

## CSA Notice of Changes to Companion Policy 41-101CP to National Instrument 41-101 *General Prospectus Requirements* Related to Financial Statement Requirements

April 14, 2022

### Introduction

The Canadian Securities Administrators (**CSA** or **we**) are making changes (the **Changes**) to:

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

We are also making a consequential change to Companion Policy 51-102CP to National Instrument 51-102 *Continuous Disclosure Obligations* (**51-102CP**) (the **Consequential Change**).

Provided all necessary ministerial approvals are obtained, the Changes and Consequential Change are effective on **April 14, 2022**.

Details of the Changes and Consequential Change are outlined in Annexes C through E of this notice and will also be available on websites of CSA jurisdictions, including:

[www.lautorite.qc.ca](http://www.lautorite.qc.ca)  
[www.bsc.bc.ca](http://www.bsc.bc.ca)  
[www.albertasecurities.com](http://www.albertasecurities.com)  
[www.osc.ca](http://www.osc.ca)  
[nssc.novascotia.ca](http://nssc.novascotia.ca)  
[www.fcaa.gov.sk.ca](http://www.fcaa.gov.sk.ca)  
[www.fcnb.ca](http://www.fcnb.ca)  
[www.mbsecurities.ca](http://www.mbsecurities.ca)

### Substance and Purpose

Form 41-101F1 *Information Required in a Prospectus* (**Form 41-101F1**) requires an issuer that is not an investment fund to include certain financial statements in its long form prospectus. These required financial statements include the financial statements of the issuer and any business or businesses acquired, or proposed to be acquired, if a reasonable investor reading the prospectus

would regard the primary business of the issuer to be the business or businesses acquired, or proposed to be acquired (collectively, the **Primary Business Requirements**).

The purpose of the Primary Business Requirements is to provide investors with financial history of the business of the issuer even if this financial history spanned multiple legal entities over the relevant time period.

The Primary Business Requirements also apply to instances where securities legislation and exchange requirements refer to disclosure prepared in accordance with Form 41-101F1. An example of this would be the requirement in Form 51-102F5 *Information Circular* for an information circular relating to a restructuring transaction to contain prospectus-level disclosure.

In practice, when acquisitions are involved, issuers and their advisors often consult with CSA staff to consider what financial statements must be included in the prospectus and to confirm whether one or more businesses comprised part of the primary business of the issuer. Sometimes these discussions result in inconsistent interpretation that adds time, cost, and uncertainty for issuers.

The Changes aim to reduce the regulatory burden resulting from uncertainty about the interpretation of the Primary Business Requirements, without compromising investor protection.

## **Background**

In April 2017, the CSA published CSA Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers* (the **Consultation Paper**) to identify and consider areas of securities legislation that could benefit from a reduction of undue regulatory burden, without compromising investor protection or the efficiency of the capital markets. While not specifically identified as an option in the Consultation Paper, commenters suggested that CSA staff revisit the interpretation of Item 32 in Form 41-101F1. These comments reflected a range of suggestions, including revisiting the requirements for an issuer to include 3 years of historical financial statements for each entity considered the primary business. Commenters also noted that inconsistent interpretation of these requirements across the CSA can lead to additional regulatory burden.

The Changes are informed by the comment letters received in response to the Consultation Paper and other stakeholder feedback. The comment letters were summarized in CSA Staff Notice 51-353 *Update on CSA Consultation Paper 51-404 Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers*.

The Changes are aimed at reducing the regulatory burden by harmonizing the approach taken by the CSA in assessing the Primary Business Requirements. We expect a reduction in the time, cost, and uncertainty of the many pre-file applications otherwise required in connection with the Primary Business Requirements, while maintaining investor protection.

In considering how best to address regulatory burden concerns related to the Primary Business Requirements without compromising investor protection, we considered a number of approaches to increase harmonization across the CSA, including amending the Primary Business Requirements. We also considered the implementation of a coverage model, whereby a certain percentage of an issuer's business would be required to have audited financial statements included

in the issuer's long form prospectus or other disclosure prepared in accordance with Form 41-101F1. We also monitored and conducted a comparative analysis of the amendments to the financial disclosure requirements of Regulation S-X issued by the U.S. Securities and Exchange Commission (**SEC**).

Ultimately, through the Changes, the CSA was able to reach a consensus on a harmonized interpretation of the Primary Business Requirements. The Changes provide additional clarification and guidance for both IPO venture and non-venture issuers.

On August 12, 2021, the CSA published a Notice and Request for Comment proposing the Changes and the Consequential Change (the **Proposed Changes**). Based on the 7 comment letters responding to the Proposed Changes, the CSA is not making any material amendments to the Changes.

The CSA acknowledges that some commenters suggested amending the Primary Business Requirements. However, considering the consensus reached by the CSA and the fact that the harmonized interpretation of the Primary Business Requirements will bring a significant reduction in regulatory burden for issuers, we are not proposing to make amendments to the Primary Business Requirements at this time. We will continue to monitor the application and interpretation of the Primary Business Requirements.

