

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

1. ***The changes proposed to Companion Policy 41-101CP to National Instrument 41-101 General Prospectus Requirements are set out in this schedule.***
2. ***Subsection 1.2(3) is changed by***
 - a. ***inserting, in the title, “, NI 51-103” after “NI 51-102”, and***
 - b. ***inserting “NI 51-103,” after “NI 51-102,”.***
3. ***Subsection 3.6(3) is changed by inserting “or Form 51-103F4, as applicable,” after “Form 51-102F6”.***
4. ***Section 3.8 is changed by***
 - a. ***inserting “or a current annual report, as applicable” after “current AIF”,***
 - b. ***inserting “or NI 51-103, as applicable” after “NI 51-102”,***
 - c. ***inserting “or section 33.2 of Form 41-101F4, as applicable” after “section 34.3 of Form 41-101F1”,***
 - d. ***inserting “or section 33.3 of Form 41-101F4, as applicable” after each occurrence of “section 34.4 of Form 41-101F1”, and***
 - e. ***inserting “or section 33.3 of Form 41-101F4, as applicable” after “subparagraph 34.4(e)(ii) of Form 41-101F1”.***
5. ***Section 3.11 is changed by inserting “or section 19.8 of Form 41-101F4, as applicable,” after “Form 41-101F1”.***
6. ***Section 4.2 is changed by inserting “or section 1.7 of Form 41-101F4, as applicable” after each occurrence of “section 1.7 of Form 41-101F1”.***
7. ***Subsection 4.3(1) is changed by***
 - a. ***inserting “or Form 41-101F4, as applicable,” after “Subsection 6.3(1) of Form 41-101F1”, and***
 - b. ***inserting “or section 20.1 of Form 41-101F4, as applicable” after “subsection 21.1(1) of Form 41-101F1”.***

8. *Subsection 4.3(2) is changed by inserting “or Form 41-101F4, as applicable” after “section 6.3 of Form 41-101F1”.*

9. *Section 4.4 is replaced by the following:*

4.4 MD&A (1) Additional information for senior unlisted issuers, IPO venture issuers and venture issuers without significant revenue - Section 8.6 of Form 41-101F1 or section 5.8 of 41-101F4, as applicable, requires certain senior unlisted issuers, IPO venture issuers and venture issuers to disclose a breakdown of material costs whether expensed or recognized as assets. A component of cost is generally considered to be a material component if it exceeds the greater of

(a) 20% of the total amount of the class, and

(b) \$25,000.

(2) Disclosure of outstanding security data - Section 8.4 of Form 41-101F1 or section 10.2 of Form 41-101F4, as applicable, requires disclosure of information relating to the outstanding securities of the issuer as of the latest practicable date. The “latest practicable date” should be as close as possible to the date of the long form prospectus. Disclosing the number of securities outstanding at the most recently completed financial period is generally not sufficient to meet this requirement.

(3) Additional disclosure for issuers with significant equity investees - Section 8.8 of Form 41-101F1 or section 5.10 of Form 41-101F4, as applicable, requires issuers with significant equity investees to provide in their long form prospectuses summarized information about the equity investee. Generally, we will consider that an equity investee is significant if the equity investee would meet the thresholds for the significance tests in Item 35 of Form 41-101F1 or the thresholds provided in the guidance under Item 21 in Form 51-103F1, as applicable, using the financial statements of the equity investee and the issuer as at the issuer’s financial year-end.

10. *Subsection 4.6(1) is changed by inserting “or section 9.3 of Form 41-101F4, as applicable,” after “Form 41-101F1”.*

11. *Section 4.7 is changed by inserting “or section 9.5 of Form 41-101F4, as applicable,” after “Form 41-101F1”.*

12. *Section 4.8 is changed by inserting “or Item 32 of Form 41-101F4, as applicable” after “Item 33 of Form 41-101F1”.*

13. *Section 4.9 is changed by inserting “or Item 33 of Form 41-101F4, as applicable,” after “Form 41-101F1”.*

14. *Section 5.1.1 is changed by inserting “or subsections 31.2(2) and 31.3(3) of Form 41-101F4, as applicable” after “Form 41-101F1”.*

