

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

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Guidance:

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

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

PART 1 DEFINITIONS, INTERPRETATION AND APPLICATION

1. Definitions

(1) In this instrument,

“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, but excludes transactions that are accounted for by the cost method;

“acquisition date” has the same meaning as in the issuer’s GAAP.

“annual financial statements” means the financial statements required by section 8;

“annual report” means a completed Form 51-103F1 *Annual and Mid-Year Reports*, prepared as an annual report or, in the case of an SEC issuer that is a venture issuer, the alternative disclosure permitted by section 42 of this instrument;

“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” or “board of directors” includes, for a person or company that does not have a board of directors, an individual or group that acts in a capacity similar to a board of directors;

“business” when used in relation to a major acquisition has the same meaning ascribed to that term in the issuer’s GAAP and 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 specifically been attributed;

“capital pool company” has the same meaning as in the corporate finance manual of the TSX Venture Exchange;

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

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

“convert”, “converting” and “conversion” include exercising, converting or exchanging a convertible security;

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

"CPC" has the same meaning as in the corporate finance manual of the TSX Venture Exchange;

“credit support issuer” has the same meaning as in subsection 13.4(1) of National Instrument 51-102 *Continuous Disclosure Obligations*;

“equity investee” means an entity that the venture issuer has invested in and accounted for using the equity method;

“exchangeable security issuer” has the same meaning as in subsection 13.3(1) of National Instrument 51-102 *Continuous Disclosure Obligations*;

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

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

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

- (a) the 2 most recently completed financial years,
- (b) the current financial year;

“information circular” means a completed Form 51-103F4 *Information Circular*;

“interim period” means,

- (a) in the case of a year other than a transition year, a period commencing on the first day of the financial year and ending 9, 6 or 3 months before the end of the financial year;
- (b) in the case of a transition year, a period commencing on the first day of the transition year and ending
 - (i) 3, 6, 9 or 12 months, if applicable, after the end of the old financial year, or
 - (ii) 12, 9, 6 or 3 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 and Auditing Standards*;

“major acquisition” means an acquisition of, including a lease of or option to acquire, by a venture issuer or one or more subsidiary entities of the venture issuer, directly or indirectly, a business or related business, if the value of the consideration transferred, determined in accordance with the issuer's GAAP without remeasuring previously held equity interests, for the business or related business equals 100% or more of the market capitalization of the venture issuer, but excludes an acquisition if the value of the consideration transferred for the business or related businesses is less than 100% of the optional market capitalization of the venture issuer;

Guidance:

IFRS 3 Business Combinations requires that when a business combination is achieved in stages, the acquirer’s previously held equity interests in the acquiree is remeasured at its acquisition date fair value. However, for the purpose of determining whether an acquisition of a business is a major acquisition, previously held equity interests in the acquiree are not required to be remeasured.

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

- (a) if the class of equity securities is traded on a published market,
 - (i) the number of securities of that class that were outstanding immediately before the announcement of the acquisitionby
 - (ii) the 10 day volume weighted average closing price of those securities as reported by the published market on the trading day immediately before announcement of the acquisition,
- (b) if the class of equity securities is not traded on a published market but the venture issuer has made application to have that class of securities listed or quoted on a published market,
 - (i) the number of securities of that class outstanding immediately before the announcement of the acquisition,

by,

- (ii) if the venture issuer is conducting an initial public offering in connection with its application to list or quote that class of securities, the price per security at which the board of directors reasonably anticipates the securities will be issued on the initial public offering, or
 - (iii) if the venture issuer is not conducting an initial public offering in connection with its application to list or quote that class of securities, the price per security at which the board of directors reasonably anticipates the securities to commence trading on the published market;
- (c) if the class of equity securities is not traded on a published market and no application to list or quote that class of securities on a published market has been made,
- (i) the number of securities of that class that were outstanding immediately before the announcement of the acquisition,
- by
- (ii) the fair market value of the outstanding securities of that class immediately before the announcement of the acquisition;

“marketplace” means any one of the following:

- (a) an exchange,
- (b) a quotation and trade reporting system,
- (c) a person or company not included in paragraph (a) or (b) that does each of the following:
 - (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,
 - (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,
- (d) a dealer, other than an inter-dealer bond broker, that executes a trade of an exchange-traded security outside of a marketplace;

“material contract” means each of the following:

- (a) a contract, other than a contract entered into in the ordinary course, to which the venture issuer or one or more of its subsidiary entities is a party if the contract is material to the venture issuer,
- (b) a contract, regardless of whether it was entered into in the ordinary course, if it is one or more of the following
 - (i) a contract with one or more directors, executive officers or founders of the venture issuer, other than an employment contract,
 - (ii) a continuing contract to sell the majority of the venture issuer’s products or services or to buy the majority of the venture issuer’s requirements of goods, services or raw materials,
 - (iii) a franchise or license or other agreement to use a patent, formula, trade secret, process or trade name,
 - (iv) a financing or credit agreement with terms that have a direct correlation with anticipated cash distributions of the venture issuer,
 - (v) an external management or external administration agreement,
 - (vi) a contract on which the continuation of the venture issuer’s business is substantially dependent;

Guidance:

Some examples of a contract on which the continuation of the venture issuer’s business might be substantially dependent include:

- (a) *financing or credit agreements that provide a majority of the venture issuer’s capital requirements if alternative financing on comparable terms is not readily available;*
- (b) *a contract calling for the purchase or sale of substantially all of the venture issuer’s property, plant and equipment, long-lived assets, or total assets;*
- (c) *an option, joint venture, purchase or other agreement relating to a mining or oil and gas property that represents a majority of the venture issuer’s business.*

“material related entity transaction” means one or more of the following, if it is material to the venture issuer:

- (a) a related party transaction as defined in the issuer's GAAP,
- (b) an oral or written agreement, or a transaction, to which a venture issuer is directly or indirectly a party and to which a person or company that is a related entity of the venture issuer at the time the agreement is entered into or the transaction is agreed to is also a party,
- (c) a material amendment to an agreement referred to in paragraph (b);

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

“mid-year interim financial report” means the interim financial report required by section 10;

“mid-year period” means

- (a) in the case of a year other than a transition year, a period commencing on the first day of the financial year and ending 6 months before the end of the financial year;
- (b) in the case of a transition year, a period commencing on the first day of the transition year and ending
 - (i) 6 months and 12 months, if applicable, after the end of the old financial year, or
 - (ii) 6 months and 12 months, if applicable, before the end of the transition year;

“mid-year report” means a completed Form 51-103F1 *Annual and Mid-Year Reports* completed in respect of a mid-year period or, in the case of an SEC issuer that is a venture issuer, the alternative disclosure permitted by section 42 of this instrument;

“optional interim period” means

- (a) in the case of a year other than a transition year, a period commencing on the first day of the financial year and ending 9 or 3 months before the end of the financial year;
- (b) in the case of a transition year, a period commencing on the first day of the transition year and ending
 - (i) 3 or 9 months, if applicable, after the end of the old financial year, or
 - (ii) 9 or 3 months, if applicable, before the end of the transition year;

“optional market capitalization” has the same meaning as market capitalization if the references in paragraph (c) of the definition of market capitalization to “before the announcement of the acquisition” are read as “before the acquisition date”.

“prescribed security” means in respect of a venture issuer, any of the following

- (a) a security issued by the venture issuer,
- (b) a put, call, option or other right or obligation to buy or sell a security of the venture issuer,
- (c) an instrument, agreement, security or exchange contract, the value, market price or payment obligations of which are derived from, referenced to or based on the value, market price or payment obligations of a security of the venture issuer,
- (d) any other instrument, agreement or understanding that affects, directly or indirectly, the economic interest of a person or company in respect of a security or an exchange contract of the venture issuer.

“principal holder” means a person or company, other than an underwriter in the course of a distribution, that holds securities of a venture issuer carrying more than 10% of the voting rights attached to any class of the venture issuer’s outstanding voting securities, where securities are considered to be “held” if the person or company holds the securities by way of either

- (a) beneficial ownership, or direct or indirect control or direction,
- (b) a combination of beneficial ownership and direct or indirect control or direction;

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

“publicly accountable enterprise” means a publicly accountable enterprise as defined in the handbook;

“published market” means a market that publishes closing prices for securities traded on that market;

“registered securityholder” means a registered holder of voting securities of a venture issuer as indicated on the register of shareholders maintained by the venture issuer or its registrar and transfer agent;

“related business” means a business which, in relation to a second business, one or more of the following apply

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

“related entity” of a venture issuer means a person or company that, at the relevant time, is one or more of the following

- (a) a “related party” as that term is defined in the issuer’s GAAP,
- (b) a founder or insider of the venture issuer or "close members of the family", as defined under Canadian GAAP applicable to publicly accountable enterprises, of a founder or insider,
- (c) a person or company of which a director, executive officer, or founder of the venture issuer is a director, executive officer or founder,
- (d) a director, executive officer or insider of the venture issuer or “close members of the family”, as defined under Canadian GAAP applicable to a publicly accountable enterprise, of a director, executive officer or insider,
- (e) a director, executive officer or insider of any other person or company referred to in paragraphs (b) or (c),
- (f) an affiliated entity of any person or company referred to in any of paragraphs (b), (c) or (d),
- (g) a person or company of which one or more persons or companies described in any paragraph of this definition beneficially own, in the aggregate more than 50% of the securities of any class of equity securities;

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

“report of material change, material related entity transaction or major acquisition” means a completed Form 51-103F2 *Report of Material Change, Material Related Entity Transaction or Major Acquisition*;

“restructuring transaction” means:

- (a) a reverse takeover;
- (b) an amalgamation, merger, arrangement or reorganization;
- (c) a transaction or series of transactions involving a venture issuer acquiring assets and issuing securities that results in
 - (i) new securityholders owning or controlling more than 50% of the venture issuer’s outstanding voting securities, and
 - (ii) a new person or company, a new combination of persons or companies acting together, the sellers of the assets, or new management either

- (A) being able to materially affect the control of the venture issuer,
 - (B) holding more than 20% of the outstanding voting securities of the venture issuer, unless there is evidence showing that the holding of those securities does not materially affect the control of the venture issuer;
- (d) 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 venture issuer and the venture issuer's proportionate interest in its assets;

Guidance:

The phrase "new securityholders" includes both beneficial owners who did not hold any of the venture issuer's securities before the restructuring transaction, and beneficial owners that held some securities in the venture issuer before the transaction, but who now, as a result of the transaction, own more than 50% of the outstanding voting securities.

