

**6.1.6 National Instrument 71-102, Continuous Disclosure and Other Exemptions Relating to Foreign Issuers**

**NATIONAL INSTRUMENT 71-102  
CONTINUOUS DISCLOSURE AND OTHER EXEMPTIONS RELATING TO FOREIGN ISSUERS**

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NATIONAL INSTRUMENT 71-102

CONTINUOUS DISCLOSURE AND OTHER EXEMPTIONS RELATING  
TO FOREIGN ISSUERS

PART 1

DEFINITIONS AND INTERPRETATION

1.1 Definitions and Interpretation<sup>1</sup>

- (1) A term used in this Instrument and defined in the securities statute of the local jurisdiction has the meaning given to it in that statute unless: (a) the definition in that statute is restricted to a specific portion of the statute that does not govern continuous disclosure, proxy solicitation, financial disclosure, insider reporting or take-over and issuer bid matters; or (b) the context otherwise requires.

- (2) Subject to subsection (1), in this Instrument:

“AIF” means a completed Form 51-102F1 *AIF* or, in the case of an SEC foreign issuer, either a completed Form 51-102F1 or a current annual report on Form 10-K, or on Form 20-F, under the 1934 Act;

“business acquisition report” means a completed Form 51-102F4 *Business Acquisition Report*;

“convertible security” means a security of an issuer that is convertible into, or carries the right of the holder to acquire, or of the issuer to cause the acquisition of, a security of the same issuer;

“designated foreign issuer” means an eligible foreign issuer:

- (a) that does not have a class of securities registered under section 12 of the 1934 Act and is not required to file reports under section 15(d) of the 1934 Act;
- (b) that is subject to the foreign disclosure requirements; and
- (c) for which the total number of equity securities owned of record, directly or indirectly, by residents of Canada does not exceed ten (10) per cent, on a fully-diluted basis, of the total number of equity securities of the issuer, calculated in accordance with sections 1.2 and 1.3;

“designated foreign jurisdiction” means Australia, France, Germany, Hong Kong, Italy, Japan, Mexico, The Netherlands, New Zealand, Singapore, South Africa, Spain, Sweden, Switzerland or the United Kingdom of Great Britain and Northern Ireland;

“eligible foreign issuer” means a reporting issuer, other than an investment fund, that is not incorporated or organized under the laws of Canada or a jurisdiction of Canada, unless:

- (a) outstanding voting securities carrying more than 50 per cent of the votes for the election of directors are owned of record directly or indirectly by residents of Canada; and
- (b) any one or more of:
  - (i) the majority of the senior officers or directors of the issuer are residents of Canada;
  - (ii) more than 50 per cent of the assets of the issuer are located in Canada; or
  - (iii) the business of the issuer is administered principally in Canada;

“equity security” means any security of an issuer that carries a residual right to participate in earnings of the issuer and, on the liquidation or winding-up of the issuer, in its assets;

“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

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<sup>1</sup> National Instrument 14-101 *Definitions* defines certain terms that are used in more than one national or multilateral instrument.

that is recognized for the purposes of National Instrument 21-101 *Marketplace Operation* and National Instrument 23-101 *Trading Rules*;

“exchangeable security” means a security of an issuer that is exchangeable for, or carries the right of the holder to acquire, or of the issuer to cause the acquisition of, a security of another issuer;

“foreign disclosure requirements” means the requirements to which an eligible foreign issuer is subject concerning disclosure made to a foreign regulatory authority:

- (a) relating to the eligible foreign issuer and the trading in its securities; and
- (b) that is made publicly available in the foreign jurisdiction under:
  - (i) the securities laws of the foreign jurisdiction in which the principal trading market of the eligible foreign issuer is located; or
  - (ii) the rules of the marketplace that is the principal trading market of the eligible foreign issuer;

“foreign regulatory authority” means a securities commission, exchange or other securities market regulatory authority in a designated foreign jurisdiction;

“group scholarship plan” means a scholarship plan the securities of which entitle the beneficiaries, who are designated in connection with the acquisition of the securities that have the same year of maturity, to a scholarship award proportionate to the value of the securities in respect of which they are designated, on or after maturity of the securities;

“inter-dealer bond broker” means a person or company that is approved by the IDA under IDA By-Law No. 36 *Inter-Dealer Bond Brokerage Systems*, as amended, and is subject to IDA By-Law No. 36 and IDA Regulation 2100 *Inter-Dealer Bond Brokerage Systems*, as amended;

“investment fund” means a mutual fund, a non-redeemable investment fund or a group scholarship plan;

“marketplace” means:

- (a) an exchange;
- (b) a quotation and trade reporting system;
- (c) a person or company not included in paragraph (a) or (b) that:
  - (i) constitutes, maintains or provides a market or facility for bringing together buyers and sellers of securities;
  - (ii) brings together the orders for securities of multiple buyers and sellers, and
  - (iii) uses established, non-discretionary methods under which the orders interact with each other, and the buyers and sellers entering the orders agree to the terms of a trade, or
- (d) a dealer that executes a trade of an exchange-traded security outside of a marketplace, but does not include an inter-dealer bond broker;

“MD&A” means a completed Form 51-102F2 *Management Discussion & Analysis* or, in the case of an SEC foreign issuer, either a completed Form 51-102F2 or management’s discussion and analysis prepared in accordance with Item 303 of Regulation S-K under the 1934 Act;

“multiple convertible security” means a security of an issuer that is convertible into, or exchangeable for, or carries the right of the holder to acquire, or of the issuer to cause the acquisition of, a convertible security, an exchangeable security or another multiple convertible security;

“Nasdaq” means Nasdaq National Market and Nasdaq SmallCap Market;

“non-redeemable investment fund” means, an issuer:

- (a) whose primary purpose is to invest money provided by its securityholders;

(b) that does not invest for the purpose of exercising effective control, seeking to exercise effective control or being actively involved in the management of the issuers in which it invests, other than other mutual funds or non-redeemable investment funds; and

(c) that is not a mutual fund;

“principal trading market” means the published market on which the largest trading volume in the equity securities of the issuer occurred during the issuer’s most recent financial year that ended before the date the determination is being made;

