and ending before October 31, 2011

This is an unofficial consolidation of National Instrument 51-102 *Continuous Disclosure Obligations* that *does not* reflect amendments made effective January 1, 2011 in connection with Canada's changeover to IFRS. This consolidation generally applies to financial periods relating to financial years beginning *before* January 1, 2011. This document is for reference purposes only and is not an official statement of the law.

**National Instrument 51-102**  
***Continuous Disclosure Obligations***

**Table of Contents**

<b>PART 1</b>	<b>DEFINITIONS AND INTERPRETATION</b>
1.1	Definitions and Interpretation
<b>PART 2</b>	<b>APPLICATION</b>
2.1	Application
<b>PART 3</b>	<b>LANGUAGE OF DOCUMENTS</b>
3.1	French or English
3.2	Filings Translated into French or English
<b>PART 4</b>	<b>FINANCIAL STATEMENTS</b>
4.1	Comparative Annual Financial Statements and Audit
4.2	Filing Deadline for Annual Financial Statements
4.3	Interim Financial Statements
4.4	Filing Deadline for Interim Financial Statements
4.5	Approval of Financial Statements
4.6	Delivery of Financial Statements
4.7	Filing of Financial Statements After Becoming a Reporting Issuer
4.8	Change in Year-End
4.9	Change in Corporate Structure
4.10	Reverse Takeovers
4.11	Change of Auditor
<b>PART 4A</b>	<b>FORWARD-LOOKING INFORMATION</b>
4A.1	Application
4A.2	Reasonable Basis
4A.3	Disclosure
<b>PART 4B</b>	<b>FOFI AND FINANCIAL OUTLOOKS</b>
4B.1	Application
4B.2	Assumptions
4B.3	Disclosure
<b>PART 5</b>	<b>MANAGEMENT'S DISCUSSION &amp; ANALYSIS</b>
5.1	Filing of MD&A
5.2	Filing of MD&A and Supplement for SEC Issuers

Unofficial consolidation for financial years beginning *before* January 1, 2011 and ending before October 31, 2011

- 5.3 Additional Disclosure for Venture Issuers Without Significant Revenue
- 5.4 Disclosure of Outstanding Share Data
- 5.5 Approval of MD&A
- 5.6 Delivery of MD&A
- 5.7 Additional Disclosure for Reporting Issuers with Significant Equity Investees
- 5.8 Disclosure Relating to Previously Disclosed Material Forward-Looking Information

**PART 6 ANNUAL INFORMATION FORM**

- 6.1 Requirement to File an AIF
- 6.2 Filing Deadline for an AIF
- 6.3 [Repealed]

**PART 7 MATERIAL CHANGE REPORTS**

- 7.1 Publication of Material Change

**PART 8 BUSINESS ACQUISITION REPORT**

- 8.1 Interpretation and Application
- 8.2 Obligation to File a Business Acquisition Report and Filing Deadline
- 8.3 Determination of Significance
- 8.4 Financial Statement Disclosure for Significant Acquisitions
- 8.5 [Repealed]
- 8.6 Exemption for Significant Acquisitions Accounted for Using the Equity Method
- 8.7 [Repealed]
- 8.8 Exemption for Significant Acquisitions if Financial Year End Changed
- 8.9 Exemption from Comparatives if Financial Statements Not Previously Prepared
- 8.10 Acquisition of an Interest in an Oil and Gas Property
- 8.11 Exemption for Step-By-Step Acquisitions

**PART 9 PROXY SOLICITATION AND INFORMATION CIRCULARS**

- 9.1 Sending of Proxies and Information Circulars
- 9.2 Exemptions from Sending Information Circular
- 9.3 Filing of Information Circulars and Proxy-Related Material
- 9.3.1 Content of Information Circular
- 9.4 Content of Form of Proxy
- 9.5 Exemption

**PART 10 RESTRICTED SECURITY DISCLOSURE**

- 10.1 Restricted Security Disclosure
- 10.2 Dissemination of Disclosure Documents to Holder of Restricted Securities
- 10.3 Exemptions for Certain Reporting Issuers

**PART 11 ADDITIONAL FILING REQUIREMENTS**

- 11.1 Additional Disclosure Requirements
- 11.2 Change of Status Report
- 11.3 Voting Results

Unofficial consolidation for financial years beginning *before* January 1, 2011 and ending before October 31, 2011

- 11.4 Financial Information
- 11.5 Re-filing Documents
- 11.6 Executive Compensation Disclosure for Certain Reporting Issuers

**PART 12 FILING OF CERTAIN DOCUMENTS**

- 12.1 Filing of Documents Affecting the Rights of Securityholders
- 12.2 Filing of Material Contracts
- 12.3 Time for Filing of Documents

**PART 13 EXEMPTIONS**

- 13.1 Exemptions from this Instrument
- 13.2 Existing Exemptions
- 13.3 Exemption for Certain Exchangeable Security Issuers
- 13.4 Exemption for Certain Credit Support Issuers

**PART 14 EFFECTIVE DATE AND TRANSITION**

- 14.1 Effective Date
- 14.2 Transition

**National Instrument 51-102**  
***Continuous Disclosure Obligations***

**PART 1 DEFINITIONS AND INTERPRETATION**

**1.1 Definitions and Interpretation**

(1) In this Instrument:

“AIF” means a completed Form 51-102F2 *Annual Information Form* or, in the case of an SEC issuer, a completed Form 51-102F2 or an annual report or transition report under the 1934 Act on Form 10-K, Form 10-KSB or Form 20-F;

“approved rating organization” means each of DBRS Limited, Fitch Ratings Ltd., Moody’s Investors Service, Standard & Poor’s and any of their successors;

“asset-backed security” means a security that is primarily serviced by the cash flows of a discrete pool of mortgages, receivables or other financial assets, fixed or revolving, that by their terms convert into cash within a finite period and any rights or other assets designed to assure the servicing or the timely distribution of proceeds to securityholders;

“board of directors” means, 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 acquisition report” means a completed Form 51-102F4 *Business Acquisition Report*;

“class” includes a series of a class;

“common share” means an equity security to which are attached voting rights exercisable in all circumstances, irrespective of the number or percentage of securities owned, that are not less, per security, than the voting rights attached to any other outstanding securities of the reporting issuer;

“date of acquisition” means the date of acquisition required for accounting purposes;

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

“equity investee” means a business that the issuer has invested in and accounted for using the equity method;

“exchange-traded security” means a security that is listed on a recognized exchange or is quoted on a recognized quotation and trade reporting system or is listed on an exchange or quoted on a quotation and trade reporting system that is recognized for the purposes of National Instrument 21-101 *Marketplace Operation* and National Instrument 23-101 *Trading*

*Rules;*

“executive officer” means, for a reporting issuer, an individual who is

- (a) a chair, vice-chair or president;
- (b) a vice-president in charge of a principal business unit, division or function including sales, finance or production; or
- (c) performing a policy-making function in respect of the issuer;

“financial outlook” means forward-looking information about prospective results of operations, financial position or cash flows that is based on assumptions about future economic conditions and courses of action and that is not presented in the format of a historical balance sheet, income statement or cash flow statement;

“FOFI”, or “future-oriented financial information”, means forward-looking information about prospective results of operations, financial position or cash flows, based on assumptions about future economic conditions and courses of action, and presented in the format of a historical balance sheet, income statement or cash flow statement;

“form of proxy” means a document containing the information required under section 9.4 that, on completion and execution by or on behalf of a securityholder, becomes a proxy;

“income from continuing operations” means income or loss, adjusted to exclude discontinued operations, extraordinary items and income taxes;

“information circular” means a completed Form 51-102F5 *Information Circular*;

“informed person” means

- (a) a director or executive officer of a reporting issuer;
- (b) a director or executive officer of a person or company that is itself an informed person or subsidiary of a reporting issuer;
- (c) any person or company who beneficially owns, or controls or directs, directly or indirectly, voting securities of a reporting issuer or a combination of both carrying more than 10 percent of the voting rights attached to all outstanding voting securities of the reporting issuer other than voting securities held by the person or company as underwriter in the course of a distribution; and
- (d) a reporting issuer that has purchased, redeemed or otherwise acquired any of its securities, for so long as it holds any of its securities;

“inter-dealer bond broker” means a person or company that is approved by the Investment

Unofficial consolidation for financial years beginning *before* January 1, 2011 and ending before October 31, 2011

Dealers Association under its By-Law No. 36 *Inter-Dealer Bond Brokerage Systems*, as amended, and is subject to its By-law No. 36 and its Regulation 2100 *Inter-Dealer Bond Brokerage Systems*, as amended;

“interim period” means,

- (a) in the case of a year other than a non-standard year or a transition year, a period commencing on the first day of the financial year and ending nine, six or three months before the end of the financial year;
- (a.1) in the case of a non-standard year, a period commencing on the first day of the financial year and ending within 22 days of the date that is nine, six or three months before the end of the financial year; or
- (b) in the case of a transition year, a period commencing on the first day of the transition year and ending
  - (i) three, six, nine or twelve months, if applicable, after the end of the old financial year; or
  - (ii) twelve, nine, six or three months, if applicable, before the end of the transition year;

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

“MD&A” means a completed Form 51-102F1 Management’s Discussion & Analysis or, in the case of an SEC issuer, a completed Form 51-102F1 or management’s discussion and analysis prepared in accordance with Item 303 of Regulation S-K or item 303 of Regulation S-B under the 1934 Act;

“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;

“material change” means

- (a) a change in the business, operations or capital of the reporting issuer that would reasonably be expected to have a significant effect on the market price or value of any of the securities of the reporting issuer; or
- (b) a decision to implement a change referred to in paragraph (a) made by the board of directors or other persons acting in a similar capacity or by senior management of the reporting issuer who believe that confirmation of the decision by the board of directors or any other persons acting in a similar capacity is probable;

“material contract” means any contract that an issuer or any of its subsidiaries is a party to, that is material to the issuer;

“mineral project” has the same meaning as in National Instrument 43-101 *Standards for Disclosure for Mineral Projects*;

“new financial year” means the financial year of a reporting issuer that immediately follows a transition year;

“NI 54-101” means National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*;

“non-standard year” means a financial year, other than a transition year, that does not have 365 days, or 366 days if it includes February 29;

“non-voting security” means a restricted security that does not carry the right to vote generally, except for a right to vote that is mandated, in special circumstances, by law;

“old financial year” means the financial year of a reporting issuer that immediately precedes a transition year;

“preference share” means a security to which is attached a preference or right over the securities of any class of equity securities of the reporting issuer, but does not include an equity security;

“principal obligor” means, for an asset-backed security, a person or company that is obligated to make payments, has guaranteed payments, or has provided alternative credit support for payments, on financial assets that represent one-third or more of the aggregate amount owing on all of the financial assets servicing the asset-backed security;

“proxy” means a completed and executed form of proxy by which a securityholder has appointed a person or company as the securityholder’s nominee to attend and act for the securityholder and on the securityholder’s behalf at a meeting of securityholders;

“recognized exchange” means

- (a) in Ontario, an exchange recognized by the securities regulatory authority to carry on business as a stock exchange;
- (a.1) in Québec, a person or company authorized by the securities regulatory authority to carry on business as an exchange; and
- (b) in every other jurisdiction, an exchange recognized by the securities regulatory authority as an exchange, self-regulatory organization or self-regulatory body;

“recognized quotation and trade reporting system” means

- (a) in every jurisdiction other than British Columbia, a quotation and trade reporting system recognized by the securities regulatory authority under securities legislation to carry on business as a quotation and trade reporting system; and
- (b) in British Columbia, a quotation and trade reporting system recognized by the securities regulatory authority under securities legislation as a quotation and trade reporting system or as an exchange;

“restricted security” means an equity security of a reporting issuer if any of the following apply:

- (a) there is another class of securities of the reporting issuer that, to a reasonable person, appears to carry a greater number of votes per security relative to the equity security;
- (b) the conditions attached to the class of equity securities, the conditions attached to another class of securities of the reporting issuer, or the reporting issuer’s constating documents have provisions that nullify or, to a reasonable person, appear to significantly restrict the voting rights of the equity securities; or
- (c) the reporting issuer has issued another class of equity securities that, to a reasonable person, appears to entitle the owners of securities of that other class to participate in the earnings or assets of the reporting issuer to a greater extent, on a per security basis, than the owners of the first class of equity securities;

“restricted security term” means each of the terms “non-voting security”, “subordinate voting security” and “restricted voting security”;

“restricted voting security” means a restricted security that carries a right to vote subject to a

Unofficial consolidation for financial years beginning *before* January 1, 2011 and ending before October 31, 2011

restriction on the number or percentage of securities that may be voted by one or more persons or companies, unless the restriction is

- (a) permitted or prescribed by statute; and
- (b) is applicable only to persons or companies that are not citizens or residents of Canada or that are otherwise considered as a result of any law applicable to the reporting issuer to be non-Canadians;

“restructuring transaction” means

- (a) a reverse takeover;
- (b) an amalgamation, merger, arrangement or reorganization;
- (c) a transaction or series of transactions involving a reporting issuer acquiring assets and issuing securities that results in
  - (i) new securityholders owning or controlling more than 50% of the reporting 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 reporting issuer; or
    - (B) holding more than 20% of the outstanding voting securities of the reporting issuer, unless there is evidence showing that the holding of those securities does not materially affect the control of the reporting issuer; and
- (d) any other transaction similar to the transactions listed in paragraphs (a) to (c),

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

“reverse takeover” means a transaction that the issuer is required under the issuer’s GAAP to account for as a reverse takeover;

“reverse takeover acquiree” means the legal parent in a reverse takeover;

“reverse takeover acquirer” means the legal subsidiary in a reverse takeover;

“SEC issuer” means an issuer that

- (a) 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) 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;

“solicit”, 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 to a reasonable person will likely result in the giving, withholding or revocation of a proxy; or
- (d) sending a form of proxy to a securityholder by management of a reporting 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 reporting issuer is incorporated, organized or continued or under the reporting issuer’s constating or

establishing documents; or

- (k) communicating, other than a solicitation by or on behalf of the management of the reporting issuer, to securityholders in the following circumstances:
  - (i) by one or more securityholders concerning the business and affairs of the reporting 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 reporting issuer if the communication is financed directly or indirectly by the reporting 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 reporting 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 securityholder's 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 reporting 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

Unofficial consolidation for financial years beginning *before* January 1, 2011 and ending before October 31, 2011

- (A) the person or company discloses to the securityholder any significant relationship with the reporting issuer and any of its affiliates or with a securityholder who has submitted a matter to the reporting 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;

“subordinate voting security” means a restricted security that carries a right to vote, if there are securities of another class outstanding that carry a greater right to vote on a per security basis;

“transition year” means the financial year of a reporting issuer or business in which the issuer or business changes its financial year-end;

“U.S. GAAP” means generally accepted accounting principles in the United States of America that the SEC has identified as having substantial authoritative support and as supplemented by Regulation S-X and Regulation S-B under the 1934 Act;

“U.S. laws” means the 1933 Act, the 1934 Act, all enactments made under those Acts and all SEC releases adopting the enactments, as amended;

“U.S. marketplace” means an exchange registered as a “national securities exchange” under section 6 of the 1934 Act, or the Nasdaq Stock Market; and

“venture issuer” means a reporting issuer that, as at the applicable time, did not have any of its securities listed or quoted on any of the Toronto Stock Exchange, a U.S. marketplace, or a marketplace outside of Canada and the United States of America other than the Alternative Investment Market of the London Stock Exchange or the PLUS markets operated by PLUS Markets Group plc; where the “applicable time” in respect of

- (a) Parts 4 and 5 of this Instrument and Form 51-102F1, is the end of the applicable financial period;
- (b) Parts 6 and 9 of this Instrument and Form 51-102F6, is the end of the most recently completed financial year;

Unofficial consolidation for financial years beginning *before* January 1, 2011 and ending before October 31, 2011

- (c) Part 8 of this Instrument and Form 51-102F4, is the date of acquisition; and
  - (d) section 11.3 of this Instrument, is the date of the meeting of the securityholders.
- (2) **Affiliate** – In this Instrument, an issuer is an affiliate of another issuer if
- (a) one of them is the subsidiary of the other, or
  - (b) each of them is controlled by the same person.
- (3) **Control** – For the purposes of subsection (2), a person (first person) is considered to control another person (second person) if
- (a) the first person beneficially owns, or controls or directs, directly or indirectly, securities of the second person carrying votes which, if exercised, would entitle the first person to elect a majority of the directors of the second person, unless that first person holds the voting securities only to secure an obligation,
  - (b) the second person is a partnership, other than a limited partnership, and the first person holds more than 50% of the interests of the partnership, or
  - (c) the second person is a limited partnership and the general partner of the limited partnership is the first person.

