

Nova Scotia Securities Commission

Rule 45-106 (Amendment)

**Amendments to National Instrument 45-106
*Prospectus and Registration Exemptions***

- and -

**Amendments to Companion Policy 45-106CP
*Prospectus and Registration Exemptions***

WHEREAS:


1. Pursuant to section 150 of the *Securities Act*, R.S.N.S. 1989, chapter 418, as amended (the Act), the Nova Scotia Securities Commission (the Commission) has power to make rules subject to compliance with the requirements of the Act;
2. Pursuant to section 19 of the Act, the Commission has power to issue and publish policy statements;
3. Amendment Instrument for National Instrument 45-106 *Prospectus and Registration Exemptions* (the Rule) and Amendment Instrument for Companion Policy 45-106CP *Prospectus and Registration Exemptions* (the Companion Policy), copies of which are attached hereto, have been made a rule by one or more of the Canadian securities regulatory authorities; and
4. 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 150 of the Act and subject to compliance with the requirements of section 150A of the Act, approves the Rule and makes the same a rule of the Commission;
- (b) pursuant to the authority contained in section 19 of the Act and subject to publication in the Royal Gazette or the Commission's website, issues the Companion Policy as a policy of the Commission; and

- (c) declares that the Rule approved and made pursuant to clause (a) and the Companion Policy issued pursuant to clause (b) shall take effect on **January 1, 2011**, unless the Minister disapproves the Rule or returns it to the Commission in accordance with subsection 150A(3) of the Act in which event the Rule and the Companion Policy shall not become effective until the Rule is approved by the Minister.

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 13th day of October, 2010.



H. Leslie O'Brien, Q.C.

Attachments

Amendment Instrument for National Instrument 45-106 Prospectus and Registration Exemptions

1. ***National Instrument 45-106 Prospectus and Registration Exemptions is amended by this Instrument.***

2. ***Section 1.1 is amended***
 - (a) ***by adding the following after “accredited investor”:***

“acquisition date” has the same meaning as in the issuer’s GAAP,;
 - (b) ***by adding the following after “financial assets”:***

“financial statements” includes interim financial reports,;
 - (c) ***by adding the following after “investment fund”:***

“issuer’s GAAP” has the same meaning as in National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards,;
 - (d) ***by adding the following after “person”:***

“private enterprise” has the same meaning as in Part 3 of National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards,;
 - (e) ***by adding the following after “private enterprise”:***

“publicly accountable enterprise” has the same meaning as in Part 3 of National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards,; and
 - (f) ***by adding the following after “related liabilities”:***

“retrospective” has the same meaning as in Canadian GAAP applicable to publicly accountable enterprises;

“retrospectively” has the same meaning as in Canadian GAAP applicable to publicly accountable enterprises,;

3. ***Clause 5.2(e)(i)(C) is amended by striking out “statements” and substituting “reports”.***

4. ***Subsection 6.2(1) is amended by striking out “section 6.1(a)” and substituting “section 6.1(1)(a)”.***

5. ***Subsection 6.5(1) is amended by striking out “subsection 2.9(12) or subsection 3.9(12)” and substituting “subsection 2.9(15)”.***
6. ***Item 1.1 Available Funds of Form 45-106F2 Offering Memorandum for Non-Qualifying Issuers is amended by striking out “H” in the table and substituting “G”.***
7. ***Item 4.2 of Form 45-106F2 Offering Memorandum for Non-Qualifying Issuers is amended***
 - (a) ***by striking out the heading “4.2 Long Term Debt” and substituting “4.2 Long Term Debt Securities”, and***
 - (b) ***by striking out “the current portion of the long-term debt” and substituting “the portion of the debt”.***
8. ***Item 8(b) of Form 45-106F2 Offering Memorandum for Non-Qualifying Issuers is amended by striking out “sales” and substituting “revenue”.***
9. ***Part B Financial Statements – General of the Instructions for Completing Form 45-106F2 Offering Memorandum for Non-Qualifying Issuers is amended***
 - (a) ***by repealing section 1 and substituting the following:***

All financial statements, operating statements for an oil and gas property that is an acquired business or a business to be acquired, and summarized financial information as to the aggregated amounts of assets, liabilities, revenue and profit or loss of an acquired business or business to be acquired that is, or will be, an investment accounted for by the issuer using the equity method included in the offering memorandum must comply with National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*, regardless of whether the issuer is a reporting issuer or not.