“published market” means, for a class of securities, a marketplace on which the securities have traded that discloses regularly in a publication of general and regular paid circulation or in a form that is broadly distributed by electronic means the prices at which those securities have traded;

“recognized exchange” means:

(a) in Ontario, an exchange recognized by the securities regulatory authority to carry on business as a stock exchange;

(b) in Québec, an exchange recognized by the securities regulatory authority as a self-regulatory organization, and

(c) 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;

“SEC foreign issuer” means an eligible foreign 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;

“SEDI issuer” has the meaning ascribed to that term in National Instrument 55-102 *System for Electronic Disclosure by Insiders (SEDI)*;

“TSX” means the Toronto Stock Exchange;

“underlying security” means a security issued or transferred, or to be issued or transferred, in accordance with the terms of a convertible security, an exchangeable security or a multiple convertible security;

“US 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 made under the 1934 Act; and

“US GAAS” means generally accepted auditing standards in the United States of America as supplemented by the SEC’s rules on auditor independence.

## 1.2 Determination of Canadian Shareholders

(1) For the purposes of sections 4.11, 7.1 and paragraph (c) of the definition of “designated foreign issuer”, a reference to equity securities owned of record, directly or indirectly, by residents of Canada, includes:

(a) the underlying securities that are equity securities of the eligible foreign issuer; and

- (b) the equity securities of the eligible foreign issuer represented by an American depositary receipt or an American depositary share issued by a depositary holding equity securities of the eligible foreign issuer.
- (2) For the purposes of paragraph (a) of the definition of “eligible foreign issuer”, securities represented by American depositary receipts or American depositary shares issued by a depositary holding voting securities of the eligible foreign issuer must be included as outstanding in determining both the number of votes attached to securities owned of record, directly or indirectly, by residents of Canada and the number of votes attached to all of the issuer’s outstanding voting securities.

### **1.3 Timing for Calculation of Designated Foreign Issuer and Eligible Foreign Issuer**

For the purposes of paragraph (c) of the definition of “designated foreign issuer”, paragraph (a) of the definition of “eligible foreign issuer” and section 4.11, the calculation is made:

- (a) if the issuer has not completed a financial year since becoming a reporting issuer, at the date that the issuer became a reporting issuer; and
- (b) for all other issuers,
  - (i) for the purpose of financial statement and MD&A filings under this Instrument, on the first day of the most recent year or year-to-date interim period for which operating results are presented in the financial statements or MD&A; and
  - (ii) for the purpose of other continuous disclosure filing obligations under this Instrument, on the first day of the issuer’s current financial year.

## **PART 2**

### **LANGUAGE OF DOCUMENTS**

#### **2.1 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) Notwithstanding subsection (1), if a person or company files a document only in French or only in English but delivers to securityholders of an issuer 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, linguistic obligations and rights prescribed by Québec law must be complied with.

#### **2.2 Filings Prepared in a Language other than French or English**

- (1) If a person or company files a document that is required to be filed under this Instrument that is a translation of a document prepared in a language other than French or English, the person or company must file the document upon which the translation was based.
- (2) An eligible foreign issuer filing a document upon which the translation was based under subsection (1) must file with the regulator or securities regulatory authority a certificate as to the accuracy of the translation.

## **PART 3**

### **FILING AND SENDING OF DOCUMENTS**

#### **3.1 Timing of Filing of Documents**

A person or company filing a document under this Instrument must file the document at the same time as, or as soon as practicable after, the filing or furnishing of the document to the SEC or to a foreign regulatory authority.

### 3.2 Sending of Documents to Canadian Securityholders

If a person or company sends a document to any securityholder of a class under US federal securities laws, or the laws or requirements of a designated foreign jurisdiction, and that document is required to be filed under this Instrument then such document must be sent at the same time to each securityholder of that class whose last address as shown on the books of the issuer is in the local jurisdiction.

## PART 4

### SEC FOREIGN ISSUERS

#### 4.1 Amendments / Supplements

Any amendments or supplements to disclosure documents filed by an SEC foreign issuer under this Instrument must also be filed.

#### 4.2 Material Change Reporting

An SEC foreign issuer is exempt from securities legislation requirements relating to disclosure of material changes if the issuer:

- (a) complies with the requirements of the US exchange on which its securities are listed or Nasdaq, as applicable, for making public disclosure of material information on a timely basis;
- (b) complies with foreign disclosure requirements for making public disclosure of material information on a timely basis, if securities of the issuer are not listed on a US exchange or quoted on Nasdaq;
- (c) promptly issues in Canada and files each news release issued by it for the purpose of complying with the requirements referred to in paragraph (a) or (b);
- (d) complies with the requirements of US federal securities law for filing or furnishing current reports to the SEC; and
- (e) files the current reports filed with or furnished to the SEC.

#### 4.3 Financial Statements

An SEC foreign issuer satisfies securities legislation requirements relating to the preparation, filing and delivery of interim financial statements, and annual financial statements and auditor's reports thereon if it:

- (a) complies with the requirements of US federal securities law relating to quarterly reports and annual reports;
- (b) in the case where securities of the issuer are listed on a US exchange or quoted on Nasdaq, complies with the requirements of the US exchange or Nasdaq relating to annual financial statements and interim financial statements;
- (c) files the quarterly reports and annual reports filed with or furnished to the SEC, a US exchange or Nasdaq;
- (d) complies with sections 7.1 and 7.3 as they relate to financial statements of the issuer that are included in any documents specified in paragraph (c); and
- (e) in the case of the annual financial statements, has them reviewed by the audit committee, if any, of the board of directors and approved by the board of directors.

#### 4.4 Annual Reports, AIFs, Business Acquisition Reports & MD&A

An SEC foreign issuer satisfies securities legislation requirements to file annual reports, AIFs, business acquisition reports and MD&A if it:

- (a) complies with the requirements of US federal securities law relating to annual reports, quarterly reports, current reports and management's discussion and analysis;
- (b) files each annual report, quarterly report, current report and management's discussion and analysis filed with or furnished to the SEC; and

- (c) complies with sections 7.1 and 7.3 as they relate to financial statements of the issuer that are included in any documents specified in paragraph (b).