## **PART 2 APPLICATION**

### **2.1 Application**

This Instrument does not apply to an investment fund.

## **PART 3 LANGUAGE OF DOCUMENTS**

### **3.1 French or English**

- (1) A person or company must file a document required to be filed under this Instrument in French or in English.
- (2) Despite subsection (1), if a person or company files a document only in French or only in English 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) In Québec, a reporting issuer must comply with linguistic obligations and rights prescribed by Québec law.

Unofficial consolidation for financial years beginning *before* January 1, 2011 and ending before October 31, 2011

### **3.2 Filings Translated into French or English**

If a person or company files a document under this Instrument that is a translation of a document prepared in a language other than French or English, 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.

## **PART 4 FINANCIAL STATEMENTS**

### **4.1 Comparative Annual Financial Statements and Audit**

- (1) Subject to subsection 4.8(6), a reporting issuer must file annual financial statements that include
  - (a) an income statement, a statement of retained earnings, and a cash flow statement for
    - (i) the most recently completed financial year; and
    - (ii) the financial year immediately preceding the most recently completed financial year, if any;
  - (b) a balance sheet as at the end of each of the periods referred to in paragraph (a); and
  - (c) notes to the financial statements.
- (2) Annual financial statements filed under subsection (1) must be audited.

### **4.2 Filing Deadline for Annual Financial Statements**

The audited annual financial statements required to be filed under section 4.1 must be filed

- (a) in the case of a reporting issuer other than a venture issuer, on or before the earlier of
  - (i) the 90th day after the end of its most recently completed financial year; and
  - (ii) the date of filing, in a foreign jurisdiction, annual financial statements for its most recently completed financial year; or
- (b) in the case of a venture issuer, on or before the earlier of
  - (i) the 120th day after the end of its most recently completed financial year; and
  - (ii) the date of filing, in a foreign jurisdiction, annual financial statements for its

most recently completed financial year.

#### **4.3 Interim Financial Statements**

- (1) Subject to sections 4.7 and 4.10, a reporting issuer must file interim financial statements for interim periods ended after it became a reporting issuer.
- (2) Subject to subsections 4.7(4), 4.8(7), 4.8(8) and 4.10(3), the interim financial statements required to be filed under subsection (1) must include
  - (a) a balance sheet as at the end of the interim period and a balance sheet as at the end of the immediately preceding financial year, if any;
  - (b) an income statement, a statement of retained earnings and a cash flow statement, all for the year-to-date interim period, and comparative financial information for the corresponding interim period in the immediately preceding financial year, if any;
  - (c) for interim periods other than the first interim period in a reporting issuer's financial year, an income statement and cash flow statement for the three month period ending on the last day of the interim period and comparative financial information for the corresponding period in the preceding financial year, if any; and
  - (d) notes to the financial statements.

#### **(3) Disclosure of Auditor Review of Interim Financial Statements**

- (a) If an auditor has not performed a review of the interim financial statements required to be filed under subsection (1), the interim financial statements must be accompanied by a notice indicating that the financial statements have not been reviewed by an auditor.
- (b) If a reporting issuer engaged an auditor to perform a review of the interim financial statements required to be filed under subsection (1) and the auditor was unable to complete the review, the interim financial statements must be accompanied by a notice indicating that the auditor was unable to complete a review of the interim financial statements and the reasons why the auditor was unable to complete the review.
- (c) If an auditor has performed a review of the interim financial statements required to be filed under subsection (1) and the auditor has expressed a reservation in the auditor's interim review report, the interim financial statements must be accompanied by a written review report from the auditor.

#### **(4) SEC Issuer - Restatement of Interim Financial Statements**

If an SEC issuer that is a reporting issuer

Unofficial consolidation for financial years beginning *before* January 1, 2011 and ending before October 31, 2011

- (a) has filed interim financial statements prepared in accordance with Canadian GAAP for one or more interim periods since its most recently completed financial year for which financial statements have been filed; and
- (b) prepares its annual or interim financial statements for the period immediately following the periods referred to in paragraph (a) in accordance with U.S. GAAP, the SEC issuer must
- (c) restate the interim financial statements for the periods referred to in paragraph (a) in accordance with U.S. GAAP and comply with the reconciliation requirements set out in Part 4 of National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*; and
- (d) file the restated financial statements referred to in paragraph (c) by the filing deadline for the financial statements referred to in paragraph (b).

#### **4.4 Filing Deadline for Interim Financial Statements**

The interim financial statements required to be filed under subsection 4.3(1) must be filed

- (a) in the case of a reporting issuer other than a venture issuer, on or before the earlier of
  - (i) the 45th day after the end of the interim period; and
  - (ii) the date of filing, in a foreign jurisdiction, interim financial statements for a period ending on the last day of the interim period; or
- (b) in the case of a venture issuer, on or before the earlier of
  - (i) the 60th day after the end of the interim period; and
  - (ii) the date of filing, in a foreign jurisdiction, interim financial statements for a period ending on the last day of the interim period.

#### **4.5 Approval of Financial Statements**

- (1) The financial statements a reporting issuer is required to file under section 4.1 must be approved by the board of directors before the statements are filed.
- (2) The financial statements a reporting issuer is required to file under section 4.3 must be approved by the board of directors before the statements are filed.
- (3) In fulfilling the requirement in subsection (2), the board of directors may delegate the approval of the financial statements to the audit committee of the board of directors.

#### **4.6 Delivery of Financial Statements**

- (1) Subject to subsection (2), a reporting issuer must send annually a request form to the registered holders and beneficial owners of its securities, other than debt instruments, that the registered holders and beneficial owners may use to request a copy of the reporting issuer's annual financial statements and MD&A for the annual financial statements, the interim financial statements and MD&A for the interim financial statements, or both.
- (2) For the purposes of subsection (1), the reporting issuer must, applying the procedures set out in NI 54-101, send the request form to the beneficial owners of its securities who are identified under that Instrument as having chosen to receive all securityholder materials sent to beneficial owners of securities.
- (3) If a registered holder or beneficial owner of securities, other than debt instruments, of a reporting issuer requests the issuer's annual or interim financial statements, the reporting issuer must send a copy of the requested financial statements to the person or company that made the request, without charge, by the later of,
  - (a) in the case of a reporting issuer other than a venture issuer, 10 calendar days after the filing deadline in subparagraph 4.2(a)(i) or 4.4(a)(i), section 4.7, or subsection 4.10(2), as applicable, for the financial statements requested;
  - (b) in the case of a venture issuer, 10 calendar days after the filing deadline in paragraph 4.2(b)(i) or 4.4(b)(i), section 4.7, or subsection 4.10(2), as applicable, for the financial statements requested; and
  - (c) 10 calendar days after the issuer receives the request.
- (4) A reporting issuer is not required to send copies of annual or interim financial statements under subsection (3) that were filed more than two years before the issuer receives the request.
- (5) Subsection (1) and the requirement to send annual financial statements under subsection (3) do not apply to a reporting issuer that sends its annual financial statements to its securityholders, other than holders of debt instruments, within 140 days of the issuer's financial year-end and in accordance with NI 54-101.
- (6) If a reporting issuer sends financial statements under this section, the reporting issuer must also send, at the same time, the annual or interim MD&A relating to the financial statements.

#### **4.7 Filing of Financial Statements After Becoming a Reporting Issuer**

- (1) Despite any provisions of this Part other than subsections (2), (3) and (4) of this section, the first annual and interim financial statements that a reporting issuer must file under sections 4.1 and 4.3 are the financial statements for the financial year and interim periods immediately

Unofficial consolidation for financial years beginning *before* January 1, 2011 and ending before October 31, 2011

- following the periods for which financial statements of the issuer were included in a document filed
- (a) that resulted in the issuer becoming a reporting issuer; or
  - (b) in respect of a transaction that resulted in the issuer becoming a reporting issuer.
- (2) If, under subsection (1), a reporting issuer is required to file annual financial statements for a financial year that ended before the issuer became a reporting issuer, those financial statements must be filed on or before the later of
- (a) the 20th day after the issuer became a reporting issuer; and
  - (b) the filing deadline in section 4.2.
- (3) If, under subsection (1), a reporting issuer is required to file interim financial statements for an interim period that ended before the issuer became a reporting issuer, those financial statements must be filed on or before the later of
- (a) the 10th day after the issuer became a reporting issuer; and
  - (b) the filing deadline in section 4.4.
- (4) A reporting issuer is not required to provide comparative interim financial information for periods that ended before the issuer became a reporting issuer if
- (a) to a reasonable person it is impracticable to present prior-period information on a basis consistent with subsection 4.3(2);
  - (b) the prior-period information that is available is presented; and
  - (c) the notes to the interim financial statements disclose the fact that the prior-period information has not been prepared on a basis consistent with the most recent interim financial information.

#### **4.8 Change in Year-End**

- (1) **Exemption from Change in Year-End Requirements** – An SEC issuer satisfies this section if
- (a) it complies with the requirements of U.S. 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 financial statements, no later than the filing deadlines prescribed under sections 4.2 and 4.4.

- (2) **Notice of Change** – If a reporting issuer decides to change its financial year-end by more than 14 days, it must file a notice containing the information set out in subsection (3) as soon as practicable, and, in any event, not later than the earlier of
- (a) the filing deadline, based on the reporting issuer’s old financial year-end, for the next financial statements required to be filed, either annual or interim, whichever comes first; and
  - (b) the filing deadline, based on the reporting issuer’s new financial year-end, for the next financial statements required to be filed, either annual or interim, whichever comes first.
- (3) The notice referred to in subsection (2) must state
- (a) that the reporting issuer has decided to change its year-end;
  - (b) the reason for the change;
  - (c) the reporting issuer’s old financial year-end;
  - (d) the reporting issuer’s new financial year-end;
  - (e) the length and ending date of the periods, including the comparative periods, of the interim and annual financial statements to be filed for the reporting issuer’s transition year and its new financial year; and
  - (f) the filing deadlines, prescribed under sections 4.2 and 4.4, for the interim and annual financial statements for the reporting issuer’s transition year.
- (4) **Maximum Length of Transition Year** – For the purposes of this section,
- (a) a transition year must not exceed 15 months; and
  - (b) the first interim period after an old financial year must not exceed four months.
- (5) **Interim Period Ends Within One Month of Year-End** – Despite subsection 4.3(1), a reporting issuer is not required to file interim financial statements 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.
- (6) **Comparative Financial Information in Annual Financial Statements for New Financial Year** – If a transition year is less than nine months in length, the reporting issuer must

Unofficial consolidation for financial years beginning *before* January 1, 2011 and ending before October 31, 2011

include as comparative financial information to its financial statements for its new financial year

- (a) a balance sheet and income statement, a statement of retained earnings and a cash flow statement for its transition year; and
- (b) a balance sheet and income statement, a statement of retained earnings and a cash flow statement for its old financial year.

(7) **Comparative Financial Information in Interim Financial Statements if Interim Periods Not Changed in Transition Year** – If interim periods for the reporting issuer’s transition year end three, six, nine or twelve months after the end of its old financial year, the reporting issuer must include

- (a) as comparative financial information in its interim financial statements during its transition year, the comparative financial information required by subsection 4.3(2), except if an interim period during the transition year is 12 months in length and the reporting issuer’s transition year is longer than 13 months, the comparative financial information must be the balance sheet and income statement, statement of retained earnings and cash flow statement for the 12 month period that constitutes its old financial year; and
- (b) as comparative financial information in its interim financial statements during its new financial year
  - (i) a balance sheet as at the end of its transition year; and
  - (ii) the income statement, statement of retained earnings and cash flow statement 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 interim period in the new financial year.

(8) **Comparative Financial Information in Interim Financial Statements if Interim Periods Changed in Transition Year** – If interim periods for a reporting issuer’s transition year end twelve, nine, six or three months before the end of the transition year, the reporting issuer must include

- (a) as comparative financial information in its interim financial statements during its transition year
  - (i) a balance sheet as at the end of its old financial year; and
  - (ii) the income statement, statement of retained earnings and cash flow statement for periods in its old financial year, for the same calendar months as, or as close as possible to, the calendar months in the interim period in the transition year; and

- (b) as comparative financial information in its interim financial statements during its new financial year
  - (i) a balance sheet as at the end of its transition year; and
  - (ii) the income statement, statement of retained earnings and cash flow statement 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 interim period in the new financial year.