"reverse takeover" means

- (a) a reverse acquisition, which has the same meaning as in Canadian GAAP applicable to a publicly accountable enterprise, or
- (b) a transaction where an issuer acquires a person or company by which the securityholders of the acquired person or company, at the time of the transaction, obtain control of the issuer, where for purposes of this paragraph, "control" has the same meaning as in Canadian GAAP applicable to a publicly accountable enterprise;

"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 a venture issuer that meets both of the following:

- (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,
- (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;

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

"senior unlisted issuer" has the same meaning as in National Instrument 51-102 *Continuous Disclosure Obligations*;

“solicit” or “solicitation” in connection with a proxy, includes

- (a) requesting a proxy whether or not the request is accompanied by or included in a form of proxy,
- (b) requesting a securityholder to execute or not to execute a form of proxy or to revoke a proxy,
- (c) sending a form of proxy or other communication to a securityholder under circumstances that 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 venture issuer,

but does not include

- (e) sending a form of proxy to a securityholder in response to an unsolicited request made by or on behalf of the securityholder,
- (f) performing ministerial acts or professional services on behalf of a person or company soliciting a proxy,
- (g) sending, by an intermediary as defined in NI 54-101, of the documents referred to in NI 54-101,
- (h) soliciting by a person or company in respect of securities of which the person or company is the beneficial owner,
- (i) publicly announcing, by a securityholder, how the securityholder intends to vote and the reasons for that decision, if that public announcement is made by
 - (i) a speech in a public forum, or
 - (ii) a press release, an opinion, a statement or an advertisement provided through a broadcast medium or by a telephonic, electronic or other communication facility, or appearing in a newspaper, a magazine or other publication generally available to the public;
- (j) communicating for the purposes of obtaining the number of securities required for a securityholder proposal under the laws under which the venture issuer is incorporated, organized or continued or under the venture issuer’s constating or establishing documents; or
- (k) communicating, other than a solicitation by or on behalf of the management of the venture issuer, to securityholders in the following circumstances:
 - (i) by one or more securityholders concerning the business and affairs of the venture issuer, including its management or proposals contained in a management

information circular, and no form of proxy is sent to those securityholders by the securityholder or securityholders making the communication or by a person or company acting on their behalf, unless the communication is made by

- (A) a securityholder who is an officer or director of the venture issuer if the communication is financed directly or indirectly by the venture issuer,
 - (B) a securityholder who is a nominee or who proposes a nominee for election as a director, if the communication relates to the election of directors,
 - (C) a securityholder whose communication is in opposition to an amalgamation, arrangement, consolidation or other transaction recommended or approved by the board of directors of the venture issuer and who is proposing or intends to propose an alternative transaction to which the securityholder or an affiliate or associate of the securityholder is a party,
 - (D) a securityholder who, because of a material interest in the subject-matter to be voted on at a securityholders' meeting, is likely to receive a benefit from its approval or non-approval, which benefit would not be shared pro rata by all other holders of the same class of securities, unless the benefit arises from the securityholder's employment with the venture issuer, or
 - (E) any person or company acting on behalf of a securityholder described in any of clauses (A) to (D);
- (ii) by one or more securityholders and concerns the organization of a dissident's proxy solicitation, and no form of proxy is sent to those securityholders by the securityholder or securityholders making the communication or by a person or company acting on their behalf;
 - (iii) as clients, by a person or company who gives financial, corporate governance or proxy voting advice in the ordinary course of business and concerns proxy voting advice if
 - (A) the person or company discloses to the securityholder any significant relationship with the venture issuer and any of its affiliates or with a securityholder who has submitted a matter to the venture issuer that the securityholder intends to raise at the meeting of securityholders and any material interests the person or company has in relation to a matter on which advice is given,
 - (B) the person or company receives any special commission or remuneration for giving the proxy voting advice only from the securityholder or securityholders receiving the advice, and
 - (C) the proxy voting advice is not given on behalf of any person or company soliciting proxies or on behalf of a nominee for election as a director, or

- (iv) by a person or company who does not seek directly or indirectly the power to act as a proxyholder for a securityholder;

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

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

“venture issuer” means an issuer in respect of which this instrument applies.

Guidance:

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

For example, the term “associate” is defined in both local securities statutes and Canadian GAAP applicable to publicly accountable enterprises. We are of the view that the references to the term “associate” in the instrument and its forms (e.g., item 12(2)(e) of Form 51-103F4 Information Circular) should be given the meaning of the term under local securities statutes since the context does not indicate that the accounting meaning of the term should be used.

If an issuer is permitted under National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards to file financial statements or interim financial reports

prepared in accordance with acceptable accounting principles other than Canadian GAAP then the issuer should interpret any reference in this instrument to a term or provision defined, or referred to, in Canadian GAAP applicable to publicly accountable enterprises as a reference to the corresponding term or provision in the other acceptable accounting principles.

- (5) *Refer to Canadian GAAP applicable to publicly accountable enterprises for the definition of “interim financial report”.*
 - (6) *When this instrument requires disclosure of a “material” relationship, transaction, agreement, plan or other information, in determining whether or not a particular matter is material, consider whether disclosing, omitting or misstating the relationship, transaction, agreement, plan or other information would likely influence or change a reasonable investor’s decision as to whether or not to buy, sell or hold a security in the capital of the venture issuer.*
- (2) For purpose of subsection (3), “core document definition” means the definition of “core document” set out in:
- (a) in Alberta, subsection 211.01(b) of the *Securities Act* (Alberta);
 - (b) in British Columbia, section 140.1 of the *Securities Act* (British Columbia);
 - (c) in Manitoba, subsection 174 of the *Securities Act* (Manitoba);
 - (d) in New Brunswick, section 161.1 of the *Securities Act* (New Brunswick);
 - (e) in Newfoundland and Labrador, section 138.1(b) of the *Securities Act* (Newfoundland and Labrador);
 - (f) in the Northwest Territories, section 122 of the *Securities Act* (Northwest Territories);
 - (g) in Nova Scotia, section 146A(b) of the *Securities Act* (Nova Scotia);
 - (h) in Nunavut, section 122 of the *Securities Act* (Nunavut);
 - (i) in Ontario, section 138.1 of the *Securities Act* (Ontario);
 - (j) in Prince Edward Island, section 122 of the *Securities Act* (Prince Edward Island);
 - (k) in Quebec, section 225.3 of the *Securities Act* (Quebec);
 - (l) in Saskatchewan, section 136.01(b) of the *Securities Act* (Saskatchewan);
 - (m) in the Yukon, section 122 of the *Securities Act* (Yukon).

- (3) Each of the following documents is prescribed as a core document for the purpose of the core document definition:
- (a) an annual report;
 - (b) a mid-year report;
 - (c) a report of material change, material related entity transaction or major acquisition, except for financial statements associated with a major acquisition.

2. Interpretation

In this instrument

- (a) an issuer is an “affiliated entity” of another issuer if one of them is the subsidiary entity of the other or if each of them is controlled by the same person or company,
- (b) an issuer is considered “controlled” by another person or company if that person or company has or shares the power to govern the financial and operating policies of the venture issuer so as to obtain benefits from its activities,
- (c) an issuer is a “subsidiary entity” of another issuer if it is controlled by that other issuer.

3. Application

- (1) This instrument applies to a reporting issuer unless, as determined at the applicable time set out in subsection (2), any of the following apply:
- (a) it is an investment fund;
 - (b) any of its securities are listed or quoted on one or more of the following
 - (i) the Toronto Stock Exchange,
 - (ii) an exchange registered as a “national securities exchange” under section 6 of the 1934 Act,
 - (iii) a marketplace outside of Canada or the United States, other than a designated venture market;
 - (c) except in Ontario, BC instrument 51-509 *Issuers Quoted in the U.S. Over-the-Counter Markets*, as amended from time to time, applies to the issuer;

- (d) the issuer is a senior unlisted issuer.
- (2) For the purposes of subsection (1), the applicable time of the determination is
- (a) the end of the venture issuer’s applicable financial year for the purpose of determining whether it is
 - (i) required to file an annual report under this instrument, or
 - (ii) required to file
 - (A) annual financial statements, associated management’s discussion and analysis and an annual information form, if applicable, under National Instrument 51-102 *Continuous Disclosure Obligations*,
 - (B) a certificate under National Instrument 52-109 *Certification of Disclosure in Issuers’ Annual and Interim Filings* in respect of its “annual filings” as that term is defined under that instrument;
 - (b) the end of the venture issuer’s applicable interim period for the purpose of determining whether it is required to file
 - (i) an interim financial report and associated management’s discussion and analysis under National Instrument 51-102 *Continuous Disclosure Obligations*,
 - (ii) a certificate under National Instrument 52-109 *Certification of Disclosure in Issuers’ Annual and Interim Filings* in respect of its “interim filings” as that term is defined under that instrument;
 - (c) the end of the venture issuer’s applicable mid-year period for the purpose of determining whether it is required to file a mid-year report under this instrument;
 - (d) the end of the most recently completed financial year for the purpose of determining whether it is required to file an information circular
 - (i) under this instrument, or
 - (ii) under National Instrument 51-102 *Continuous Disclosure Obligations*;
 - (e) the acquisition date for the purpose of determining whether it is required to file
 - (i) a report of material change, material related entity transaction or major acquisition under this instrument, or

- (ii) a report in Form 51-102F4 *Business Acquisition Report* under National Instrument 51-102 *Continuous Disclosure Obligations*;
- (f) the date of the material change for the purpose of determining whether it is required to file
 - (i) a report of material change, material related entity transaction or major acquisition under this instrument, or
 - (ii) a report in Form 51-102F3 *Material Change Report* under National Instrument 51-102 *Continuous Disclosure Obligations*.
- (3) Despite subsection (1), paragraph 35(1)(d) applies to an issuer that was a venture issuer but has ceased to be a venture issuer.
- (4) In this section, “designated venture market” means the Alternative Investment Market of the London Stock Exchange, the PLUS-SX market operated by PLUS Markets Group, plc, the NZAX Market of the New Zealand Stock Exchange, the Risk Capital Segment of the Segmento de Capital de Riesgo de la Bolsa de Valores de Lima, the NASDAQ *OMX* First North, the Bolsa de Valores de Colombia or other exchange, quotation and trade reporting system or other market that has been recognized or designated by the securities regulatory authority or regulator for the purpose of this instrument.