### **Summary of Written Comments Received by the CSA**

The comment period for the Proposed Changes ended on October 11, 2021. We considered all the comments received and thank the commenters for their input. The names of the commenters are contained in Annex A along with a summary of the comments received and our responses in Annex B.

The comment letters can be viewed on the website of each of:

- the Alberta Securities Commission at [www.albertasecurities.com](http://www.albertasecurities.com)
- the Autorité des marchés financiers at <https://lautorite.qc.ca/en/>
- the Ontario Securities Commission at [www.osc.ca](http://www.osc.ca)

### **Summary of Changes**

We have revised the Changes to make some non-material changes as further described in Annex B. As these changes are not material, we are not publishing the Changes for a further comment period.

### **Local Matters**

An annex to this notice outlines the consequential changes to local securities legislation and includes additional text, as required, to respond to local matters in a local jurisdiction. Each jurisdiction that is proposing local amendments or changes will publish an Annex E.

## **Contents of Annexes**

This notice includes the following annexes:

- Annex A – List of Commenters
- Annex B – Summary of Comments and CSA Responses
- Annex C – Changes to 41-101CP
- Annex D – Consequential Change to 51-102CP
- Annex E – Local Matters

## **Questions**

Please refer your questions to any of the following:

### **British Columbia Securities Commission**

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### **Alberta Securities Commission**

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### **Financial and Consumer Affairs Authority of Saskatchewan**

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## **Ontario Securities Commission**

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## **Autorité des marchés financiers**

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## **Financial Consumer Services Commission New Brunswick**

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## ANNEX A

### LIST OF COMMENTERS

We received comment letters on the Proposed Changes from the following:

<b>No.</b>	<b>Commenter</b>	<b>Date</b>
1.	Fasken Martineau DuMoulin LLP	October 7, 2021
2.	PricewaterhouseCoopers LLP	October 7, 2021
3.	Torys LLP	October 8, 2021
4.	Osler, Hoskin & Harcourt LLP	October 11, 2021
5.	Stikeman Elliott LLP	October 11, 2021
6.	Goodmans LLP	October 11, 2021
7.	TMX Group Limited	October 18, 2021

## ANNEX B

### SUMMARY OF COMMENTS AND CSA RESPONSES

This annex summarizes the comment letters and our responses to these comments.

#### Introduction

The CSA acknowledge that some commenters suggested that we consider rule amendments related to the Primary Business Requirements such as revisiting Item 32 in Form 41-101F1. However, considering the consensus reached by the CSA and that the harmonized interpretation of the Primary Business Requirements will bring significant reduction of regulatory burden for issuers, we are not proposing to make amendments to the Primary Business Requirements at this time. We will continue to monitor the application and the interpretation of the Primary Business Requirements.

In this annex, we consolidated and summarized the comments received and our responses by the general themes of the comments. We have included section references to the Proposed Changes for convenience. We thank the commenters for their input.

#### Responses to Comments Received on the Proposed Changes

No.	Subject	Summarized Comment	CSA Response
1	General Support	All seven commenters indicated some level of support for the Proposed Changes.	We thank the commenters for their views.
2	General commentary on changes to guidance and rule amendments	<p>One commenter recommended that the CSA revisit Items 32 and 35 of Form 41-101F1 and the related guidance (and not make changes solely to 41-101CP), with a view to streamlining, consolidating, harmonizing (where appropriate) and clarifying these requirements.</p> <p>One commenter suggested that additional guidance should not be subject to significant CSA staff discretion and interpretation which effectively reduces the benefit of any transparency and predictability to market participants.</p>	<p>At this time, considering the consensus reached by the CSA and that the harmonized interpretation of the Primary Business Requirements will bring a significant reduction in regulatory burden for issuers, we are not proposing to make amendments to the Primary Business Requirements.</p> <p>The intention of the Changes is to create and set out in 41-101CP a harmonized interpretation of the Primary Business Requirements across the CSA. We expect the Changes to eliminate any variation in the interpretation of the Primary Business Requirements.</p>

