

Nova Scotia Securities Commission

Rule 51-102 (Amendment)

Amendments to National Instrument 51-102, *Continuous Disclosure Obligations*

- and-

Amendments to Form 51-102F1, *Management's Discussion and Analysis*, Form 51-102F2, *Annual Information Form*, and Form 51-102F5, *Information Circular*

- and-

Amendments to Companion Policy 51-102CP, *Continuous Disclosure Obligations*

- and -

Related Consequential and Other Amendments to National Instrument 52-107, *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*, Multilateral Instrument 52-109, *Certification of Disclosure in Issuers' Annual and Interim Filings*, Multilateral Instrument 52-110, *Audit Committees*, National Instrument 58-101, *Disclosure of Corporate Governance Practices*, National Instrument 71-102, *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*, Form 44-101F1, *Short Form Prospectus*, Form 45-101F, *Information Required in a Rights Offering Circular*, Form 45-106F2, *Offering Memorandum for Non-Qualifying Issuers* and Form 45-106F3, *Offering Memorandum for Qualifying Issuers*

- and -

Related Amendments to Companion Policy 44-101CP, Short Form Prospectus Distributions, National Policy 41-201, Income Trusts and Other Indirect Offerings and National Policy 51-201, Disclosure Standards

- and -

Rescission of National Policy 48, Future - Oriented Financial Information

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. Amendments to National Instrument 51-102, *Continuous Disclosure Obligations*, Amendments to Form 51-102F1, *Management's Discussion and Analysis*, Form 51-102F2, *Annual Information Form* and Form 51-102F5, *Information Circular* and Related Consequential and Other Amendments to National Instrument 52-107, *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*, Multilateral Instrument 52-109, *Certification of Disclosure in Issuers' Annual and Interim Filings*, Multilateral Instrument 52-110, *Audit Committees*, National Instrument 58-101, *Disclosure of Corporate Governance Practices*, National Instrument 71-102, *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*, Form 44-101F1, *Short Form Prospectus*, Form 45-101F, *Information Required in a Rights Offering Circular*, Form 45-106F2, *Offering Memorandum for Non-Qualifying Issuers* and Form 45-106F3, *Offering Memorandum for Qualifying Issuers* (hereinafter collectively called the "Rules") and Amendments to Companion Policy 51-102CP, *Continuous Disclosure Obligations* and Related Amendments to Companion Policy 44-101CP, *Short Form Prospectus Distributions*, National Policy 41-201, *Income Trusts and Other Indirect Offerings* and National Policy 51-201, *Disclosure Standards* (hereinafter collectively called the "Policies"), copies of which are attached hereto, have been adopted by one or more of the Canadian securities regulatory authorities; and

4. As a result of the Amendments to National Instrument 51-102, *Continuous Disclosure Obligations* and Related Consequential and Other Amendments to Form 44-101F1, *Short Form Prospectus*, Form 45-101F, *Information Required in a Rights Offering Circular*, Form 45-106F2, *Offering Memorandum for Non-Qualifying Issuers*, Form 45-106F3, *Offering Memorandum for Qualifying Issuers*, Companion Policy 51-102CP, *Continuous Disclosure Obligations*, Companion Policy 44-101CP, *Short Form Prospectus Distributions*, National Policy 41-201, *Income Trusts and Other Indirect Offerings* and National Policy, 51-201, *Disclosure Standards*, National Policy 48, *Future-Oriented Financial Information* is to be rescinded; and

5. 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 Rules and makes the same rules of the Commission;

(b) pursuant to the statutory authority contained in section 19 of the Act and subject to publication in the *Royal Gazette* or the Commission's website, rescinds National Policy 48, *Future-Orientated Financial Statements* and issues the Policies as policies of the Commission; and

(c) declares that the Rules are approved and made pursuant to clause (a) and the rescission of National Policy 48, *Future-Orientated Financial Statements* and the issuance of the Policies pursuant to clause (b) shall all take effect on **December 31, 2007**, unless the Minister disapproves the Rules or returns it to the Commission in accordance with subsection 150A(3) of the Act in which event the Rules and the Policies shall not become effective until they are approved by the Minister.

IN WITNESS WHEREOF this Instrument has been signed by the Chair and Vice-Chair of the Commission, being the members 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 **17th** day of **October, 2007**.

"H. Leslie O'Brien"
H. Leslie O'Brien, Q.C.

