

Nova Scotia Securities Commission

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

-and-

**Changes to Companion Policy 51-102CP *Continuous Disclosure Obligations*
(the Policy Changes)**

WHEREAS:

1. Pursuant to s 19 of the Act, the Nova Scotia Securities Commission (the Commission) has power to issue and publish policy statements;
2. The Policy Changes, copies of which are attached hereto, have been issued by one or more of the Canadian securities regulatory authorities; and
3. The Commission is of the opinion that the attainment of the purpose of the Act is advanced by this Instrument.

NOW THEREFORE the Commission hereby:

- (a) pursuant to the authority contained in section 19 of the Act and subject to publication on the Commission's website, issues the Policy Changes as policy statements of the Commission; and
- (b) declares that the issuance of the policy statements pursuant to clause (a) shall take effect on April 14, 2022.

IN WITNESS WHEREOF this Instrument has been signed by the Chair of the Commission, being the member of the Commission prescribed by the Chair pursuant to subsection 15(3) of the Act to attend the hearing of this matter and the quorum with respect to this matter, on the 14th day of April, 2022.

(signed) "Paul E. Radford"

Paul E. Radford, Q.C.

Chair

Attachments

**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:

Entity	Assets	Investments	Specified profit or loss
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:

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

<i>Significance tests results</i>	<i>78.0%</i>	<i>53.3%</i>	<i>46.7%</i>
-----------------------------------	--------------	--------------	--------------

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.

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

1. ***Companion Policy 51-102CP to National Instrument 51-102 Respecting Continuous Disclosure Obligations is changed by this Document.***
2. **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.**