#### **4.9 Change in Corporate Structure**

If an issuer is party to a transaction that resulted in,

- (a) the issuer becoming a reporting issuer other than by filing a prospectus; or
- (b) if the issuer was already a reporting issuer, in
  - (i) the issuer ceasing to be a reporting issuer,
  - (ii) a change in the reporting issuer's financial year end, or
  - (iii) a change in the name of the reporting issuer;

the issuer must, as soon as practicable, and in any event not later than the deadline for the first filing required under this Instrument following the transaction, file a notice stating

- (c) the names of the parties to the transaction;
- (d) a description of the transaction;
- (e) the effective date of the transaction;
- (f) the name of each party, if any, that ceased to be a reporting issuer after the transaction and of each continuing entity;
- (g) the date of the reporting issuer's first financial year-end after the transaction if paragraph (a) or subparagraph (b)(ii) applies;
- (h) the periods, including the comparative periods, if any, of the interim and annual financial statements required to be filed for the reporting issuer's first financial year after the transaction, if paragraph (a) or subparagraph (b)(ii) applies; and
- (i) what documents were filed under this Instrument that described the transaction and where those documents can be found in electronic format, if paragraph (a) or

subparagraph (b)(ii) applies.

#### **4.10 Reverse Takeovers**

- (1) **Change in Year End** - If a reporting issuer must comply with section 4.9 because it was a party to a reverse takeover, the reporting issuer must comply with section 4.8 unless
  - (a) the reporting issuer had the same year-end as the reverse takeover acquirer before the transaction; or
  - (b) the reporting issuer changes its year-end to be the same as that of the reverse takeover acquirer.
  
- (2) **Financial Statements of the Reverse Takeover Acquirer for Periods Ending Before a Reverse Takeover** - If a reporting issuer completes a reverse takeover, it must
  - (a) file the following financial statements for the reverse takeover acquirer, unless the financial statements have already been filed:
    - (i) financial statements for all annual and interim periods ending before the date of the reverse takeover and after the date of the financial statements included in an information circular or similar document, or under Item 5.2 of the Form 51-102F3 Material Change Report, prepared in connection with the transaction; or
    - (ii) if the reporting issuer did not file a document referred to in subparagraph (i), or the document does not include the financial statements for the reverse takeover acquirer that would be required to be included in a prospectus, the financial statements prescribed under securities legislation and described in the form of prospectus that the reverse takeover acquirer was eligible to use prior to the reverse takeover for a distribution of securities in the jurisdiction;
  - (b) file the annual financial statements required by paragraph (a) on or before the later of
    - (i) the 20th day after the date of the reverse takeover;
    - (ii) the 90th date after the end of the financial year; and
    - (iii) the 120th day after the end of the financial year if the reporting issuer is a venture issuer; and
  - (c) file the interim financial statements required by paragraph (a) on or before the later of
    - (i) the 10th day after the date of the reverse takeover;
    - (ii) the 45th day after the end of the interim period;

- (iii) the 60th day after the end of the interim period if the reporting issuer is a venture issuer; and
- (iv) the filing deadline in paragraph (b).

(3) **Comparative Financial Information in Interim Financial Statements after a Reverse Takeover** – A reporting issuer is not required to provide comparative interim financial information for the reverse takeover acquirer for periods that ended before the date of a reverse takeover if

- (a) to a reasonable person it is impracticable to present prior-period information on a basis consistent with subsection 4.3(2);
- (b) the prior-period information that is available is presented; and
- (c) the notes to the interim financial statements disclose the fact that the prior-period information has not been prepared on a basis consistent with the most recent interim financial information.

#### 4.11 Change of Auditor

(1) **Definitions** - In this section

“appointment” means, in relation to a reporting issuer, the earlier of

- (a) the appointment as its auditor of a different person or company than its former auditor; and
- (b) the decision by the board of directors of the reporting issuer to propose to holders of qualified securities to appoint as its auditor a different person or company than its former auditor;

“consultation” means advice provided by a successor auditor, whether or not in writing, to a reporting issuer during the relevant period, which the successor auditor concluded was an important factor considered by the reporting issuer in reaching a decision concerning

- (a) the application of accounting principles or policies to a transaction, whether or not the transaction is completed;
- (b) a report provided by an auditor on the reporting issuer’s financial statements;
- (c) scope or procedure of an audit or review engagement; or
- (d) financial statement disclosure;

“disagreement” means a difference of opinion between personnel of a reporting issuer

responsible for finalizing the reporting issuer's financial statements and the personnel of a former auditor responsible for authorizing the issuance of audit reports on the reporting issuer's financial statements or authorizing the communication of the results of the auditor's review of the reporting issuer's interim financial statements, if the difference of opinion

- (a) resulted in a reservation in the former auditor's audit report on the reporting issuer's financial statements for any period during the relevant period;
- (b) would have resulted in a reservation in the former auditor's audit report on the reporting issuer's financial statements for any period during the relevant period if the difference of opinion had not been resolved to the former auditor's satisfaction, not including a difference of opinion based on incomplete or preliminary information that was resolved to the satisfaction of the former auditor upon the receipt of further information;
- (c) resulted in a qualified or adverse communication or denial of assurance in respect of the former auditor's review of the reporting issuer's interim financial statements for any interim period during the relevant period; or
- (d) would have resulted in a qualified or adverse communication or denial of assurance in respect of the former auditor's review of the reporting issuer's interim financial statements for any interim period during the relevant period if the difference of opinion had not been resolved to the former auditor's satisfaction, not including a difference of opinion based on incomplete or preliminary information that was resolved to the satisfaction of the former auditor upon the receipt of further information;

"former auditor" means the auditor of a reporting issuer that is the subject of the most recent termination or resignation;

"qualified securities" means securities of a reporting issuer that carry the right to participate in voting on the appointment or removal of the reporting issuer's auditor;

"relevant information circular" means

- (a) if a reporting issuer's constating documents or applicable law require holders of qualified securities to take action to remove the reporting issuer's auditor or to appoint a successor auditor
  - (i) the information circular required to accompany or form part of every notice of meeting at which that action is proposed to be taken; or
  - (ii) the disclosure document accompanying the text of the written resolution provided to holders of qualified securities; or
- (b) if paragraph (a) does not apply, the information circular required to accompany or

Unofficial consolidation for financial years beginning *before* January 1, 2011 and ending before October 31, 2011

form part of the first notice of meeting to be sent to holders of qualified securities following the preparation of a reporting package concerning a termination or resignation;

“relevant period” means the period

- (a) commencing at the beginning of the reporting issuer’s two most recently completed financial years and ending on the date of termination or resignation; or
- (b) during which the former auditor was the reporting issuer’s auditor, if the former auditor was not the reporting issuer’s auditor throughout the period described in paragraph (a);

“reportable event” means a disagreement, a consultation, or an unresolved issue;

“reporting package” means

- (a) the documents referred to in subparagraphs (5)(a)(i) and (6)(a)(i);
- (b) the letter referred to in clause (5)(a)(ii)(B), if received by the reporting issuer, unless an updated letter referred to in clause (6)(a)(iii)(B) has been received by the reporting issuer;
- (c) the letter referred to in clause (6)(a)(ii)(B), if received by the reporting issuer; and
- (d) any updated letter referred to in clause (6)(a)(iii)(B) received by the reporting issuer;

“resignation” means notification from an auditor to a reporting issuer of the auditor’s decision to resign or decline to stand for reappointment;

“successor auditor” means the person or company

- (a) appointed;
- (b) that the board of directors have proposed to holders of qualified securities be appointed; or
- (c) that the board of directors have decided to propose to holders of qualified securities be appointed,

as the reporting issuer’s auditor after the termination or resignation of the reporting issuer’s former auditor;

“termination” means, in relation to a reporting issuer, the earlier of

- (a) the removal of its auditor before the expiry of the auditor’s term of appointment, the

expiry of its auditor's term of appointment without reappointment, or the appointment of a different person or company as its auditor upon expiry of its auditor's term of appointment; and

- (b) the decision by the board of directors of the reporting issuer to propose to holders of its qualified securities that its auditor be removed before, or that a different person or company be appointed as its auditor upon, the expiry of its auditor's term of appointment;

“unresolved issue” means any matter that, in the former auditor's opinion, has, or could have, a material impact on the financial statements, or reports provided by the auditor relating to the financial statements, for any financial period during the relevant period, and about which the former auditor has advised the reporting issuer if

- (a) the former auditor was unable to reach a conclusion as to the matter's implications before the date of termination or resignation;
  - (b) the matter was not resolved to the former auditor's satisfaction before the date of termination or resignation; or
  - (c) the former auditor is no longer willing to be associated with any of the financial statements;
- (2) **Meaning of “Material”** - For the purposes of this section, the term “material” has a meaning consistent with the discussion of the term “materiality” in the Handbook.
- (3) **Exemption from Change of Auditor Requirements** - This section does not apply if
- (a) the following three conditions are met:
    - (i) a termination, or resignation, and appointment occur in connection with an amalgamation, arrangement, takeover or similar transaction involving the reporting issuer or a reorganization of the reporting issuer;
    - (ii) the termination, or resignation, and appointment have been disclosed in a news release that has been filed or in a disclosure document that has been delivered to holders of qualified securities and filed; and
    - (iii) no reportable event has occurred;
  - (b) the change of auditor is required by the legislation under which the reporting issuer exists or carries on its activities; or
  - (c) the change of auditor arises from an amalgamation, merger or other reorganization of the auditor.

- (4) **Exemption From Change of Auditor Requirements – SEC Issuers** - An SEC issuer

Unofficial consolidation for financial years beginning *before* January 1, 2011 and ending before October 31, 2011

satisfies this section if it

- (a) complies with the requirements of U.S. laws relating to a change of auditor;
  - (b) files a copy of all materials required by U.S. laws relating to a change of auditor at the same time as, or as soon as practicable after, they are filed with or furnished to the SEC;
  - (c) issues and files a news release describing the information disclosed in the materials referred to in paragraph (b), if there are any reportable events; and
  - (d) includes the materials referred to in paragraph (b) with each relevant information circular.
- (5) **Requirements Upon Auditor Termination or Resignation** - Upon a termination or resignation of its auditor, a reporting issuer must
- (a) within 10 days after the date of termination or resignation
    - (i) prepare a change of auditor notice in accordance with subsection (7) and deliver a copy of it to the former auditor; and
    - (ii) request the former auditor to
      - (A) review the reporting issuer's change of auditor notice;
      - (B) prepare a letter, addressed to the regulator or securities regulatory authority, stating, for each statement in the change of auditor notice, whether the auditor
        - (I) agrees,
        - (II) disagrees, and the reasons why, or
        - (III) has no basis to agree or disagree; and
      - (C) deliver the letter to the reporting issuer within 20 days after the date of termination or resignation;
  - (b) within 30 days after the date of termination or resignation
    - (i) have the audit committee of its board of directors or its board of directors review the letter referred to in clause (5)(a)(ii)(B) if received by the reporting issuer, and approve the change of auditor notice;
    - (ii) file a copy of the reporting package with the regulator or securities regulatory

- authority;
- (iii) deliver a copy of the reporting package to the former auditor;
- (iv) if there are any reportable events, issue and file a news release describing the information in the reporting package; and
- (c) include with each relevant information circular
  - (i) a copy of the reporting package as an appendix; and
  - (ii) a summary of the contents of the reporting package with a cross-reference to the appendix.
- (6) **Requirements upon Auditor Appointment** - Upon an appointment of a successor auditor, a reporting issuer must
  - (a) within 10 days after the date of appointment
    - (i) prepare a change of auditor notice in accordance with subsection (7) and deliver it to the successor auditor and to the former auditor;
    - (ii) request the successor auditor to
      - (A) review the reporting issuer's change of auditor notice;
      - (B) prepare a letter addressed to the regulator or securities regulatory authority, stating, for each statement in the change of auditor notice, whether the auditor
        - (I) agrees,
        - (II) disagrees, and the reasons why, or
        - (III) has no basis to agree or disagree; and
      - (C) deliver that letter to the reporting issuer within 20 days after the date of appointment; and
    - (iii) request the former auditor to, within 20 days after the date of appointment,
      - (A) confirm that the letter referred to in clause (5)(a)(ii)(B) does not have to be updated; or
      - (B) prepare and deliver to the reporting issuer an updated letter to replace the letter referred to in clause (5)(a)(ii)(B);

- (b) within 30 days after the date of appointment,
  - (i) have the audit committee of its board of directors or its board of directors review the letters referred to in clauses (6)(a)(ii)(B) and (6)(a)(iii)(B) if received by the reporting issuer, and approve the change of auditor notice;
  - (ii) file a copy of the reporting package with the regulator or securities regulatory authority;
  - (iii) deliver a copy of the reporting package to the successor auditor and to the former auditor; and
  - (iv) if there are any reportable events, issue and file a news release disclosing the appointment of the successor auditor and either describing the information in the reporting package or referring to the news release required under subparagraph (5)(b)(iv).
  
- (7) **Change of Auditor Notice Content** - A change of auditor notice must state
  - (a) the date of termination or resignation;
  
  - (b) whether the former auditor
    - (i) resigned on the former auditor's own initiative or at the reporting issuer's request;
    - (ii) was removed or is proposed to holders of qualified securities to be removed during the former auditor's term of appointment; or
    - (iii) was not reappointed or has not been proposed for reappointment;
  
  - (c) whether the termination or resignation of the former auditor and any appointment of the successor auditor were considered or approved by the audit committee of the reporting issuer's board of directors or the reporting issuer's board of directors;
  
  - (d) whether the former auditor's report on any of the reporting issuer's financial statements relating to the relevant period contained any reservation and, if so, a description of each reservation;
  
  - (e) if there is a reportable event, the following information:
    - (i) for a disagreement,
      - (A) a description of the disagreement;
      - (B) whether the audit committee of the reporting issuer's board of

directors or the reporting issuer's board of directors discussed the disagreement with the former auditor; and

- (C) whether the reporting issuer authorized the former auditor to respond fully to inquiries by any successor auditor concerning the disagreement and, if not, a description of and reasons for any limitation;

(ii) for a consultation,

- (A) a description of the issue that was the subject of the consultation;
- (B) a summary of the successor auditor's oral advice, if any, provided to the reporting issuer concerning the issue;
- (C) a copy of the successor auditor's written advice, if any, received by the reporting issuer concerning the issue; and
- (D) whether the reporting issuer consulted with the former auditor concerning the issue and, if so, a summary of the former auditor's advice concerning the issue; and

(iii) for an unresolved issue,

- (A) a description of the issue;
- (B) whether the audit committee of the reporting issuer's board of directors or the reporting issuer's board of directors discussed the issue with the former auditor; and
- (C) whether the reporting issuer authorized the former auditor to respond fully to inquiries by any successor auditor concerning the issue and, if not, a description of and reasons for any limitation; and

(f) if there are no reportable events, a statement to that effect.

- (8) **Auditor's Obligations to Report Non-Compliance** - If the successor auditor becomes aware that the change of auditor notice required by this section has not been prepared and filed by the reporting issuer, the auditor must, within 7 days, advise the reporting issuer in writing and deliver a copy of the letter to the regulator or securities regulatory authority.