Under National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*, financial statements are generally required to be prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises. An issuer using this form cannot use Canadian GAAP applicable to private enterprises, except, subject to the requirements of NI 52-107, certain issuers may use Canadian GAAP applicable to private enterprises for financial statements for a business referred to in C.1. An issuer that is not a reporting issuer may prepare acquisition statements in accordance with the requirements of NI 52-107 as if

the issuer were a venture issuer as defined in NI 51-102. For the purposes of Form 45-106F2, the “applicable time” in the definition of a venture issuer is the acquisition date.,

- (b) ***in paragraph 3(a) by striking out “an income statement” and substituting “a statement of comprehensive income”, by striking out “statement of retained earnings” and substituting “statement of changes in equity”, and by striking out “cash flow statement” and substituting “statement of cash flows”,***
- (c) ***in paragraph 3(b) by striking out “balance sheet” and substituting “statement of financial position”,***
- (d) ***in paragraph 4(a) by striking out “an income statement” and substituting “a statement of comprehensive income”, by striking out “statement of retained earnings” and substituting “statement of changes in equity”, and by striking out “cash flow statement” and substituting “statement of cash flows”,***
- (e) ***in paragraph 4(b) by striking out “balance sheet” and substituting “statement of financial position” and by striking out “and”,***
- (f) ***in paragraph 4(c) by striking out “(c) notes to the financial statements.” and substituting:***
 - (c) a statement of financial position as at the beginning of the earliest comparative period for which financial statements that are included in the offering memorandum comply with IFRS in the case of an issuer that
 - (i) discloses in its annual financial statements an unreserved statement of compliance with IFRS, and
 - (ii) does any of the following:
 - (A) applies an accounting policy retrospectively in its annual financial statements;
 - (B) makes a retrospective restatement of items in its annual financial statements;
 - (C) reclassifies items in its annual financial statements,
 - (d) in the case of an issuer’s first IFRS financial statements as defined in NI 51-102, the opening IFRS statement of

financial position at the date of transition to IFRS as defined in NI 51-102, and

- (e) notes to the financial statements.
- 4.1 If an issuer presents the components of profit or loss in a separate income statement, the separate income statement must be displayed immediately before the statement of comprehensive income filed under Item 4 above.,
 - (g) ***in section 5 by striking out “interim financial statements” and substituting “an interim financial report”,***
 - (h) ***in paragraphs 5(a) and 5(b) by striking out “an income statement” and substituting “a statement of comprehensive income”, by striking out “statement of retained earnings” and substituting “statement of changes in equity”, and by striking out “cash flow statement” and substituting “statement of cash flows”,***
 - (i) ***in paragraph 5(c) by striking out “balance sheet” and substituting “statement of financial position”, and by striking out “the periods required by paragraphs (a) and (b) and”, and substituting “the period required by paragraph (a) and the end of the immediately preceding financial year”,***
 - (j) ***by adding the following after paragraph 5(c):***
 - (d) a statement of financial position as at the beginning of the earliest comparative period for which financial statements that are included in the offering memorandum comply with IFRS in the case of an issuer that
 - (i) discloses in its interim financial report an unreserved statement of compliance with International Accounting Standard 34 *Interim Financial Reporting*, and
 - (ii) does any of the following:
 - (A) applies an accounting policy retrospectively in its interim financial report;
 - (B) makes a retrospective restatement of items in its interim financial report;

- (C) reclassifies items in its interim financial report,
- (e) in the case of the first interim financial report in the year of adopting IFRS, the opening IFRS statement of financial position at the date of transition to IFRS,
- (f) for an issuer that is not a reporting issuer in at least one jurisdiction of Canada immediately before filing the offering memorandum, if the issuer is including an interim financial report of the issuer for the second or third interim period in the year of adopting IFRS include
 - (i) the issuer's first interim financial report in the year of adopting IFRS, or
 - (ii) both
 - (A) the opening IFRS statement of financial position at the date of transition to IFRS, and
 - (B) the annual and date of transition to IFRS reconciliations required by IFRS 1 *First-time Adoption of International Financial Reporting Standards* to explain how the transition from previous GAAP to IFRS affected the issuer's reported financial position, financial performance and cash flows, and
- (g) notes to the financial statements.

