

Appendix A

Schedule A-2

Amendments to Companion Policy 41-101CP to *National Instrument 41-101* *General Prospectus Requirements*

1. *Companion Policy 41-101CP to National Instrument 41-101 General Prospectus Requirements is amended.*
2. *Subsection 1.2(5) is amended by replacing “Companion Policy” with “companion policy”.*
3. *The following section is added after section 2.2:*

“Minimum offering amount

2.2.1 If the distribution of securities is being done on a best efforts basis, an issuer will need to determine if a minimum offering is required for the issuer to achieve one or more of the stated purposes of the offering, as expressed in the “Use of Proceeds” section of the prospectus. If this is the case, the issuer will need to provide a minimum and maximum offering amount. Otherwise, the issuer is required to provide the cautionary statement prescribed in paragraph 1.4(3)(b) of Form 41-101F1.

Although an issuer may determine that a minimum offering amount is not necessary for the prospectus offering, a regulator may reasonably infer that a minimum offering amount is appropriate in certain circumstances. This could occur, for example, if we have concerns that a minimum amount of proceeds must be raised in order for the issuer to achieve its stated objectives. Also, if we have concerns about an issuer continuing as a going concern, we may take the view that the issuer cannot achieve its stated objectives unless a minimum offering amount is raised. The imposition of a minimum offering amount by a regulator derives from the general responsibility of a regulator under securities laws to refuse a receipt for a prospectus if it appears that the aggregate of the proceeds from the sale of the securities under the prospectus and other resources of the issuer are insufficient to accomplish the purposes stated in the prospectus, or if it would not be in the public interest to issue a receipt. A benefit of the imposition of a minimum offering amount is that if the issuer fails to raise the minimum amount, investors benefit from an investor protection mechanism that facilitates the return of their subscription funds to them, if previously deposited.”.

4. *Section 2.9 is replaced with the following:*

“Offerings of convertible, exchangeable or exercisable securities

- 2.9** Investor protection concerns may arise where the distribution of a convertible, exchangeable or exercisable security is qualified under a prospectus and the subsequent conversion, exchange or exercise of this security is made on a prospectus-exempt basis. Specifically, this concern arises when the subsequent conversion, exchange or exercise occurs within a short period of time – generally 180 days or less - following the purchase of the original security.

The concerns arise because the conversion, exchange or exercise feature of the security may operate to limit or “strip away” the remedies available to an investor for a misrepresentation in a prospectus.

In particular, we are concerned about offerings of subscription receipts, or other types of securities which may be convertible, exchangeable or exercisable within a short period of time following the purchase of the original security (generally 180 days or less), where the investor, when purchasing the subscription receipt, or other similar type of security, is in effect also making an investment decision in respect of the underlying security.

Public interest concerns arise if the subsequent distribution of the underlying security is not part of the initial distribution and is not qualified by the prospectus.

These concerns arise because when the security is converted, exchanged or exercised prior to the end of the statutory period for a right of action for rescission under securities legislation (which in many jurisdictions is 180 days from the date of purchase of the original security), the purchaser of a convertible, exchangeable or exercisable security does not retain the same rights to rescission because the convertible, exchangeable or exercisable security that was issued under the prospectus has been replaced by the underlying security. In these circumstances, the original purchaser should retain the benefit of any remaining statutory right of rescission that would otherwise apply in respect of the convertible, exchangeable or exercisable security. As such, the issuer should provide the original purchaser of the convertible, exchangeable or exercisable security with a contractual right of rescission in respect of the conversion, exchange or exercise transaction.

In some cases, the subsequent distribution of the underlying security may be part of the initial distribution as it is part of a series of transactions involving further purchases and sales in the course of or incidental to a distribution. If this is the case the issuer should consider whether its prospectus should qualify the distribution of both the subscription receipt, or other similar type of security, as well as the underlying security.

The guidance above would not apply to an offering of warrants where the warrants may reasonably be regarded as incidental to the offering as a whole. For example, in the case of a typical special warrant offering, the special warrant converts into i) a common share, and ii) a common share purchase warrant (or a

fraction thereof). In such cases, we have generally accepted that the common share purchase warrant component merely represents a “sweetener”, and that the primary investment decision relates to the common share underlying the special warrant. This would also generally be the case with a unit offering where the unit consists of a common share, and a common share purchase warrant. Therefore, the regulator would not generally request that the issuer provide the original purchaser with a contractual right of rescission in respect of the sweetener warrants.”

5. *The second paragraph of section 3.4 is amended by replacing “10.1(1)” with “10.1(1.1)”.*

6. *Section 4.2 is amended by adding the following subsection after subsection (2):*

“(3) If a minimum offering amount is not provided and the issuer faces significant short-term expenditures or commitments, the issuer must provide additional disclosure as required under subsections 6.3(3) and (4) of Form 41-101F1 or subsections 4.2(3) and (4) of Form 44-101F1. The issuer must provide disclosure of how it will use the proceeds at different thresholds, describing what business objectives will be accomplished at each threshold as well as the priority of how the proceeds will be used. In describing the use of proceeds under each threshold, the disclosure must also include an assessment of the impact of raising this amount on the issuer’s liquidity, operations, capital resources and solvency.