## **PART 4A FORWARD-LOOKING INFORMATION**

### **4A.1 Application**

This Part applies to forward-looking information that is disclosed by a reporting issuer other

than forward-looking information contained in oral statements.

#### **4A.2 Reasonable Basis**

A reporting issuer must not disclose forward-looking information unless the issuer has a reasonable basis for the forward-looking information.

#### **4A.3 Disclosure**

A reporting issuer that discloses material forward-looking information must include disclosure that

- (a) identifies forward-looking information as such;
- (b) cautions users of forward-looking information that actual results may vary from the forward-looking information and identifies material risk factors that could cause actual results to differ materially from the forward-looking information;
- (c) states the material factors or assumptions used to develop forward-looking information; and
- (d) describes the reporting issuer's policy for updating forward-looking information if it includes procedures in addition to those described in subsection 5.8(2).

### **PART 4B FOFI AND FINANCIAL OUTLOOKS**

#### **4B.1 Application**

- (1) Subject to subsection (2), this Part applies to FOFI or a financial outlook that is disclosed by a reporting issuer.
- (2) This Part does not apply to disclosure that is
  - (a) subject to requirements in National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* or National Instrument 43-101 *Standards of Disclosure for Mineral Projects*;
  - (b) made to comply with the conditions of any exemption from the requirements referred to in paragraph (a) that a reporting issuer received from a regulator or securities regulatory authority unless the regulator or securities regulatory authority orders that this Part applies to disclosure made under the exemption; or
  - (c) contained in an oral statement.

Unofficial consolidation for financial years beginning *before* January 1, 2011 and ending before October 31, 2011

#### **4B.2 Assumptions**

- (1) A reporting issuer must not disclose FOFI or a financial outlook unless the FOFI or financial outlook is based on assumptions that are reasonable in the circumstances.
- (2) FOFI or a financial outlook that is based on assumptions that are reasonable in the circumstances must, without limitation,
  - (a) be limited to a period for which the information in the FOFI or financial outlook can be reasonably estimated; and
  - (b) use the accounting policies the reporting issuer expects to use to prepare its historical financial statements for the period covered by the FOFI or the financial outlook.

#### **4B.3 Disclosure**

In addition to the disclosure required by section 4A.3, if a reporting issuer discloses FOFI or a financial outlook, the issuer must include disclosure that

- (a) states the date management approved the FOFI or financial outlook, if the document containing the FOFI or financial outlook is undated; and
- (b) explains the purpose of the FOFI or financial outlook and cautions readers that the information may not be appropriate for other purposes.

### **PART 5 MANAGEMENT'S DISCUSSION & ANALYSIS**

#### **5.1 Filing of MD&A**

- (1) A reporting issuer must file MD&A relating to its annual and interim financial statements required under Part 4.
  - (1.1) Despite subsection (1), a reporting issuer does not have to file MD&A relating to the annual and interim financial statements required under sections 4.7 and 4.10 for financial years and interim periods that ended before the issuer became a reporting issuer.
- (2) Subject to section 5.2, the MD&A required to be filed under subsection (1) must be filed by the earlier of
  - (a) the filing deadlines for the annual and interim financial statements set out in sections 4.2 and 4.4, as applicable; and
  - (b) the date the reporting issuer files the financial statements under subsections 4.1(1) or 4.3(1), as applicable.

Unofficial consolidation for financial years beginning *before* January 1, 2011 and ending before October 31, 2011

## **5.2 Filing of MD&A and Supplement for SEC Issuers**

- (1) If an SEC issuer that is a reporting issuer is filing its annual or interim MD&A prepared in accordance with Item 303 of Regulation S-K or Item 303 of Regulation S-B under the 1934 Act, the SEC issuer must file that document on or before the earlier of
  - (a) the date the SEC issuer would be required to file that document under section 5.1; and
  - (b) the date the SEC issuer files that document with the SEC.
- (1.1) An SEC issuer that is a reporting issuer must file a supplement prepared in accordance with subsection (2) at the same time it files its annual or interim MD&A, if the SEC issuer
  - (a) has based the discussion in the MD&A on financial statements prepared in accordance with U.S. GAAP; and
  - (b) is required by subsection 4.1(1) of National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* to provide a reconciliation to Canadian GAAP.
- (2) A supplement required under subsection (1.1) must restate, based on financial information of the reporting issuer prepared in accordance with or reconciled to Canadian GAAP, those parts of the MD&A that
  - (a) are based on financial statements of the reporting issuer prepared in accordance with U.S. GAAP; and
  - (b) would contain material differences if they were based on financial statements of the reporting issuer prepared in accordance with Canadian GAAP.

## **5.3 Additional Disclosure for Venture Issuers Without Significant Revenue**

- (1) A venture issuer that has not had significant revenue from operations in either of its last two financial years, must disclose in its MD&A or in its MD&A supplement if one is required under section 5.2, for each period referred to in subsection (2), a breakdown of material components of
  - (a) capitalized or expensed exploration and development costs;
  - (b) expensed research and development costs;
  - (c) deferred development costs;
  - (d) general and administration expenses; and
  - (e) any material costs, whether capitalized, deferred or expensed, not referred to in

paragraphs (a) through (d);

and if the venture issuer's business primarily involves mining exploration and development, the analysis of capitalized or expensed exploration and development costs must be presented on a property-by-property basis.

- (2) The disclosure in subsection (1) must be provided for the following periods:
  - (a) in the case of annual MD&A, for the two most recently completed financial years; and
  - (b) in the case of interim MD&A, for the most recent year-to-date interim period and the comparative year-to-date period presented in the interim financial statements.
- (3) Subsection (1) does not apply if the information required under that subsection has been disclosed in the financial statements to which the MD&A or MD&A supplement relates.

#### **5.4 Disclosure of Outstanding Share Data**

- (1) A reporting issuer must disclose in its MD&A, or in its MD&A supplement if one is required under section 5.2, the designation and number or principal amount of
  - (a) each class and series of voting or equity securities of the reporting issuer for which there are securities outstanding;
  - (b) each class and series of securities of the reporting issuer for which there are securities outstanding if the securities are convertible into, or exercisable or exchangeable for, voting or equity securities of the reporting issuer; and
  - (c) subject to subsection (2), each class and series of voting or equity securities of the reporting issuer that are issuable on the conversion, exercise or exchange of outstanding securities of the reporting issuer.
- (2) If the exact number or principal amount of voting or equity securities of the reporting issuer that are issuable on the conversion, exercise or exchange of outstanding securities of the reporting issuer is not determinable, the reporting issuer must disclose the maximum number or principal amount of each class and series of voting or equity securities that are issuable on the conversion, exercise or exchange of outstanding securities of the reporting issuer and, if that maximum number or principal amount is not determinable, the reporting issuer must describe the exchange or conversion features and the manner in which the number or principal amount of voting or equity securities will be determined.
- (3) The disclosure under subsections (1) and (2) must be prepared as of the latest practicable date.

## **5.5 Approval of MD&A**

- (1) The annual MD&A and any annual MD&A supplement that a reporting issuer is required to file under this Part must be approved by the board of directors before being filed.
- (2) The interim MD&A and any interim MD&A supplement that a reporting issuer is required to file under this Part must be approved by the board of directors before being filed.
- (3) In fulfilling the requirement in subsection (2), the board of directors may delegate the approval of the interim MD&A and any MD&A supplement required to be filed under this Part to the audit committee of the board of directors.

## **5.6 Delivery of MD&A**

- (1) If a registered holder or beneficial owner of securities, other than debt instruments, of a reporting issuer requests the reporting issuer's annual or interim MD&A, the reporting issuer must send a copy of the requested MD&A and any MD&A supplement required under section 5.2 to the person or company that made the request, without charge, by the delivery deadline set out in subsection 4.6(3) for the annual or interim financial statements to which the MD&A relates.
- (2) A reporting issuer is not required to send copies of any MD&A or MD&A supplement under subsection (1) that was filed more than two years before the issuer receives the request.
- (3) The requirement to send annual MD&A and any related MD&A supplement under subsection (1) does not apply to a reporting issuer that sends its annual MD&A and any related MD&A supplement to its securityholders, other than holders of debt instruments, within 140 days of the issuer's financial year-end and in accordance with NI 54-101.
- (4) If a reporting issuer sends MD&A under this section, the reporting issuer must also send, at the same time, the annual or interim financial statements to which the MD&A relates.

## **5.7 Additional Disclosure for Reporting Issuers with Significant Equity Investees**

- (1) A reporting issuer that has a significant equity investee must disclose in its MD&A, or in its MD&A supplement if one is required under section 5.2, for each period referred to in subsection (2),
  - (a) summarized information as to the assets, liabilities and results of operations of the equity investee; and
  - (b) the reporting issuer's proportionate interest in the equity investee and any contingent issuance of securities by the equity investee that might significantly affect the reporting issuer's share of earnings.
- (2) The disclosure in subsection (1) must be provided for the following periods:

- (a) in the case of annual MD&A, for the two most recently completed financial years; and
  - (b) in the case of interim MD&A, for the most recent year-to-date interim period and the comparative year-to-date period presented in the interim financial statements.
- (3) Subsection (1) does not apply if
- (a) the information required under that subsection has been disclosed in the financial statements to which the MD&A or MD&A supplement relates; or
  - (b) the issuer files separate financial statements of the equity investee for the periods referred to in subsection (2).

## **5.8 Disclosure Relating to Previously Disclosed Material Forward-Looking Information**

- (1) **Application** – This section applies to material forward-looking information that is disclosed by a reporting issuer other than
- (a) forward-looking information contained in an oral statement; or
  - (b) disclosure that is
    - (i) subject to the requirements in National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* or National Instrument 43-101 *Standards of Disclosure for Mineral Projects*; or
    - (ii) made to comply with the conditions of any exemption from the requirements referred to in subparagraph (i) that a reporting issuer received from a regulator or securities regulatory authority unless the regulator or securities regulatory authority orders that this Part applies to disclosure made under the exemption.
- (2) **Update** – A reporting issuer must discuss in its MD&A, or MD&A supplement if one is required under section 5.2,
- (a) events and circumstances that occurred during the period to which the MD&A relates that are reasonably likely to cause actual results to differ materially from material forward-looking information for a period that is not yet complete that the reporting issuer previously disclosed to the public; and
  - (b) the expected differences referred to in paragraph (a).
- (3) **Exemption** – Subsection (2) does not apply if the reporting issuer
- (a) includes the information required by subsection (2) in a news release issued and filed

- by the reporting issuer before the filing of the MD&A or MD&A supplement referred to in subsection (2); and
- (b) includes disclosure in the MD&A or MD&A supplement referred to in subsection (2) that
    - (i) identifies the news release referred to in paragraph (a);
    - (ii) states the date of the news release; and
    - (iii) states that the news release is available on [www.sedar.com](http://www.sedar.com).
- (4) **Comparison to Actual** – A reporting issuer must disclose and discuss in its MD&A, or MD&A supplement if one is required under section 5.2, material differences between
- (a) actual results for the annual or interim period to which the MD&A relates; and
  - (b) any FOFI or financial outlook for the period referred to in paragraph (a) that the reporting issuer previously disclosed.
- (5) **Withdrawal** – If during the period to which its MD&A relates, a reporting issuer decides to withdraw previously disclosed material forward-looking information,
- (a) the reporting issuer must, in its MD&A or MD&A supplement if one is required under section 5.2, disclose the decision and discuss the events and circumstances that led the reporting issuer to that decision, including a discussion of the assumptions underlying the forward-looking information that are no longer valid; and
  - (b) subsection (4) does not apply to the reporting issuer with respect to the MD&A or MD&A supplement
    - (i) if the reporting issuer complies with paragraph (a); and
    - (ii) the MD&A or MD&A supplement is filed before the end of the period covered by the forward-looking information.
- (6) **Exemption** – Paragraph 5(a) does not apply if the reporting issuer
- (a) includes the information required by paragraph (5)(a) in a news release issued and filed by the reporting issuer before the filing of the MD&A or MD&A supplement referred to in subsection (5); and
  - (b) includes disclosure in the MD&A or MD&A supplement referred to in subsection (5) that
    - (i) identifies the news release referred to in paragraph (a);

Unofficial consolidation for financial years beginning *before* January 1, 2011 and ending before October 31, 2011

- (ii) states the date of the news release; and
- (iii) states that the news release is available on [www.sedar.com](http://www.sedar.com).

## **PART 6 ANNUAL INFORMATION FORM**

### **6.1 Requirement to File an AIF**

A reporting issuer that is not a venture issuer must file an AIF.

### **6.2 Filing Deadline for an AIF**

An AIF required to be filed under section 6.1 must be filed,

- (a) subject to paragraph (b), on or before the 90th day after the end of the reporting issuer's most recently completed financial year; or
- (b) in the case of a reporting issuer that is an SEC issuer filing its AIF in Form 10-K, Form 10-KSB or Form 20-F, on or before the earlier of
  - (i) the 90th day after the end of the reporting issuer's most recently completed financial year; and
  - (ii) the date the reporting issuer files its Form 10-K, Form 10-KSB or Form 20-F with the SEC.

### **6.3 [Repealed]**

## **PART 7 MATERIAL CHANGE REPORTS**

### **7.1 Publication of Material Change**

- (1) Subject to subsection (2), if a material change occurs in the affairs of a reporting issuer, the reporting issuer must
  - (a) immediately issue and file a news release authorized by an executive officer disclosing the nature and substance of the change; and
  - (b) as soon as practicable, and in any event within 10 days of the date on which the change occurs, file a Form 51-102F3 Material Change Report with respect to the material change.
- (2) Subsection (1) does not apply if,
  - (a) in the opinion of the reporting issuer, and if that opinion is arrived at in a reasonable

manner, the disclosure required by subsection (1) would be unduly detrimental to the interests of the reporting issuer; or

- (b) the material change consists of a decision to implement a change made by senior management of the reporting issuer who believe that confirmation of the decision by the board of directors is probable, and senior management of the reporting issuer has no reason to believe that persons with knowledge of the material change have made use of that knowledge in purchasing or selling securities of the reporting issuer,

and the reporting issuer immediately files the report required under paragraph (1)(b) marked so as to indicate that it is confidential, together with written reasons for non-disclosure.

(3) [Repealed]

(4) [Repealed]

(5) If a report has been filed under subsection (2), the reporting issuer must advise the regulator or securities regulatory authority in writing if it believes the report should continue to remain confidential, within 10 days of the date of filing of the initial report and every 10 days thereafter until the material change is generally disclosed in the manner referred to in paragraph (1)(a), or, if the material change consists of a decision of the type referred to in paragraph (2)(b), until that decision has been rejected by the board of directors of the reporting issuer.

(6) Despite subsection (5), in Ontario, the reporting issuer must advise the securities regulatory authority.