5.1 If an issuer presents the components of profit or loss in a separate income statement, the separate income statement must be displayed immediately before the statement of comprehensive income filed under item 5 above.,

(k) by repealing section 8 and substituting the following:

The comparative financial information required under B.5(b) and (c) may be omitted if the issuer has not previously prepared financial statements in accordance with its current or, if applicable, its previous GAAP.,

(l) in section 13 by striking out "statements" and substituting "reports",

(m) *in section 14 by adding “, as defined in NI 51-102,” after “Forward looking information”, and*

(n) *by adding the following after section 15:*

16. Despite section B.5, an issuer may include a comparative interim financial report of the issuer for the most recent interim period, if any, ended
- (a) subsequent to the most recent financial year in respect of which annual financial statements of the issuer are included in the offering memorandum, and
 - (b) more than 90 days before the date of the offering memorandum.

This section does not apply unless

- (a) the comparative interim financial report is the first interim financial report required to be filed in the year of adopting IFRS, and the issuer is disclosing, for the first time, a statement of compliance with International Accounting Standard 34 *Interim Financial Reporting*,
- (b) the issuer is a reporting issuer in the local jurisdiction immediately before the date of the offering memorandum, and
- (c) the offering memorandum is dated before June 29, 2012..

10. *Part C Financial Statements – Business Acquisitions of the Instructions for Completing Form 45-106F2 Offering Memorandum for Non-Qualifying Issuers is amended*

- (a) *in paragraph 2(a), and 2(b) by striking out “date of acquisition” and substituting “acquisition date”,*
- (b) *in paragraph 2(b) by adding the following after “offering memorandum for a proposed acquisition.”:*

For information about how to perform the investment test in this paragraph, please refer to subsections 8.3(4.1) and (4.2) of NI 51-102. Additional guidance may be found in the companion policy to NI 51-102.,

- (c) *by repealing section 2.1,*
- (d) *in subparagraph 4(a)(i) by striking out “an income statement” and substituting “a statement of comprehensive income”, by striking out “statement of retained earnings” and substituting “statement of changes in equity”, and by striking out “cash flow statement” and substituting “statement of cash flows”,*
- (e) *in clause 4(a)(i)(B) by striking out “date of acquisition” and substituting “acquisition date”,*
- (f) *in subparagraph 4(a)(ii) by striking out “balance sheet” and substituting “statement of financial position”,*
- (g) *in clause 4(b)(i)(A) by striking out “an income statement” and substituting “a statement of comprehensive income”, by striking out “statement of retained earnings” and substituting “statement of changes in equity”, and by striking out “cash flow statement” and substituting “statement of cash flows”,*
- (h) *in subclause 4(b)(i)(A)(i) by striking out “date of acquisition” and substituting “acquisition date”,*
- (i) *in clause 4(b)(i)(B) by striking out “balance sheet” and substituting “statement of financial position”,*
- (j) *by repealing subparagraph 4(b)(ii) and substituting the following:*
 - (ii) an interim financial report comprised of
 - A) either
 - (i) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the most recently completed year-to-date interim period ending on the last date of the interim period that ended before the acquisition date and more than 60 days before the date of the offering memorandum and ended after the date of the financial statements required under subclause (b)(i)(A)(i), and a statement of comprehensive income and a statement of changes in equity for the three month period ending on the last date of the interim period

that ended before the acquisition date and more than 60 days before the date of the offering memorandum and ended after the date of the financial statements required under subclause (b)(i)(A)(i), or

- (ii) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the period from the first day after the financial year referred to in subparagraph (b)(i) to a date before the acquisition date and after the period end in subclause (b)(ii)(A)(i),
- B) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the corresponding period in the immediately preceding financial year, if any,
- C) a statement of financial position as at the end of the period required by clause (A) and the end of the immediately preceding financial year, and
- D) notes to the financial statements.

Refer to Instruction B.7 for the meaning of “interim period”,

- (k) ***in section 6 by striking out “date of acquisition” and substituting “acquisition date”, and***
- (l) ***in section 8 by striking out “accounted for as” and by striking out “, as that term is defined in the CICA Handbook,”.***

11. Part D Financial Statement – Exemptions of the Instructions for Completing Form 45-106F2 Offering Memorandum for Non-Qualifying Issuers is amended

- (a) ***in paragraph 2 by striking out “section 3.2(a) of NI 52-107” and substituting “section 3.3(1)(a)(i) of National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards”,***
- (b) ***in paragraph 2 and 2(b) by striking out “contain” and substituting “express”,***
- (c) ***in paragraph 2(a) and 2(b) by striking out “balance sheet” and substituting “statement of financial position”,***

- (d) *in paragraph 2(c) by striking out “contained” and substituting “expressed”,*
- (e) *in subparagraph 3(a)(i) by adding “aggregated amounts of” before “assets”, by adding “, revenue and profit or loss” after “liabilities”, and by striking out “and results of operations”,*
- (f) *in subparagraph 3(a)(ii) by striking out “earnings” and substituting “profit or loss”,*
- (g) *in subparagraph 3(c)(ii) by striking out “issued without a reservation of opinion” and substituting “an unmodified opinion”, and by striking out the following:*