#### 4.5 Proxies and Proxy Solicitation by the Issuer / Information Circulars

- (1) An SEC foreign issuer that has a class of securities registered under section 12 of the 1934 Act satisfies securities legislation requirements relating to information circulars, proxies and proxy solicitation if it:

- (a) complies with the requirements of US federal securities law relating to proxy statements, proxies and proxy solicitation;
- (b) files all material relating to the meeting that is filed with or furnished to the SEC;
- (c) sends each document filed under paragraph (b) to each securityholder whose last address as shown on the book of the issuer is in the local jurisdiction in the manner and at the time required by US federal securities law and the requirements of the US exchange on which securities of the issuer are listed or Nasdaq; and
- (d) complies with sections 7.1 and 7.3 as they relate to financial statements of the issuer that are included in any documents specified in paragraph (b).

- (2) An SEC foreign issuer that:

- (a) is a foreign private issuer as defined under Rule 3b-4 under the 1934 Act; and
- (b) is required to file reports under section 15(d) of the 1934 Act

satisfies securities legislation requirements relating to information circulars, proxies and proxy solicitation if it complies with the requirements of paragraphs (a), (b), (c) and (d) of subsection (1).

#### 4.6 Proxy Solicitation by Another Person or Company

- (1) A person or company, other than the SEC foreign issuer, satisfies securities legislation requirements relating to information circulars, proxies and proxy solicitation with respect to an SEC foreign issuer that has a class of securities registered under section 12 of the 1934 Act if the person or company complies with the requirements of paragraphs (a), (b), (c) and (d) of subsection 4.5(1).

- (2) A person or company, other than the SEC foreign issuer, satisfies securities legislation requirements relating to information circulars, proxies and proxy solicitation with respect to an SEC foreign issuer that meets the requirements of paragraphs 4.5(2)(a) and (b) if the person or company complies with paragraphs (a), (b), (c) and (d) of subsection 4.5(1).

- (3) If a proxy solicitation is made with respect to an SEC foreign issuer by a person or company other than the SEC foreign issuer and the person or company soliciting proxies lacks access to the relevant list of securityholders of the SEC foreign issuer, the exemption in subsection (1) or (2) is not available, if:

- (a) the aggregate published trading volume of the class on the TSX and the TSX Venture Exchange Inc. exceeded the aggregate published trading volume of the class on national securities exchanges in the United States of America and Nasdaq:
  - (i) for the 12 calendar month period before commencement of the proxy solicitation, if there is no other proxy solicitation for securities of the same class in progress, or
  - (ii) for the 12 calendar month period before commencement of the first proxy solicitation, if another proxy solicitation for securities of the same class is already in progress;
- (b) the information discussed by the SEC foreign issuer in its most recent Form 10-K or Form 20-F filed with the SEC under the 1934 Act demonstrated that paragraph (a) of the definition of “eligible foreign issuer” was satisfied; or
- (c) the person or company soliciting proxies reasonably believes that paragraph (a) of the definition of “eligible foreign issuer” is satisfied.

#### 4.7 Disclosure of Outstanding Share Data

An SEC foreign issuer is exempt from securities legislation requirements relating to disclosure of outstanding share data if the issuer:

- (a) reports outstanding share information in compliance with the 1934 Act; and
- (b) files a copy of all disclosure of outstanding share data made under the 1934 Act that has not previously been filed promptly after its filing with the SEC.

#### 4.8 Early Warning

A person or company is exempt from the early warning requirements and acquisition announcement provisions of securities legislation in respect of securities of an SEC foreign issuer that has a class of securities registered under section 12 of the 1934 Act if the person or company:

- (a) complies with the requirements of US federal securities law relating to the reporting of beneficial ownership of equity securities of the SEC foreign issuer; and
- (b) files each report of beneficial ownership that is filed with the SEC.

#### 4.9 Insider Reporting

The insider reporting requirements do not apply to an insider of an SEC foreign issuer that has a class of securities registered under section 12 of the 1934 Act if:

- (a) the SEC foreign issuer is not a SEDI issuer;
- (b) the insider complies with the requirements of US federal securities law regarding insider reporting; and
- (c) the insider files each insider report that is filed with the SEC.

#### 4.10 Communication with Beneficial Owners of Securities

An SEC foreign issuer that has a class of securities registered under section 12 of the 1934 Act satisfies securities legislation requirements relating to communications with, delivery of materials to and conferring voting rights upon non-registered holders of its securities who hold their interests in the securities through one or more intermediaries if the issuer:

- (a) complies with the requirements of Rule 14a-13 under the 1934 Act for any depositary and any intermediary whose last address as shown on the books of the issuer is in Canada; and
- (b) complies with the requirements of National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* with respect to fees payable to intermediaries, for any depositary and any intermediary whose last address as shown on the books of the issuer is in Canada.

#### 4.11 Going Private Transactions and Related Party Transactions

Securities legislation requirements relating to going private transactions and related party transactions do not apply to a SEC foreign issuer carrying out a going private transaction or related party transaction if the total number of equity securities of the SEC foreign issuer owned of record, directly or indirectly, by residents of Canada, does not exceed twenty (20) per cent, on a fully-diluted basis, of the total number of equity securities of the SEC foreign issuer.

#### 4.12 Change of Auditor

An SEC foreign issuer satisfies securities legislation requirements relating to a change of auditor if the issuer:

- (a) complies with US federal securities laws requirements relating to a change of auditor; and
- (b) files a copy of all filings made under US federal securities laws requirements relating to the change of auditor promptly after their filing with the SEC.

#### **4.13 Restricted Shares**

- (1) Securities legislation continuous disclosure requirements relating to restricted shares do not apply in respect of SEC foreign issuers.
- (2) Securities legislation minority approval requirements relating to restricted shares do not apply in respect of SEC foreign issuers.

### **PART 5**

#### **DESIGNATED FOREIGN ISSUERS**

##### **5.1 Amendments / Supplements**

Any amendments or supplements to disclosure documents filed by a designated foreign issuer under this Instrument must also be filed.