Guidance:

- (1) *The SEC website provides a list that identifies each exchange registered as a “national securities exchange”. See <http://www.sec.gov/divisions/marketreg/mrechanges.shtml>*
- (2) *In determining whether or not a venture issuer’s securities are listed or quoted on a “marketplace” outside of Canada or the United States, consider whether the securities are “listed or quoted”, as opposed to merely admitted for trading. Refer to the definition of “marketplace”.*
- (3) *Subsection 3(4) authorizes securities regulatory authorities to designate a market as a designated venture market. Refer to CSA Notice ■ for a current list of such markets.*

PART 2 DISCLOSURE OBLIGATIONS

Guidance:

- (1) *Generally, securities legislation in each of the jurisdictions prohibits a venture issuer from making a statement that is a misrepresentation or otherwise, in a material respect and at the time and in light of the circumstances, is false or misleading or fails to state a fact that is either required to be stated or that is necessary to make another statement not misleading. These prohibitions can apply in a number of circumstances and may differ somewhat among jurisdictions. Some examples include if the statement*
- (a) *could reasonably be expected to have a significant effect on the market price or value of the securities,*
 - (b) *is made to securities regulatory authorities or is in a document provided to securities regulatory authorities, or*
 - (c) *is made in connection with activities or oral or written communications, by or on behalf of an issuer that promote or reasonably could be expected to promote the purchase or sale of securities of the issuer.*

Breaching these provisions can lead to a variety of sanctions including, in some circumstances, fines and imprisonment.

- (2) *Directors and officers of a venture issuer can also be held liable for false or misleading statements if they authorize, acquiesce to or permit the statements. Directors and officers will therefore want to exercise diligence with respect to the accuracy and completeness of the disclosure made or authorized by the venture issuer.*

PART 3 GOVERNANCE RESPONSIBILITIES

4. Conflicts of Interest and Material Related Entity Transactions

The board of directors of a venture issuer must take steps reasonably designed to ensure that they are made aware of and have an opportunity to discuss and consider in a timely fashion, having regard to the best interests of the venture issuer, the following:

- (a) each conflict of interest between the venture issuer and any of its directors or executive officers;
- (b) each proposed material related entity transaction and the consideration to be paid or received by the venture issuer.

Guidance:

The board of directors should develop the policies and processes that it thinks are appropriate to accomplish the purposes described in section 4.

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

- (a) are implemented through written corporate policies or by way of conditions of employment or retention included as part of employment and consulting agreements;*
- (b) describe the circumstances under which directors and executive officers of the venture issuer would be expected to disclose conflicts of interest to the board of directors;*
- (c) describe the circumstances under which directors and executive officers would be expected to disclose proposed material related entity transactions to the board;*
- (d) assist the board in determining whether directors and executive officers are aware of the venture issuer's policies on conflicts of interest and material related entity transactions;*
- (e) describe what disclosure and reporting to the board is expected and when it is required in order to ensure the board of directors gets sufficient information and has an opportunity to consider the nature, effect and significance of the actual or perceived conflict of interest or material related entity transaction; and*
- (f) the process the board would use to review and assess the disclosure and reporting it has received.*

5. Audit Committees

- (1) The board of directors of a venture issuer must appoint an audit committee composed of at least three directors a majority of whom are not executive officers or employees of the venture issuer or an affiliated entity of the venture issuer.
- (2) The audit committee of a venture issuer must do each of the following:
 - (a) oversee the selection and appointment of an auditor;
 - (b) oversee the performance of services provided to the venture issuer by the auditor and the auditor's relationship with the venture issuer's management, including by doing each of the following

- (i) monitor the services provided by the auditor which are beyond the scope of the venture issuer's audit and the amount of fees charged for those services relative to the fees charged for the audit services,
 - (ii) meet annually with the auditors, independent of the executive officers of the venture issuer, before the board of directors review and approval of the annual financial statements, to determine whether there have been any disagreements or contentious issues between the auditor and the venture issuer's executive officers relating to the venture issuer's disclosure and whether those issues have been resolved to the satisfaction of the auditor,
 - (iii) meet with the auditor at such other times as reasonably necessary,
 - (iv) review and approve the hiring policies regarding employees, and consultants, previously employed by the venture issuer's auditor;
- (c) before filing or disclosure, review the annual financial statements, the auditor's report relating to those annual financial statements and the associated MD&A contained in the annual report, and make a recommendation to the board of directors regarding whether to approve that disclosure;
- (d) before filing or disclosure, review the mid-year interim financial report and associated MD&A contained in the mid-year report and either, if authorized to do so, approve that disclosure or make a recommendation to the board of directors regarding whether to approve that disclosure;
- (e) before filing or disclosure, review each interim financial report prepared for an optional interim period and either, if authorized to do so, approve that disclosure or make a recommendation to the board of directors regarding whether to approve that disclosure;
- (f) before filing or disclosure, review each news release if it contains financial information derived from annual financial statements, a mid-year interim financial report or an interim financial report for an optional interim period;
- (g) establish procedures reasonably designed to ensure each of the following
- (i) they receive, have an opportunity to consider and address and keep a record of each complaint or concern regarding questionable accounting, internal accounting controls and auditing matters,
 - (ii) complaints and concerns can be submitted to a non-management member of the audit committee or another individual designated by the audit committee who is not a member of management or a family member of management,

- (iii) that employees and consultants of the venture issuer can submit such complaints or concerns on a confidential and no-names basis.

Guidance:

Subsection 7(3) requires that the board of directors approve the annual report. Subsection 9(3) requires that either the board of directors or the audit committee approve the mid-year report and subsection 13(2)(b) requires that either the board of directors or the audit committee approve an interim financial report prepared for an optional interim period.

6. Trading Policies

A venture issuer must take steps reasonably designed to become aware of and to deter or prevent each person or company that is in a special relationship with the venture issuer, when they have knowledge of a material fact or material change with respect to the venture issuer that has not been generally disclosed, from

- (a) buying or selling or otherwise entering into a transaction with respect to a prescribed security,
- (b) except as necessary in the course of business, informing (“tipping”) another person or company of the material fact or material change, and
- (c) recommending or encouraging another person or company to buy, sell or otherwise enter into a transaction with respect to a prescribed security.

Guidance:

(1) *Policies and procedures that could significantly assist the board of directors in complying with the obligation in section 6 include those that:*

- (a) *are designed to ensure directors, executive officers, employees and consultants are aware of the venture issuer’s trading policies and the securities law prohibitions on insider trading, tipping and recommending, when a person or company is in possession of undisclosed material information;*
- (b) *identify persons or companies who typically have access to undisclosed material information;*
- (c) *establish certain black-out periods during which trading by persons or companies with access to undisclosed material information is prohibited, for example, during the preparation of and for some specified period (perhaps 2 trading days) after filing of the annual report, mid-year report or a news release containing material information;*
- (d) *establish procedures for limiting the persons or companies who have access to undisclosed material information before it is properly disclosed; and*

(e) *implement procedures to enable the board and management to become aware on a timely basis that undisclosed material information exists or is expected to become known within the venture issuer so that steps can be taken promptly to deal with it appropriately.*

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

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

(2) *Part 3 of National Policy 51-201 Disclosure Standards provides additional guidance on the meanings of the term “special relationship” and the phrase “necessary course of business”. Part 4 of that policy provides guidance on assessing materiality.*

PART 4 PERIODIC DISCLOSURE

7. Approval and Filing of Annual Report

- (1) A venture issuer must file an annual report for each financial year ended after becoming a venture issuer.
- (2) A report referred to in subsection (1) must be filed on or before the 120th day after the end of its most recently completed financial year.
- (3) The board of directors of the venture issuer must approve the annual report before it is filed.

Guidance:

Under subsection 5(2)(c), the audit committee is required to first make a recommendation to the board of directors regarding whether to approve the annual financial statements, applicable auditor’s report and associated MD&A forming part of the annual report.

8. Annual Report and Annual Financial Statements

- (1) A venture issuer must prepare an annual report in accordance with Form 51-103F1 *Annual and Mid-Year Reports*.
- (2) A venture issuer’s annual report must contain financial statements that
 - (a) include a statement of comprehensive income, a statement of changes in equity, and a statement of cash flows for
 - (i) the most recently completed financial year, and

- (ii) the financial year immediately preceding the most recently completed financial year, if any;
 - (b) if the venture issuer presents the components of profit or loss in a separate income statement, display the separate income statement immediately before the statement of comprehensive income filed under paragraph (a);
 - (c) include a statement of financial position as at the end of each of the periods referred to in paragraph (a);
 - (d) include a statement of financial position as at the beginning of the financial year immediately preceding the most recently completed financial year in the case of a venture issuer that discloses in its annual financial statements an unreserved statement of compliance with IFRS and that
 - (i) applies an accounting policy retrospectively in its annual financial statements,
 - (ii) makes a retrospective restatement of items in its annual financial statements, or
 - (iii) reclassifies items in its annual financial statements,
 - (e) in the case of a venture issuer's "first IFRS financial statements", as that phrase is defined in Canadian GAAP applicable to publicly accountable enterprises, include the opening IFRS statement of financial position at the "date of transition to IFRSs", as that phrase is defined in Canadian GAAP applicable to publicly accountable enterprises, and
 - (f) include notes to the annual financial statements.
- (3) The annual financial statements contained in the annual report must be audited.
- (4) The CEO and CFO of the venture issuer must certify the annual report as set out in Form 51-103F1 *Annual and Mid-Year Reports*.
- (5) If a venture issuer has outstanding restricted securities, or securities that are directly or indirectly convertible into restricted securities or securities that will, when issued, result in an existing class of outstanding securities being considered restricted securities, the venture issuer must comply with Part 10 of National Instrument 51-102 *Continuous Disclosure Obligations* as if it were a senior unlisted issuer to which that instrument applies and include the disclosure required by Part 10 of that instrument in the annual report.