(7) If a report has been filed under subsection (2), the reporting issuer must promptly generally disclose the material change in the manner referred to in subsection (1) upon the reporting issuer becoming aware, or having reasonable grounds to believe, that persons or companies are purchasing or selling securities of the reporting issuer with knowledge of the material change that has not been generally disclosed.

## **PART 8 BUSINESS ACQUISITION REPORT**

### **8.1 Interpretation and Application**

(1) In this Part,

“acquisition” includes an acquisition of an interest in a business that is consolidated for accounting purposes or accounted for by another method, such as the equity method;

“acquisition of related businesses” means the acquisition of two or more businesses if

- (a) the businesses were under common control or management before the acquisitions were completed;

- (b) each acquisition was conditional upon the completion of each other acquisition; or
- (c) the acquisitions were contingent upon a single common event; and

“business” includes an interest in an oil and gas property to which reserves, as defined in National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*, have been specifically attributed.

- (2) This Part does not apply to a transaction that is a reverse takeover.

## **8.2 Obligation to File a Business Acquisition Report and Filing Deadline**

- (1) If a reporting issuer completes a significant acquisition, as determined under section 8.3, it must file a business acquisition report within 75 days after the date of acquisition.
- (2) Despite subsection (1), if the most recently completed financial year of the acquired business ended 45 days or less before the date of acquisition, a reporting issuer must file a business acquisition report
  - (a) within 90 days after the date of acquisition, in the case of an issuer other than a venture issuer, or
  - (b) within 120 days after the date of acquisition, in the case of a venture issuer.

## **8.3 Determination of Significance**

- (1) **Significant Acquisitions** - Subject to subsection (3) and subsections 8.10(1) and 8.10(2), an acquisition of a business or related businesses is a significant acquisition,
  - (a) for a reporting issuer that is not a venture issuer, if the acquisition satisfies any of the three significance tests set out in subsection (2); and
  - (b) for a venture issuer, if the acquisition satisfies either of the significance tests set out in paragraphs (2)(a) or (b) if “20 percent” is read as “40 percent”.
- (2) **Required Significance Tests** - For the purposes of subsection (1), the significance tests are:
  - (a) **The Asset Test.** The reporting issuer’s proportionate share of the consolidated assets of the business or related businesses exceeds 20 percent of the consolidated assets of the reporting issuer calculated using the audited financial statements of each of the reporting issuer and the business or the related businesses for the most recently completed financial year of each that ended before the date of the acquisition.
  - (b) **The Investment Test.** The reporting issuer’s consolidated investments in and advances to the business or related businesses as at the date of the acquisition exceeds

20 percent of the consolidated assets of the reporting issuer as at the last day of the most recently completed financial year of the reporting issuer ended before the date of the acquisition, excluding any investments in or advances to the business or related businesses as at that date.

- (c) **The Income Test.** The reporting issuer's proportionate share of the consolidated income from continuing operations of the business or related businesses exceeds 20 percent of the consolidated income from continuing operations of the reporting issuer calculated using the audited financial statements of each of the reporting issuer and the business or related businesses for the most recently completed financial year of each ended before the date of acquisition.
- (3) **Optional Significance Tests** - Despite subsection (1) and subject to subsections 8.10(1) and 8.10(2), if an acquisition of a business or related businesses is significant based on the significance tests in subsection (2),
- (a) a reporting issuer that is not a venture issuer may re-calculate the significance using the optional significance tests in subsection (4); and
  - (b) a venture issuer may re-calculate the significance using the optional significance tests in paragraphs (4)(a) or (b) if "20 percent" is read as "40 percent".
- (4) For the purposes of subsection (3), the optional significance tests are:
- (a) **The Asset Test.** The reporting issuer's proportionate share of the consolidated assets of the business or related businesses exceeds 20 percent of the consolidated assets of the reporting issuer, calculated using the financial statements of each of the reporting issuer and the business or the related businesses for the most recently completed interim period or financial year of each, without giving effect to the acquisition.
  - (b) **The Investment Test.** The reporting issuer's consolidated investments in and advances to the business or related businesses as at the date of the acquisition exceeds 20 percent of the consolidated assets of the reporting issuer as at the last day of the most recently completed interim period or financial year of the reporting issuer, excluding any investments in or advances to the business or related businesses as at that date.
  - (c) **The Income Test.** The income from continuing operations calculated under the following subparagraph (i). exceeds 20 percent of the income from continuing operations calculated under the following subparagraph (ii):
    - (i) the reporting issuer's proportionate share of the consolidated income from continuing operations of the business or related businesses for the later of
      - (A) the most recently completed financial year of the business or related businesses; or

- (B) the 12 months ended on the last day of the most recently completed interim period of the business or related businesses;
  - (ii) the reporting issuer's consolidated income from continuing operations for the later of
    - (A) the most recently completed financial year, without giving effect to the acquisition; or
    - (B) the 12 months ended on the last day of the most recently completed interim period of the reporting issuer, without giving effect to the acquisition.
- (5) If an acquisition does not meet any of the significance tests under subsection (4), the acquisition is not a significant acquisition.
- (6) Despite subsection (3), the significance of an acquisition of a business or related businesses may be re-calculated using financial statements for periods that ended after the date of acquisition only if, after the date of acquisition, the business or related businesses remained substantially intact and were not significantly reorganized, and no significant assets or liabilities were transferred to other entities.
- (7) **Application of the Income Test if a Loss Occurred** - For the purposes of paragraphs (2)(c) and (4)(c), if any of the reporting issuer, the business or the related businesses has incurred a loss, the significance test must be applied using the absolute value of the loss.
- (8) **Application of the Income Test if Lower Than Average Income for the Most Recent Year** - For the purposes of paragraph (2)(c) and clause (4)(c)(ii)(A), if the reporting issuer's consolidated income from continuing operations for the most recently completed financial year was lower by 20 percent or more than its average consolidated income from continuing operations for the three most recently completed financial years, the issuer may, subject to subsection (10), substitute the average consolidated income from continuing operations for the three most recently completed financial years in determining whether the significance test set out in paragraph (2)(c) or (4)(c) is satisfied.
- (9) **Application of the Optional Income Test if Lower Than Average Income for the Most Recent Year** - For the purpose of clause (4)(c)(ii)(B) if the reporting issuer's consolidated income from continuing operations for the most recently completed 12-month period was lower by 20 percent or more than its average consolidated income from continuing operations for the three most recently completed 12-month periods, the issuer may, subject to subsection (10), substitute the average consolidated income for the three most recently completed 12-month periods in determining whether the significance test set out in paragraph (4)(c) is satisfied.
- (10) **Lower than Average Income of the Issuer if a Loss Occurred** - If the reporting issuer's

consolidated income from continuing operations for either of the two earlier financial periods referred to in subsections (8) and (9) is a loss, the reporting issuer's income from continuing operations for that period is considered to be zero for the purposes of calculating the average consolidated income for the three financial periods.

- (11) **Application of Significance Tests – Step-By-Step Acquisitions** - If a reporting issuer has made a “step-by-step” purchase as described in the Handbook, then for the purposes of applying subsections (2) and (4),
- (a) if the initial investment and one or more incremental investments were made during the same financial year, the investments must be aggregated and tested on a combined basis;
  - (b) if one or more incremental investments were made in a financial year subsequent to the financial year in which an initial or incremental investment was made and the initial or previous incremental investments are reflected in audited annual financial statements of the reporting issuer previously filed, the reporting issuer must apply the significance tests set out in subsections (2) and (4) on a combined basis to the incremental investments not reflected in audited financial statements of the reporting issuer previously filed; and
  - (c) if one or more incremental investments were made in a financial year subsequent to the financial year in which the initial investment was made and the initial investment is not reflected in audited annual financial statements of the reporting issuer previously filed, the reporting issuer must apply the significance tests set out in subsections (2) and (4) to the initial and incremental investments on a combined basis.
- (11.1) **Application of the Optional Income Test based on Pro Forma Financial Information.** For the purposes of calculating the optional income test under clause (4)(c)(ii)(A), a reporting issuer may use pro forma consolidated income from continuing operations for its most recently completed financial year that was included in a previously filed document if
- (a) the reporting issuer has made a significant acquisition of a business after its most recently completed financial year; and
  - (b) the previously filed document included
    - (i) audited annual financial statements of that acquired business for the periods required by this Part; and
    - (ii) the pro forma financial information required by subsection 8.4(5) or (6).
- (12) **Application of Significance Tests – Related Businesses** - In determining whether an acquisition of related businesses is a significant acquisition, related businesses acquired after the ending date of the most recently filed annual audited financial statements of the reporting

Unofficial consolidation for financial years beginning *before* January 1, 2011 and ending before October 31, 2011

issuer must be considered on a combined basis.

- (13) **Application of Significance Tests – Accounting Principles and Currency** - For the purposes of the significance tests in subsections (2) and (4), financial statements of the business or related businesses must be reconciled to the accounting principles used to prepare the reporting issuer's financial statements and translated into the same reporting currency as that used in the reporting issuer's financial statements.
- (14) **Application of Significance Tests – Use of Unaudited Financial Statements** - Despite subsections (2) and (4), the significance of an acquisition of a business or related businesses may be calculated using unaudited financial statements of the business or related businesses that comply with subsection 6.1(1) of National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* if the financial statements of the business or related businesses for the most recently completed financial year have not been audited.
- (15) **Application of Significance Tests – Use of Previous Audited Financial Statements** – Despite subsections (2) and (4), the significance of an acquisition of a business or related businesses may be calculated using the audited financial statements for the financial year immediately preceding the reporting issuer's most recently completed financial year if the reporting issuer has not been required to file, and has not filed, audited financial statements for its most recently completed financial year.

#### **8.4 Financial Statement Disclosure for Significant Acquisitions**

- (1) **Comparative Annual Financial Statements** - If a reporting issuer is required to file a business acquisition report under section 8.2, subject to sections 8.6 through 8.11, the business acquisition report must include the following for each business or related businesses:
- (a) an income statement, a statement of retained earnings and a cash flow statement for the following periods:
- (i) if the business has completed one financial year,
- (A) the most recently completed financial year ended on or before the date of acquisition; and
- (B) the financial year immediately preceding the most recently completed financial year, if any; or
- (ii) if the business has not completed one financial year, the financial period commencing on the date of formation and ending on a date not more than 45 days before the date of acquisition;
- (b) a balance sheet as at the end of each of the periods specified in paragraph (a); and

- (c) notes to the financial statements.
- (2) **Audit** – The most recently completed financial period referred to in subsection (1) must be audited.
- (3) **Interim Financial Statements** - Subject to subsection (4) and sections 8.6 through 8.11, if a reporting issuer is required to include financial statements in a business acquisition report under subsection (1), the business acquisition report must include financial statements for
- (a) the most recently completed interim period or other period that started the day after the date of the balance sheet specified in paragraph (1)(b) and ended,
    - (i) in the case of an interim period, before the date of acquisition; or
    - (ii) in the case of a period other than an interim period, after the interim period referred to in subparagraph (i) and on or before the date of acquisition; and
  - (b) a comparable period in the preceding financial year of the business.
- (4) **Earlier Interim Financial Statements Permitted** – Despite subsection (3), the business acquisition report may include financial statements for a period ending not more than one interim period before the period referred to in subparagraph (3)(a)(i) if
- (a) the business does not, or related businesses do not, constitute a material departure from the business or operations of the reporting issuer immediately before the acquisition;
  - (b) the reporting issuer will not account for the acquisition as a continuity of interests; and
  - (c) either
    - (i) the date of acquisition is, and the reporting issuer files the business acquisition report, within the following time after the business’s or related businesses’ most recently completed interim period:
      - (A) 45 days, if the reporting issuer is not a venture issuer; or
      - (B) 60 days, if the reporting issuer is a venture issuer; or
    - (ii) the reporting issuer filed a document before the date of acquisition that included financial statements for the business or related businesses that would have been required if the document were a prospectus, and those financial statements are for a period ending not more than one interim period before the interim period referred to in subparagraph (3)(a)(i).

- (5) **Pro Forma Financial Statements Required in a Business Acquisition Report** - If a reporting issuer is required to include financial statements in a business acquisition report under subsection (1) or (3), the business acquisition report must include
- (a) a pro forma balance sheet of the reporting issuer,
    - (i) as at the date of the reporting issuer's most recent balance sheet filed, that gives effect, as if they had taken place as at the date of the pro forma balance sheet, to significant acquisitions that have been completed, but are not reflected in the reporting issuer's most recent balance sheet for an annual or interim period; or
    - (ii) if the reporting issuer has not filed a balance sheet for any annual or interim period, as at the date of the acquired business's most recent balance sheet, that gives effect, as if they had taken place as at the date of the pro forma balance sheet, to significant acquisitions that have been completed;
  - (b) a pro forma income statement of the reporting issuer that gives effect to significant acquisitions completed since the beginning of the financial year referred to in clause (i)(A) or (ii)(A), as applicable, as if they had taken place at the beginning of that financial year, for each of the following financial periods:
    - (i) the reporting issuer's
      - (A) most recently completed financial year for which it has filed financial statements; and
      - (B) interim period for which it has filed financial statements that started after the period in clause (A) and ended immediately before the date of acquisition or, in the reporting issuer's discretion, after the date of acquisition; or
    - (ii) if the reporting issuer has not filed an income statement for any annual or interim period, for the business's or related businesses'
      - (A) most recently completed financial year that ended before the date of acquisition; and
      - (B) period for which financial statements are included in the business acquisition report under paragraph (3)(a); and
  - (c) pro forma earnings per share based on the pro forma financial statements referred to in paragraph (b).