##### **5.2 Material Change Reporting**

A designated foreign issuer is exempt from securities legislation requirements relating to disclosure of material changes if the issuer:

- (a) complies with foreign disclosure requirements for making public disclosure of material information on a timely basis;
- (b) promptly issues in Canada and files each news release issued by it for the purpose of complying with the requirements referred to in paragraph (a); and
- (c) files the documents disclosing the material information filed with or furnished to the foreign regulatory authority.

##### **5.3 Financial Statements**

A designated foreign issuer satisfies securities legislation requirements relating to the preparation, filing and delivery of interim financial statements, and annual financial statements and auditor's reports thereon if it:

- (a) complies with the foreign disclosure requirements relating to interim financial statements, annual financial statements and auditor's reports on annual financial statements;
- (b) files the interim financial statements, annual financial statements and auditor's reports on annual financial statements required to be filed with or furnished to the foreign regulatory authority;
- (c) complies with sections 7.1 and 7.3 as they relate to financial statements of the issuer that are included in any documents specified in paragraph (b); and
- (d) in the case of the annual financial statements, has them reviewed by the audit committee, if any, of the board of directors and approved by the board of directors.

##### **5.4 Annual Reports, AIFs, Business Acquisition Reports & MD&A**

A designated foreign issuer satisfies securities legislation requirements to file annual reports, AIFs, business acquisition reports and MD&A if it:

- (a) complies with the foreign disclosure requirements relating to annual reports, quarterly reports, business acquisitions and management's discussion and analysis;
- (b) files each annual report, quarterly report, report in respect of a business acquisition and management's discussion and analysis required to be filed with the foreign regulatory authority; and
- (c) complies with sections 7.1 and 7.3 as they relate to financial statements of the issuer that are included in any documents specified in paragraph (b).

### 5.5 Proxies and Proxy Solicitation by the Issuer / Information Circulars

A designated foreign issuer satisfies securities legislation requirements relating to information circulars, proxies and proxy solicitation if it:

- (a) complies with the foreign disclosure requirements relating to proxy statements, proxies and proxy solicitation;
- (b) files all material relating to the meeting that is filed with the foreign regulatory authority;
- (c) sends each document filed under paragraph (b) to each securityholder whose last address as shown on the books of the issuer is in the local jurisdiction, in the manner and at the time required by the foreign disclosure requirements; and
- (d) complies with sections 7.1 and 7.3 as they relate to financial statements of the issuer that are included in any documents specified in paragraph (b).

### 5.6 Proxy Solicitation by Another Person or Company

- (1) A person or company, other than the designated foreign issuer, satisfies securities legislation requirements relating to information circulars, proxies and proxy solicitation with respect to a designated foreign issuer if the person or company satisfies the requirements of paragraphs 5.5(a), (b), (c) and (d).
- (2) If a proxy solicitation is made with respect to a designated foreign issuer by a person or company other than the designated foreign issuer and the person or company soliciting proxies lacks access to the relevant list of securityholders of the designated foreign issuer, the exemption in subsection (1) is not available, if:
  - (a) the aggregate published trading volume of the class on the TSX and the TSX Venture Exchange exceeded the aggregate trading volume on securities marketplaces outside Canada:
    - (i) for the 12 calendar months before commencement of the proxy solicitation, if there is no other proxy solicitation for securities of the same class in progress, or
    - (ii) for the 12 calendar month period before the commencement of the first proxy solicitation, if another proxy solicitation for securities of the same class is already in progress;
  - (b) the information disclosed by the designated foreign issuer in a document filed within the previous 12 months with a foreign regulatory authority, demonstrated that paragraph (a) of the definition of “eligible foreign issuer” was satisfied; or
  - (c) the person or company soliciting proxies reasonably believes that paragraph (a) of the definition of “eligible foreign issuer” is satisfied.

### 5.7 Disclosure of Outstanding Share Data

A designated foreign issuer is exempt from securities legislation requirements relating to disclosure of outstanding share data if the issuer:

- (a) complies with the foreign disclosure requirements relating to disclosure of outstanding share data; and
- (b) files each report disclosing outstanding share data that is filed with a foreign regulatory authority.

### 5.8 Early Warning

A person or company is exempt from the early warning requirements and acquisition announcement provisions of securities legislation in respect of securities of a designated foreign issuer if the person or company:

- (a) complies with the foreign disclosure requirements relating to reporting of beneficial ownership of equity securities of the designated foreign issuer; and
- (b) files each report of beneficial ownership that is filed with the foreign regulatory authority.

### 5.9 Insider Reporting

The insider reporting requirements do not apply to an insider of a designated foreign issuer if:

- (a) the designated foreign issuer is not a SEDI issuer;
- (b) the insider complies with the foreign disclosure requirements regarding insider reporting; and
- (c) the insider files each insider report that is filed with the foreign regulatory authority.

### 5.10 Communication with Beneficial Owners of Securities

A designated foreign issuer satisfies securities legislation requirements relating to communications with, delivery of materials to and conferring voting rights upon non-registered holders of its securities who hold their interests in the securities through one or more intermediaries if the issuer:

- (a) complies with foreign disclosure requirements regarding communication with beneficial owners of securities; and
- (b) complies with the requirements of National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* with respect to fees payable to intermediaries, for any depository and any intermediary whose last address as shown on the books of the issuer is in Canada.

### 5.11 Going Private Transactions and Related Party Transactions

Securities legislation requirements relating to going private transactions and related party transactions do not apply to a designated foreign issuer carrying out a going private transaction or related party transaction.

### 5.12 Change of Auditor

A designated foreign issuer satisfies securities legislation requirements relating to a change of auditor if the issuer:

- (a) complies with foreign disclosure requirements relating to a change of auditor; and
- (b) files a copy of all filings made under foreign disclosure requirements relating to the change of auditor promptly after their filing with the foreign regulatory authority.

### 5.13 Restricted Shares

- (1) Securities legislation continuous disclosure requirements relating to restricted shares do not apply in respect of designated foreign issuers.
- (2) Securities legislation minority approval requirements relating to restricted shares do not apply in respect of designated foreign issuers.