- 15. Section 5.2 is changed by inserting** “or sections 31.6 and 34.6 of Form 41-101F4, as applicable,” **after** “Form 41-101F1”.
- 16. Subsection 5.3(1) is changed**
- a. by inserting** “or Item 31 of Form 41-101F4, as applicable,” **after** “Item 32 of Form 41-101F1”,
 - b. by inserting** “or a major acquisition, as applicable” **after** “subsection 35.1(4) of Form 41-101F1”, **and**
 - c. by inserting** “A venture issuer should consider the instructions in section 31.1 of Form 41-101F4.” **after** “to determine whether a reasonable investor would regard the primary business of the issuer to be the acquired business or related businesses.”.
- 17. Subsection 5.3(2) is changed**
- a. by inserting** “or under Item 31 of Form 41-101F4, as applicable,” **after** “Item 32 of Form 41-101F1”,
 - b. by inserting** “or to sections 31.2 and 31.3 of Form 41-101F4, as applicable” **after** “sections 32.2 and 32.3 of Form 41-101F1”,
 - c. by inserting** “or in paragraphs 31.4(a) through (c) of Form 41-101F4, as applicable” **after** “paragraphs 32.4(a) through (e) of Form 41-101F1”,
 - d. by inserting** “but is not a venture issuer,” **after** “for an issuer that is a reporting issuer in at least one jurisdiction immediately before filing a long form prospectus,” **and**
 - e. by replacing** “subparagraph 32.2(6)(a)” **with** “paragraph 32.2(6)(a)”.
- 18. Section 5.4 is changed by inserting** “or Item 31 of Form 41-101F4, as applicable,” **after** “Form 41-101F1”.
- 19. Section 5.5 is changed by**
- a. inserting** “or Item 31 of Form 41-101F4, as applicable,” **after** “Item 32 of Form 41-101F1”,
 - b. inserting** “or sections 31.2, 31.3, 34.6 and 34.7 of Form 41-101F4, as applicable,” **after** “35.6 of Form 41-101F1”,

- c. replacing* “subparagraph 32.3(2)(e) and subsection 32.3(4) of Form 41-101F1” *with* “paragraph 32.3(2)(e) and subsection 32.3(4) of Form 41-101F1 or paragraph 31.3(2)(d) and subsection 31.3(4) of Form 41-101F4”,
- d. inserting* “or subsection 31.3(4) of Form 41-101F4, as applicable,” *after* “subsection 32.3(4) of Form 41-101F1”, *and*
- e. inserting* “or subsection 31.3(4) of Form 41-101F4, as applicable” *after* “Alternatively, pursuant to subsection 32.3(4) of Form 41-101F1”.

20. Section 5.6 is changed by

- a. inserting* “under Form 41-101F1” *after* “for an IPO”, *and*
- b. inserting* “years of audited historical financial statements and under Form 41-101F4 no less than two” *after* “no less than three”.

21. Subsection 5.8(2) is changed by

- a. inserting* “or Item 31 of Form 41-101F4, as applicable” *after* “Item 32 of Form 41-101F1”,
- b. inserting* “or Item 34 of Form 41-101F4, as applicable” *after* “Item 35 of Form 41-101F1”, *and*
- c. inserting* “or NI 51-103, as applicable” *after* “NI 51-102”.

22. Section 5.9 is replaced by the following:

Financial statement disclosure for significant acquisitions and major acquisitions

Applicable principles in NI 51-102 and NI 51-103

5.9(1) Generally, it is intended that the disclosure requirements set out in Item 35 of Form 41-101F1 for significant acquisitions or Item 34 of Form 41-101F4 for major acquisitions, as applicable, follow the requirements in Part 8 of NI 51-102 or in sections 22 and 23 of NI 51-103, as applicable.