Unofficial consolidation for financial years beginning *before* January 1, 2011 and ending before October 31, 2011

- (6) **Pro Forma Financial Statements based on Earlier Interim Financial Statements Permitted** – Despite paragraph (5)(a) and clauses (5)(b)(i)(B) and (5)(b)(ii)(B), if the reporting issuer relies on subsection (4), the business acquisition report may include
- (a) a pro forma balance sheet as at the date of the balance sheet filed immediately before the reporting issuer’s most recent balance sheet filed; and
  - (b) a pro forma income statement for the period ending not more than one interim period before the interim period referred to in clause (5)(b)(i)(B) or (5)(b)(ii)(B), as applicable.
- (7) **Preparation of Pro Forma Financial Statements** - If a reporting issuer is required to include pro forma financial statements in a business acquisition report under subsection (5),
- (a) the reporting issuer must identify in the pro forma financial statements each significant acquisition, if the pro forma financial statements give effect to more than one significant acquisition;
  - (b) the reporting issuer must include in the pro forma financial statements a description of the underlying assumptions on which the pro forma financial statements are prepared, cross-referenced to each related pro forma adjustment;
  - (c) if the financial year-end of the business differs from the reporting issuer’s year-end by more than 93 days, for the purpose of preparing the pro forma income statement for the reporting issuer’s most recently completed financial year, the reporting issuer must construct an income statement of the business for a period of 12 consecutive months ending no more than 93 days before or after the reporting issuer’s year-end, by adding the results for a subsequent interim period to a completed financial year of the business and deducting the comparable interim results for the immediately preceding year;
  - (d) if a constructed income statement is required under paragraph (c), the pro forma financial statements must disclose the period covered by the constructed income statement on the face of the pro forma financial statements and must include a note stating that the financial statements of the business used to prepare the pro forma financial statements were prepared for the purpose of the pro forma financial statements and do not conform with the financial statements for the business included elsewhere in the business acquisition report;
  - (e) if a reporting issuer is required to prepare a pro forma income statement for an interim period required by paragraph (5)(b), and the pro forma income statement for the most recently completed financial year includes results of the business which are also included in the pro forma income statement for the interim period, the reporting issuer must disclose in a note to the pro forma financial statements the revenue, expenses, gross profit and income from continuing operations included in each pro forma income statement for the overlapping period; and

- (f) a constructed period referred to in paragraph (c) does not have to be audited.
- (8) **Financial Statements of Related Businesses** - If a reporting issuer is required under subsection (1) to include financial statements for more than one business because the significant acquisition involves an acquisition of related businesses, the financial statements required under subsection (1) must be presented separately for each business, except for the periods during which the businesses have been under common control or management, in which case the reporting issuer may present the financial statements of the businesses on a combined basis.

## 8.5 [Repealed]

## 8.6 Exemption for Significant Acquisitions Accounted for Using the Equity Method

A reporting issuer is exempt from the requirements in section 8.4 if

- (a) the acquisition is, or will be, of an equity investee;
- (b) the business acquisition report includes disclosure for the periods for which financial statements are otherwise required under subsection 8.4(1) that
- (i) summarizes information as to the assets, liabilities and results of operations of the equity investee; and
  - (ii) describes the reporting issuer's proportionate interest in the equity investee and any contingent issuance of securities by the equity investee that might significantly affect the reporting issuer's share of earnings;
- (c) the financial information provided under paragraph (b) for the most recently completed financial year
- (i) has been derived from audited financial statements of the equity investee; or
  - (ii) has been audited; and
- (d) the business acquisition report
- (i) identifies the financial statements referred to in subparagraph (c)(i) from which the disclosure provided under paragraph (b) has been derived; or
  - (ii) discloses that the financial information provided under paragraph (b), if not derived from audited financial statements, has been audited; and
  - (iii) discloses that the audit opinion with respect to the financial statements referred to in subparagraph (i), or the financial information referred to in subparagraph (ii), was issued without a reservation.

**8.7 [Repealed]**

**8.8 Exemption for Significant Acquisitions if Financial Year End Changed**

If under section 8.4 a reporting issuer is required to provide financial statements for a business acquired and the business changed its financial year end during either of the financial years required to be included, the reporting issuer may include financial statements for the transition year in satisfaction of the financial statements for one of the years, provided that the transition year is at least nine months.

**8.9 Exemption from Comparatives if Financial Statements Not Previously Prepared**

A reporting issuer is not required to provide comparative information for interim financial statements required under subsection 8.4(3) for a business acquired if

- (a) to a reasonable person it is impracticable to present prior-period information on a basis consistent with the most recently completed interim period of the acquired business;
- (b) the prior-period information that is available is presented; and
- (c) the notes to the interim financial statements disclose the fact that the prior-period information has not been prepared on a basis consistent with the most recent interim financial information.

**8.10 Acquisition of an Interest in an Oil and Gas Property**

- (1) **Asset Test** - Despite subsections 8.3(2) and 8.3(4), the asset tests in paragraphs 8.3(2)(a) and 8.3(4)(a) do not apply to an acquisition
  - (a) of a business that is an interest in an oil and gas property or related businesses that are interests in oil and gas properties; and
  - (b) that is not of securities of another issuer.
- (2) **Income Test** - Despite subsections 8.3(2), 8.3(4), 8.3(8), 8.3(9), 8.3(10) and 8.3(11.1), a reporting issuer must substitute “operating income” for “consolidated income from continuing operations” for the purposes of the income test in paragraphs 8.3(2)(c) and 8.3(4)(c) if the acquisition is one described in subsection (1).
- (3) **Exemption from Financial Statement Disclosure** - A reporting issuer is exempt from the requirements in section 8.4 if
  - (a) the significant acquisition is an acquisition described in subsection (1);
  - (b) the reporting issuer is unable to provide the financial statements in respect of the significant acquisition otherwise required under this Part because those financial

statements do not exist or because the reporting issuer does not have access to those financial statements;

- (c) the acquisition does not constitute a reverse takeover;
- (d) the business or related businesses did not, immediately before the time of completion of the acquisition, constitute a “reportable segment” of the vendor, as defined in the Handbook;
- (e) subject to subsection (4), in respect of the business or related businesses, for each of the financial periods for which financial statements would, but for this section, be required under section 8.4, the business acquisition report includes
  - (i) an operating statement presenting for the business or related businesses at least the following:
    - (A) gross revenue;
    - (B) royalty expenses;
    - (C) production costs; and
    - (D) operating income;
  - (ii) a pro forma operating statement of the reporting issuer that gives effect to significant acquisitions completed since the beginning of the reporting issuer’s most recently completed financial year for which financial statements are required to have been filed, as if they had taken place at the beginning of that financial year, for each of the financial periods referred to in paragraph 8.4(5)(b);
  - (iii) a description of the property or properties and the interest acquired by the reporting issuer; and
  - (iv) disclosure of the annual oil and gas production volumes from the business or related businesses;
- (f) the operating statement for the most recently completed financial period referred to in subsection 8.4(1) is audited; and
- (g) the business acquisition report discloses
  - (i) the estimated reserves and related future net revenue attributable to the business or related businesses, the material assumptions used in preparing the estimates and the identity and relationship to the reporting issuer or to the vendor of the person who prepared the estimates; and

- (ii) the estimated oil and gas production volumes from the business or related businesses for the first year reflected in the estimates disclosed under subparagraph (i).
- (4) **Exemption from Alternative Disclosure** – A reporting issuer is exempt from the requirements of subparagraphs (3)(e)(i), (ii) and (iv), if
  - (a) production, gross revenue, royalty expenses, production costs and operating income were nil for the business or related businesses for each financial period; and
  - (b) the business acquisition report discloses this fact.

### **8.11 Exemption for Step-By-Step Acquisitions**

Despite section 8.4, a reporting issuer is exempt from the requirements to file financial statements for an acquired business, other than the pro forma financial statements required by subsection 8.4(5), in a business acquisition report if the reporting issuer has made a “step-by-step” purchase as described in the Handbook and the acquired business has been consolidated in the reporting issuer's most recent annual financial statements that have been filed.

## **PART 9 PROXY SOLICITATION AND INFORMATION CIRCULARS**

### **9.1 Sending of Proxies and Information Circulars**

- (1) If management of a reporting issuer gives notice of a meeting to its registered holders of voting securities, management must, at the same time as or before giving that notice, send to each registered holder of voting securities who is entitled to notice of the meeting a form of proxy for use at the meeting.
- (2) Subject to section 9.2, a person or company that solicits proxies from registered holders of voting securities of a reporting issuer must,
  - (a) in the case of a solicitation by or on behalf of management of a reporting issuer, send an information circular with the notice of meeting to each registered securityholder whose proxy is solicited; or
  - (b) in the case of any other solicitation, concurrently with or before the solicitation, send an information circular to each registered securityholder whose proxy is solicited.
- (3) [Repealed]

### **9.2 Exemptions from Sending Information Circular**

- (1) Subsection 9.1(2) does not apply to a solicitation by a person or company in respect of securities of which the person or company is the beneficial owner.

- (2) Paragraph 9.1(2)(b) does not apply to a solicitation if the total number of securityholders whose proxies are solicited is not more than 15.
- (3) For the purposes of subsection (2), two or more persons or companies who are joint registered owners of one or more securities are considered to be one securityholder.
- (4) Despite paragraph 9.1(2)(b), a person or company, other than management of a reporting issuer or a person or company acting on behalf of management, may solicit proxies from registered securityholders of a reporting issuer without sending an information circular, if
  - (a) the solicitation is made to the public by broadcast, speech or publication;
  - (b) soliciting proxies by broadcast, speech or publication is permitted by the laws under which the reporting issuer is incorporated, organized or continued and the person or company making the solicitation complies with the requirements, if any, of those laws relating to the broadcast, speech or publication;
  - (c) the person or company has filed the following information:
    - (i) the name and address of the reporting issuer to which the solicitation relates,
    - (ii) the information required under item 2, sections 3.2, 3.3 and 3.4 and paragraphs (b) and (d) of item 5 of Form 51-102F5 *Information Circular*,
    - (iii) any information required to be disclosed in respect of the broadcast, speech or publication by the laws under which the reporting issuer is incorporated, organized or continued, and
    - (iv) a copy of any communication intended to be published; and
  - (d) the broadcast, speech or publication contains the information referred to in paragraphs (c)(i) to (iii).
- (5) Subsection (4) does not apply to a person or company that is proposing, at the time of the solicitation, a significant acquisition or restructuring transaction involving the reporting issuer and the person or company, under which securities of the person or company, or securities of an affiliate 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 by section 14.4 of Form 51-102F5 *Information Circular*; and
  - (b) the solicitation refers to that information circular or other document and discloses that the circular or other document is on SEDAR.
- (6) Subsection (4) does not apply to a person or company that is nominating or proposing to

Unofficial consolidation for financial years beginning *before* January 1, 2011 and ending before October 31, 2011

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 Form 51-102F5 *Information Circular* in respect of the proposed nominee; and
- (b) the solicitation refers to that information circular or other document and discloses that the circular or other document is on SEDAR.

### **9.3 Filing of Information Circulars and Proxy-Related Material**

A person or company that is required under this Instrument to send an information circular or form of proxy to registered securityholders of a reporting issuer must promptly file a copy of the information circular, form of proxy and all other material required to be sent by the person or company in connection with the meeting to which the information circular or form of proxy relates.

#### **9.3.1 Content of Information Circular**

- (1) Subject to Item 8 of Form 51-102F5, if a reporting issuer sends an information circular to a securityholder under paragraph 9.1(2)(a), the issuer must
  - (a) disclose all compensation paid, payable, awarded, granted, given or otherwise provided, directly or indirectly, by the issuer, or a subsidiary of the issuer, to each NEO and director, in any capacity, including, for greater certainty, all plan and non-plan compensation, direct and indirect pay, remuneration, economic or financial award, reward, benefit, gift or perquisite paid, payable, awarded, granted, given, or otherwise provided to the NEO or director for services provided, directly or indirectly, to the issuer or a subsidiary of the issuer, and
  - (b) include detail and discussion of the compensation, and the decision-making process relating to compensation, presented in such a way that it provides a reasonable person, applying reasonable effort, an understanding of
    - (i) how decisions about NEO and director compensation are made,
    - (ii) the compensation the board of directors intended the issuer to pay, make payable, award, grant, give or otherwise provide to each NEO and director, and
    - (iii) how specific NEO and director compensation relates to the overall stewardship and governance of the reporting issuer.
- (2) The disclosure required under subsection (1) must be provided for the periods set out in, in accordance with, and subject to any exemptions set out in, Form 51-102F6 *Statement of Executive Compensation*, which came into force on December 31, 2008.

- (3) For the purposes of this section, “NEO” and “plan” have the meaning ascribed to those terms in Form 51-102F6 *Statement of Executive Compensation*, which came into force on December 31, 2008.
- (4) This section does not apply to an issuer in respect of a financial year ending before December 31, 2008.

#### **9.4 Content of Form of Proxy**

- (1) A form of proxy sent to securityholders of a reporting issuer by a person or company soliciting proxies must indicate in bold-face type whether or not the proxy is solicited by or on behalf of the management of the reporting issuer, provide a specifically designated blank space for dating the form of proxy and specify the meeting in respect of which the proxy is solicited.
- (2) An information circular sent to securityholders of a reporting issuer or the form of proxy to which the information circular relates must
  - (a) indicate in bold-face type that the securityholder has the right to appoint a person or company to represent the securityholder at the meeting other than the person or company if any, designated in the form of proxy; and
  - (b) contain instructions as to the manner in which the securityholder may exercise the right referred to in paragraph (a).
- (3) If a form of proxy sent to securityholders of a reporting issuer contains a designation of a named person or company as nominee, it must provide an option for the securityholder to designate in the form of proxy some other person or company as the securityholder’s nominee.
- (4) A form of proxy sent to securityholders of a reporting issuer must provide an option for the securityholder to specify that the securities registered in the securityholder’s name will be voted for or against each matter or group of related matters identified in the form of proxy, in the notice of meeting or in an information circular, other than the appointment of an auditor and the election of directors.
- (5) A form of proxy sent to securityholders of a reporting issuer may confer discretionary authority with respect to each matter referred to in subsection (4) as to which a choice is not specified if the form of proxy or the information circular states in bold-face type how the securities represented by the proxy will be voted in respect of each matter or group of related matters.
- (6) A form of proxy sent to securityholders of a reporting issuer must provide an option for the securityholder to specify that the securities registered in the name of the securityholder must be voted or withheld from voting in respect of the appointment of an auditor or the election

Unofficial consolidation for financial years beginning *before* January 1, 2011 and ending before October 31, 2011

- of directors.
- (7) An information circular sent to securityholders of a reporting issuer or the form of proxy to which the information circular relates must state that
- (a) the securities represented by the proxy will be voted or withheld from voting in accordance with the instructions of the securityholder on any ballot that may be called for; and
  - (b) if the securityholder specifies a choice under subsection (4) or (6) with respect to any matter to be acted upon, the securities will be voted accordingly.
- (8) A form of proxy sent to securityholders of a reporting issuer may confer discretionary authority with respect to
- (a) amendments or variations to matters identified in the notice of meeting; and
  - (b) other matters which may properly come before the meeting,
- if,
- (c) the person or company by whom or on whose behalf the solicitation is made is not aware within a reasonable time before the time the solicitation is made that any of those amendments, variations or other matters are to be presented for action at the meeting; and
  - (d) a specific statement is made in the information circular or in the form of proxy that the proxy is conferring such discretionary authority.
- (9) A form of proxy sent to securityholders of a reporting issuer must not confer authority to vote
- (a) for the election of any person as a director of a reporting issuer unless a bona fide proposed nominee for that election is named in the information circular; or
  - (b) at any meeting other than the meeting specified in the notice of meeting or any adjournment of that meeting.