No.	Subject	Summarized Comment	CSA Response
		<p>One commenter proposed the inclusion of a flowchart and certain additional examples to be incorporated into the proposed subsection 5.3(1) of 41-101CP.</p>	<p>We note that the examples in the Changes represent the most common scenarios that staff encounter in prospectus reviews. Therefore, we do not propose to include a flowchart or additional examples at this time.</p>
3	Align disclosure requirements with the SEC	<p>One commenter encouraged the CSA to consider revising National Instrument 41-101 and Form 41-101F1 to include certain other changes to the disclosure regime for acquired businesses to align with the SEC’s recently adopted amendments to the financial disclosure requirements for business acquisitions and dispositions.</p> <p>One commenter also encouraged the CSA to reduce the number of audited and interim periods for which historical financial statements must be presented if an acquisition is determined to be significant to a maximum of the two most recent fiscal years, similar to the SEC.</p>	<p>We think that the Changes appropriately address regulatory burden concerns identified relating to the interpretation of the Primary Business Requirements without compromising investor protection.</p> <p>The CSA also monitored and conducted a comparative analysis of requirements of Regulation S-X issued by the SEC and the Proposed Changes. We think we have reached the right balance of CSA harmonization on the interpretation of the Primary Business Requirements, which in some cases, resulted in less regulatory burden than Regulation S-X on our reporting issuer population. We will continue to monitor the application of the Changes.</p>
4	Remove or modify the “exceptional circumstances guidance” in section 5.7 of 41-101CP	<p>Four commenters requested either the removal or the modification of the proposed guidance as to what would constitute an “exceptional circumstance” and require additional disclosure (other than financial statements) and/or a pre-file discussion with CSA staff.</p>	<p>We note that each prospectus filing encompasses unique facts and circumstances, and therefore it is not possible to provide guidance that will address all “exceptional circumstances” that issuers may experience when filing a prospectus. It is our expectation that these circumstances will be rare.</p> <p>The guidance provided in the Changes represents certain exceptional</p>



No.	Subject	Summarized Comment	CSA Response
			<p>circumstances that we have encountered to date.</p> <p>Depending on the specific circumstances of a prospectus filing, these “exceptional circumstances” may require further financial information disclosure, other than financial statements, in the prospectus, such as property or business valuation reports, forecasted cash flow information, or additional disclosure about an acquired business.</p>
5	Align the 100% trigger in section 5.3 of 41-101CP with the two-test Business Acquisition Report ( <b>BAR</b> ) rules	Three commenters recommended that the 100% trigger which is based on whether the acquisition meets <i>any</i> of the BAR significance tests <sup>1</sup> at the 100% or greater level, be aligned with the two-test trigger of the BAR rules.	<p>The 100% trigger is meant to identify the primary business of the issuer and therefore we think that the single trigger test is appropriate.</p> <p>In the Changes we have clarified that the 100% trigger is based on whether the acquisition meets <i>any</i> of the BAR significance tests.</p>
6	Modify or clarify the predecessor entity guidance in section 5.4 of 41-101CP and/or consider rule amendments related to predecessor entities	<p>One commenter recommended clarifying when a predecessor entity would not be considered material.</p> <p>One commenter recommended aligning the predecessor entity rules with the Proposed Changes related to the guidance for primary business.</p> <p>One commenter recommended guidance for REITs and other roll-up issuers.</p>	<p>We refer the commenter to the general instructions of Form 41-101F1, which has additional clarity on materiality in the context of a long form prospectus.</p> <p>We note that requirements for financial statements of any predecessor entity within a prospectus are outlined in Item 32 of Form 41-101F1 and are not an interpretation of the CSA. Any changes relating to requirements for predecessor entities would require rule amendments and considering the consensus reached by the CSA on the interpretation of the Primary Business Requirements and the significant reduction of regulatory burden for issuers that it will bring, we are not</p>

<sup>1</sup> As outlined in National Instrument 51-102 *Continuous Disclosure Obligations*.

No.	Subject	Summarized Comment	CSA Response
			<p>proposing rule amendments at this time.</p> <p>We are not proposing guidance related to specific entities and/or industries in the context of the Primary Business Requirements as based on our experience, each prospectus filing encompasses unique facts and circumstances, and therefore it is not possible to provide guidance that will address all specific scenarios.</p>
7	<p>Modify or clarify the guidance for acquired business(es) in section 5.3 of 41-101CP</p>	<p>One commenter recommended illustrative examples of when historical financial statements of an acquired business would not be required in an IPO prospectus and additional guidance in 41-101CP with respect to the treatment of multiple acquisitions and related businesses.</p> <p>One commenter requested clarity that the disclosure requirements in Item 32 of Form 41-101F1 should apply only in respect of a proposed acquisition when it has progressed to a state where a reasonable person would believe that the likelihood of the issuer completing the acquisition is high.</p> <p>One commenter recommended clarification that the July 2015 Ontario Securities Commission (OSC) guidance<sup>2</sup> no longer applies (that issuers must include the financial history of acquired businesses that are in the same primary business as the issuer in</p>	<p>An issuer is required to provide historical financial statements under the Primary Business Requirements for a business, or related businesses that a reasonable investor would regard as the primary business of the issuer.</p> <p>We note that subsection 5.3(1) of the Changes outlines examples of when a reasonable investor would regard the acquired business or related businesses to be the primary business of the issuer, thereby triggering the application of the Primary Business Requirements. The examples provided are common scenarios that the CSA have encountered on past prospectus reviews. We do not propose to include additional examples at this time.</p> <p>The Primary Business Requirements apply to businesses proposed to be acquired “where a reasonable person would believe that the likelihood of the acquisition being completed is high”, as determined by the factors outlined in subsection 5.9(3) of 41-101CP. We have revised section 5.3 to refer to the guidance in subsection 5.9(3).</p>

<sup>2</sup> OSC Staff Notice 51-725 *Corporate Finance Branch 2014-2015 Annual Report* (July 14, 2015) at page 13.