(1.1) The guidance in Part 8 of the companion policy to NI 51-102 (“51-102CP”) apply to any disclosure of a significant business acquisition in a long form prospectus required by Item 35 of Form 41-101F1, except

- (a) any headings in Part 8 of 51-102CP should be disregarded,
- (b) subsections 8.1(1), 8.1(5), 8.7(8), and 8.10(2) of 51-102CP do not apply,

- (c) other than in subsections 8.3(4) and 8.7(7) of 51-102CP, any references to a “reporting issuer” should be read as an “issuer”,
- (d) any references to the “Instrument” should be read as “NI 51-102”,
- (e) any references to a provision in NI 51-102 in 51-102CP should be read to include the following “as it applies to a long form prospectus pursuant to Item 35 of Form 41-101F1”,
- (f) any references to “business acquisition report” should be read as “long form prospectus”,
- (g) in subsection 8.1(2) of 51-102CP, the term “file a copy of the documents as its business acquisition report” should be read as “include that disclosure in its long form prospectus in lieu of the significant acquisition disclosure required under Item 35 of Form 41-101F1”,
- (h) in subsection 8.2(1) of 51-102CP,
 - (i) the term “The test” should be read as “For any completed acquisition, the test”,
 - (ii) the sentence “For any proposed acquisition of a business or related businesses by an issuer that has progressed to a state where a reasonable person would believe that the likelihood of the issuer completing the acquisition is high, the test must be applied using the financial statements included in the long form prospectus.” should be added after “the business.”, and
 - (iii) the term “business acquisition report will be required to be filed” should be read as “disclosure regarding the significant acquisition is required to be included in the issuer’s long form prospectus”,
- (i) in subsection 8.3(1) of 51-102CP, the term “filing a business acquisition report” should be read as “the financial statements used for the optional tests”,
- (j) in section 8.5, and subsection 8.7(4), of 51-102CP, the term “filed” wherever it occurs, should be read as “included in the long form prospectus”,
- (k) in subsection 8.7(1) of 51-102CP, the term “as already filed” should be read as “included in the long form prospectus”,
- (l) in subsection 8.7(2) of 51-102CP, the term “filed under the Instrument” should be read as “included in the long form prospectus”,

- (m) in subsection 8.7(4) of 51-102CP, the term “presented” should be read as “for which financial statements are included in the prospectus”,
- (n) in subsection 8.7(6) of 51-102CP, the term “for which financial statements are included in the long form prospectus” should be added after “financial year”,
- (o) in paragraph 8.8(a) of 51-102CP, the term “prior to the deadline for filing the business acquisition report” should be read as “using the pre-filing procedures referred to in section 5.1 of this Policy”,
- (p) in subsection 8.9(1) of 51-102CP, the term “before the filing deadline for the business acquisition report and before the closing date of the transaction, if applicable. Reporting issuers are reminded that many securities regulatory authorities and regulators do not have the power to grant retroactive relief” should be read as “using the pre-filing procedures referred to in section 5.1 of this Policy”,
- (q) in subparagraphs 8.9(4)(a)(i) and 8.9(4)(b)(i) of 51-102CP, the term “no later than the time the business acquisition report is required to be filed” wherever it occurs should be read as “using the pre-filing procedures referred to in section 5.1 of this Policy”, and
- (r) in subsection 8.10(1) of 51-102CP, the term “but must be reviewed” should be added after “may be unaudited”.

Completed significant acquisitions and major acquisitions and the obligation to provide business acquisition report or Form 51-103F2 *Report of Material Change and Other Material Information* level disclosure for a non-reporting issuer

- (2) For an issuer that is not a reporting issuer in any jurisdiction immediately before filing the long form prospectus (a “non-reporting issuer”), the long form prospectus disclosure requirements for a significant acquisition or a major acquisition, as applicable, are generally intended to mirror those for reporting issuers subject to Part 8 of NI 51-102 or section 22 and 23 of NI 51-103, as applicable. To determine whether an acquisition is a significant acquisition or a major acquisition, as applicable, non-reporting issuers would first look to the guidance under section 8.3 of NI 51-102 or under section 22 of NI 51-103, as applicable.

For issuers other than venture issuers and IPO venture issuers, the initial test for significance would be calculated based on the financial statements of the issuer and acquired business or related businesses for the most recently completed financial year of each that ended before the acquisition date.