"R. Daren Baxter"
R. Daren Baxter

Attachments

Amendments to National Instrument 51-102 *Continuous Disclosure Obligations*

- 1. National Instrument 51-102 *Continuous Disclosure Obligations* is amended by this Instrument.**
- 2. Subsection 1.1(1) is amended by,**
 - a. in the definition of “approved rating organization”, striking out “Dominion Bond Rating Service Limited” and substituting “DBRS Limited”.**
 - b. repealing the definition of “investment fund”,**
 - c. repealing the definition of “non-redeemable investment fund”,**
 - d. in the the definition of “venture issuer”, striking out “the market known as OFEX” and substituting “the PLUS markets operated by PLUS Markets Group plc”.**
- 3. Subparagraph 4.10(2)(a)(ii) is repealed and the following substituted:**
 - (ii) if the reporting issuer did not file a document referred to in subparagraph (i), or the document does not include the financial statements for the reverse takeover acquirer that would be required to be included in a prospectus, the financial statements prescribed under securities legislation and described in the form of prospectus that the reverse takeover acquirer was eligible to use prior to the reverse takeover for a distribution of securities in the jurisdiction;
- 4. This amendment comes into force December 31, 2007.**

**Amendments to
National Instrument 51-102 *Continuous Disclosure Obligations***

1. *National Instrument 51-102 Continuous Disclosure Obligations is amended by this Instrument.*
2. *National Instrument 51-102 Continuous Disclosure Obligations is amended by adding the following definition to subsection 1.1(1) after the definition of “executive officer”,*

“financial outlook” means forward-looking information about prospective results of operations, financial position or cash flows that is based on assumptions about future economic conditions and courses of action and that is not presented in the format of a historical balance sheet, income statement or cash flow statement;

“FOFI”, or “future-oriented financial information”, means forward-looking information about prospective results of operations, financial position or cash flows, based on assumptions about future economic conditions and courses of action, and presented in the format of a historical balance sheet, income statement or cash flow statement.

3. *The following new Part 4A is added after section 4.11,*

PART 4A – FORWARD-LOOKING INFORMATION

4A.1 Application

This Part applies to forward-looking information that is disclosed by a reporting issuer other than forward-looking information contained in oral statements.

4A.2 Reasonable Basis

A reporting issuer must not disclose forward-looking information unless the issuer has a reasonable basis for the forward-looking information.

4A.3 Disclosure

A reporting issuer that discloses material forward-looking information must include disclosure that

- (a) identifies forward-looking information as such;
- (b) cautions users of forward-looking information that actual results may vary from the forward-looking information and identifies material risk factors that could cause actual results to differ materially from the forward-looking information;

- (c) states the material factors or assumptions used to develop forward-looking information; and
- (d) describes the reporting issuer's policy for updating forward-looking information if it includes procedures in addition to those described in subsection 5.8(2).

PART 4B – FOFI AND FINANCIAL OUTLOOKS

4B.1 Application

- (1) Subject to subsection (2), this Part applies to FOFI or a financial outlook that is disclosed by a reporting issuer.
- (2) This Part does not apply to disclosure that is
 - (a) subject to requirements in National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* or National Instrument 43-101 *Standards of Disclosure for Mineral Projects*;
 - (b) made to comply with the conditions of any exemption from the requirements referred to in paragraph (a) that a reporting issuer received from a regulator or securities regulatory authority unless the regulator or securities regulatory authority orders that this Part applies to disclosure made under the exemption; or
 - (c) contained in an oral statement.

4B.2 Assumptions

- (1) A reporting issuer must not disclose FOFI or a financial outlook unless the FOFI or financial outlook is based on assumptions that are reasonable in the circumstances.
- (2) FOFI or a financial outlook that is based on assumptions that are reasonable in the circumstances must, without limitation,
 - (a) be limited to a period for which the information in the FOFI or financial outlook can be reasonably estimated; and
 - (b) use the accounting policies the reporting issuer expects to use to prepare its historical financial statements for the period covered by the FOFI or the financial outlook.

4B.3 Disclosure

In addition to the disclosure required by section 4A.3, if a reporting issuer discloses FOFI or a financial outlook, the issuer must include disclosure that

- (a) states the date management approved the FOFI or financial outlook, if the document containing the FOFI or financial outlook is undated; and
- (b) explains the purpose of the FOFI or financial outlook and cautions readers that the information may not be appropriate for other purposes.

4. Part 5 is amended by adding the following after section 5.7,

5.8 Disclosure Relating to Previously Disclosed Material Forward-Looking Information

- (1) **Application** – This section applies to material forward-looking information that is disclosed by a reporting issuer other than
 - (a) forward-looking information contained in an oral statement; or
 - (b) disclosure that is
 - (i) subject to the requirements in National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* or National Instrument 43-101 *Standards of Disclosure for Mineral Projects*; or
 - (ii) made to comply with the conditions of any exemption from the requirements referred to in subparagraph (i) that a reporting issuer received from a regulator or securities regulatory authority unless the regulator or securities regulatory authority orders that this Part applies to disclosure made under the exemption.
- (2) **Update** – A reporting issuer must discuss in its MD&A, or MD&A supplement if one is required under section 5.2,
 - (a) events and circumstances that occurred during the period to which the MD&A relates that are reasonably likely to cause actual results to differ materially from material forward-looking information for a period that is not yet complete that the reporting issuer previously disclosed to the public; and
 - (b) the expected differences referred to in paragraph (a).