## PART 6

### FOREIGN TRANSITION ISSUERS

#### 6.1 Application

This Part only applies in Ontario.

#### 6.2 Definition

In this section, "foreign transition issuer" means an issuer:

- (a) that is not incorporated or organized under the laws of Canada or a jurisdiction of Canada;
- (b) that is not an SEC foreign issuer or designated foreign issuer;

- (c) that became a reporting issuer solely by listing securities on the TSX before •, 2003<sup>2</sup>;
- (d) of which the total number of securities of the class listed on the TSX registered in the names of residents of Canada does not exceed five percent of the total number of issued and outstanding securities of the class; and
- (e) of which the total number of holders of securities of the class listed on the TSX registered in the names of residents of Canada does not exceed 300.

### **6.3 Transitional Exemptions**

Until July 1, 2004 a foreign transition issuer is exempt from:

- (a) securities legislation requirements to file business acquisition reports, AIFs and MD&A;
- (b) securities legislation requirements relating to the preparation and filing of annual financial statements and auditors' reports thereon if the annual financial statements are:
  - (i) prepared in compliance with the laws of the foreign jurisdiction of incorporation or organization of the issuer, and
  - (ii) filed not later than the earlier of:
    - (A) promptly after they are filed with any other governmental agency or securities market regulatory authority, and
    - (B) 140 days after the end of the financial year; and
- (c) securities legislation requirements relating to the preparation and filing of interim financial statements, if the interim financial statements are:
  - (i) prepared in compliance with the laws of the foreign jurisdiction of incorporation or organization of the issuer; and
  - (ii) filed not later than:
    - (A) promptly after they are filed with any other governmental agency or securities market regulatory authority; and
    - (B) 60 days after the end of the interim period.

## **PART 7**

### **ACCOUNTING PRINCIPLES AND AUDITING**

#### **STANDARDS FOR ELIGIBLE FOREIGN ISSUERS**

### **7.1 Accounting Principles**

- (1) Subject to subsection (3) and subsections 7.2(1) and (2), an eligible foreign issuer satisfies securities legislation requirements relating to generally accepted accounting principles for annual and interim financial statements by filing statements prepared in accordance with:
  - (a) Canadian GAAP but may not be prepared in accordance with differential reporting options as set out in section 1300 of the Handbook;
  - (b) US GAAP if the issuer is an SEC foreign issuer;
  - (c) International Accounting Standards;

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<sup>2</sup> The date this Instrument is expected to become effective.

- (d) accounting principles that meet the disclosure requirements for foreign private issuers, as that term is defined for the purposes of the 1934 Act, if the issuer is an SEC foreign issuer and at the beginning of the most recent year or year-to-date interim period for which operating results are presented in the financial statements, the total number of equity securities owned of record directly or indirectly by residents of Canada does not exceed ten (10) percent, on a fully-diluted basis, of the total number of equity securities of the issuer provided that the financial statements include any reconciliation to US GAAP required by the SEC;
  - (e) accounting principles that meet the foreign disclosure requirements of the designated foreign jurisdiction that the issuer is subject to, if the issuer is a designated foreign issuer; or
  - (f) accounting principles that cover substantially the same core subject matter as Canadian GAAP, including recognition and measurement principles and disclosure requirements, provided the notes to the financial statements:
    - (i) explain the nature of material differences between Canadian GAAP and the accounting principles used that relate to measurement in the issuer's financial statements;
    - (ii) quantify the effect of material differences between Canadian GAAP and the accounting principles used that relate to measurement in the issuer's financial statements, including a tabular reconciliation between net income reported in the issuer's financial statements and net income computed in accordance with Canadian GAAP; and
    - (iii) provide disclosure consistent with Canadian GAAP requirements to the extent not already reflected in the financial statements.
- (2) An eligible foreign issuer that relies on subsection 7.1(1) must state in the notes to the financial statements which accounting principles the financial statements have been prepared in accordance with.
- (3) Where an eligible foreign issuer relies on subsection 7.1(1), the accounting principles used to prepare financial information presented for the comparative period must be the same as the accounting principles used for the most recently completed period presented in the financial statements.

## **7.2 Accounting Principles for Significant Acquisitions**

- (1) An eligible foreign issuer that cannot rely on section 4.4 or section 5.4 satisfies securities legislation requirements relating to accounting principles for:
- (a) the financial statements used to determine whether an acquisition of a business or related businesses is a significant acquisition, by complying with the following:
    - (i) if the issuer's financial statements are prepared under paragraph 7.1(1)(a), (b) or (c), the financial statements for a business or related businesses must be prepared in accordance with, or reconciled to, the same accounting principles used in the issuer's financial statements and the significance tests must be applied using financial information for both the issuer and the business or related businesses based on those accounting principles; and
    - (ii) if the issuer's financial statements are prepared under paragraph 7.1(1)(f), the financial statements for a business or related businesses must be prepared in accordance with, or reconciled to, Canadian GAAP and the significance tests must be applied using financial information for both the issuer and the business or related businesses based on Canadian GAAP;
  - (b) the financial statements of a business or related businesses included in a business acquisition report, by complying with the following:
    - (i) the financial statements required to be filed in a business acquisition report must be prepared in accordance with:
      - (A) Canadian GAAP, but may not be prepared in accordance with differential reporting options as set out in section 1300 of the Handbook; or
      - (B) accounting principles that cover substantially the same core subject matter as Canadian GAAP including recognition and measurement principles and disclosure requirements;