No.	Subject	Summarized Comment	CSA Response
		the three-year financial history included in an IPO prospectus).	As a result of the Changes, the OSC will withdraw certain guidance related to Primary Business Requirements. Please refer to Annex E – Local Matters.
8	Provide more guidance as to what is required to satisfy the requirement for full, true and plain disclosure in section 5.3 of 41-101CP	<p>Three commenters requested additional guidance with respect to how issuers may satisfy the requirement that a long form prospectus contain full, true and plain disclosure to reduce the instances in which an issuer will have to incur costs associated with a pre-filing application.</p>	<p>We note that subsection 5.3(1) of the Changes sets out the key examples where a reasonable investor would regard the acquired business or related businesses to be the primary business of the issuer. We expect scenarios requiring a pre-file application will be rare and, therefore, we have removed references in section 5.3 to utilizing the pre-filing procedures in National Policy 11-202 -<i>Process for Prospectus Reviews in Multiple Jurisdictions (National Policy 11-202)</i>.</p> <p>We also note that we have not made any changes to the interpretation of what constitutes “full, true, and plain disclosure” within securities legislation.</p>
9	Provide more guidance as to what would constitute a <i>change</i> in the primary business of the issuer in section 5.3 of 41-101CP	<p>Three commenters requested additional clarity on what would constitute a change in the primary business of an issuer. Commenters recommended that this guidance should only apply to a fundamental change, size, or other factors to determine whether primary business disclosure is warranted.</p> <p>One commenter requested additional clarity that, when an acquisition does not change the issuer’s historic business, the acquired business would not be</p>	<p>In the Changes we have clarified that this guidance only applies to a “fundamental” change of the issuer’s primary business, as further referenced within subsection 5.6(3) of 41-101CP.</p> <p>We confirm that when an acquisition does not change the issuer’s historic business, the acquired business would not be considered the “primary business” unless the acquisition triggered any of the other factors identified in section 5.3 of the Changes.</p>

No.	Subject	Summarized Comment	CSA Response
		<p>considered the “primary business” unless the acquisition triggered the 100% significance test.</p> <p>One commenter requested additional clarity that if an issuer already has a variety of businesses, it can be comfortable concluding that an acquisition will not be considered a “primary business” if it becomes one of many businesses owned by the issuer and does not trip the significance test at the 100% level.</p>	<p>We also confirm that if an issuer already has a variety of businesses, an acquisition will not be considered a “primary business” if it becomes one of many businesses owned by the issuer and does not trigger any of the 100% significance tests unless the acquisition triggered any of the other factors identified in section 5.3 of the Changes.</p>
10	Broaden the use of the optional tests	<p>Two commenters suggested that issuers should be allowed to <i>not</i> apply subsection 8.3(6) of National Instrument 51-102 - <i>Continuous Disclosure Obligations</i> (which requires that the business acquired must remain substantially intact) when calculating the significance of an acquisition under the optional tests.</p>	<p>At this time, we are not proposing any changes to how any of the significance tests, including optional tests, are applied in connection with the interpretation of the Primary Business Requirements. It is our view that the business(es) acquired must be substantially intact in order to apply the optional tests.</p>
11	Broaden the mining assets guidance in section 5.11 of 41-101CP and expand the guidance in 41-101CP regarding the determination of what constitutes a business to other industry sectors	<p>One commenter recommended not limiting an issuer’s ability to utilize this guidance by allowing assets and liabilities directly related to the mining assets to be acquired.</p> <p>One commenter suggested the deletion of paragraph 5.11(a) of the Proposed Changes and questioned the relevance of whether the party from whom mining assets were acquired was non-arm’s length to the issuer. The commenter is of the view that the key driver is whether the acquired</p>	<p>In scenarios where assets and liabilities directly relate to mining assets that are acquired, we are of the view that audited financial statements contain useful and relevant information to investors in making investment decisions.</p> <p>Furthermore, we are of the view that paragraph 5.11(a) of the Changes is necessary, and we expect that the issuer would have access through the related party to the information necessary to prepare and audit financial statements for the mining assets.</p>