Guidance:

- (1) *Form 51-103F1 Annual and Mid-Year Reports requires that the venture issuer's annual financial statements and the associated auditor's report be included in the annual report. The annual report must also be certified by the CEO and CFO.*
- (2) *Because the definition of annual financial statements in this instrument includes both the financial statements for the most recently completed financial year and the corresponding financial statements for the financial year immediately preceding the most recently completed financial year, a venture issuer will generally be required to include audited financial statements for the 2 most recently completed financial years.*
- (3) *Canadian GAAP applicable to publicly accountable enterprises provides an issuer 2 alternatives in presenting its income: (a) in one single statement of comprehensive income, or (b) in a statement of comprehensive income with a separate income statement. If an issuer presents its income using the second alternative, both statements must be filed to satisfy the requirements of paragraphs 8(2)(b) and 10(2)(b) of this instrument.*

9. Approval and Filing of Mid-Year Report

- (1) A venture issuer must file a mid-year report for each mid-year period ended after becoming a venture issuer.
- (2) A report referred to in subsection (1) must be filed on or before the 60th day after the end of its most recently completed mid-year period.
- (3) The board of directors or the audit committee of the venture issuer must approve the mid-year report before it is filed.

10. Mid-Year Report and Mid-Year Interim Financial Report

- (1) A venture issuer must prepare its mid-year report in accordance with Form 51-103F1 *Annual and Mid-Year Reports*.
- (2) A venture issuer's mid-year report must contain a mid-year interim financial report that
 - (a) includes a statement of comprehensive income, a statement of changes in equity, and a statement of cash flows for
 - (i) the most recent mid-year period, and
 - (ii) the mid-year period in the immediately preceding financial year, if any;
 - (b) if the venture issuer presents the components of profit or loss in a separate income statement, displays the separate income statement immediately before the statement of comprehensive income filed under paragraph (a);

- (c) includes a statement of financial position as at the end of each of
 - (i) the period referred to in paragraph (a)(i), and
 - (ii) the immediately preceding financial year
 - (d) in the case of a venture issuer's mid-year interim financial report in the year of adopting IFRS, includes the opening IFRS statement of financial position at the "date of transition to IFRSs," as that phrase is defined in Canadian GAAP applicable to publicly accountable enterprises, and
 - (e) includes notes to the mid-year interim financial report.
- (3) The CEO and CFO of the venture issuer must certify the mid-year report as set out in Form 51-103F1 *Annual and Mid-Year Reports*.

Guidance:

- (1) *A mid-year report is required to be prepared in Form 51-103F1 Annual and Mid-Year Reports. It is required to include the venture issuer's mid-year interim financial report and certain additional information, including MD&A. It is required to be certified by the venture issuer's CEO and CFO.*
- (2) *Mid-year interim financial reports are interim financial reports as that term is defined in Canadian GAAP applicable to publicly accountable enterprises. The term "interim financial report" is the term used under IFRS to refer to what was previously called "interim financial statements".*

11. First Annual Financial Statements and Mid-Year Interim Financial Reports After Becoming a Reporting Issuer

- (1) Despite any other provision of this Part, a venture issuer must file annual financial statements and an interim financial report for each annual and mid-year period immediately following the periods covered by the financial statements and interim financial reports of the venture issuer in the document filed
 - (a) that resulted in the venture issuer becoming a reporting issuer, or
 - (b) in respect of a transaction that resulted in the venture issuer becoming a reporting issuer.
- (2) If subsection (1) requires a venture issuer to file annual financial statements or an interim financial report for a period that ended on or before the date the venture issuer became a reporting issuer, those must be filed by the later of
 - (a) in the case of annual financial statements,

- (i) the 20th day after the venture issuer became a reporting issuer,
 - (ii) the filing deadline in subsection 7(2).
- (b) in the case of an interim financial report,
 - (i) the 10th day after the venture issuer became a reporting issuer,
 - (ii) the filing deadline in subsection 9(2).
- (3) A venture issuer is not required to provide comparative financial information for mid-year periods that ended before the venture issuer became a reporting issuer if all of the following apply:
 - (a) the board of directors or audit committee, acting reasonably, determines that it is impracticable to present prior-period information on a basis consistent with the requirements for an interim financial report,
 - (b) the prior-period information that is available is presented,
 - (c) the notes to the interim financial report disclose the fact that the prior-period information has not been prepared on a basis consistent with the most recent interim financial report.
- (4) Annual financial statements filed under this Part must be audited.

Guidance:

- (1) *Section 11 is intended to provide investors with access to the current financial history of the venture issuer by requiring venture issuers to file financial statements for all annual periods and interim financial reports for all mid-year periods that ended after the periods that are covered by the financial statements and interim financial reports which were included in the prospectus, information circular or other document that was filed in connection with the venture issuer becoming a reporting issuer.*
- (2) *Securities regulatory authorities are of the view that it is only “impracticable to present prior-period information” if the venture issuer has made every reasonable effort to present prior-period information on a basis consistent with the interim financial report. We are of the view that an issuer should only rely on this exemption in unusual circumstances and generally not for reasons related solely to the cost or the time involved in preparing the interim financial report.*

12. Delivery Options for an Annual Report or Mid-Year Report

A venture issuer must send its annual report and mid-year report to each registered securityholder using one or any combination of the following methods:

- (a) the method set out in section 4.6 of National Instrument 51-102 *Continuous Disclosure Obligations* as if the venture issuer were a senior unlisted issuer to which that instrument

applies;

- (b) a method to which the registered securityholder consents;
- (c) a method that satisfies all of the following:
 - (i) the venture issuer must issue a news release disclosing the filing of each annual report and mid-year report as soon as reasonably practicable, and in any event within 3 business days of the filing,
 - (ii) the news release must do each of the following
 - (A) provide the address of the SEDAR website and the specific address and/or a link to the specific page on another website, at which the annual report or mid-year report, as applicable, can be viewed electronically,
 - (B) disclose that a registered securityholder may request from the venture issuer a copy of the most recently filed annual report or mid-year report, as applicable, free of charge,
 - (C) disclose contact details including at least a toll-free phone number, which may be a number that permits collect calls, through which the request can be made,
 - (iii) if a registered securityholder of the venture issuer requests a copy of an annual report or mid-year report, the venture issuer must send the most recently filed annual report or mid-year report, as applicable, to the registered securityholder, without charge, as soon as reasonably practicable following the request and, in any event, within three business days of the request by either
 - (A) sending a paper copy by pre-paid mail, courier or another method that provides delivery within an equivalent time period,
 - (B) any other method to which the registered securityholder consents.

Guidance:

- (1) *Section 12 of this instrument permits use of a notice and access system as an alternative to mailing the annual report or mid-year report. However, applicable corporate law or the legal documents creating or establishing the issuer may impose a requirement that the annual financial statements be placed before or sent to the securityholders.*
- (2) *This instrument only addresses the notification and delivery requirements for registered securityholders. National Instrument 54-101 Communication with Beneficial Owners of Securities of a Reporting Issuer addresses delivery obligations with respect to beneficial securityholders.*

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

13. Interim Financial Reports for Optional Interim Periods

- (1) If the board of directors of a venture issuer decides to file an interim financial report for an optional interim period, the venture issuer must, on or before the end of the first optional interim period for which they intend to file an interim financial report, issue and file a news release disclosing the decision and indicating the first optional interim period for which an interim financial report will be filed.
- (2) If a venture issuer files an interim financial report for an optional interim period
 - (a) it must file it on or before the 60th day after the end of the optional interim period,
 - (b) the board of directors or the audit committee of the venture issuer must approve the interim financial report before it is filed,
 - (c) if an auditor has not performed a review of the interim financial report, the interim financial report must include a notice stating that fact,
 - (d) if an auditor was engaged to perform a review of the interim financial report and
 - (i) the auditor was unable to complete the review, a notice must be filed with the interim financial report disclosing that fact and the reasons for the inability to complete the review,
 - (ii) there was any reservation of opinion in the auditor’s interim review report, the interim review report must be filed with the interim financial report.
- (3) If a venture issuer has filed an interim financial report for an optional interim period the venture issuer must file the following additional interim financial reports for each of the following optional interim periods:
 - (a) if the first interim financial report filed was for the period commencing on the first day of the financial year ending 9 months before the venture issuer’s financial year end, the next 3 optional interim periods;
 - (b) if the first interim financial report filed was for the period commencing on the first day of the financial year and ending 3 months before the venture issuer’s financial year end, the next 4 optional interim periods.
- (4) If the board of directors of a venture issuer that has filed an interim financial report for an optional interim period decides to cease filing interim financial reports for optional interim periods then, on or before the last day of the financial year immediately preceding

the financial year that the venture issuer will cease filing interim financial reports for optional interim periods, the venture issuer must issue and file a news release disclosing its intention to cease filing interim financial reports for optional interim periods and indicating the last optional interim period for which an interim financial report will be filed.

- (5) Subsections (1) through (4) do not apply to a venture issuer if the only interim financial reports for optional interim periods that were filed were filed with either a prospectus, or an information circular prepared in connection with a restructuring transaction or major acquisition.

Guidance:

(1) *National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards requires that, subject to certain exceptions, all financial statements (which is defined in that instrument to include interim financial reports) “filed” be prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises and disclose*

(a) *in the case of annual financial statements, an unreserved statement of compliance with IFRS*

(b) *in the case of an interim financial report, an unreserved statement of compliance with International Accounting Standard 34 Interim Financial Reporting, as amended from time to time.*

Annual financial statements and interim financial reports (including those filed for an optional interim period) must comply with that instrument.