- (ii) the financial statements required to be filed in a business acquisition report must be prepared in accordance with the same accounting principles for each period presented;
  - (iii) if the issuer's financial statements are prepared under paragraph 7.1(1)(a) or (f), then the most recent financial statements for a business or related businesses required to be filed must be prepared in accordance with:
    - (A) Canadian GAAP but may not be prepared in accordance with differential reporting options as set out in section 1300 of the Handbook; or
    - (B) accounting principles that cover substantially the same core subject matter as Canadian GAAP, including recognition and measurement principles and disclosure requirements, provided the notes to the financial statements:
      - 1. explain the nature of material differences between Canadian GAAP and the accounting principles used that relate to measurement;
      - 2. quantify the effect of material differences between Canadian GAAP and the accounting principles used that relate to measurement, including a tabular reconciliation between net income reported in the financial statements and net income computed in accordance with Canadian GAAP; and
      - 3. provide disclosure consistent with Canadian GAAP requirements to the extent not already reflected in the financial statements.
  - (iv) if the issuer's financial statements are prepared under paragraph 7.1(1)(b), then the most recent financial statements for a business or related businesses required to be filed must be prepared in accordance with US GAAP or reconciled to US GAAP; or
  - (v) if the issuer's financial statements are prepared under paragraph 7.1(1)(c), then the most recent financial statements for a business or related businesses required to be filed must be prepared in accordance with International Accounting Standards, or reconciled to International Accounting Standards.
- (c) pro forma financial statements included in a business acquisition report, by complying with the following:
- (i) if the issuer's financial statements are prepared under paragraph 7.1(1)(a), (b) or (c), then the pro forma financial statements must be prepared using the accounting principles used by the issuer; or
  - (ii) if the issuer's financial statements are prepared under paragraph 7.1(1)(f), then the pro forma financial statements must be prepared using Canadian GAAP.

### **7.3 Auditing Standards**

- (1) Subject to subsections (2), (3) and (4), an eligible foreign issuer satisfies securities legislation requirements relating to the auditing standards that must be used to audit financial statements and prepare an auditor's report by filing financial statements and an accompanying auditor's report that have been audited or prepared, as the case may be, in accordance with:
- (a) Canadian GAAS;
  - (b) US GAAS;
  - (c) International Standards of Auditing;
  - (d) auditing standards that meet the foreign disclosure requirements of the designated foreign jurisdiction that the issuer is subject to, if the issuer is a designated foreign issuer; or
  - (e) auditing standards that are substantially equivalent to Canadian GAAS.
- (2) If an eligible foreign issuer relies on subsection (1)(c), (d) or (e), the auditor's report must specify which auditing standards are being applied.

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- (3) If an eligible foreign issuer relies on paragraph 7.1(1)(c) or (e), the auditor's report filed by the issuer must be accompanied by a statement by the auditor confirming that the auditing standards applied are substantially equivalent to Canadian GAAS.
- (4) If an eligible foreign issuer relies on paragraph 7.1(1)(c) or (e), the auditor's report filed by the issuer must be accompanied by a statement by the auditor disclosing any material differences in the form and content of the auditor's report as compared to an auditor's report prepared in accordance with Canadian GAAS.
- (5) If an eligible foreign issuer relies on:
  - (a) paragraph 7.3(1)(a), the auditor's report must not contain a reservation, or
  - (b) paragraph 7.3(1)(b), the auditor's report must contain an unqualified opinion, or
  - (c) paragraph 7.3(1)(c) or (e), the comparison required by subsection (4) must indicate that an auditor's report prepared in accordance with Canadian GAAS would not contain a reservation.

### **PART 8**

#### **EFFECTIVE DATE**

##### **8.1 Effective Date**

This Instrument comes into force on •, 2003.

## COMPANION POLICY 71-102CP TO NATIONAL INSTRUMENT 71-102

### CONTINUOUS DISCLOSURE AND OTHER EXEMPTIONS

#### RELATING TO FOREIGN ISSUERS

##### PART 1 – GENERAL

#### 1.1 Introduction and Purpose

- (1) National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (the “Instrument”) contains disclosure and other exemptions relating to foreign issuers, other than investment funds, that are reporting issuers in one or more Canadian jurisdictions.

The Instrument provides eligible foreign issuers with various options relating to the accounting principles used to prepare their financial statements and the auditing standards used to audit their annual financial statements.

The Instrument also provides broader relief from requirements of National Instrument 51-102 *Continuous Disclosure Obligations* (“NI 51-102”) for two sub-categories of eligible foreign issuers – SEC foreign issuers and designated foreign issuers – on the condition that they comply with the continuous disclosure (“CD”) requirements of the SEC or a designated foreign jurisdiction. SEC foreign issuers and designated foreign issuers are also exempted from certain other requirements of Canadian securities legislation, including insider reporting and early warning, that are not contained in NI 51-102.

- (2) This Companion Policy provides information about how the Canadian securities regulatory authorities interpret the Instrument, and should be read in conjunction with it.
- (3) The Instrument provides that certain persons and companies satisfy the requirements of Canadian securities legislation by complying with the requirements of certain foreign jurisdictions. The Canadian securities regulatory authorities consider that the requirements of the foreign regulators or foreign jurisdictions identified in the Instrument, as they concern continuous disclosure, AIF and MD&A, proxies and proxy solicitation, early warning and insider reporting, communication with beneficial owners of securities, and going private and related party transactions to adequately serve the purposes of Canadian securities legislation on the conditions set out in the Instrument.

#### 1.2 Other Relevant Legislation

In addition to this Instrument, foreign issuers should consult the following non-exhaustive list of legislation to see how it may apply to them:

- (1) Implementing Legislation (the regulation, rule, ruling, order or other instrument that implements the Instrument in each applicable jurisdiction);
- (2) NI 51-102;
- (3) National Instrument 71-101 *The Multijurisdictional Disclosure System* (“NI 71-101”).

#### 1.3 Multijurisdictional Disclosure System

- (1) NI 71-101 permits certain US incorporated issuers to satisfy specified Canadian CD requirements by using disclosure prepared in accordance with US requirements. The Instrument does not replace or alter NI 71-101. There are instances in which NI 71-101 and the Instrument offer similar relief to a reporting issuer, but other instances in which the relief available to a reporting issuer in one instrument differs from the relief available to the reporting issuer under the other instrument. Many issuers that are eligible for an exemption under the Instrument will be ineligible to rely on NI 71-101 and vice versa. For example, the Instrument defines a class of “SEC foreign issuers”. Not all US issuers referred to in NI 71-101 are SEC foreign issuers and not all SEC foreign issuers are US issuers.
- (2) An eligible US issuer may choose to use an exemption in the Instrument or NI 71-101. For example, section 17.1 of NI 71-101 grants an exemption from the insider reporting requirements to an insider of a US issuer that has securities registered under section 12 of the 1934 Act if the insider complies with the requirements of US federal securities law regarding insider reporting and files with the SEC any insider report required to be filed with the SEC. This relief goes beyond the exemption provided by section 4.9 of the Instrument which is not available to insiders of a SEDI issuer as defined in National Instrument 55-102 *System for Electronic Disclosure by Insiders (SEDI)* and requires that the insider of the SEC foreign issuer file with the applicable regulator or securities regulatory authority Canadian insider reports.