## **9.5 Exemption**

Sections 9.1 to 9.4 do not apply to a reporting issuer, or a person or company that solicits proxies from registered holders of voting securities of a reporting issuer, if

- (a) the reporting issuer or other person or company complies with the requirements of the laws relating to the solicitation of proxies under which the reporting issuer is incorporated, organized or continued;

Unofficial consolidation for financial years beginning *before* January 1, 2011 and ending before October 31, 2011

- (b) the requirements referred to in subsection (a) are substantially similar to the requirements of this Part; and
- (c) the reporting issuer or other person or company files a copy of any information circular and form of proxy, or other documents that contain substantially similar information, promptly after the reporting issuer or other person or company sends the circular, form or other document in connection with the meeting.

## **PART 10 RESTRICTED SECURITY DISCLOSURE**

### **10.1 Restricted Security Disclosure**

- (1) Except as otherwise provided in section 10.3, if a reporting issuer has outstanding restricted securities, or securities that are directly or indirectly convertible into or exercisable or exchangeable for restricted securities or securities that will, when issued, result in an existing class of outstanding securities being considered restricted securities, each document referred to in subsection (2) must
  - (a) refer to restricted securities using a term that includes the appropriate restricted security term;
  - (b) not refer to securities by a term that includes “common”, or “preference” or “preferred”, unless the securities are common shares or preference shares, respectively;
  - (c) describe any restrictions on the voting rights of restricted securities;
  - (d) describe the rights to participate, if any, of holders of restricted securities if a takeover bid is made for securities of the reporting issuer with voting rights superior to those attached to the restricted securities;
  - (e) state the percentage of the aggregate voting rights attached to the reporting issuer’s securities that are represented by the class of restricted securities; and
  - (f) if holders of restricted securities have no right to participate if a takeover bid is made for securities of the reporting issuer with voting rights superior to those attached to the restricted securities, contain a statement to that effect in bold-face type.
- (2) Subsection (1) applies to the following documents except as provided in subsections (3) and (6):
  - (a) an information circular;
  - (b) a document required by this Instrument to be delivered upon request by a reporting issuer to any of its securityholders; and

- (c) an AIF prepared by a reporting issuer.
- (3) Despite subsection (2), annual financial statements, interim financial statements and MD&A or other accompanying discussion by management of those financial statements are not required to include the details referred to in paragraphs (1)(c), (d), (e) and (f).
- (4) Each reference to restricted securities in any document not referred to in subsection (2) that a reporting issuer sends to its securityholders must include the appropriate restricted security term.
- (5) A reporting issuer must not refer, in any of the documents described in subsection (4), to securities by a term that includes “common” or “preference” or “preferred”, unless the securities are common shares or preference shares, respectively.
- (6) Despite paragraph (1)(b) and subsection (5), a reporting issuer may, in one place only in a document referred to in subsection (2) or (4), describe the restricted securities by the term used in the constating documents of the reporting issuer, to the extent that term differs from the appropriate restricted security term, if the description is not on the front page of the document and is in the same type face and type size as that used generally in the document.

## **10.2 Dissemination of Disclosure Documents to Holder of Restricted Securities**

- (1) If a reporting issuer sends a document to all holders of any class of its equity securities the document must also be sent by the reporting issuer at the same time to the holders of its restricted securities.
- (2) A reporting issuer that is required by this Instrument to arrange for, or voluntarily makes arrangements for, delivery of the documents referred to in subsection (1) to the beneficial owners of any securities of a class of equity securities registered in the name of a registrant, must make similar arrangements for delivery of the documents to the beneficial owners of securities of a class of restricted securities registered in the name of the registrant.

## **10.3 Exemptions for Certain Reporting Issuers**

The provisions of sections 10.1 and 10.2 do not apply to

- (a) securities that carry a right to vote subject to a restriction on the number or percentage of securities that may be voted or owned by persons or companies that are not citizens or residents of Canada or that are otherwise considered as a result of any law applicable to the reporting issuer to be non-Canadians, but only to the extent of the restriction; and
- (b) securities that are subject to a restriction, imposed by any law governing the reporting issuer, on the level of ownership of the securities by any person, company or combination of persons or companies, but only to the extent of the restriction.

## **PART 11 ADDITIONAL FILING REQUIREMENTS**

### **11.1 Additional Disclosure Requirements**

- (1) A reporting issuer must file a copy of any disclosure material
  - (a) that it sends to its securityholders;
  - (b) in the case of an SEC issuer, that it files with or furnishes to the SEC under the 1934 Act, including material filed as exhibits to other documents, if the material contains information that has not been included in disclosure already filed in a jurisdiction by the SEC issuer; or
  - (c) that it files with another provincial or territorial securities regulatory authority or regulator other than in connection with a distribution.
- (2) A reporting issuer must file the material referred to in subsection (1) on the same date as, or as soon as practicable after, the earlier of
  - (a) the date on which the reporting issuer sends the material to its securityholders;
  - (b) the date on which the reporting issuer files or furnishes the material to the SEC; and
  - (c) the date on which the reporting issuer files that material with the other provincial or territorial securities regulatory authority or regulator.

### **11.2 Change of Status Report**

A reporting issuer must file a notice promptly after the occurrence of either of the following:

- (a) the reporting issuer becomes a venture issuer; or
- (b) the reporting issuer ceases to be a venture issuer.

### **11.3 Voting Results**

A reporting issuer that is not a venture issuer must, promptly following a meeting of securityholders at which a matter was submitted to a vote, file a report that discloses, for each matter voted upon

- (a) a brief description of the matter voted upon and the outcome of the vote; and
- (b) if the vote was conducted by ballot, including a vote on a matter in which votes are cast both in person and by proxy, the number or percentage of votes cast for, against or withheld from the vote.

#### **11.4 Financial Information**

A reporting issuer must file a copy of any news release issued by it that discloses information regarding its historical or prospective results of operations or financial condition for a financial year or interim period.

#### **11.5 Re-filing Documents**

If a reporting issuer decides it will

- (a) re-file a document filed under this Instrument, or
- (b) re-state financial information for comparative periods in financial statements for reasons other than retroactive application of a change in an accounting standard or policy or a new accounting standard,

and the information in the re-filed document, or re-stated financial information, will differ materially from the information originally filed, the issuer must immediately issue and file a news release authorized by an executive officer disclosing the nature and substance of the change or proposed changes.

#### **11.6 Executive Compensation Disclosure for Certain Reporting Issuers**

- (1) A reporting issuer that does not send to its securityholders an information circular that includes the disclosure required by Item 8 of Form 51-102F5 and that does not file an AIF that includes the executive compensation disclosure required by Item 18 of Form 51-102F2 must
  - (a) disclose all compensation, paid, payable, awarded, granted, given, or otherwise provided, directly or indirectly, by the issuer, or a subsidiary of the issuer, to each NEO and director, in any capacity, including, for greater certainty, all plan and non-plan compensation, direct and indirect pay, remuneration, economic or financial award, reward, benefit, gift or perquisite paid, payable, awarded, granted, given, or otherwise provided to the NEO or director for services provided, directly or indirectly, to the issuer or a subsidiary of the issuer, and
  - (b) include detail and discussion of the compensation, and the decision-making process relating to compensation, presented in such a way that it provides a reasonable person, applying reasonable effort, an understanding of
    - (i) how decisions about NEO and director compensation are made,
    - (ii) the compensation the board of directors intended the issuer to pay, make payable, award, grant, give or otherwise provide to each NEO and director, and

Unofficial consolidation for financial years beginning *before* January 1, 2011 and ending before October 31, 2011

- (iii) how specific NEO and director compensation relates to the overall stewardship and governance of the reporting issuer.
- (2) The disclosure required under subsection (1) must be provided for the periods set out in, and in accordance with, Form 51-102F6 *Statement of Executive Compensation*, which came into force on December 31, 2008.
- (3) The disclosure required under subsection (1) must be filed not later than 140 days after the end of the reporting issuer's most recently completed financial year.
- (4) For the purposes of this section, "NEO" and "plan" have the meaning ascribed to those terms in Form 51-102F6 *Statement of Executive Compensation*, which came into force on December 31, 2008.
- (5) This section does not apply to an issuer that satisfies securities legislation requirements relating to information circulars, proxies and proxy solicitation under section 4.6 or 5.7 of National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*.
- (6) This section does not apply to an issuer in respect of a financial year ending before December 31, 2008.

## **PART 12 FILING OF CERTAIN DOCUMENTS**

### **12.1 Filing of Documents Affecting the Rights of Securityholders**

- (1) A reporting issuer must file copies of the following documents, and any material amendments to the following documents, unless previously filed:
  - (a) articles of incorporation, amalgamation, continuation or any other constating or establishing documents of the issuer, unless the constating or establishing document is a statutory or regulatory instrument;
  - (b) by-laws or other corresponding instruments currently in effect;
  - (c) any securityholder or voting trust agreement that the reporting issuer has access to and that can reasonably be regarded as material to an investor in securities of the reporting issuer;
  - (d) any securityholders' rights plans or other similar plans; and
  - (e) any other contract of the issuer or a subsidiary of the issuer that creates or can reasonably be regarded as materially affecting the rights or obligations of its securityholders generally.
- (2) A document required to be filed under subsection (1) may be filed in paper format if

Unofficial consolidation for financial years beginning *before* January 1, 2011 and ending before October 31, 2011

- (a) it is dated before March 30, 2004; and
- (b) it does not exist in an acceptable electronic format.

## **12.2 Filing of Material Contracts**

- (1) Unless previously filed, a reporting issuer must file a material contract entered into
  - (a) within the last financial year; or
  - (b) before the last financial year if that material contract is still in effect.
- (2) Despite subsection (1), a reporting issuer is not required to file a material contract entered into in the ordinary course of business unless the material contract is
  - (a) a contract to which directors, officers, or promoters are parties other than a contract of employment;
  - (b) a continuing contract to sell the majority of the reporting issuer's products or services or to purchase the majority of the reporting issuer's requirements of goods, services, or raw materials;
  - (c) a franchise or licence or other agreement to use a patent, formula, trade secret, process or trade name;
  - (d) a financing or credit agreement with terms that have a direct correlation with anticipated cash distributions;
  - (e) an external management or external administration agreement; or
  - (f) a contract on which the reporting issuer's business is substantially dependent.
- (3) A provision in a material contract filed pursuant to subsections (1) or (2) may be omitted or marked to be unreadable if an executive officer of the reporting issuer reasonably believes that disclosure of that provision would be seriously prejudicial to the interests of the reporting issuer or would violate confidentiality provisions.
- (4) Subsection (3) does not apply if the provision relates to
  - (a) debt covenants and ratios in financing or credit agreements;
  - (b) events of default or other terms relating to the termination of the material contract; or
  - (c) other terms necessary for understanding the impact of the material contract on the business of the reporting issuer.
- (5) If a provision is omitted or marked to be unreadable under subsection (3), the reporting issuer

Unofficial consolidation for financial years beginning *before* January 1, 2011 and ending before October 31, 2011

must include a description of the type of information that has been omitted or marked to be unreadable immediately after the provision in the copy of the material contract filed by the reporting issuer.

- (6) Despite subsections (1) and (2), a reporting issuer is not required to file a material contract entered into before January 1, 2002.

### **12.3 Time for Filing of Documents**

The documents required to be filed under sections 12.1 and 12.2 must be filed no later than the time the reporting issuer files a material change report in Form 51-102F3, if the making of the document constitutes a material change for the issuer, and

- (a) no later than the time the reporting issuer's AIF is filed under section 6.1, if the document was made or adopted before the date of the issuer's AIF; or
- (b) if the reporting issuer is not required to file an AIF under section 6.1, within 120 days after the end of the issuer's most recently completed financial year, if the document was made or adopted before the end of the issuer's most recently completed financial year.

## **PART 13 EXEMPTIONS**

### **13.1 Exemptions from this Instrument**

- (1) The regulator or securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.
- (2) Despite subsection (1), in Ontario only the regulator may grant such an exemption.
- (3) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

### **13.2 Existing Exemptions**

- (1) A reporting issuer that was entitled to rely on an exemption, waiver or approval granted to it by a regulator or securities regulatory authority relating to continuous disclosure requirements of securities legislation or securities directions existing immediately before this Instrument came into force is exempt from any 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.
- (2) A reporting issuer must, at the time that it first intends to rely on subsection (1) in connection with a filing requirement under this Instrument, inform the securities regulatory authority in

writing of

- (a) the general nature of the prior exemption, waiver or approval and the date on which it was granted; and
- (b) the requirement under prior securities legislation or securities directions in respect of which the prior exemption, waiver or approval applied and the substantially similar provision of this Instrument.

### **13.3 Exemption for Certain Exchangeable Security Issuers**

(1) In this section:

“designated Canadian jurisdiction” means Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Québec, or Saskatchewan;

“designated exchangeable security” means an exchangeable security which provides the holder of the security with economic and voting rights which are, as nearly as possible except for tax implications, equivalent to the underlying securities;

“exchangeable security” means a security of an issuer that is exchangeable for, or carries the right of the holder to purchase, or of the parent issuer to cause the purchase of, an underlying security;

“exchangeable security issuer” means a person or company that has issued an exchangeable security;

“parent issuer”, when used in relation to an exchangeable security issuer, means the person or company that issues the underlying security; and

“underlying security” means a security of a parent issuer issued or transferred, or to be issued or transferred, on the exchange of an exchangeable security.