(2) *This instrument does not require that interim financial reports prepared for an optional interim period be mailed to shareholders.*

(3) *This instrument does not require that interim financial reports prepared for an optional interim period be accompanied by MD&A or a certificate of the CEO or CFO. However, the interim financial report and any accompanying discussion, analysis or other narrative are subject to the statutory prohibitions against misrepresentations.*

(4) *The purpose of subsection (4) is to ensure that venture issuers announce the decision to cease filing interim financial reports for optional interim periods prior to the end of the financial year in which the venture issuer will file its last interim financial report for an optional interim period.*

PART 5 PROXY SOLICITATION AND INFORMATION CIRCULARS

14. Requirements for Proxy Form and Information Circular

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

15. Delivery Options for Proxy Form

A person or company required to send a proxy form to a registered securityholder under this Part must use one or any combination of the following methods:

- (a) send paper copies by prepaid mail, courier or another method that provides for delivery in an equivalent time period,
- (b) any delivery method to which that registered securityholder consents.

16. Delivery Options for Information Circular and Proxy Related Material

- (1) A person or company required to send an information circular or any other proxy related material to a registered securityholder under this Part must use one or any combination of the following methods:

- (a) send paper copies by prepaid mail, courier or another method that provides for delivery in an equivalent time period,
- (b) a method to which the registered securityholder consents,
- (c) a method that satisfies the following:
 - (i) at least 30 days before the date fixed for the meeting, send, at no cost to a registered securityholder, in one of the methods described in paragraphs (a) or (b), a document (the “access document”) containing all of the following information, and no other information:
 - A. the date, time and location of the venture issuer’s securityholder meeting,
 - B. a factual description of each matter or group of related matters identified in the form of proxy to be voted on,
 - C. the website address other than the address for SEDAR, where the proxy-related materials are located,
 - D. a reminder to review the information circular before voting,
 - E. an explanation of how to obtain a paper copy of the information circular from the person or company, and
 - F. a document in plain language that explains notice and access and includes the following information:
 - (I) why the venture issuer is using notice-and-access,
 - (II) if the venture issuer is using stratification, as defined in National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*, which registered holders or beneficial owners are receiving paper copies of the information circular,
 - (III) the date and time by which a request for a paper copy of the information circular should be received in order for the requester to receive the information circular in advance of any deadline for the submission of voting instructions and the date of the meeting,
 - (IV) an explanation of how to return voting instructions, including any deadline for return of such instructions,

- (V) the page numbers of the information circular where disclosure regarding each matter or group of related matters identified in the notice in clause (i)B can be found,
 - (VI) a toll-free telephone number the beneficial owner can call to ask questions about notice-and-access,
- (ii) in the case of a solicitation by or on behalf of management of the venture issuer, at least 30 days before the date fixed for the meeting, issue a news release containing all of the following:
 - A. the information required in the access document;
 - B. if management is using the procedures in this paragraph only in respect of certain registered securityholders, an explanation of this decision;
- (iii) from the day the person or company soliciting proxies sends the documents required by paragraph (a) until at least the date of the meeting for which proxies are being solicited
 - A. provide public electronic access, to the extent reasonably practicable, through a website, other than SEDAR, to the information circular and all other proxy-related material in a format that permits a person or company with a reasonable level of computer skill and knowledge to access, read, search, download and print the document,
 - B. maintain a toll-free telephone number that can be used by registered securityholders to request a paper copy of the information circular and other proxy-related materials;
- (iv) if a request is received by a registered securityholder for a paper copy of the information circular or other proxy-related materials, send the information circular or other proxy-related materials, as applicable, to the registered securityholder in a method described in paragraph (a) or (b) no later than three business days after the request is received;
- (v) in the case of a solicitation by or on behalf of management of a venture issuer, where management sends paper copies of the information circular to other registered securityholders, send the paper copies to those other registered securityholders on the same day as they are sent under paragraph (a).

- (2) A venture issuer that uses the notice and access procedures in subsection (1)(c) to send proxy-related materials to a registered securityholder must do the following not more than 6 months and not less than 3 months before the expected date for the first meeting for which proxy-related materials will be sent by notice and access:
 - (a) post on a website that is not SEDAR a document in plain language that explains the notice and access procedures,
 - (b) issue a news release stating that the venture issuer intends to use notice and access procedures to deliver proxy-related materials and providing the website address where the document in paragraph (i) is posted.

Guidance:

- (1) *Section 16 of this instrument permits use of a notice and access system as an alternative to mailing an information circular. However, applicable corporate law or constating documents may impose a mailing requirement.*
- (2) *This instrument only addresses the notification and delivery requirements for registered securityholders. National Instrument 54-101 Communication with Beneficial Owners of Securities of a Reporting Issuer addresses delivery obligations with respect to beneficial securityholders.*

17. Dissident Proxy Solicitation Exemption

- (1) Despite subsection 14(2), a person or company, other than management of a venture issuer or a person or company acting on behalf of management, may solicit proxies from registered securityholders of a venture issuer without sending an information circular if
 - (a) the solicitation is made to the public by broadcast, speech or publication, in a manner legally permitted by the laws under which the venture issuer is incorporated, organized or continued,
 - (b) in the case of a solicitation that occurs in connection with a restructuring transaction,
 - (i) the following information is contained in the broadcast, speech or publication:
 - A. the name and address of the venture issuer to which the solicitation relates,
 - B. the information required by sections 7 and 21(2) and (4) of Form 51-103F4 *Information Circular*,

- C. whether the person or company giving a proxy has the right to revoke it and, if so, a description of any limitations on or conditions to the right to revoke,
 - D. a statement identifying the document referred to in paragraph (b)(ii)A and indicating that it is or will be available at www.sedar.com,
- (ii) all of the following documents are filed:
- A. a document containing the information required by subparagraphs (b)(i)A, B and C,
 - B. any information required to be disclosed or sent to securityholders by the laws under which the venture issuer is incorporated, organized or continued,
 - C. any communication to be published or sent to securityholders, or
- (c) in the case of a solicitation that occurs in connection with the nomination of a director,
- (i) a document containing the information required by Part 4 of Form 51-103F4 *Information Circular* is filed,
 - (ii) the broadcast, speech or publication indicates that the solicitation is made in connection with the nomination of a director, identifies the document in paragraph (c)(i) and indicates that it is or will be available at www.sedar.com.
- (2) A solicitation under section (1) will not be considered to be made to the public unless it is disseminated in a manner calculated to be reasonably effective in reaching the market for the venture issuer's voting securities by way of one or more of the following:
- (a) a speech in a public forum that is generally accessible;
 - (b) a news release, statement or advertisement provided through a news wire, broadcast medium, magazine or newspaper of general and widespread circulation, telephone conference call, webcast or similar communication facility that is generally accessible.
- (3) Subsection (1) does not apply to a person or company that is proposing, at the time of the solicitation, a transaction that would be a restructuring transaction or major acquisition, that would involve the venture issuer and the person or company or an affiliated entity of the person or company, if in relation to the transaction the securities of the person or

company, or securities of an affiliated entity of the person or company, are to be changed, exchanged, issued or distributed unless

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

Guidance:

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

18. Other Solicitation Exemptions

- (1) Section 14(2) does not apply if the total number of securityholders whose proxies are solicited is not more than 15 where joint registered securityholders are counted as a single registered securityholder.
- (2) Sections 14 to 17 do not apply to a venture issuer, or a person or company that solicits proxies from registered securityholders if
 - (a) the venture issuer or other person or company complies with the requirements of the laws relating to solicitation of proxies under which the venture issuer is incorporated, organized or continued,
 - (b) those requirements are substantially similar to the requirements of this Part, and
 - (c) the venture issuer or other person or company promptly files a copy of each form of proxy, information circular or other document that contains substantially similar disclosure, sent by the person or company in connection with the meeting.

PART 6 MATERIAL CHANGES, MATERIAL RELATED ENTITY TRANSACTIONS AND MAJOR ACQUISITIONS

19. Disclosure of Material Changes, Material Related Entity Transactions and Major Acquisitions

A venture issuer must immediately issue and file a news release authorized by an executive officer disclosing any of the following

- (a) a material change,
- (b) a material related entity transaction,
- (c) a decision to implement a material related entity transaction made either
 - (i) by the board of directors of the venture issuer,
 - (ii) by senior management of the venture issuer who believe that confirmation of the decision by the board of directors is probable,
- (d) the closing of a major acquisition.

20. Contents of Report of Material Change, Material Related Entity Transaction or Major Acquisition

- (1) Upon the occurrence of any of the events referred to in section 19, a venture issuer must prepare and file a report either
 - (a) in accordance with Form 51-103F2 *Report of Material Change, Material Related Entity Transaction or Major Acquisition*, or
 - (b) as a news release that
 - (i) contains the information required by Form 51-103F2 *Report of Material Change, Material Related Entity Transaction or Major Acquisition*, other than that relating to a prior news release, and
 - (ii) in the title of the news release identifies whether the report is a report of a material change, material related entity transaction or major acquisition.

Guidance:

If a report of material change, material related entity transaction or major acquisition is prepared in the form of a news release under paragraph 20(1)(b) and filed in the SEDAR category for reports of material change, material related entity transaction or major acquisition, it does not need to also be filed as a news release. However, the reverse is not true. If a report of material change, material related entity transaction or major acquisition is prepared in the form of a news release it is not sufficient to file it only in the SEDAR category for news releases. The

news release must also be filed in the SEDAR category for reports of material change, material related entity transaction or major acquisition.

- (2) A report filed pursuant to subsection (1) in respect of the closing of a major acquisition must include, or incorporate by reference, the financial statements and interim financial report for the business or related businesses required by section 22.