#### 1.4 Exemptions

- (1) The exemptions contained in the Instrument are in addition to any exemptions that may be available to an issuer under any other applicable legislation.
- (2) If an issuer wishes to seek exemptive relief from NI 51-102 on grounds similar but not identical to those permitted under this Instrument, the issuer should apply for this relief under the exemptive provisions of NI 51-102.

#### 1.5 Exemptions May Not Require Disclosure

Most of the exemptions in the Instrument are only available to a person or company that complies with a particular aspect of either US federal securities laws or the laws of a designated foreign jurisdiction. If those laws do not require the issuer to disclose, file or send any information, for example, because the issuer may rely on an exemption under those laws, then the issuer is not required to disclose, file or send any information in order to rely on the exemption contained in the Instrument.

### PART 2 – DEFINITIONS

#### 2.1 Calculation of Voting Securities Owned by Residents of Canada

In order to qualify for any of the exemptions contained in the Instrument, other than the relief for “foreign transition issuers” in Part 6, an issuer must be an “eligible foreign issuer”. The definition of eligible foreign issuer is based upon the definition of foreign private issuer in Rule 405 of the 1933 Act and Rule 3b-4 of the 1934 Act. For the purposes of the definition of “eligible foreign issuer”, it is the CSA’s view that, in determining the outstanding voting securities that are directly or indirectly owned of record by residents of Canada, an issuer should use reasonable efforts to:

- (a) determine securities held of record by a broker, dealer, bank, trust company or nominee or any of them for the accounts of customers resident in Canada;
- (b) count securities beneficially owned by residents of Canada as reported on reports of beneficial ownership, including insider reports and early warning reports; and
- (c) assume that a customer is a resident of the jurisdiction or foreign jurisdiction in which the nominee has its principal place of business if, after reasonable inquiry, information regarding the jurisdiction or foreign jurisdiction of residence of the customer is unavailable.

The determination of the percentage of securities of the foreign issuer owned of record by residents of Canada should be made in the same manner for the purposes of paragraph (d) of the definition of “designated foreign issuer” and paragraph (d) of the definition of “foreign transition issuer” in section 6.2 of the Instrument. This method of calculation differs from that of NI 71-101, which only requires a calculation based on the address of record. Accordingly, some SEC foreign issuers may qualify for exemptive relief under NI 71-101 but not under this Instrument.

### PART 3 – INSIDER REPORTS

#### 3.1 Requirement to File Insider Reports on SEDI

Insiders of foreign issuers who voluntarily file under National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)* are required to file insider reports electronically under SEDI. The Instrument does not provide an exemption from filing insider reports in the form required by Canadian securities legislation if the foreign issuer is a SEDI filer. However, under NI 71-101 an insider of an eligible U.S. issuer, as defined NI 71-101, is exempt from the insider reporting requirements if the insider complies with U.S. federal securities law regarding insider reporting and files with the SEC any insider report required to be filed with the SEC. Consequently, insiders of NI 71-101 eligible issuers are also exempt from the requirement to file insider reports on SEDI.

Insiders of a foreign issuer that do not file under SEDAR, and who are therefore eligible to file insider reports under section 4.9 or 5.9 of the Instrument, must file the foreign form of insider report in paper form.

### PART 4 – RESTRICTED SHARES

#### 4.1 Exemptions

Sections 4.13 and 5.13 of the Instrument provide exemptions from the minority approval requirements of restricted share requirements found in Alberta Securities Commission Policy 1.2, Ontario Securities Commission Rule 56-501 and Policy Q-17 of the Commission des valeurs mobilières du Québec.

## PART 5 – RESOURCE ISSUERS

### 5.1 Standards of Disclosure for Mineral Projects and Oil and Gas Activities

The Instrument does not provide an exemption from National Instrument 43-101 *Standards of Disclosure for Mineral Projects* or National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*. Issuers are reminded that those National Instruments apply to SEC foreign issuers and designated foreign issuers.

## PART 6 – ACCOUNTING PRINCIPLES AND AUDITING STANDARDS FOR ELIGIBLE FOREIGN ISSUERS

### 6.1 Accounting Principles

- (1) Appendix A to this Policy contains a chart outlining the accounting principles permitted for annual and interim financial statements for foreign issuers.
- (2) Appendix B to this Policy contains a summary of the accounting principles permitted for the financial statements of a business or businesses acquired by a foreign issuer.
- (3) Subsection 7.1(1) of the Instrument specifies that an eligible foreign issuer may file financial statements prepared in accordance with accounting principles that cover substantially the same core subject matter as Canadian GAAP provided the notes to the financial statements include a reconciliation to Canadian GAAP. Subparagraph (f)(ii) of subsection 7.1(1) requires quantification of the effect of material differences between Canadian GAAP and the accounting principles used that relate to measurement in the issuer's financial statements, including a tabular reconciliation between net income reported in the issuer's financial statements and net income computed in accordance with Canadian GAAP. While the differences impacting net income must be presented in a tabular format, differences relating to assets, liabilities, retained earnings, and other aspects of the issuer's financial statements may be presented in a tabular format or some other format.