No.	Subject	Summarized Comment	CSA Response
		<p>mining assets had ongoing activities during the relevant period, and not based on whether those assets were acquired in an arm’s length transaction or from a related party.</p> <p>One commenter suggested that paragraph 5.11(b) is an unnecessary condition in situations where there has been no recent exploration, development or activity on the mining assets acquired.</p> <p>Another commenter recommended applying the mining assets guidance to the acquisition of oil and gas assets and to consider whether it would be possible to expand the guidance in 41-101CP regarding the determination of what constitutes a business to other industry sectors.</p>	<p>We are of the view that paragraph 5.11(b) of the Changes is necessary for the acquisition of mining assets. For example, a mining claim may have had no exploration, development or production activity in the last three years; however, it may have a significant asset retirement obligation outstanding. We think this is relevant information to investors in making investment decisions.</p> <p>We are not expanding the guidance in 41-101CP regarding the determination of what constitutes a business within the oil and gas industry, as section 1.3 of National Instrument 41-101 <i>General Prospectus Requirements (NI 41-101)</i> already includes these properties within the definition of “business”.</p> <p>Staff refer you to the guidance contained in section 8.1(4) of 51-102CP regarding the determination of what constitutes the acquisition of a business.</p>
12	Clarify the guidance on the pre-filings procedure	One commenter requested clarity on the type of information that would be expected to be included in a pre-filing, in the event that a pre-filing is necessary.	We note that each prospectus encompasses unique facts and circumstances, and therefore we cannot provide guidance on the type of information that would be expected to be included in connection with a pre-filing beyond what is set out in Part 8 of National Policy 11-202.
13	Clarify the meaning of certain terminology	One commenter recommended we consider whether additional guidance would be useful regarding the meaning of the terms “other liabilities”, “business” or “primary business” as applicable to NI 41-101 and Form 41-101F1.	<p>For additional clarity on the term “primary business”, we refer to Item 32 of Form 41-101F1, as well as section 5.3 of the Changes.</p> <p>For additional clarity on the interpretation of what constitutes an</p>

No.	Subject	Summarized Comment	CSA Response
		One commenter recommended we consider whether additional guidance would be useful regarding the meaning of the term “immaterial”.	acquired “business”, we refer to subsection 8.1(4) of 51-102CP.  Furthermore, for additional clarity on the term “materiality”, we refer to the general instructions of Form 41-101F1.
14	Remove or modify the MD&A requirements	One commenter recommended that the CSA reconsider the requirements in Item 8.2 of Form 41-101F1 that MD&A be provided in respect of any acquired business whose financial statements the issuer is required to include in the prospectus under Item 32.	At this time, we are not proposing any changes to the MD&A requirements outlined in Item 8.2 of Form 41-101F1 because we are of the view that the MD&A enhances a readers’ understanding of the financial performance and financial condition of an acquisition that constitutes the issuer’s primary business.
15	Permit further use of foreign GAAP/GAAS	Two commenters suggested that foreign GAAP/ GAAS should be permitted in financial statements that are provided for primary business acquisitions.	At this time, we are not proposing amendments to any requirements in National Instrument 52-107 – <i>Acceptable Accounting Principles and Auditing Standards</i> , because it would be beyond the scope of this project.

**ANNEX C**

**CHANGES 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 changed by this Document.*
2. **Section 5.1 is changed by replacing "Request for exemptions" with "Requests for exemptions".**
3. *First paragraph of Section 5.2 is changed by adding "an" immediately before "interim financial report for periods that are more recent"..*
4. *Section 5.3 is changed by replacing the text with the following:*

**Interpretation of issuer – primary business**

**5.3 (1)** An issuer is required to provide historical financial statements under Item 32 of Form 41-101F1 for a business or related businesses that a reasonable investor would regard as the primary business of the issuer. The issuer is also required to include the applicable MD&A for the primary business.

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, the reporting issuer is subject to the requirements of Item 35 of Form 41-101F1, and not Item 32 of Form 41-101F1, in respect of the financial statements and other disclosure for that acquisition.

A reporting issuer cannot rely on the exemption in subsection 32.1(2) of Form 41-101F1 if the applicable transaction is a reverse takeover. In such circumstances, the reverse takeover acquirer would be considered the primary business under either paragraph 32.1(1)(a) or (b) of Form 41-101F1.

Examples of when a reasonable investor would regard the business or businesses acquired, or proposed to be acquired, to be the primary business of the issuer, thereby triggering the application of Item 32 of Form 41-101F1, are when the acquisition(s) was or will be

- (a) a reverse takeover,
- (b) a qualifying transaction for a capital pool company under the policies of the TSX Venture Exchange,
- (c) a qualifying acquisition or qualification transaction by a special purpose acquisition corporation under the policies of a recognized exchange,

(d) an acquisition that satisfies any of the applicable significance tests set out in subsection 8.3(2) of NI 51-102 if “30 percent” is read as “100 percent (see example 1 below),

(e) an acquisition that results in a fundamental change in the primary business of the issuer, as disclosed in the prospectus (see example 2 below).

For paragraph (d), if the issuer qualifies as an IPO venture issuer, it should refer to paragraphs 8.3(2)(a) and (b) of NI 51-102 for the applicable significance tests.

An issuer may re-calculate the significance of a transaction using the optional significance tests set out in subsection 8.3(4) of NI 51-102, and should refer to paragraph 35.1(4)(b) of Form 41-101F1, except (i) and (ii), for the applicable financial periods and references.

For any proposed acquisition, the issuer should refer to the guidance in subsection 5.9(3) of this Policy to determine whether a reasonable person would believe that the likelihood of the acquisition being completed is high.