If the financial information included in an offering memorandum under D.3(a) has been derived from financial statements of a business incorporated or organized in a foreign jurisdiction that have been prepared in accordance with foreign GAAP, the information must be accompanied by a note that explains and quantifies the effect of material differences between Canadian GAAP and the foreign GAAP.,

- (h) *in paragraph 4(b) by striking out “accounted for as” , by striking out ““reverse take-over”” and substituting “reverse take-over”, and by adding “and” after “NI 51-102,”,*
- (i) *by repealing paragraph 4(c),*
- (j) *by repealing subparagraph 4(d)(i) and replacing it with the following:*
 - (i) an operating statement for the business or related businesses for each of the financial periods for which financial statements would, but for this section, be required under C.4 prepared in accordance with subsection 3.11(5) of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*. The operating statement for the most recently completed financial period referred to in C.4(b)(i) must be audited.,
- (k) *in section 5 by striking out “date of acquisition” and substituting “acquisition date” , and*
- (l) *in paragraph 5(iii) by striking out “D.5(b)(ii)” and substituting “D.5(ii)”.*

12. *Section 1.1 Available Funds of Form 45-106F3 Offering Memorandum for Qualifying Issuers is amended by striking out “H” in the table and substituting “G”.*
13. *Item 8(b) of Form 45-106F3 Offering Memorandum for Qualifying Issuers is amended by striking out “sales” and substituting “revenue”.*
14. *Section 1, Part B Financial Statements of the Instructions for Completing Form 45-106F3 Offering Memorandum for Qualifying Issuers is amended by striking out “Acceptable Accounting Principles, Auditing Standards and Reporting Currency” and substituting “Acceptable Accounting Principles and Auditing Standards”.*
15. *Section 2, Part C Required Updates to the Offering Memorandum of the Instructions for Completing Form 45-106F3 Offering Memorandum for Qualifying Issuers is amended by striking out “interim financial statements” and substituting “interim financial reports”.*
16. *Paragraph 1(c), Part D Information about the Issuer of the Instructions for Completing Form 45-106F3 Offering Memorandum for Qualifying Issuers is amended by striking out “interim financial statements” and substituting “interim financial report”, and by striking out “interim financial statements that are” and substituting “an interim financial report that is”.*
17. *Transition - This Instrument only applies in respect of an offering memorandum or an amendment to an offering memorandum of an issuer if that offering memorandum or amendment includes or incorporates by reference financial statements of the issuer in respect of periods relating to financial years beginning on or after January 1, 2011.*
18. *Exception - Despite section 17, this Instrument may be applied by an issuer to an offering memorandum or an amendment to an offering memorandum of the issuer which includes or incorporates by reference financial statements of the issuer in respect of periods relating to a financial year that begins before January 1, 2011 if the immediately preceding financial year ends no earlier than December 21, 2010 and if the issuer is relying on the exemption in section 5.3 of National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards.*
19. *Effective Date - This Instrument comes into force on January 1, 2011.*

Amendment Instrument for Companion Policy 45-106 Prospectus and Registration Exemptions

1. *Companion Policy 45-106CP Prospectus and Registration Exemptions is amended by this Instrument.*
2. *Subsection 3.8(1) is amended by adding “or profit” after “\$75 000 pre-tax net income”.*
3. *The following is added after Part 6:*

PART 7 – TRANSITION

7.1 Transition – Application of Amendments –The amendments to NI 45-106 and this Companion Policy which came into effect on January 1, 2011 only apply in respect of an offering memorandum or an amendment to an offering memorandum of an issuer which includes or incorporates by reference financial statements of the issuer in respect of periods relating to financial years beginning on or after January 1, 2011..

4. *These amendments only apply in respect of an offering memorandum or an amendment to an offering memorandum of an issuer which includes or incorporates by reference financial statements of the issuer in respect of periods relating to financial years beginning on or after January 1, 2011.*
5. *Despite section 4, these amendments may be applied by an issuer to an offering memorandum or an amendment to an offering memorandum of the issuer which includes or incorporates by reference financial statements of the issuer in respect of periods relating to a financial year that begins before January 1, 2011 if the immediately preceding financial year ends no earlier than December 21, 2010 and if the issuer is relying on the exemption in section 5.3 of National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards.*
6. *This Instrument comes into force on January 1, 2011.*