For issuers other than venture issuers and IPO venture issuers, to recognize the possible growth of a non-reporting issuer between the date of its most recently completed year end and the acquisition date and the corresponding potential decline in significance of the acquisition to the issuer, issuers should refer to the guidance in paragraph 35.1(4)(b) of Form 41-101F1 to perform the optional test. The applicable time period for this optional test for the issuer is the most recently completed interim period or financial year for which financial statements of the issuer are included in the prospectus and for the acquired business or related businesses is the most recently completed interim period or financial year ended before the date of the long form prospectus.

The significance thresholds for IPO senior unlisted issuers are identical to the significance thresholds for senior unlisted issuers in the case of NI 51-102.

The timing of the disclosure requirements set out in subsection 35.3(1) of Form 41-101F1 or section 34.3 of Form 41-101F4, as applicable, are based on the principles under section 8.2 of NI 51-102 or section 24 of NI 51-103. For reporting issuers, subsection 8.2(2) of NI 51-102 or paragraph 24(1)(a) of NI 51-103, as applicable, sets out the timing of disclosures for significant acquisitions or major acquisitions, as applicable, where the acquisition occurs within 45 days after the year end of the acquired business. However, for IPO senior unlisted issuers, paragraph 35.3(1)(d) of Form 41-101F1 imposes a disclosure requirement for all significant acquisitions completed more than 90 days before the date of the long form prospectus, where the acquisition occurs within 45 days after the year end of the acquired business.

This differs from the deadlines for filing a business acquisition report for senior unlisted issuers under paragraph 8.2(2)(b) of NI 51-102. The business acquisition report deadline for any significant acquisition where the acquisition occurs within 45 days after the year end of the acquired business is within 120 days after the acquisition date. For a venture issuer, the deadline for filing financial statements under a Form 51-103F2 is the same.

Probable acquisitions

- (3) When interpreting the phrase “where a reasonable person would believe that the likelihood of the acquisition being completed is high”, it is our view that the following factors may be relevant in determining whether the likelihood of an acquisition being completed is high:
 - (a) whether the acquisition has been publicly announced;
 - (b) whether the acquisition is the subject of an executed agreement;
 - (c) the nature of conditions to the completion of the acquisition including any material third party consents required.

The test of whether a proposed acquisition “has progressed to a state where a reasonable person would believe that the likelihood of the acquisition being completed is high” is an objective, rather than subjective, test in that the question turns on what a “reasonable person” would believe. It is not sufficient for an officer of an issuer to determine that he or she personally believes that the likelihood of the acquisition being completed is or is not high. The officer must form an opinion as to what a reasonable person would believe in the circumstances. In the event of a dispute, an objective test requires an adjudicator to decide whether a reasonable person would believe in the circumstances that the likelihood of an acquisition being completed was high. By contrast, if the disclosure requirement involved a subjective test, the adjudicator would assess an individual’s credibility and decide whether the personal opinion of the individual as to whether the likelihood of the acquisition being completed was high was an honestly held opinion. Formulating the disclosure requirement using an objective test rather than a subjective test strengthens the basis upon which the regulator may object to an issuer’s application of the test in particular circumstances.

We generally presume that the inclusion of financial statements or other information is required for all acquisitions that are, or would be, significant under Part 8 of NI 51-102 or would constitute a major acquisition under section 22 of NI 51-103, as applicable. Reporting issuers can rebut this presumption if they can provide evidence that the financial statements or other information are not required for full, true and plain disclosure.

Satisfactory alternative financial statements or other information

- (4) Issuers must satisfy the disclosure requirements in section 35.5 or section 35.6 of Form 41-101F1 or section 34.6 or section 34.7 of Form 41-101F4, as applicable, by including either
 - (i) the financial statements or other information that would be required by Part 8 of NI 51-102 or Part 5 and Part 6 of NI 51-103, as applicable, or
 - (ii) satisfactory alternative financial statements or other information.