In addition to the above, the issuer should consider the facts of each situation, including the facts of the business or related businesses acquired or proposed to be acquired, and determine whether a reasonable investor would regard the primary business of the issuer to be the acquired business or related businesses.

The disclosure in the prospectus, including financial statements and applicable MD&A, must satisfy the requirement that the long form prospectus contain full, true and plain disclosure of all material facts relating to the securities being distributed.

**Example 1: A non-venture issuer completed an acquisition exceeding the 100% threshold for any of the significance tests in the year prior to its most recently completed financial year**

**Facts:**

- A non-venture issuer filed a preliminary IPO prospectus on April 1, 2021 that included audited annual financial statements for its financial year ended December 31, 2020.
- The issuer disclosed in the prospectus that it had completed Acquisition A on October 1, 2019.
- Both the issuer and Acquisition A have a December 31 year-end.

The initial determination of the significance of an acquisition would be calculated based on the financial statements of the issuer and the acquired business or related businesses for the most recently completed financial year of each that ended before the acquisition date. In this case, the significance tests would be based on the most recently completed financial year before the acquisition date (i.e., December 31, 2018) - applying paragraph 35.1(4)(b) of Form 41-101F1 for the purposes of the periods used for the calculation.



**Initial tests: Significance tests results based on the most recently completed financial year before the acquisition date (i.e., December 31, 2018)**

- The following is a summary of certain key information:

<b>Entity</b>	<b>Assets</b>	<b>Investments</b>	<b>Specified profit or loss</b>
Issuer	\$ 100	n/a	\$ 8
Acquisition A	\$ 125	\$ 80	\$ 7
<i>Significance tests results</i>	<i>125%</i>	<i>80%</i>	<i>87.5%</i>

Acquisition A is regarded to be the primary business of the issuer because it exceeded the 100% threshold for the asset test.

In some circumstances, an issuer may have grown between the date on which the significance tests are calculated and the date of the IPO such that the acquisition is no longer significant enough for a reasonable investor to regard the acquisition as the primary business of the issuer. An issuer could demonstrate this by testing significance using optional significance tests as set out in subsection 8.3(4) of NI 51-102, for the periods set out in subparagraphs 35.1(4)(b)(iii) and (iv) of Form 41-101F1. In this specific example, the applicable time period for the optional significance tests is the year-ended December 31, 2020 for both the issuer and Acquisition A.

We note that financial statements for the year ended December 31, 2020 for Acquisition A are required for the issuer to use the optional significance tests, which can only be used by the issuer after the acquisition date if the business remained substantially intact and was not significantly reorganized, and no significant assets or liabilities were transferred to other entities, as set out in subsection 8.3(6) of NI 51-102.

**Optional significance tests: Significance tests results based on the most recently completed financial year (i.e., as at December 31, 2020)**

- The following is a summary of certain key information:

<b>Entity</b>	<b>Assets</b>	<b>Investments</b>	<b>Specified profit or loss</b>
Issuer (excluding Acquisition A)	\$ 150	n/a	\$ 15
Acquisition A	\$ 117	\$ 80	\$ 7

<i>Significance tests results</i>	78.0%	53.3%	46.7%
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**Application of paragraph 32.1(1)(b) of Form 41-101F1:**

- Although Acquisition A exceeds the 100% threshold for the asset test using the initial significance tests, by applying the optional significance tests, the issuer may be able to demonstrate that a reasonable investor would not regard Acquisition A to be the primary business of the issuer.
- In this circumstance, the issuer experienced growth subsequent to acquiring Acquisition A such that Acquisition A no longer exceeds the 100% threshold. As a result, a reasonable investor would not regard Acquisition A to be the primary business of the issuer. Therefore, the issuer would not be required to provide historical financial statements of Acquisition A under Item 32 of Form 41-101F1.
- However, if the issuer applied the optional significance tests and Acquisition A still exceeded the 100% threshold for any of the significance tests, the issuer would have been required to provide audited financial statements of Acquisition A for enough periods so that when those periods are added to the periods for which the issuer's financial statements are included in the prospectus, the results of the issuer and Acquisition A, either separately or on a consolidated basis, total 3 years. This means that the issuer would have been required to include in the IPO prospectus:
  - its audited consolidated financial statements for each of the 3 years ended December 31, 2020, 2019 and 2018, which include the results of Acquisition A from October 1, 2019 onwards, and
  - the audited standalone financial statements of Acquisition A for the period from January 1, 2019 to September 30, 2019, and for the year-ended December 31, 2018.

**Example 2: An issuer has recently changed its primary business through the acquisition of a new business and the acquisition does not meet the 100% threshold for any of the significance tests.**

**Facts:**

- An IPO venture issuer filed a preliminary IPO prospectus on April 1, 2021.
- The issuer was incorporated on January 1, 2015 to operate a mining exploration and development business.
- On December 19, 2020, the issuer acquired a cannabis cultivation property and announced its intention to convert its existing business to a cannabis cultivation

business in 2021.

- The year end of the issuer and the acquired cannabis cultivation business is December 31.