### 6.2 Auditing Standards

- (1) **Chart** – Appendix C to this Policy contains a chart outlining the auditing standards permitted for foreign issuers.
- (2) **Foreign GAAS Substantially Equivalent to Canadian GAAS** - Paragraph (3) of section 7.3 of the Instrument refers to an auditor's report prepared in accordance with auditing standards that are substantially equivalent to Canadian GAAS. The Canadian securities regulatory authorities are of the view that in order for auditing standards to be substantially equivalent to Canadian GAAS, they must require underlying audit work that is comparable in scope, nature and timing to the work required in connection with an audit in accordance with Canadian GAAS. For example, auditing standards of a foreign jurisdiction such as the United States are known to the Canadian securities regulatory authorities to be substantially equivalent to the standards of the CICA. Foreign issuers using auditors from foreign jurisdictions, with auditing standards and supervisions that are less well known to securities regulatory authorities or regulators, are encouraged to consult with staff of securities regulatory authorities or regulators in advance of filing of financial statements to resolve uncertainty as to whether the securities regulatory authority or regulator will consider a particular auditor or auditing standards to be acceptable.

In making a determination of whether the foreign auditing standards are substantially equivalent to Canadian GAAS, auditors are referred, in particular, to the general standard of Canadian GAAS as set out in Section 5100 of the Handbook and its reference to an auditor's "objective state of mind". This standard, when read together with the objectivity standard for auditors contained in the Standards of Professional Conduct applicable to Canadian auditors in each jurisdiction, emphasizes the importance of the independence of the auditor. In the view of the Canadian securities regulatory authorities, auditor independence is an essential element of Canadian GAAS and should be reflected, among other things, in the foreign GAAS applied in order for the foreign GAAS applied and Canadian GAAS to be considered substantially equivalent.

## APPENDIX A

Accounting Principles Permitted for Annual and Interim Financial Statements  
of Eligible Foreign Issuers<sup>1,3</sup>

Accounting Principles:	Eligible Foreign Issuers <sup>2</sup>		
	SEC Foreign Issuers <sup>2</sup>	Designated Foreign Issuers <sup>2</sup>	Other Eligible Foreign Issuers
Canadian GAAP	✓	✓	✓
US GAAP	✓ No Canadian GAAP reconciliation required	✓ Canadian GAAP reconciliation may be required <sup>4</sup>	✓ Canadian GAAP reconciliation required
International Accounting Standards (no reconciliation)	✓	✓	✓
Foreign Accounting Principles Used in an SEC Filing (Annual F/S reconciled to US GAAP)	✓ if ≤ 10% Canadian shareholders		
Accounting Principles Accepted in the Designated Jurisdiction (no reconciliation)		✓	
Foreign Comprehensive Accounting Principles reconciled to Canadian GAAP	✓	✓	✓

**Notes**

- 1 This decision chart provides general guidance and should be read in conjunction with National Instrument 71-102, Companion Policy 71-102CP and National Instrument 51-102. The decision chart does not relate to financial statements other than those of reporting issuers.
- 2 These terms are defined in the Instrument.
- 3 Foreign issuers who are not eligible foreign issuers are required to fully comply with National Instrument 51-102.
- 4 A Canadian GAAP reconciliation would not be required if the designated foreign jurisdiction accepts financial statements prepared in accordance with US GAAP. See the second last row of this chart.

## APPENDIX B

**Accounting Principles Permitted for Financial Statements of a Business or  
Related Businesses Acquired by an Eligible Foreign Issuer**

If the Issuer's Financial Statements are prepared using:	Financial statements for an acquired business or related businesses in a Business Acquisition Report must be prepared in accordance with:	The <b>most recent annual and interim</b> financial statements for an acquired business or related businesses required in a Business Acquisition Report must be prepared in accordance with:
Canadian GAAP	Comprehensive accounting principles. <sup>1</sup>	Canadian GAAP or Comprehensive accounting principles <sup>1</sup> reconciled to Canadian GAAP.
US GAAP	Comprehensive accounting principles. <sup>1</sup>	US GAAP or Comprehensive accounting principles <sup>1</sup> reconciled to US GAAP.
International Accounting Standards	Comprehensive accounting principles. <sup>1</sup>	International Accounting Standards or Comprehensive accounting principles <sup>1</sup> reconciled to International Accounting Standards.
Foreign Comprehensive Accounting Principles reconciled to Canadian GAAP	Comprehensive accounting principles. <sup>1</sup>	Canadian GAAP or Comprehensive accounting principles <sup>1</sup> reconciled to Canadian GAAP.
Foreign Accounting Principles Used in an SEC Filing	Section 4.4 allows an SEC foreign issuer to satisfy the requirement for business acquisition reports by complying with SEC requirements for current reports.	
Accounting Principles Accepted in the Designated Jurisdiction	Section 5.4 allows a designated foreign issuer to satisfy the requirement for business acquisition reports by complying with the foreign disclosure requirements relating to business acquisitions.	

**Notes**

- 1 Comprehensive accounting principles are accounting principles that cover substantially the same core subject matter as Canadian GAAP, including recognition and measurement principles and disclosure requirements.
- 2 These terms are defined in the Instrument.

## APPENDIX C

Auditing Standards Permitted for Eligible Foreign Issuers<sup>5</sup>

Auditing Standards:	Eligible Foreign Issuers <sup>4</sup>		
	SEC Foreign Issuers <sup>4</sup>	Designated Foreign Issuers <sup>4</sup>	Other Eligible Foreign Issuers
Canadian GAAS	✓	✓	✓
US GAAS	✓ <sup>1</sup>	✓ <sup>1</sup>	✓ <sup>1</sup>
International Standards of Auditing	✓ <sup>1,2</sup>	✓ <sup>1,2</sup>	✓ <sup>1,2</sup>
Auditing Standards Accepted in the Designated Jurisdiction <sup>3</sup>		✓	
Other Auditing Standards substantially equivalent to Canadian GAAS	✓ <sup>1,2</sup>	✓ <sup>1,2</sup>	✓ <sup>1,2</sup>

**Notes**

- 1 Audit Report must be accompanied by a statement disclosing any material differences in the form and content of the audit report compared to a Canadian GAAS audit report.
- 2 Audit Report must be accompanied by a statement confirming that the auditing standards applied are substantially equivalent to Canadian GAAS.
- 3 The auditing standards must meet the foreign disclosure requirements of the designated foreign jurisdiction that the issuer is subject to.
- 4 These terms are defined in the Instrument.
- 5 Foreign issuers who are not eligible foreign issuers are required to fully comply with NI 51-102.