Satisfactory alternative financial statements or other information may be provided to satisfy the requirements of subsection 35.5(3) or subsection 35.6(3) of Form 41-101F1 or subsection 34.6(3) or subsection 34.7(3) of Form 41-101F4, as applicable, when the financial statements or other information that would be required by Part 8 of NI 51-102 or Part 5 and Part 6 of NI 51-103, as applicable, relate to a financial year ended within 90 days before the date of the long form prospectus or an interim period ended within 60 days before the date of the long form prospectus for issuers that are senior unlisted issuers, and 45 days for issuers that are not senior unlisted issuers. In these circumstances, we believe that satisfactory alternative financial statements or other information would not have

to include any financial statements or other information for the acquisition or probable acquisition related to

- (a) a financial year ended within 90 days before the date of the long form prospectus, or
- (b) for issuers that are senior unlisted issuers, an interim period ended within 60 days before the date of the long form prospectus, or
- (c) for issuers that are not senior unlisted issuers, venture issuers or IPO venture issuers an interim period ended within 45 days before the date of the long form prospectus.

Examples of satisfactory alternative financial statements or other information that we will generally find acceptable include:

- (d) comparative annual financial statements or other information for the acquisition or probable acquisition for at least the number of financial years as would be required under Part 8 of NI 51-102 or Part 5 and Part 6 of NI 51-103, as applicable, that ended more than 90 days before the date of the long form prospectus, audited for the most recently completed financial period in accordance with section 4.2 of the Instrument, and reviewed for the comparative period in accordance with section 4.3 of the Instrument;
- (e) a comparative interim financial report or other information for the acquisition or probable acquisition for any interim period ended subsequent to the latest annual financial statements included in the long form prospectus and more than 60 days before the date of the long form prospectus for issuers that are senior unlisted issuers and 45 days for issuers that are not senior unlisted issuers, venture issuers or IPO venture issuers reviewed in accordance with section 4.3 of the Instrument;
- (f) for issuers that are not venture issuers or IPO venture issuers, pro forma financial statements or other information required under Part 8 of NI 51-102.

If the issuer intends to include financial statements as set out in the examples above as satisfactory alternative financial statements, we ask that this be highlighted in the cover letter to the long form prospectus. If the issuer does not intend to include financial statements or other information, or intends to file financial statements or other information that are different from those set out above, the issuer should use the pre-filing procedures in NP 11-202.

Acquired business has recently completed an acquisition

- (5) When an issuer acquires a business or related businesses that has itself recently acquired another business or related businesses (an “indirect acquisition”), the issuer should consider whether long form prospectus disclosure about the indirect acquisition, including historical financial statements, is necessary to satisfy the requirement that the long form prospectus contain full, true and plain disclosure of all material facts relating to the securities being distributed. In making this determination, the issuer should consider the following factors:
- whether the indirect acquisition would meet any of the significance tests in section 35.1(4) of Form 41-101F1 or would constitute a major acquisition for a venture issuer, as applicable, when the issuer applies each of those tests to its proportionate interest in the indirect acquisition of the business;
 - whether the amount of time between the separate acquisitions is such that the effect of the first acquisition is not adequately reflected in the results of the business or related businesses the issuer is acquiring.

Financial statements or other information

- (6) Paragraphs 35.5(2)(b) and 35.6(2)(b) of Form 41-101F1 and sections 34.3 and 34.4 of Form 41-101F4, as applicable, discuss financial statements or other information for the acquired business or related businesses. This “other information” is intended to capture the financial information disclosures required under Part 8 of NI 51-102 and section 23 of NI 51-103, as applicable, other than financial statements. An example of “other information” would include the operating statements, property descriptions, production volumes and reserves disclosures described under section 8.10 of NI 51-102 or section 31 of NI 51-103.
- (7) Section 3.11 of NI 52-107 permits acquisition statements included in a business acquisition report under NI 51-102 or financial statements included in a report prepared in accordance with Form 51-103F2, as applicable, or prospectus to be prepared in accordance with Canadian GAAP applicable private enterprises in certain circumstances. The ability to present acquisition statements using Canadian GAAP applicable to private enterprises would not extend to a situation where an entity acquired or to be acquired is considered the primary business or the predecessor of the issuer.

23. *Appendix A is amended by replacing each occurrence of “Financial Statement Disclosure Requirements for Significant Acquisitions” with “Financial Statement Disclosure Requirements for Significant Acquisitions by Issuers Other than Venture Issuers”.*

24. These changes become effective on ●.