**Application of paragraph 32.1(1)(b) of Form 41-101F1:**

- To meet the requirements of paragraph 32.1(1)(b) of Form 41-101F1, the issuer must include in the prospectus its audited financial statements for the years ended December 31, 2020 and 2019.
  - In addition, given that the issuer has fundamentally changed its primary business to cannabis cultivation activities, the pre-acquisition financial statements for the acquired cannabis cultivation business (along with the related MD&A) must also be included in the prospectus.
  - This is because a reasonable investor reading the prospectus would regard the primary business of the issuer to be the cannabis cultivation business, as referenced in paragraph 32.1(1)(b) of Form 41-101F1.
- (2) The periods for which the issuer must provide financial statements under Item 32 of Form 41-101F1 for an acquired business or related businesses that are regarded as the primary business of the issuer should be determined in reference to sections 32.2 and 32.3 of Form 41-101F1, and with the same exceptions, where applicable, set out in paragraphs 32.4(1)(a) through (e) of Form 41-101F1. For example, for an issuer that is a reporting issuer in at least one jurisdiction immediately before filing a long form prospectus, the reference to 3 years in paragraph 32.2(6)(a) of Form 41-101F1 should be read as 2 years under paragraphs 32.4(1)(a), (b), (d) and (e) of Form 41-101F1.

In addition, subsection 32.2(6) of Form 41-101F1 requires an issuer to include the financial statements for those entities or businesses set out in paragraphs 32.1(1)(a) and (b) of Form 41-101F1 for as many periods before the acquisition as may be necessary. This is so that when these periods are added to the periods for which the issuer's financial statements are included in the prospectus, the results of the entities or businesses, either separately or on a consolidated basis, total the required number of annual periods (2 or 3 years). These financial statements must be audited.

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.

- (3) Reporting issuers are reminded that an acquisition may constitute the acquisition of a business for securities legislation purposes, even if the acquired set of activities or assets does not meet the definition of a "business" for accounting purposes..

**5. Section 5.4 is changed by replacing the text with the following:**

## **Interpretation of issuer – predecessor entity**

**5.4 (1)** An issuer that has not existed for 3 years is required under paragraph 32.1(1)(a) of Form 41-101F1 to provide historical financial statements of any predecessor entity that forms or will form the basis of the business of the issuer (see example 3 below). This may include financial statements of predecessor entities that have been, or are contemplated to be, put together to form the basis of the business of the issuer. If an issuer is not able to provide financial statements of certain predecessor entities that are required in the prospectus to meet the requirements in paragraph 32.1(1)(a) of Form 41-101F1, or if the financial statements for certain predecessor entities are not considered material for an investment decision or otherwise necessary for the prospectus to contain full, true and plain disclosure, the issuer should utilize the pre-filing procedures in NP 11-202.

### **Example 3: A newly incorporated non-venture issuer with minimal operations will acquire several real estate properties immediately prior to, or concurrently with, the closing of an IPO**

#### **Facts:**

- A non-venture issuer is a real estate investment trust incorporated on December 21, 2020 for the purpose of acquiring an initial portfolio of 4 real estate properties in order to generate rental income from the properties. The issuer filed a preliminary IPO prospectus on April 1, 2021.
- Concurrent with the closing of the IPO, the issuer will complete the acquisition of 4 real estate properties, which were previously operated as rental properties by the vendors, generating rental income. The year end of the issuer and each of the acquired businesses is December 31.

#### **Application of paragraph 32.1(1)(a) of Form 41-101F1:**

- The issuer must include in the prospectus its audited financial statements for the period from December 21, 2020 (incorporation) to December 31, 2020.
- In addition, the issuer would need to include audited financial statements in accordance with Item 32 of Form 41-101F1 (and related MD&A) for each of the real estate properties that form the basis of the business of the issuer.
- If either one or more of the rental properties is immaterial, or if the issuer is not able to provide financial statements for one or more of them, the issuer should utilize the pre-filing procedures in NP 11-202..

**6.** *Subsection 5.5(3) is deleted ..*

**7.** *Section 5.7 is changed by replacing the text with the following:*

#### **Additional information that may be required**

**5.7 (1)** In order to meet the requirement for full, true and plain disclosure contained in securities legislation, an issuer may be required to include certain additional

financial information in its long form prospectus. For instance, in exceptional circumstances, we may require separate financial statements of a subsidiary of the issuer, even if that subsidiary is included in the consolidated financial statements of the issuer. This exception may be necessary to help explain the risk profile and nature of the operations of the subsidiary.

(2) There may be other exceptional scenarios where issuers may be required to include additional financial information, other than financial statements, in a prospectus in order for the prospectus to meet the requirement for full, true and plain disclosure. An example would be where an issuer incurred significant growth through one or more acquisitions prior to the IPO filing resulting in insufficient financial history of the primary business as disclosed in the prospectus and one of the following situations occurred:

- an IPO venture issuer acquired or proposes to acquire a business that would result in any of the applicable significance tests, as calculated in section 8.3 of NI 51-102, close to exceeding the 100% threshold;
- the issuer made or proposed to make one or more acquisitions during the relevant period, but financial disclosure was not triggered by Item 32 or 35 of Form 41-101F1;
- the issuer completed a relatively large number of unrelated and individually immaterial acquisitions (that are not predecessor entities) in the relevant periods prior to filing the prospectus.