21. Filing Deadline for Report of Material Change, Material Related Entity Transaction or Major Acquisition

- (1) As soon as practicable but in any case by the 10th day after any of the events referred to in section 19, a venture issuer must file a report of material change, material related entity transaction or major acquisition, disclosing the event.
- (2) Despite subsection (1), the venture issuer may file the financial statements or interim financial report for a major acquisition either
 - (a) within 75 days after the acquisition date, or
 - (b) if the most recently completed financial year of the acquired business ended 45 days or less before the acquisition date, within 120 days after the acquisition date.

22. Financial Statement Requirements for a Major Acquisition

- (1) A report filed under section 20 in respect of the closing of a major acquisition must include, or incorporate by reference, each of the following for each business or related business:
 - (a) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows 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 acquisition date,
 - B. the financial year immediately preceding the most recently completed financial year, if any,
 - (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 acquisition date;
 - (b) a statement of financial position as at the end of each of the periods specified in paragraph (a);

- (c) notes to the financial statements.
- (2) The most recently completed financial period referred to in subsection (1) must be audited.
- (3) A report filed under section 20 in respect of the closing of a major acquisition must include, or incorporate by reference, interim financial reports for each business or related business for each of the following:
 - (a) the most recently completed mid-year period, or other period, that started the day after the date of the statement of financial position specified in paragraph (1)(b) and ended
 - (i) in the case of a mid-year period, before the acquisition date, or
 - (ii) in the case of a period other than a mid-year period, after the mid-year period referred to in subparagraph (i) and on or before the acquisition date; and
 - (b) a comparable period in the preceding financial year of the business.
- (4) If a venture issuer relies on the exemption in subsection 21(2) to file annual financial statements required under subsection (1) or an interim financial report required under subsection (3), the financial statements and interim financial report, as applicable, must be accompanied by a notice that discloses each of the following
 - (a) a title stating “Addendum to Report of Material Change, Material Related Entity Transaction or Major Acquisition”;
 - (b) the fact that the annual financial statements or interim financial report relate to a major acquisition and the acquisition date;
 - (c) the date of the report of material change, material related entity transaction or major acquisition to which they relate.
- (5) This section does not apply to a restructuring transaction.

Guidance:

Section 5 of Form 51-103F2 Report of Material Change, Material Related Entity Transaction or Major Acquisition requires that if information is incorporated by reference into a report that information must be filed by the venture issuer under its filer profile for SEDAR.

23. Contents of Mid-Year Interim Financial Report - Canadian GAAP Applicable to Private Enterprises

If a venture issuer is required under subsection 22(3) to include an interim financial report in a report of material change, material related entity transaction or major acquisition and the interim

financial report for the business or related business acquired is prepared in accordance with Canadian GAAP applicable to private enterprises, as permitted under National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*, the interim financial report must include each of the following:

- (a) a balance sheet as at the end of the mid-year 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 mid-year period, and comparative financial information for the corresponding mid-year period in the immediately preceding financial year, if any;
- (c) notes to the interim financial report.

24. Financial Statements for Related Businesses

If a venture issuer is required under section 22 to include financial statements for more than one business because a major acquisition involves an acquisition of related businesses, the financial statements required 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 venture issuer may present the financial statements of the businesses on a combined basis.

25. Exemption for Major Acquisitions Accounted for Using the Equity Method

A venture issuer is exempt from section 22 if

- (a) the acquisition is, or will be, of an equity investee;
- (b) the report of material change, material related entity transaction or major acquisition includes disclosure for the periods for which financial statements are otherwise required under subsection 22(1) that
 - (i) summarizes financial information of the equity investee, including the aggregated amounts of assets, liabilities, revenue and profit or loss; and
 - (ii) describes the venture issuer's proportionate interest in the equity investee and any contingent issuance of securities by the equity investee that might significantly affect the venture issuer's share of profit or loss;
- (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 report of material change, material related entity transaction or major acquisition

- (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 auditor expressed an unmodified opinion with respect to the financial statements referred to in subparagraph (i) or the financial information referred to in subparagraph (ii).

26. Exemption for Major Acquisitions if Financial Year End Changed

If under section 22 a venture 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 venture 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 9 months.

27. Exemption from Comparatives if Mid-Year Interim Financial Report Not Previously Prepared

A venture issuer is not required to provide comparative information for an interim financial report required under subsection 22(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 mid-year period of the acquired business;
- (b) the prior-period information that is available is presented; and
- (c) the notes to the interim financial report disclose the fact that the prior-period information has not been prepared on a basis consistent with the most recent mid-year financial information.

Guidance:

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

28. Exemption for Multiple Investments in the Same Business

Despite section 22, a venture issuer is exempt from the requirements to include, or incorporate by reference, financial statements and interim financial reports, as applicable, for an acquired business in a report of material change, material related entity transaction or major acquisition if the venture issuer has made multiple investments in the same business and the acquired business has been consolidated in the venture issuer's most recent annual financial statements that have been filed.

29. Exemption for an Acquisition of an Interest in an Oil and Gas Property

- (1) A venture issuer is exempt from the requirements in section 22 if
 - (a) the major acquisition is an acquisition of a business that is an oil and gas property or related businesses that are interests in oil and gas properties and that is not of securities of another issuer;
 - (b) the venture issuer is unable to provide the financial statements or interim financial reports in respect of the major acquisition required under section 22, or as otherwise permitted by sections 23, 25, 26, 27 or 28 because those financial statements or interim financial reports, as applicable, do not exist or because the venture issuer does not have access to those financial statements or interim financial reports, as applicable;
 - (c) the acquisition does not constitute a reverse takeover;
 - (d) subject to subsection (2), in respect of the business or related businesses, for each of the financial periods for which financial statements or an interim financial report, as applicable, would, but for this section, be required under section 22, or as otherwise permitted by sections 23, 25, 26, 27 or 28, the report of material change, material related entity transaction or major acquisition includes each of the following
 - (i) an operating statement for the business or related businesses prepared in accordance with subsection 3.11(5) of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*;
 - (ii) a description of the property or properties and the interest acquired by the venture issuer;
 - (iii) disclosure of the annual oil and gas production volumes from the business or related businesses;
 - (e) the operating statement for the most recently completed financial period referred to in subsection 22(1) is audited; and

- (f) the report of material change, material related entity transaction or major acquisition discloses each of the following
 - (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 venture issuer or to the seller of the person who prepared the estimates;
 - (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).
- (2) A venture issuer is exempt from the requirements of subparagraphs (1)(d)(i) and (iii), if each of the following applies:
 - (a) production, gross revenue, royalty expenses, production costs and operating income were nil for the business or related businesses for each financial period;
 - (b) the report of material change, material related entity transaction or major acquisition discloses this fact.

30. Disclosure and Financial Statements for a Restructuring Transaction

- (1) If a material change, material related entity transaction or major acquisition involves the closing of a restructuring transaction include, or incorporate by reference, in the report of material change, material related entity transaction or major acquisition information, including annual financial statements and interim financial reports, if applicable, as prescribed by section 17 of Form 51-103F4 *Information Circular*.
- (2) If a venture issuer relies on the exemption in subsection 21(2) to file annual financial statements required under subsection 22(1) or an interim financial report required under subsection 22(3), the financial statements and interim financial report, as applicable, must be accompanied by a notice that discloses each of the following
 - (a) a title stating “Addendum to Report of Material Change, Material Related Entity Transaction or Major Acquisition”;
 - (b) the fact that they relate to a major acquisition and the acquisition date;
 - (c) the date of the report of material change, material related entity transaction or major acquisition to which they relate.
- (3) Despite subsection (1) if disclosure for the restructuring transaction has been included in an information circular, a prospectus, a securities exchange takeover bid circular or other filed document, a venture issuer may comply with the disclosure requirements of this section by stating the name and date of that other document and that it is available on

SEDAR at www.sedar.com. The venture issuer must also include a statement that the applicable disclosure is incorporated by reference into the report of material change, material related entity transaction or major acquisition. If the other document is lengthy, the venture issuer must indicate the location of the relevant information in the other document.

Guidance:

Section 5 of Form 51-103F2 Report of Material Change, Material Related Entity Transaction or Major Acquisition requires that if information is incorporated by reference into a report that information must be filed by the venture issuer under its filer profile for SEDAR.

31. Confidential Report of Material Change

- (1) Despite sections 19 and 20, a venture issuer may temporarily delay generally disclosing a material change that is not a material related entity transaction, if
 - (a) the venture issuer immediately delivers the report required under section 21 marked to indicate that it is confidential, and
 - (b) either,
 - (i) in the opinion of the venture issuer, and if that opinion is arrived at in a reasonable manner, the disclosure required by section 19 would be unduly detrimental to the interests of the venture issuer, or
 - (ii) the material change consists of a decision to implement a change made by senior management of the venture issuer who believe that confirmation of the decision by the board of directors is probable, and senior management has no reason to believe that a person or company with knowledge of the material change has made use of that knowledge to buy or sell a prescribed security of the venture issuer.
- (2) If a venture issuer has filed a report under paragraph (1)(a), and the venture issuer believes the report should continue to remain confidential, the venture issuer must advise the securities regulatory authority or, except in Ontario and Québec, the regulator, in writing of this within 10 days of the date of filing of the initial report and every 10 days after that until either of the following applies
 - (a) the material change is generally disclosed as required under paragraph 19(a),
 - (b) if the material change consists of a decision of the type referred to in subparagraph (1)(c)(ii), until that decision has been rejected by the board of directors of the venture issuer.
- (3) If a report has been filed under paragraph (1)(a) and the venture issuer becomes aware of or has reasonable grounds to believe that a person or company with knowledge of the material change that has not been generally disclosed has bought or sold or is buying or

selling a prescribed security of the venture issuer, the venture issuer must promptly generally disclose the material change as required by sections 19 and 21.

PART 7 OTHER REQUIRED DISCLOSURE

32. Disclosure Made in Other Jurisdictions or Sent to Securityholders

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

Guidance:

National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards requires that, subject to certain exceptions, all financial statements and interim financial reports “filed” be prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises and, if required by securities legislation to be audited, must be audited in accordance with Canadian GAAS. Accordingly, if a financial statement, interim financial report and/or auditors’ report is required to be filed because of section 32 it must comply with National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards.