- (3) **Exemption** – Subsection (2) does not apply if the reporting issuer
 - (a) includes the information required by subsection (2) in a news release issued and filed by the reporting issuer before the filing of the MD&A or MD&A supplement referred to in subsection (2); and
 - (b) includes disclosure in the MD&A or MD&A supplement referred to in subsection (2) that
 - (i) identifies the news release referred to in paragraph (a);
 - (ii) states the date of the news release; and
 - (iii) states that the news release is available on www.sedar.com.

- (4) **Comparison to Actual** – A reporting issuer must disclose and discuss in its MD&A, or MD&A supplement if one is required under section 5.2, material differences between
 - (a) actual results for the annual or interim period to which the MD&A relates; and
 - (b) any FOFI or financial outlook for the period referred to in paragraph (a) that the reporting issuer previously disclosed.

- (5) **Withdrawal** – If during the period to which its MD&A relates, a reporting issuer decides to withdraw previously disclosed material forward-looking information,
 - (a) the reporting issuer must, in its MD&A or MD&A supplement if one is required under section 5.2, disclose the decision and discuss the events and circumstances that led the reporting issuer to that decision, including a discussion of the assumptions underlying the forward-looking information that are no longer valid; and
 - (b) subsection (4) does not apply to the reporting issuer with respect to the MD&A or MD&A supplement
 - (i) if the reporting issuer complies with paragraph (a); and
 - (ii) the MD&A or MD&A supplement is filed before the end of the period covered by the forward-looking information.

- (6) **Exemption** – Paragraph 5(a) does not apply if the reporting issuer

- (a) includes the information required by paragraph (5)(a) in a news release issued and filed by the reporting issuer before the filing of the MD&A or MD&A supplement referred to in subsection (5); and
- (b) includes disclosure in the MD&A or MD&A supplement referred to in subsection (5) that
 - (i) identifies the news release referred to in paragraph (a);
 - (ii) states the date of the news release; and
 - (iii) states that the news release is available on www.sedar.com.

4. These amendments come into force on December 31, 2007.

**Amendments to
Form 51-102F1 Management's Discussion and Analysis**

- 1. Form 51-102F1 Management's Discussion and Analysis is amended by this Instrument.**
- 2. Part 1 – General Provisions is amended by,**
 - (a) repealing paragraph (g); and**
 - (b) renaming paragraphs (h) to (p) as paragraphs (g) to (o).**
- 3. These amendments come into force on December 31, 2007.**

Amendments to Form 51-102F2 Annual Information Form

1. Form 51-102F2 Annual Information Form is amended by this Instrument.

2. Form 51-102F2 is amended by,

a. repealing subsection 10.2(1) and substituting the following:

- (1) If a director or executive officer of your company is, as at the date of the AIF, or was within 10 years before the date of the AIF, a director, chief executive officer or chief financial officer of any company (including your company), that:
 - (a) was subject to an order that was issued while the director or executive officer was acting in the capacity as director, chief executive officer or chief financial officer, or
 - (b) was subject to an order that was issued after the director or executive officer ceased to be a director, chief executive officer or chief financial officer and which resulted from an event that occurred while that person was acting in the capacity as director, chief executive officer or chief financial officer,

state the fact and describe the basis on which the order was made and whether the order is still in effect.

(1.1) For the purposes of subsection (1), “order” means

- (a) a cease trade order;
- (b) an order similar to a cease trade order; or
- (c) an order that denied the relevant company access to any exemption under securities legislation,

that was in effect for a period of more than 30 consecutive days.

(1.2) If a director or executive officer of your company, or a shareholder holding a sufficient number of securities of your company to affect materially the control of your company

- (a) is, as at the date of the AIF, or has been within the 10 years before the date of the AIF, a director or executive officer of any company (including your company) that, while that person was acting in that capacity, or within a year of that

person ceasing to act in that capacity, became bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency or was subject to or instituted any proceedings, arrangement or compromise with creditors or had a receiver, receiver manager or trustee appointed to hold its assets, state the fact; or

- (b) has, within the 10 years before the date of the AIF, become bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency, or become subject to or instituted any proceedings, arrangement or compromise with creditors, or had a receiver, receiver manager or trustee appointed to hold the assets of the director, executive officer or shareholder, state the fact.

b. in Instruction (i) after subsection 10.2(3), adding “, (1.2)” after “subsections (1)”, wherever it appears,

c. repealing Instruction (ii) after subsection 10.2(3) and substituting the following:

(ii) A management cease trade order which applies to directors or executive officers of a company is an “order” for the purposes of paragraph 10.2(1)(a) and must be disclosed, whether or not the director, chief executive officer or chief financial officer was named in the order.

d. adding the following as Instruction (iv) after subsection 10.2(3):

(iv) The disclosure in paragraph 10.2(1)(a) only applies if the director or executive officer was a director, chief executive officer or chief financial officer when the order was issued against the company. You do not have to provide disclosure if the director or executive officer became a director, chief executive officer or chief financial officer after the order was issued.

e. repealing section 18.1 and substituting the following:

18.1 Additional Disclosure

For companies that are not required to send a Form 51-102F5 to any of their securityholders, disclose the information required under Items 6 to 10, 12 and 13 of Form 51-102F5, as modified below, if applicable:

Form 51-102F5 Reference Modification

<u>Form 51-102F5 Reference</u>	<u>Modification</u>
Item 6 - Voting Securities and Principal Holders of Voting Securities	Include the disclosure specified in section 6.1 without regard to the phrase “entitled to be voted at the meeting”. Do not include the disclosure specified in sections 6.2, 6.3 and 6.4. Include the disclosure specified in section 6.5.
Item 7 – Election of Directors	Disregard the preamble of section 7.1. Include the disclosure specified in section 7.1 without regard to the word “proposed” throughout. Do not include the disclosure specified in section 7.3.
Item 8 – Executive Compensation	Disregard the preamble and paragraphs (a), (b) and (c) of Item 8. A company that does not send a management information circular to its securityholders must provide the disclosure required by Form 51-102F6.
Item 9 – Securities Authorized for Issuance under Equity Compensation Plans	Disregard subsection 9.1(1).
Item 10 – Indebtedness of Directors and Executive Officers	Include the disclosure specified throughout; however, replace the phrase “date of the information circular” with “date of the AIF” throughout. Disregard paragraph 10.3(a).
Item 12 – Appointment of Auditor	Name the auditor. If the auditor was first appointed within the last five years, state the date when the auditor was first appointed.”

3. This amendment comes into force December 31, 2007.

Amendments to Form 51-102F5 *Information Circular*

1 Form 51-102F5 *Information Circular* is amended by this Instrument.

2. Form 51-102F5 is amended by,

a. repealing section 7.2 and substituting the following:

7.2 If a proposed director

- (a) is, as at the date of the information circular, or has been, within 10 years before the date of the information circular, a director, chief executive officer or chief financial officer of any company (including the company in respect of which the information circular is being prepared) that,
 - (i) was subject to an order that was issued while the proposed director was acting in the capacity as director, chief executive officer or chief financial officer; or
 - (ii) was subject to an order that was issued after the proposed director ceased to be a director, chief executive officer or chief financial officer and which resulted from an event that occurred while that person was acting in the capacity as director, chief executive officer or chief financial officer,

state the fact and describe the basis on which the order was made and whether the order is still in effect; or

- (b) is, as at the date of the information circular, or has been within 10 years before the date of the information circular, a director or executive officer of any company (including the company in respect of which the information circular is being prepared) that, while that person was acting in that capacity, or within a year of that person ceasing to act in that capacity, became bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency or was subject to or instituted any proceedings, arrangement or compromise with creditors or had a receiver, receiver manager or trustee appointed to hold its assets, state the fact; or
- (c) has, within the 10 years before the date of the information circular, become bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency, or become subject to or instituted any proceedings, arrangement or compromise with creditors, or had a

receiver, receiver manager or trustee appointed to hold the assets of the proposed director, state the fact.

b. repealing Instruction (ii) after section 7.2.2 and substituting the following:

(ii) A management cease trade order which applies to directors or executive officers of a company is an “order” for the purposes of paragraph 7.2(a)(i) and must be disclosed, whether or not the proposed director was named in the order.

c. adding the following as Instruction (iv) after section 7.2.2:

(iv) The disclosure in paragraph 7.2(a)(i) only applies if the proposed director was a director, chief executive officer or chief financial officer when the order was issued against the company. You do not have to provide disclosure if the proposed director became a director, chief executive officer or chief financial officer after the order was issued.

c. adding the following as section 7.2.3:

7.2.3 For the purposes of subsection 7.2(a), “order” means

- (a) a cease trade order;
- (b) an order similar to a cease trade order; or
- (c) an order that denied the relevant company access to any exemption under securities legislation,

that was in effect for a period of more than 30 consecutive days.

d. repealing the last paragraph of section 14.2 and substituting the following:

The disclosure must be the disclosure (including financial statements) prescribed under securities legislation and described in the form of prospectus that the entity would be eligible to use immediately prior to the sending and filing of the information circular in respect of the significant acquisition or restructuring transaction, for a distribution of securities in the jurisdiction.

3. This amendment comes into force December 31, 2007.

**Amendments to
Companion Policy 51-102CP *Continuous Disclosure Obligations***

1. Companion Policy 51-102CP *Continuous Disclosure Obligations* is amended by,

a. adding the following after subsection 1.4(3):

Similarly, the terms chief executive officer and chief financial officer should be read to include the individuals who have the responsibilities normally associated with these positions or act in a similar capacity. This determination should be made irrespective of an individual's corporate title or whether that individual is employed directly or acts pursuant to an agreement or understanding.

b. adding the following after section 9.1:

9.2 Prospectus-level Disclosure in Certain Information Circulars

Section 14.2 of Form 51-102F5 *Information Circular* requires an issuer to provide prospectus-level disclosure about certain entities if securityholder approval is required in respect of a significant acquisition under which securities of the acquired business are being exchanged for the issuer's securities or in respect of a restructuring transaction under which securities are to be changed, exchanged, issued or distributed.