Disclosures that may be necessary to understand this impact may include the following examples:

- (a) for issuers without significant revenue and available working capital, disclose the anticipated length of time that the proceeds at each threshold will suffice to meet expected cash requirements;
- (b) for issuers that have or anticipate having within the next 12 months any cash flow or liquidity problems, disclose how the proceeds at each threshold may impact the issuer’s ability to continue in operation for the foreseeable future and realize assets and discharge liabilities in the normal course of operations;
- (c) for issuers that have significant projects that have not yet commenced operations and the projects have therefore not yet generated revenue, describe how the proceeds at each threshold may impact the anticipated timing and costs of the project and other critical milestones;
- (d) for issuers that have exploration and development expenditures or research and development expenditures required to maintain properties or agreements in good standing, describe how the proceeds at each threshold may impact these properties or agreements.

If the issuer anticipates additional funds from other sources are to be used in conjunction with the proceeds and the available working capital, the issuer will need to sufficiently describe the amounts of those funds, the source of those funds and whether those funds are firm or contingent. If the funds are contingent, the issuer should describe the nature of the contingency.

Depending on the particular circumstances of the issuer, one or more of the above examples may require the provision of a minimum offering amount in the prospectus. Refer to section 2.2.1 of this Policy for additional guidance.”.

7. Subsection 5.3(1) is amended by

(a) in the first paragraph, adding the following after the first sentence:

“However, if the issuer is a reporting issuer whose principal assets are not cash, cash equivalents or an exchange listing, and the acquisition of the primary business represents a significant acquisition for the issuer, the reporting issuer is subject to the requirements of Item 35 in respect of the financial statement and other disclosure for the acquisition.

An acquisition does not include a reverse takeover, as defined in NI 41-101 which cross-references the meaning of acquisition as used in Part 8 of NI 51-102. Therefore a reporting issuer cannot rely on the exemption in subsection 32.1(2) if the applicable transaction is a reverse takeover.”, **and**

(b) in the third paragraph, adding “, thereby triggering the application of Item 32,” before “are when the acquisition(s) was”.

8. Subsection 5.3(2) is amended by adding the following paragraph at the end:

“The issuer must also consider the necessity of including pro forma financial statements pursuant to section 32.7 of Form 41-101F1 to illustrate the impact of the acquisition of the primary business on the issuer’s financial position and results of operations. For additional guidance, an issuer should refer to section 5.10 of this Policy.”.

9. Subsection 5.4(1) is amended by replacing “In these circumstances, the issuer should consider including pro forma financial statements in the prospectus giving effect to the recently completed or proposed acquisition of a predecessor entity.” with the following:

“However, if the issuer is a reporting issuer whose principal assets are not cash, cash equivalents or an exchange listing, and the acquisition of the predecessor entity represents a significant acquisition for the issuer, the reporting issuer is subject to the requirements of Item 35 in respect of the financial statement and other disclosure for the acquisition.

The issuer must also consider the necessity of including pro forma financial statements pursuant to section 32.7 of Form 41-101F1 to illustrate the impact of the acquisition of the predecessor entity on the issuer's financial position and results of operations. For additional guidance, an issuer should refer to section 5.10 of this Policy.”

10. Subsection 5.9(7) is amended by

- (a) **adding “to” before “private enterprises in certain circumstances.”, and**
- (b) **adding “and the issuer must provide financial statements for this acquisition under Item 32” after “predecessor of the issuer”.**

11. Section 5.10 is replaced with the following:

“Financial statements for acquisitions of a predecessor entity, a business or businesses acquired by reporting and non-reporting issuers

5.10(1) The financial statements for acquisitions of a predecessor entity, a business or businesses acquired by the issuer, or other entity must be included in the prospectus under Item 32 of Form 41-101F1, if the entities or businesses satisfy the conditions of paragraph 32.1(1)(a), (b), or (c) of Form 41-101F1 and

- (a) the issuer was not a reporting issuer in any jurisdiction on the acquisition date in the case of a completed acquisition or immediately prior to the prospectus filing in the case of a proposed acquisition, as set out in section 35.1 of Form 41-101F1; or
- (b) the issuer was a reporting issuer with only cash, cash equivalents or an exchange listing as its principal asset.

If the issuer was a reporting issuer prior to the filing of the prospectus, but its principal asset was not cash, cash equivalents or its exchange listing, the issuer would be eligible to disclose the above-noted acquisitions in accordance with Item 35. The disclosure requirements applicable to a reporting issuer in Item 35 are intended to reflect the requirements that would be prescribed for such acquisitions in the reporting issuer's business acquisition report.

(2) An issuer that is subject to Item 32 must also consider the necessity of including pro forma financial statements pursuant to section 32.7 of Form 41-101F1 to illustrate the impact of the acquisition on the issuer's financial position and results of operations. However, these pro forma financial statements are only required if their inclusion is necessary for the prospectus to contain full, true and plain disclosure of all material facts relating to the securities being distributed. Examples of when pro forma financial statements would likely be necessary are in cases where:

- (a) the issuer has acquired multiple businesses over the relevant period; or

- (b) the issuer has an active business and has acquired another business that will constitute its primary business going forward.

In certain circumstances, an issuer may need to disclose multiple acquisitions in its prospectus where the acquisitions include an acquisition of a primary business or predecessor entity to which section 32.1 of Form 41-101F1 applies and a significant acquisition to which only item 35 of Form 41-101F1 applies. In this case, the issuer may wish to present one set of pro forma financial statements reflecting the results of all of the acquisitions, as contemplated separately in each of sections 32.8 and 35.7 of Form 41-101F1. The securities regulatory authority or regulator would not generally object to providing this relief. However the issuer must request the relief when filing its preliminary prospectus.”.

- 12. These amendments become effective on ●, 2012.