33. Change of Reporting Issuer Status or Name

- (1) An issuer must file a notice after each of the following circumstances:
 - (a) it becomes a reporting issuer, other than by filing a prospectus;
 - (b) it changes its name;
 - (c) it becomes a venture issuer;
 - (d) it ceases to be a venture issuer.

- (2) The notice required under subsection (1) must be filed as soon as practicable, and in any event not later than the deadline for the first filing required under this instrument following the change in circumstances referred to in subsection (1).
- (3) The notice required under subsection (1) must disclose each of the following:
 - (a) each of the circumstances under subsection (1) that apply to the issuer and any other party to a transaction that occurred in connection with the change of status or change of name;
 - (b) the significant terms of any transaction that occurred in connection with the change of status or change of name, including the names of the parties and the effective date of the transaction;
 - (c) if paragraph (1)(a) applies, each of the following,
 - (i) the date of the first financial year-end for the reporting issuer after becoming a reporting issuer,
 - (ii) the periods, including comparative periods, if any of the interim financial reports and annual financial statements required to be filed for the venture issuer's first financial year after becoming a reporting issuer,
 - (iii) the documents that were filed under this instrument describing the transaction and where those documents can be found on SEDAR.
- (4) This section does not apply if the venture issuer has disclosed the change of status or change of name as a material change under Part 6 and files a copy of the report of material change, material related entity transaction or major acquisition in the SEDAR category for changes in status.

Guidance:

If an issuer ceases or intends to cease to be a reporting issuer refer to CSA Staff Notice 12-307 Applications for a Decision that an Issuer is not a Reporting Issuer. If an issuer fails to file the applicable notice, regulators will not receive notice to update their records and may continue to report the issuer on a list of defaulting issuers.

34. Securityholder Documents and Material Contracts

- (1) A venture issuer must file each of the following documents and any material amendment to these documents:
 - (a) the constating documents establishing the venture issuer, including any articles or memorandum of incorporation, association, amalgamation or continuation;
 - (b) the venture issuer's existing by-laws or similar instruments;

- (c) any material securityholder or voting trust agreement that the venture issuer has access to;
 - (d) any material securityholders' rights plan or similar plan or contract of the venture issuer or a subsidiary of the venture issuer that significantly affects the rights or obligations of securityholders;
 - (e) a material contract.
- (2) A venture issuer may omit or make a provision of a material contract unreadable if
- (a) an executive officer of the venture issuer reasonably believes that disclosure of the provision would be seriously prejudicial to the interests of the venture issuer or violate confidentiality provisions,
 - (b) the provision does not relate to
 - (i) debt covenants and ratios in a financing or credit agreement,
 - (ii) events of default or other terms relating to the termination of a material contract,
 - (iii) other terms necessary for understanding the impact of the material contract on the venture issuer's business; and
 - (c) the venture issuer includes a description of the type of information that has been omitted or made unreadable in the material contract, immediately below the omitted or unreadable provision.
- (3) The documents required to be filed under (1) must be filed no later than the earlier of:
- (a) when the venture issuer files a report in Form 51-103F2 *Report of Material Change, Material Related Entity Transaction or Major Acquisition*, if the making of a document is a material change for the issuer;
 - (b) when the venture issuer's annual report is filed.

Guidance:

- (1) *Venture issuers should consider their securities law disclosure obligations when negotiating material contracts. Securities regulatory authorities or regulators will only consider exemptions from section 34(2)(b) in limited circumstances such as where it is reasonable for an executive officer of the venture issuer to consider that the disclosure would be seriously prejudicial to the venture issuer and the contract was negotiated before the issuer was a reporting issuer.*
- (2) *Disclosure that would violate applicable privacy legislation in Canada could be "seriously prejudicial"; however, generally when securities legislation requires*

disclosure of a particular type of information, applicable privacy legislation provides an exemption for the disclosure.

35. Change of Auditor

- (1) This section does not apply to a change of auditor required by legislation or resulting from a take-over, reorganization, merger or amalgamation unless one of the principal purposes of that transaction is to avoid making the disclosure required by this section.
- (2) A venture issuer that changes its auditor must, as soon as practicable following the change, and in any event not later than the deadline for the first filing required under this instrument following the change of auditor,
 - (a) prepare and deliver to its former and successor auditors a report describing the reasons for and circumstances surrounding the change, including details of any disagreement or reason related to the content or presentation of the venture issuer's annual financial statements or interim financial reports, any modified opinion or reservation of opinion related to the venture issuer's annual financial statements or interim financial reports, and the nature and extent of discussions between the venture issuer's former auditor and its audit committee or board of directors, and
 - (b) file a notice disclosing the change of auditor, including the report referred to in paragraph (a).
- (3) If a former or successor auditor concludes that the venture issuer's report fails to fairly and fully provide the information required by paragraph (2)(a), it must deliver a letter notifying the securities regulatory authority of the deficiency.

Guidance:

Form 51-103F4 Information Circular requires that the report referred to in paragraph 35(2)(a) be included in the next information circular that is sent and filed in connection with a meeting at which securityholders will be asked to appoint an auditor.

36. Financial News Release

If a venture issuer issues a news release disclosing information about its historical or prospective financial performance or financial condition, the venture issuer must promptly file that news release.

Guidance:

Subsection 5(2) requires that the news release be approved by the audit committee before it is issued.

37. Forward-Looking Information, FOFI and Financial Outlooks

- (1) A venture issuer that discloses material forward-looking information, other than in oral statements, must have a reasonable basis for that forward-looking information, and must do each of the following, in connection with disclosing the material forward-looking information:
 - (a) identify the statements that contain the material forward-looking information;
 - (b) caution users of the material forward-looking information that actual results may vary from the material forward-looking information and identify material known and reasonably foreseeable risk factors that could cause actual results to differ materially from the material forward-looking information;
 - (c) state the material factors or assumptions used to develop the material forward-looking information;
 - (d) describe any policy of the venture issuer for updating material forward-looking information, beyond that which is required by section 21 of Form 51-103F1 *Annual and Mid-Year Reports*.

- (2) A venture issuer may only disclose material forward-looking information about prospective financial performance, financial position or cash flows that is based on assumptions about future economic conditions and courses of action, (regardless of whether it is presented in the format of a historical statement of financial position, statement of comprehensive income or statement of cash flows, that is, as “future oriented financial information” or “FOFI”, or presented in some other manner as a “financial outlook”) if
 - (a) at the time of disclosure, the assumptions are reasonable in the circumstances,
 - (b) such information is limited to a period for which it can be reasonably estimated, and
 - (c) the venture issuer uses the accounting policies it expects to use to prepare its historical annual financial statements and interim financial reports for the period covered by such information.

- (3) A venture issuer that discloses information described in subsection (2) must, in addition to making the disclosure required by paragraph (1),
 - (a) state the date management approved the information unless the document in which the information is disclosed is dated, and
 - (b) explain the purpose of the information and provide a caution to readers that the information may not be appropriate for other purposes.

- (4) Subsections (2) and (3) do not apply to oral statements or to either of the following:
- (a) disclosure subject to the requirements of either or both of National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* and National Instrument 43-101 *Standards of Disclosure for Mineral Projects*;
 - (b) disclosure that has been made to comply with an exemption previously provided from the applicable requirements of paragraph (2)(a) if that exemption has not been removed.

Guidance:

- (1) *The provisions dealing with forward-looking information in section 37 would apply not only to documents filed by a venture issuer with securities regulatory authorities but also to its news releases, website and marketing materials.*
- (2) *In addition to the provisions in this instrument dealing with forward-looking information, the securities legislation in certain jurisdictions contains secondary market civil liability provisions which create a statutory right of action on the part of persons or companies who relied on the forward-looking information if the forward-looking information contains a misrepresentation.*

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

38. Change in Year End

- (1) A venture issuer that decides to change its financial year-end must, as soon as practicable, and in any event not later than the deadline for the first filing required under this instrument following such decision, file a notice disclosing
 - (a) that it has decided to change its year-end and the reason for the change,
 - (b) its old financial year-end and new financial year-end,
 - (c) the length and ending date of the periods and comparative periods of the mid-year interim financial report and annual financial statements to be filed for its transition year and new financial year, and
 - (d) the filing deadlines, respectively, for the mid-year report and annual report for its transition year.

- (2) For the purposes of this section,
 - (a) a transition year must not exceed 15 months; and
 - (b) the first mid-year period after an old financial year must not exceed 7 months.
- (3) Despite section 10, a venture issuer is not required to file a mid-year report for:
 - (a) any period in its transition year if the transition year is less than 9 months in length.
 - (b) any period in its transition year that ends not more than 3 months
 - (i) after the last day of its old financial year; or
 - (ii) before the first day of its new financial year.
- (4) If a transition year is less than 9 months in length, the venture issuer must include as comparative financial information to its annual financial statements for its new financial year
 - (a) a statement of financial position, a statement of comprehensive income, a statement of changes in equity, a statement of cash flows and notes to the financial statements for its transition year,
 - (b) a statement of financial position, a statement of comprehensive income, a statement of changes in equity, a statement of cash flows, and notes to its financial statements for its old financial year,
 - (c) a statement of financial position as at the beginning of the old financial year, in the case of a venture issuer that discloses in its annual financial statements an unreserved statement of compliance with IFRS and that
 - (i) applies an accounting policy retrospectively in its annual financial statements,
 - (ii) makes a retrospective restatement of items in its annual financial statements, or
 - (iii) reclassifies items in its annual financial statements.
- (5) If the mid-year period for the venture issuer's transition year ends 6 or 12 months after the end of its old financial year, the venture issuer must include as comparative financial information in its mid-year interim financial report
 - (a) during its transition year, a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the corresponding mid-year period in the immediately preceding financial year, except if a mid-year period

during the transition year is 12 months in length and the venture issuer's transition year is longer than 13 months, the comparative financial information must be the statement of financial position, statement of comprehensive income, statement of changes in equity and statement of cash flows for the 12 month period that constitutes its old financial year; and

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

both, as appropriate, for the same calendar months as, or as close as possible to, the calendar months in the Mid-Year period in the new financial year;

- (c) in the case of a venture issuer that discloses in its mid-year interim financial report a statement of compliance with International Accounting Standard 34 *Interim Financial Reporting*, a statement of financial position as at the beginning of the earliest comparative period if the venture issuer
 - (i) applies an accounting policy retrospectively in its mid-year interim financial report,
 - (ii) makes a retrospective restatement of items in its mid-year interim financial report, or
 - (iii) reclassifies items in its mid-year interim financial report.