Section 14.2 provides that the disclosure must be the disclosure (including financial statements) prescribed by the form of prospectus that the entity would be eligible to use immediately prior to the sending and filing of the information circular in respect of the significant acquisition or restructuring transaction, for a distribution of securities in the jurisdiction.

For example, if disclosure was required in an information circular of Company A for both Company A (an issuer that was only eligible to file a long form prospectus) and Company B (an issuer that was eligible to file a short form prospectus), the disclosure for Company A would be that required by the long form prospectus rules and the disclosure for Company B would be that required by the short form prospectus rules. Any information incorporated by reference in the information circular of Company A would have to comply with paragraph (c) of Part 1 of Form 51-102F5 and be filed under Company A's profile on SEDAR.

2. This amendment comes into force December 31, 2007.

**Amendments to
Companion Policy 51-102CP *Continuous Disclosure Obligations***

1. **Companion Policy 51-102CP *Continuous Disclosure Obligations* is amended by this Instrument.**
2. **Companion Policy 51-102CP *Continuous Disclosure Obligations* is amended by adding the following after section 4.2,**

PART 4A – FORWARD-LOOKING INFORMATION

4A.1 Application

Section 4A.1 of the Instrument indicates that Part 4A applies to forward-looking information that is disclosed by a reporting issuer other than forward-looking information contained in oral statements. Reporting issuers should consider broadly the various instances of forward-looking information made available to the public in considering the scope of forward-looking information that is disclosed. This includes, but is not limited to:

- Information that a reporting issuer files with securities regulators
- Information contained in news releases issued by a reporting issuer
- Information published on a reporting issuer's website
- Information published in marketing materials or other similar materials prepared by a reporting issuer or distributed to the public by a reporting issuer.

4A.2 Reasonable Basis

Section 4A.2 of the Instrument requires a reporting issuer to have a reasonable basis for any forward-looking information it discloses. When interpreting "reasonable basis", reporting issuers should consider:

- (a) the reasonableness of the assumptions underlying the forward-looking information; and
- (b) the process followed in preparing and reviewing forward-looking information.

4A.3 Material Forward-Looking Information

Section 4A.3 and section 5.8 of the Instrument require a reporting issuer to include specified disclosure in material forward-looking information it discloses. Reporting issuers should exercise judgement when determining whether information is material. If a reasonable investor's decision whether or not to buy, sell or hold securities of the reporting issuer would be influenced or changed if the information were omitted or misstated, then the information is likely material. This concept of materiality is consistent with the one contained in the Handbook.

Section 1.1 contains definitions of the terms “financial outlook” and “FOFI.” We consider FOFI and most financial outlooks to be material forward-looking information. Examples of financial outlooks include expected revenues, net income, earnings per share and R&D spending. A financial outlook relating to earnings is commonly referred to as “earnings guidance.”

An example of forward-looking information that is not a financial outlook or FOFI would be an estimate of future store openings by an issuer in the retail industry. This type of information may or may not be material, depending on whether a reasonable investor’s decision whether or not to buy, sell or hold securities of that issuer would be influenced or changed if the information were omitted or misstated.

4A.4 Location of Disclosure

Section 4A.3 of the Instrument requires that any material forward-looking information include specified disclosure. This disclosure should be presented in a manner that allows an investor who reads the document or other material containing the forward-looking information to be able to readily:

- (a) understand that the forward-looking information is being provided in the document or other material;
- (b) identify the forward-looking information; and
- (c) inform himself or herself of the material assumptions underlying the forward-looking information and the material risk factors associated with the forward-looking information.

4A.5 Disclosure of Cautionary Language and Material Risk Factors

- (1) Paragraph 4A.3(b) of the Instrument requires a reporting issuer to accompany any material forward-looking information with disclosure that cautions users that actual results may vary from the forward-looking information and identifies material risk factors that could cause material variation. The material risk factors identified in the cautionary language should be relevant to the forward-looking information and the disclosure should not be boilerplate in nature.
- (2) The cautionary statements required by paragraph 4A.3(b) of the Instrument should identify significant and reasonably foreseeable factors that could reasonably be expected to cause results to differ materially from those projected in the material forward-looking statement. Reporting issuers should not interpret this as requiring a reporting issuer to anticipate and discuss everything that could conceivably cause results to differ.

4A.6 Disclosure of Material Factors or Assumptions

Paragraph 4A.3(c) of the Instrument requires a reporting issuer to disclose the material factors or assumptions used to develop material forward-looking information. The factors or assumptions should be relevant to the forward-looking information. Disclosure of material factors or assumptions does not require an exhaustive statement of every factor or assumption applied – a materiality standard applies.

4A.7 Date of Assumptions

Management of a reporting issuer that discloses material forward-looking information should satisfy itself that the assumptions are appropriate as of the date management discloses the material forward-looking information even though the material forward-looking information may have been prepared at an earlier time, and may be based on information accumulated over a period of time.