The types of additional financial information that might be necessary to meet the full, true and plain disclosure standard will vary on a case-by-case basis but may include:

- property or business valuation reports;
- forecasted cash flow information;
- additional disclosure about an acquired business, such as key financial information that explains the financial performance and operations of that business prior to its acquisition.

While it is our expectation that these circumstances will be rare, if an issuer thinks that it might fall into an exceptional circumstance where additional financial information might be required, it could utilize the pre-filing procedures in NP 11-202.

(3) If the issuer cannot provide sufficient financial history reflected in the financial statements in a prospectus or the prospectus does not otherwise contain information concerning the business conducted or to be conducted by the issuer that is sufficient to enable an investor to make an informed investment decision, we would consider this important when determining whether the prospectus provides full, true and plain disclosure of all material facts relating to the securities being distributed..

8. *Subsection 5.8 (2) is changed by adding "that" immediately before "an issuer's comparative financial statements be accompanied by an auditors' report" ..*
9. *Subsection 5.9 (2) is changed by replacing the text with the following:*

**Completed significant acquisitions and the obligation to provide business acquisition report level disclosure for a non-reporting issuer**

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

The initial tests to determine significance of an acquisition would be calculated based on the financial statements of the issuer and the acquired business or related businesses for the most recently completed financial year of each that ended before the acquisition date.

To recognize the possible growth of an issuer between the date of its most recently completed financial year or interim period and the acquisition date, and the corresponding potential decline in significance of the acquisition relative to the issuer, an issuer could perform optional significance tests as set out in subsection 8.3(4) of NI 51-102, for the periods set out in subparagraphs 35.1(4)(b)(iii) and (iv) of Form 41-101F1. Specifically, for an issuer, the applicable time period for the optional significance tests 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.

For more information, see Chart 2 of Appendix A – Financial Statement Disclosure Requirements for Significant Acquisitions of this Policy.

The significance tests threshold for an IPO venture issuer is identical to the significance tests threshold for a venture issuer. For any business or related businesses acquired by an IPO venture issuer or venture issuer within 2 years before the date of the prospectus, or proposed to be acquired, which exceed any of the significance tests thresholds, the issuer is required to include in a prospectus the financial statements referred to in subsection 5.3(1) of this Policy.

The timing of the disclosure requirements set out in subsection 35.3(1) of Form 41-101F1 are based on the principles under section 8.2 of NI 51-102. For reporting issuers, subsection 8.2(2) of NI 51-102 sets out the timing of disclosures for significant acquisitions where the acquisition occurs within 45 days after the year end of the acquired business. However, for IPO venture issuers, paragraph 35.3(1)(d) 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 business acquisition report filing deadline for venture issuers under paragraph 8.2(2)(b) of NI 51-102 where 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..

**10. Part 5 is changed by adding the following section 5.11:**

**5.11. Determination of what constitutes a business – mining assets**

While an acquisition of mining assets may constitute an acquisition of a business for securities legislation purposes even if the acquired assets do not meet the definition of a “business” for accounting purposes, we would not consider an acquisition of mining assets to be a business requiring financial statements under either Item 32 or Item 35 of Form 41-101F1 if all of the following apply:

- (a) the acquisition of the mining assets was an arm’s length transaction;
- (b) no other assets were transferred and no other liabilities were assumed as part of the acquisition;
- (c) there has been no exploration, development or production activity on the mining assets in the 3 years (2 years for an IPO venture issuer or a venture issuer) before the date of the preliminary prospectus..

**11. These changes become effective on April 14, 2022 .**

**ANNEX D**  
**CHANGES TO**  
**COMPANION POLICY 51-102CP TO NATIONAL INSTRUMENT 51-102**  
***CONTINUOUS DISCLOSURE OBLIGATIONS***

**11. *Companion Policy 51-102CP to National Instrument 51-102 Respecting Continuous Disclosure Obligations is changed by this Document.***

**12. Section 8.1 is changed by adding the following paragraph 4.1:**

**(4.1) Determination of what constitutes a business – mining assets**

While an acquisition of mining assets may constitute an acquisition of a business for securities legislation purposes even if the acquired assets do not meet the definition of a “business” for accounting purposes, we would not consider an acquisition of mining assets to be a business requiring a business acquisition report if all of the following apply:

- (a) the acquisition of the mining assets was an arm’s length transaction;
- (b) no other assets were transferred and no other liabilities were assumed as part of the acquisition;
- (c) there has been no exploration, development or production activity on the mining assets in the 2 years prior to the acquisition.

**3. These changes become effective on April 14, 2022.**