39. Reverse Takeovers

- (1) A venture issuer that completes a reverse takeover, must file the following financial statements and interim financial reports for the reverse takeover acquirer, unless the financial statements or interim financial reports have already been filed:
 - (a) audited annual financial statements for all financial years and interim financial reports for each mid-year period ending before the date of the reverse takeover and after the date of the financial statements and interim financial reports, as applicable, included in either of the following documents if the document was prepared in connection with the reverse takeover
 - (i) an information circular or similar document;
 - (ii) under section 11 of Form 51-103F2 *Report of Material Change, Material Related Entity Transaction or Major Acquisition*, or
 - (b) if the venture issuer did not file a document referred to in paragraph (a) or the document did not include the financial statements or interim financial reports of the reverse takeover acquirer that would be required to be included in a prospectus, the financial statements and each interim financial report that the reverse takeover acquirer would be required to provide in the prospectus the reverse takeover acquirer was eligible to file immediately before the reverse takeover.
- (2) The annual financial statements required by subsection (1) must be filed by the later of
 - (a) the 20th day after the date of the reverse takeover, and
 - (b) the 120th day after the end of the financial year.

- (3) The interim financial reports for mid-year periods required by subsection (1) must be filed by the later of
 - (a) the 10th day after the date of the reverse takeover,
 - (b) the 60th day after the end of the mid-year period, and
 - (c) the filing deadline in subsection (2).
- (4) A venture issuer is not required to provide comparative mid-year period financial information in the financial statements or interim financial reports of the reverse takeover acquirer for periods that ended before the date of a reverse takeover if it is impracticable. If applicable, the notes to the interim financial report must disclose that the prior period information was not prepared on the same basis as the most recent interim financial report.

Guidance:

- (1) *Following a reverse takeover, the venture issuer that legally acquired the business that is now its legal subsidiary remains the reporting issuer. From a legal perspective this issuer was the acquirer; however, for accounting purposes this issuer is referred to as the reverse takeover acquiree. The venture issuer's financial statements and interim financial reports for periods ended on or after the date of the reverse takeover will reflect the financial performance of the legal subsidiary, referred to, for accounting purposes, as the reverse takeover acquirer. Consequently, the venture issuer's financial statements for annual financial years and interim financial reports for interim periods that end on or after the date of the reverse takeover must be prepared and filed as if the reverse takeover acquirer had always been the reporting issuer.*
- (2) *The venture issuer must also file all annual reports and mid-year reports of the reverse takeover acquiree for each annual financial year and mid-year period ending before the date of the reverse takeover, even if the filing deadline for those financial statements and interim financial reports is after the date of the reverse takeover.*
- (3) *See the guidance following section 11 of this instrument regarding the meaning of the word "impracticable".*
- (4) *If a venture issuer changes its year end in connection with a reverse takeover, section 38 requires that it file a notice.*

40. Refiling of a Continuous Disclosure Document

A venture issuer must immediately issue and file a news release that describes the nature and substance of the change or proposed changes and that is authorized by an executive officer, if it makes a decision to re-file a document filed under either this instrument or National Instrument 51-102 *Continuous Disclosure Obligations* and the information in the re-filed document will differ materially from the information originally filed.

Guidance:

If any portion of an annual report or mid-year report differs materially from the information originally filed, the entire revised annual report or mid-year report must be re-filed and recertified.

PART 8 EXEMPTIONS

41. Discretionary Exemptions

- (1) The securities regulatory authority or regulator may grant an exemption from this instrument, in whole or in part, subject to such conditions and 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) may be granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction or as otherwise permitted in the local jurisdiction.

42. SEC Issuers

- (1) A venture issuer that is an SEC issuer satisfies the requirements of section 8 with respect to the contents of an annual report for a financial year if it
 - (a) files an annual report or transition report prepared under the 1934 Act on Form 10-K or Form 20-F for that financial year,
 - (b) files concurrently with or as soon as reasonably practicable after the filing of the report referred to in (a), the information required by Item 402 “Executive Compensation” of Regulation S-K under the 1934 Act other than, as a foreign private issuer, by providing the information required by Items 6.B “Compensation” and 6.E.2 “Share Ownership” of Form 20-F under the 1934 Act, prepared for the financial year referred to in paragraph (a),
 - (c) is in compliance with the SOX 302 rules, and files the signed certificates required by the SOX 302 rules relating to the report referred to in paragraph (a) together or concurrently with the filing of that report,
 - (d) discloses in the report referred to in paragraph (a) or files together or concurrently with that report a document which includes the disclosure required by the following items of Form 51-103F1 *Annual and Mid-Year Reports*
 - (i) subsections 17(3) to (5) (MD&A disclosure for venture issuers without significant revenue),

- (ii) section 18 Business Objectives, Performance Targets and Milestones,
 - (iii) section 20 Significant Equity Investees,
 - (iv) section 21 Forward-Looking Information, FOFI and Financial Outlooks,
 - (v) section 25 Outstanding, Escrowed and Fully-Diluted Securities,
 - (vi) section 28 Trading Price and Volume,
 - (vii) section 29 Directors' and Executive Officers' Biographical Information and Securityholdings, but only as it relates to securityholdings,
- (e) if the disclosure required by either or both of paragraphs (b) and (d) is not included in the report referred to in (a), files together or concurrently with the report referred to in paragraph (a), the certificates required by subsection 8(4), modified as necessary to indicate that the certification applies to the disclosure required by paragraphs (b) and (d).
- (2) A venture issuer that is an SEC issuer satisfies the requirements of section 10 with respect to a mid-year report for a mid-year period if it
- (a) files each Form 6-K required under the 1934 Act that was prepared for an interim period ending during the mid-year period and containing the venture issuer's quarterly interim financial report and MD&A,
 - (b) is in compliance with the SOX 302 rules and files the signed certificates required by the SOX 302 rules relating to the report referred to in paragraph (a) together or concurrently with that report, and
 - (c) discloses in the report referred to in paragraph (a) prepared for an interim period ending at the end of the venture issuer's mid-year period, or files together with or concurrently with that report, a document which includes the disclosure required by the following items of Form 51-103F1 *Annual and Mid-Year Reports*
 - (i) subsections 17(3) to (5) (MD&A disclosure for venture issuers without significant revenue),
 - (ii) section 20 Significant Equity Investees,
 - (iii) section 21 Forward-Looking Information, FOFI and Financial Outlooks,
 - (iv) section 45 Mid-Year Interim Financial Report in Mid-Year Report,
 - (d) if the disclosure required by paragraph (c) is filed separately from the report referred to in (a), files together or concurrently with the report referred to in

paragraph (a) prepared for an interim period ending at the end of the venture issuer's mid-year period, the certificates required by subsection 10(3), modified as necessary to indicate that the certification applies to the disclosure required by paragraph (c).

- (3) Section 16(c) does not apply to an SEC issuer if it uses the procedures in Rule 14a-16 under the 1934 Act to deliver proxy-related materials to a registered securityholder.
- (4) An SEC issuer satisfies the requirements of section 38 if:
 - (a) it complies with the requirements of U.S. federal securities laws relating to a change of fiscal year; and
 - (b) it files a copy of all materials required by U.S. laws relating to a change of fiscal year at the same time as, or as soon as practicable after, they are filed with or furnished to the SEC and, in the case of annual and mid-year reports, no later than the filing deadlines prescribed under sections 7 and 9.
- (5) Section 35 does not apply to an SEC issuer 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; and
 - (c) includes the materials referred to in paragraph (b) with the next information circular that is sent and filed in connection with a meeting at which securityholders will be asked to appoint an auditor.

Guidance:

Paragraph 32(1)(c) of this instrument requires that the documents referred to in this section, if they are filed with or furnished to the SEC must be concurrently filed with the securities regulatory authority or regulator.

43. Exemptions for Exchangeable Security Issuers and Credit Support Issuers

- (1) An exchangeable security issuer satisfies the requirements of this instrument and the insider reporting and insider profile filing requirements under National Instrument 55-102 *System for Electronic Disclosure by Insiders* if it qualifies under and complies with section 13.3 of National Instrument 51-102 *Continuous Disclosure Obligations* as if it were a senior unlisted issuer to which that instrument applies.
- (2) A credit support issuer satisfies the requirements of this instrument and the insider reporting and insider profile filing requirements under National Instrument 55-102 *System for Electronic Disclosure by Insiders* if it qualifies under and complies with

section 13.4 of National Instrument 51-102 *Continuous Disclosure Obligations* as if it were a senior unlisted issuer to which that instrument applies.

44. Existing Exemptions

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

PART 9 EFFECTIVE DATE AND TRANSITION

45. Effective Date

This instrument comes into force [●].

46. Transition

Despite section 45, Parts 4, 5 and 7 of this instrument do not apply to a venture issuer until the last day of a venture issuer's most recently completed financial year end which is on or after [●].

PART 10 LANGUAGE OF DOCUMENTS

47. Language of Documents

- (1) A document required to be filed under this instrument must be filed in English or French.
- (2) Despite subsection (1) if a person or company files a document only in English or French but delivers to securityholders a version of the document in the other language, the person or company must file that other version not later than when it is first delivered to securityholders.

- (3) If a person or company files a document under this instrument that is a translation of a document prepared in a language other than English or French, the person or company must
 - (a) attach a certificate as to the accuracy of the translation to the filed document; and
 - (b) make a copy of the document in the original language available to a registered holder or beneficial owner of its securities, on request.