4A.8 Time Period

Paragraph 4B.2(2)(a) of the Instrument requires a reporting issuer to limit the period covered by FOFI or a financial outlook to a period for which the information can be reasonably estimated. In many cases that time period will not go beyond the end of the reporting issuer's next fiscal year. Some of the factors a reporting issuer should consider include the reporting issuer's ability to make appropriate assumptions, the nature of the reporting issuer's industry, and the reporting issuer's operating cycle.

4A.9 FOFI

Section 4250 *Future-Oriented Financial Information* (Section 4250) of the CICA Handbook is relevant to reporting issuers who disclose FOFI. If a reporting issuer determines that it has a reasonable basis for FOFI prepared using one or more hypotheses, as that term is defined in CICA Handbook Section 4250, the hypotheses should be consistent with the courses of action that the reporting issuer intends to adopt.

3. *Part 5 is amended by adding the following after section 5.4:*

5.5 Previously disclosed material forward-looking information

- (1) Subsection 5.8(2) of the Instrument requires a reporting issuer to discuss certain events and circumstances that occurred during the period to which its MD&A relates. The events to be discussed are those that are reasonably likely to cause actual results to differ materially from material forward-looking information for a period that is not yet complete. This discussion is only required if the reporting issuer previously disclosed the forward-looking information to the public. Subsection 5.8(2) also requires a reporting issuer to discuss the expected differences.

For example, assume that a reporting issuer published FOFI for the current year assuming no change in the prime interest rate, but by the end of the second quarter the prime interest rate went up by 2%. In its MD&A for the second quarter, the reporting issuer should discuss the interest rate increase and its expected effect on results compared to those indicated in the FOFI.

A reporting issuer should consider whether the events and circumstances that trigger MD&A or MD&A supplement disclosure under subsection 5.8(2) of the Instrument might also trigger material change reporting requirements under Part 7 of the Instrument.

- (2) Subsection 5.8(4) of the Instrument requires a reporting issuer to disclose and discuss material differences between actual results for the annual or interim period to which its MD&A or MD&A supplement relates and any FOFI or financial outlook for that period that the reporting issuer previously disclosed to the public. A reporting issuer should disclose and discuss material differences for material individual items included in the FOFI or financial outlook, including assumptions.

For example, if the actual dollar amount of revenue approximates forecasted revenue but the sales mix or sales volume differs materially from what the reporting issuer expected, the reporting issuer should explain the differences.

- (3) Subsection 5.8(5) of the Instrument addresses a reporting issuer's decision to withdraw previously disclosed material forward-looking information. The subsection requires the reporting issuer to disclose that decision and discuss the events and circumstances that led the reporting issuer to the decision to withdraw the material forward-looking information, including a discussion of the assumptions included in the material forward-looking information that are no longer valid. A reporting issuer should consider whether the events and circumstances that trigger MD&A or MD&A supplement disclosure under subsection 5.8(5) of the Instrument might also trigger material change reporting requirements under Part 7 of the Instrument. We encourage all reporting issuers to promptly communicate to the market a decision to withdraw material forward-looking information, even if the material change reporting requirements are not triggered.

4. *These amendments come into force on December 31, 2007.*

**Consequential Amendments to
National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards
and Reporting Currency***

- 1. National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* is amended by this Instrument.**
- 2. National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* is amended in section 1.1 by repealing the definition of “investment fund”.**
- 3. This amendment comes into force December 31, 2007.**

**Consequential Amendments to
Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and
Interim Filings***

- 1. Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* is amended by this Instrument.**
- 2. Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* is amended in section 1.1 by repealing the definition of “investment fund”.**
- 3. This amendment comes into force December 31, 2007.**

**Consequential and Other Amendments to
Multilateral Instrument 52-110 *Audit Committees***

- 1. Multilateral Instrument 52-110 *Audit Committee* is amended by this Instrument.**
- 2. Multilateral Instrument 52-110 *Audit Committees* is amended:**
 - (a) in section 1.1 by,**
 - (i) repealing the definition of “AIF” and substituting the following:**

“AIF” has the meaning ascribed to it in NI 51-102;
 - (ii) repealing the definition of “asset-backed security” and substituting the following:**

“asset-backed security” has the meaning ascribed to it in NI 51-102;
 - (iii) repealing the definition of “credit support issuer” and substituting the following:**

“credit support issuer” has the meaning ascribed to it in section 13.4 of NI 51-102;
 - (iv) repealing the definition of “exchangeable security issuer” and substituting the following:**

“exchangeable security issuer” has the meaning ascribed to it in section 13.3 of NI 51-102;
 - (v) repealing the definition of “investment fund”,**
 - (vi) repealing the definition of “National Instrument 51-102”,**
 - (vii) adding the following definition of “NI 51-102”:**

“NI 51-102” means National Instrument 51-102 *Continuous Disclosure Obligations*;
 - (viii) repealing the definition of “venture issuer” and substituting the following:**

“venture issuer” means an issuer that, at the end of its most recently completed financial year, did not have any of its securities listed or quoted on any of the Toronto Stock Exchange, a U.S. marketplace, or a marketplace outside of Canada and the United States of America other

than the Alternative Investment Market of the London Stock Exchange or the PLUS markets operated by PLUS Markets Group plc.