(2) Except as provided in this subsection, an exchangeable security issuer satisfies the requirements in this Instrument if

- (a) the parent issuer is the beneficial owner of all the issued and outstanding voting securities of the exchangeable security issuer;
- (b) the parent issuer is either
  - (i) an SEC issuer with a class of securities listed or quoted on a U.S. marketplace that has filed all documents it is required to file with the SEC; or
  - (ii) a reporting issuer in a designated Canadian jurisdiction that has filed all documents it is required to file under this Instrument;

- (c) the exchangeable security issuer does not issue any securities, and does not have any securities outstanding, other than
  - (i) designated exchangeable securities;
  - (ii) securities issued to and held by the parent issuer or an affiliate of the parent issuer;
  - (iii) debt securities issued to and held by banks, loan corporations, loan and investment corporations, savings companies, trust corporations, treasury branches, savings or credit unions, financial services cooperatives, insurance companies or other financial institutions; or
  - (iv) securities issued under exemptions from the prospectus requirement in section 2.35 and registration requirement in section 3.35 of National Instrument 45-106 *Prospectus and Registration Exemptions*;
- (d) the exchangeable security issuer files in electronic format,
  - (i) if the parent issuer is not a reporting issuer in a designated Canadian jurisdiction, copies of all documents the parent issuer is required to file with the SEC under the 1934 Act, at the same time as, or as soon as practicable after, the filing by the parent issuer of those documents with the SEC; or
  - (ii) if the parent issuer is a reporting issuer in a designated Canadian jurisdiction,
    - (A) a notice indicating that the exchangeable security issuer is relying on the continuous disclosure documents filed by its parent issuer and setting out where those documents can be found in electronic format, if the parent issuer is a reporting issuer in the local jurisdiction; or
    - (B) copies of all documents the parent issuer is required to file under securities legislation, other than in connection with a distribution, at the same time as the filing by the parent issuer of those documents with a securities regulatory authority or regulator;
- (e) the exchangeable security issuer concurrently sends to all holders of designated exchangeable securities all disclosure materials that are sent to holders of the underlying securities in the manner and at the time required by
  - (i) U.S. laws and any U.S. marketplace on which securities of the parent issuer are listed or quoted, if the parent issuer is not a reporting issuer in a designated Canadian jurisdiction; or
  - (ii) securities legislation, if the parent issuer is a reporting issuer in a designated

Canadian jurisdiction;

- (f) the parent issuer
    - (i) complies with U.S. laws and the requirements of any U.S. marketplace on which the securities of the parent issuer are listed or quoted if the parent issuer is not a reporting issuer in a designated Canadian jurisdiction, or securities legislation if the parent issuer is a reporting issuer in a designated Canadian jurisdiction, in respect of making public disclosure of material information on a timely basis; and
    - (ii) immediately issues in Canada and files any news release that discloses a material change in its affairs;
  - (g) the exchangeable security issuer issues in Canada a news release and files a material change report in accordance with Part 7 of this Instrument for all material changes in respect of the affairs of the exchangeable security issuer that are not also material changes in the affairs of its parent issuer; and
  - (h) the parent issuer includes in all mailings of proxy solicitation materials to holders of designated exchangeable securities a clear and concise statement that
    - (i) explains the reason the mailed material relates solely to the parent issuer;
    - (ii) indicates that the designated exchangeable securities are the economic equivalent to the underlying securities; and
    - (iii) describes the voting rights associated with the designated exchangeable securities.
- (3) The insider reporting requirement and the requirement to file an insider profile under National Instrument 55-102 *System for Electronic Disclosure by Insiders* does not apply to any insider of an exchangeable security issuer in respect of securities of the exchangeable security issuer so long as,
- (a) if the insider is not the parent issuer,
    - (i) the insider does not receive, in the ordinary course, information as to material facts or material changes concerning the parent issuer before the material facts or material changes are generally disclosed, and
    - (ii) the insider is not an insider of the parent issuer in any capacity other than by virtue of being an insider of the exchangeable security issuer;
  - (b) the parent issuer is the beneficial owner of all of the issued and outstanding voting securities of the exchangeable security issuer;

- (c) if the insider is the parent issuer, the insider does not beneficially own any designated exchangeable securities other than securities acquired through the exercise of the exchange right and not subsequently traded by the insider;
- (d) the parent issuer is an SEC issuer or a reporting issuer in a designated Canadian jurisdiction; and
- (e) the exchangeable security issuer has not issued any securities and does not have any securities outstanding, other than
  - (i) designated exchangeable securities;
  - (ii) securities issued to and held by the parent issuer or an affiliate of the parent issuer;
  - (iii) debt securities issued to and held by banks, loan corporations, loan and investment corporations, savings companies, trust corporations, treasury branches, savings or credit unions, financial services cooperatives, insurance companies or other financial institutions; and
  - (iv) securities issued under exemptions from the prospectus requirement in section 2.35 and registration requirement in section 3.35 of National Instrument 45-106 *Prospectus and Registration Exemptions*.

#### **13.4 Exemption for Certain Credit Support Issuers**

- (1) In this section:

“alternative credit support” means support, other than a guarantee, for the payments to be made by the issuer, as stipulated in the terms of the securities or in an agreement governing rights of, or granting rights to, holders of the securities that

- (a) obliges the person or company providing the support to provide the issuer with funds sufficient to enable the issuer to make the stipulated payments, or
- (b) entitles the holder of the securities to receive, from the person or company providing the support, payment if the issuer fails to make a stipulated payment;

“credit support issuer” means an issuer of securities for which a credit supporter has provided a guarantee or alternative credit support;

“credit supporter” means a person or company that provides a guarantee or alternative credit support for any of the payments to be made by an issuer of securities as stipulated in the terms of the securities or in an agreement governing rights of, or granting rights to, holders of the securities;

“designated Canadian jurisdiction” means Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Québec or Saskatchewan;

“designated credit support securities” means

- (a) non-convertible debt or convertible debt that is convertible into non-convertible securities of the credit supporter; or
- (b) non-convertible preferred shares or convertible preferred shares that are convertible into securities of the credit supporter,

in respect of which a parent credit supporter has provided;

- (c) alternative credit support that
  - (i) entitles the holder of the securities to receive payment from the credit supporter, or enables the holder to receive payment from the credit support issuer, within 15 days of any failure by the credit support issuer to make a payment; and
  - (ii) results in the securities receiving the same credit rating as, or a higher credit rating than, the credit rating they would have received if payment had been fully and unconditionally guaranteed by the credit supporter, or would result in the securities receiving such a rating if they were rated; or
- (d) a full and unconditional guarantee of the payments to be made by the credit support issuer, as stipulated in the terms of the securities or in an agreement governing the rights of holders of the securities, that results in the holder of such securities being entitled to receive payment from the credit supporter within 15 days of any failure by the credit support issuer to make a payment; and

“parent credit supporter” means a credit supporter of which the reporting issuer is a subsidiary;

“subsidiary credit supporter” means a credit supporter that is a subsidiary of the parent credit supporter;

“summary financial information” includes the following line items:

- (a) sales or revenues;
- (b) income from continuing operations;
- (c) net earnings or loss; and
- (d) unless the accounting principles used to prepare the financial statements of the person

or company permits the preparation of the person or company's balance sheet without classifying assets and liabilities between current and non-current and the person or company provides alternative meaningful financial information which is more appropriate to the industry,

- (i) current assets
- (ii) non-current assets;
- (iii) current liabilities; and
- (iv) non-current liabilities.

- (1.1) For the purposes of subparagraph (2)(g)(ii), consolidating summary financial information must be prepared on the following basis:
- (a) an entity's annual or interim summary financial information must be derived from the entity's financial information underlying the corresponding consolidated financial statements of the parent credit supporter for the corresponding period;
  - (b) the parent credit supporter column must account for investments in all subsidiaries under the equity method; and
  - (c) all subsidiary entity columns must account for investments in non-credit supporter subsidiaries under the equity method.
- (2) Except as provided in this section, a credit support issuer satisfies the requirements in this Instrument if
- (a) the parent credit supporter is the beneficial owner of all the outstanding voting securities of the credit support issuer;
  - (b) the parent credit supporter is either
    - (i) an SEC issuer that is incorporated or organized under the laws of the United States of America or any state or territory of the United States of America or the District of Columbia and that has filed all documents it is required to file with the SEC; or
    - (ii) subject to subsection (4), a reporting issuer in a designated Canadian jurisdiction that has filed all documents it is required to file under this Instrument;
  - (c) the credit support issuer does not issue any securities, and does not have any securities outstanding, other than
    - (i) designated credit support securities;

- (ii) securities issued to and held by the parent credit supporter or an affiliate of the parent credit supporter;
  - (iii) debt securities issued to and held by banks, loan corporations, loan and investment corporations, savings companies, trust corporations, treasury branches, savings or credit unions, financial services cooperatives, insurance companies or other financial institutions; or
  - (iv) securities issued under exemptions from the prospectus requirement in section 2.35 and registration requirement in section 3.35 of National Instrument 45-106 *Prospectus and Registration Exemptions*;
- (d) the credit support issuer files in electronic format,
- (i) if the parent credit supporter is not a reporting issuer in a designated Canadian jurisdiction, copies of all documents the parent credit supporter is required to file with the SEC under the 1934 Act, at the same time or as soon as practicable after the filing by the parent credit supporter of those documents with the SEC; or
  - (ii) if the parent credit supporter is a reporting issuer in a designated Canadian jurisdiction,
    - (A) a notice indicating that the credit support issuer is relying on the continuous disclosure documents filed by the parent credit supporter and setting out where those documents can be found for viewing in electronic format, if the credit support issuer is a reporting issuer in the local jurisdiction; or
    - (B) copies of all documents the parent credit supporter is required to file under securities legislation, other than in connection with a distribution, at the same time as the filing by the parent credit supporter of those documents with a securities regulatory authority or regulator;
- (e) if the parent credit supporter is not a reporting issuer in a designated Canadian jurisdiction, the parent credit supporter
- (i) complies with U.S. laws and the requirements of any U.S. marketplace on which securities of the parent credit supporter are listed or quoted in respect of making public disclosure of material information on a timely basis; and
  - (ii) immediately issues in Canada and files any news release that discloses a material change in its affairs;

- (f) the credit support issuer issues in Canada a news release and files a material change report in accordance with Part 7 for all material changes in respect of the affairs of the credit support issuer that are not also material changes in the affairs of the parent credit supporter;
- (g) the credit support issuer files, in electronic format, in the notice referred to in clause (d)(ii)(A) or in or with the copy of the interim and annual consolidated financial statements filed under subparagraph (d)(i) or clause (d)(ii)(B), either
  - (i) a statement that the financial results of the credit support issuer are included in the consolidated financial results of the parent credit supporter, if at that time,
    - (A) the credit support issuer has minimal assets, operations, revenues or cash flows other than those related to the issuance, administration and repayment of the securities described in paragraph (c), and
    - (B) each item of the summary financial information of the subsidiaries of the parent credit supporter on a combined basis, other than the credit support issuer, represents less than 3% of the corresponding items on the consolidated financial statements of the parent credit supporter being filed or referred to under paragraph (d), or
  - (ii) for the periods covered by the interim or annual consolidated financial statements of the parent credit supporter filed, consolidating summary financial information for the parent credit supporter presented with a separate column for each of the following:
    - (A) the parent credit supporter;
    - (B) the credit support issuer;
    - (C) any other subsidiaries of the parent credit supporter on a combined basis;
    - (D) consolidating adjustments; and
    - (E) the total consolidated amounts;
- (h) the credit support issuer files a corrected notice under clause (d)(ii)(A) if the credit support issuer filed the notice with the statement contemplated in subparagraph (g)(i) and the credit support issuer can no longer rely on subparagraph (g)(i);
- (i) in the case of designated credit support securities that include debt, the credit support issuer concurrently sends to all holders of such securities all disclosure materials that are sent to holders of similar debt of the parent credit supporter in the manner and at the time required by

- (i) U.S. laws and any U.S. marketplace on which securities of the parent credit supporter are listed or quoted, if the parent credit supporter is not a reporting issuer in a designated Canadian jurisdiction; or
    - (ii) securities legislation, if the parent credit supporter is a reporting issuer in a designated Canadian jurisdiction;
  - (j) in the case of designated credit support securities that include preferred shares, the credit support issuer concurrently sends to all holders of such securities all disclosure materials that are sent to holders of similar preferred shares of the parent credit supporter in the manner and at the time required by
    - (i) U.S. laws and any U.S. marketplace on which securities of the parent credit supporter are listed or quoted, if the parent credit supporter is not a reporting issuer in a designated Canadian jurisdiction; or
    - (ii) securities legislation, if the parent credit supporter is a reporting issuer in a designated Canadian jurisdiction; and
  - (k) no person or company other than the parent credit supporter has provided a guarantee or alternative credit support for the payments to be made under any issued and outstanding securities of the credit support issuer.
- (2.1) A credit support issuer satisfies the requirements of this Instrument where there is a parent credit supporter and one or more subsidiary credit supporters if
- (a) the conditions in paragraphs (2)(a) to (f), (i), and (j) are complied with;
  - (b) the parent credit supporter controls each subsidiary credit supporter and the parent credit supporter has consolidated the financial statements of each subsidiary credit supporter into the parent credit supporter's financial statements that are filed or referred to under paragraph (2)(d);
  - (c) the credit support issuer files, in electronic format, in the notice referred to in clause (2)(d)(ii)(A) or in or with the copy of the interim and annual consolidated financial statements filed under subparagraph (2)(d)(i) or clause (2)(d)(ii)(B), for a period covered by any interim or annual consolidated financial statements of the parent credit supporter filed by the parent credit supporter, consolidating summary financial information for the parent credit supporter presented with a separate column for each of the following:
    - (i) the parent credit supporter;
    - (ii) the credit support issuer;

Unofficial consolidation for financial years beginning *before* January 1, 2011 and ending before October 31, 2011

- (iii) each subsidiary credit supporter on a combined basis;
  - (iv) any other subsidiaries of the parent credit supporter on a combined basis;
  - (v) consolidating adjustments; and
  - (vi) the total consolidated amounts;
- (d) no person or company, other than the parent credit supporter or a subsidiary credit supporter has provided a guarantee or alternative credit support for the payments to be made under the issued and outstanding designated credit support securities; and
- (e) the guarantees or alternative credit supports are joint and several.
- (2.2) Despite paragraph (2.1)(c), the information set out in a column in accordance with
- (a) subparagraph (2.1)(c)(iv), may be combined with the information set out in accordance with any of the other columns in paragraph (2.1)(c) if each item of the summary financial information set out in a column in accordance with subparagraph (2.1)(c)(iv) represents less than 3% of the corresponding items on the consolidated financial statements of the parent credit supporter being filed or referred to under paragraph (2)(d),
  - (b) subparagraph (2.1)(c)(ii) may be combined with the information set out in accordance with any of the other columns in paragraph (2.1)(c) if the credit support issuer has minimal assets, operations, revenues or cash flows other than those related to the issuance, administration and repayment of the securities described in paragraph (2)(c).
- (3) The insider reporting requirement and the requirement to file an insider profile under National Instrument 55-102 *System for Electronic Disclosure by Insiders* do not apply to an insider of a credit support issuer in respect of securities of the credit support issuer so long as,
- (a) the conditions in paragraphs (2)(a) to (c) are complied with;
  - (b) if the insider is not a credit supporter,
    - (i) the insider does not receive, in the ordinary course, information as to material facts or material changes concerning a credit supporter before the material facts or material changes are generally disclosed, and
    - (ii) the insider is not an insider of a credit supporter in any capacity other than by virtue of being an insider of the credit support issuer; and
  - (c) if the insider is a credit supporter, the insider does not beneficially own any designated credit support securities.

Unofficial consolidation for financial years beginning *before* January 1, 2011 and ending before October 31, 2011

- (4) A parent credit supporter is not a reporting issuer in a designated Canadian jurisdiction for the purposes of subparagraph (2)(b)(ii) if the parent credit supporter complies with a requirement of this Instrument by relying on a provision of National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*.

## **PART 14 EFFECTIVE DATE AND TRANSITION**

### **14.1 Effective Date**

This Instrument comes into force on March 30, 2004.

### **14.2 Transition**

Despite section 14.1, section 5.7 applies for financial years of the reporting issuer beginning on or after January 1, 2007.