(b) in section 1.2 by striking out “National Instrument 51-102” and substituting “NI 51-102” wherever it appears.

3. This amendment comes into force December 31, 2007.

**Consequential and Other Amendments to
National Instrument 58-101 *Disclosure of Corporate Governance Practices***

- 1. National Instrument 58-101 *Disclosure of Corporate Governance Practices* is amended by this Instrument.**
- 2. National Instrument 58-101 *Disclosure of Corporate Governance Practices* is amended:**
 - (a) in section 1.1 by,**
 - (i) repealing the definition of “AIF” and substituting the following:**

“AIF” has the same meaning as in NI 51-102;
 - (ii) adding the following definition of “asset-backed security”:**

“asset-backed security” has the same meaning as in NI 51-102;
 - (iii) repealing the definition of “executive officer” and substituting the following:**

“executive officer” has the same meaning as in NI 51-102;
 - (iv) repealing the definition of “MD&A” and substituting the following:**

“MD&A” has the same meaning as in NI 51-102;
 - (v) adding the following definition of “NI 51-102”:**

“NI 51-102” means National Instrument 51-102 *Continuous Disclosure Obligations*;
 - (vi) repealing the definition of “venture issuer” and substituting the following:**

“venture issuer” means a reporting issuer that, at the end of its most recently completed financial year, did not have any of its securities listed or quoted on any of the Toronto Stock Exchange, a U.S. marketplace, or a marketplace outside of Canada and the United States of America other than the Alternative Investment Market of the London Stock Exchange or the PLUS markets operated by PLUS Markets Group plc.

(b) in section 1.3 by striking out “National Instrument 51-102” and substituting “NI 51-102” wherever it appears.

3. This amendment comes into force December 31, 2007.

**Consequential Amendments to
National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to
Foreign Issuers***

- 1. National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* is amended by this Instrument.**
- 2. National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* is amended in section 1.1 by repealing the definition of “investment fund”.**
- 3. This amendment comes into force December 31, 2007.**

**Amendments to
Form 44-101F1 Short Form Prospectus Distributions**

and

**Companion Policy 44-101 CP to
National Instrument 44-101 Short Form Prospectus Distributions**

Amendments to Form 44-101F1 Short Form Prospectus of National Instrument 44-101 Short Form Prospectus Distributions

1. This Instrument amends Form 44-101F1 Short Form Prospectus.

2. Form 44-101F1 Short Form Prospectus is amended by adding the following after paragraph (12) under the heading “Instructions”:

- (13) Forward-looking information included in a short form prospectus must comply with section 4A.2 of NI 51-102 and must include the disclosure described in section 4A.3 of NI 51-102. In addition to the foregoing, FOFI or a financial outlook, each as defined in NI 51-102, included in a short form prospectus must comply with Part 4B of NI 51-102. If the forward-looking information relates to an issuer or other entity that is not a reporting issuer, section 4A.2, section 4A.3 and Part 4B of NI 51-102 apply as if the issuer or other entity were a reporting issuer.

3. This amendment comes into force on December 31, 2007.

Amendments to Companion Policy 44-101CP to National Instrument 44-101 Short Form Prospectus Distributions

1. This Instrument amends Companion Policy 44-101CP to National Instrument 44-101 Short Form Prospectus Distributions.

2. Companion Policy 44-101CP to National Instrument 44-101 Short Form Prospectus Distributions is amended by adding the following after section 4.13:

4.14 Previously Disclosed Material Forward-Looking Information – If an issuer, at the time it files a short form prospectus,

1. has previously disclosed to the public material forward-looking information for a period that is not yet complete;

2. is aware of events and circumstances that are reasonably likely to cause actual results to differ materially from the material forward-looking information; and

3. has not filed an MD&A or MD&A supplement with the securities regulatory authorities that discusses those events and circumstances and expected differences from the material forward-looking information, as required by section 5.8 of NI 51-102,

the issuer should discuss those events and circumstances, and the expected differences from the material forward-looking information, in the short form prospectus.

3. These amendments come into force on December 31, 2007.

**Amendments to
Form 45-101F Information Required in a Rights Offering Circular**

- 1. This Instrument amends Form 45-101F Information Required in a Rights Offering Circular.**
- 2. Form 45-101F Information Required in a Rights Offering Circular is amended by adding the following after item 16.1:**

Item 17 – Forward-Looking Information

17.1 – Forward-Looking Information

Forward-looking information included in a rights offering circular must comply with section 4A.2 of NI 51-102 and must include the disclosure described in section 4A.3 of NI 51-102. In addition to the foregoing, FOFI or a financial outlook, each as defined in NI 51-102, included in a rights offering circular must comply with Part 4B of NI 51-102. If the forward-looking information relates to an issuer or other entity that is not a reporting issuer, section 4A.2, section 4A.3 and Part 4B of NI 51-102 apply as if the issuer or other entity were a reporting issuer.

- 3. This amendment comes into force on December 31, 2007.**

**Amendments to
Form 45-106F2 Offering Memorandum for Non-Qualifying Issuers**

and

Form 45-106F3 Offering Memorandum for Qualifying Issuers

**Amendments to Form 45-106F2 Offering Memorandum for Non-Qualifying Issuers
of National Instrument 45-106 Prospectus and Registration Exemptions**

- 1. This Instrument amends Form 45-106F2 Offering Memorandum for Non-Qualifying Issuers.**
- 2. Form 45-106F2 Offering Memorandum for Non-Qualifying Issuers is amended by,**
 - (a) adding the following after item A.10 under the heading “Instructions for Completing Form 45-106F2 Offering Memorandum for Non-Qualifying Issuers”:**
 11. During the course of a distribution of securities, any material forward-looking information disseminated must only be that which is set out in the offering memorandum. If an extract of FOFI, as defined in National Instrument 51-102 *Continuous Disclosure Obligations*, is disseminated, the extract or summary must be reasonable and balanced and have a cautionary note in boldface stating that the information presented is not complete and that complete FOFI is included in the offering memorandum., **and**
 - (b) striking out “Refer to National Policy 48 *Future Oriented Financial Information* if future oriented financial information is included in the offering memorandum.” in item B.12 under the heading “Instructions for Completing Form 45-106F2 Offering Memorandum for Non-Qualifying Issuers” and substituting “Forward-looking information included in an offering memorandum must comply with section 4A.2 of NI 51-102 and must include the disclosure described in section 4A.3 of NI 51-102. In addition to the foregoing, FOFI or a financial outlook, each as defined in NI 51-102, included in an offering memorandum must comply with Part 4B of NI 51-102. For an issuer that is not a reporting issuer, references to a “reporting issuer” in section 4A.2, section 4A.3 and Part 4B of NI 51-102 should be read as references to an “issuer.” Additional guidance may be found in the companion policy to NI 51-102.”**
- 3. These amendments come into force on December 31, 2007.**

Amendments to Form 45-106F3 Offering Memorandum for Qualifying Issuers of National Instrument 45-106 Prospectus and Registration Exemptions

1. This Instrument amends Form 45-106F3 Offering Memorandum for Qualifying Issuers.

2. Form 45-106F3 Offering Memorandum for Qualifying Issuers is amended by,

(a) adding the following after item A.11 under the heading “Instructions for Completing Form 45-106F3 Offering Memorandum for Qualifying Issuers”

12. During the course of a distribution of securities, any material forward-looking information disseminated must only be that which is set out in the offering memorandum. If an extract of FOFI, as defined in National Instrument 51-102 *Continuous Disclosure Obligations*, is disseminated, the extract or summary must be reasonable and balanced and must have a cautionary note in boldface stating that the information presented is not complete and that complete FOFI is included in the offering memorandum., ***and***

(b) striking out “Refer to National Policy 48 Future Oriented Financial Information if future oriented financial information is included in the offering memorandum.” in item B.2 under the heading “Instructions for Completing Form 45-106F3 Offering Memorandum for Qualifying Issuers” and substituting “Forward-looking information included in an offering memorandum must comply with section 4A.2 of NI 51-102 and must include the disclosure described in section 4A.3 of NI 51-102. In addition to the foregoing, FOFI or a financial outlook, each as defined in NI 51-102, included in an offering memorandum must comply with Part 4B of NI 51-102. Additional guidance may be found in the companion policy to NI 51-102.

3. These amendments come into force on December 31, 2007.

**Amendments to
National Policy 41-201 *Income Trusts and Other Indirect Offerings***

1. This Instrument amends National Policy 41-201 Income Trusts and Other Indirect Offerings.

2. National Policy 41-201 Income Trusts and Other Indirect Offerings is amended by adding the following as the last sentence of the first paragraph of section 2.8:

Although securities legislation does not prohibit the use of projections, as defined in CICA Handbook section 4250, we believe that a S. 4250 forecast is more appropriate in these circumstances.

3. This amendment comes into force on December 31, 2007.

**Amendments to
National Policy 51-201 Disclosure Standards**

- 1. This Instrument amends National Policy 51-201 Disclosure Standards.**
- 2. National Policy 51-201 Disclosure Standards is amended by**
 - (a) repealing sections 5.5 and 5.6;**
 - (b) renumbering section 5.7 as section 5.5;**
 - (c) striking out “earnings guidance” in subsection 6.4(1) and replacing it with “financial outlooks and FOFI, as defined in National Instrument 51-102 – Continuous Disclosure Obligations”;**
 - (d) repealing section 6.9; and**
 - (e) renumbering sections 6.10 to 6.14 as sections 6.9 to 6.13.**
- 3. These amendments come into force on December 31, 2007.**