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(3) Despite subsection (1), if the accounting principles used to prepare an issuer's most recent annual financial statements differ from the accounting principles used to prepare the issuer's interim financial report for a subsequent period, the issuer may prepare a *pro forma* income statement for the same period as that of its most recent annual financial statements using accounting policies that:

- (a) are permitted by the accounting principles that were used to prepare the issuer's interim financial report; and
- (b) would apply to the information presented in the *pro forma* income statement if that information were included in the issuer's interim financial report.

**3.15 Acceptable Accounting Principles for Foreign Registrants** — Despite paragraph 3.2 (3)(a), financial statements and interim financial information delivered by a foreign registrant may be prepared in accordance with:

- (a) IFRS, except that any investments in subsidiaries, jointly controlled entities and associates must be accounted for as specified for separate financial statements in IAS 27;
- (b) U.S. GAAP, except that any investments in subsidiaries, jointly controlled entities and associates must be accounted for as specified for separate financial statements in IAS 27; or
- (c) accounting principles that meet the disclosure requirements of a foreign regulatory authority to which the registrant is subject, if it is a foreign registrant incorporated or organized under the laws of that designated foreign jurisdiction.

**3.16 Acceptable Auditing Standards for Foreign Registrants** —

(1) Despite subsection 3.3(1), financial statements referred to in paragraph 2.1(2)(a) that are delivered by a foreign registrant and required by securities legislation to be audited may be audited in accordance with:

- (a) International Standards on Auditing if the financial statements are accompanied by:
  - (i) an auditor's report that:
    - (A) expresses an unmodified opinion;
    - (B) identifies all financial periods presented for which the auditor has issued the auditor's report;
    - (C) identifies the auditing standards used to conduct the audit and the accounting principles used to prepare the financial statements; and
    - (D) is prepared in accordance with the same auditing standards used to conduct the audit; and
  - (ii) the predecessor auditor's reports on the comparative periods, if the foreign registrant has changed its auditor and one or more of the comparative periods presented in the financial statements were audited by the predecessor auditor;

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(b) U.S. PCAOB GAAS or U.S. AICPA GAAS if the financial statements are accompanied by:

- (i) an auditor's report that:
  - (A) expresses an unqualified opinion;
  - (B) identifies all financial periods presented for which the auditor has issued the auditor's report;
  - (C) identifies the auditing standards used to conduct the audit and the accounting principles used to prepare the financial statements; and
  - (D) is prepared in accordance with the same auditing standards used to conduct the audit; and

- (ii) the predecessor auditor's reports on the comparative periods, if the foreign registrant has changed its auditor and one or more of the comparative periods presented in the financial statements were audited by the predecessor auditor; or

(c) auditing standards that meet the foreign disclosure requirements of the designated foreign jurisdiction to which the registrant is subject if:

- (i) it is a foreign registrant incorporated or organized under the laws of that designated foreign jurisdiction;
- (ii) the financial statements are accompanied by an auditor's report prepared in accordance with the same auditing standards used to conduct the audit; and
- (iii) the auditor's report identifies the accounting principles used to prepare the financial statements.

(2) Subparagraph (1)(a)(ii) or (b)(ii) does not apply if the auditor's report described in subparagraph (1)(a)(i) or (b)(i), as the case may be, refers to the predecessor auditor's reports on the comparative periods.

**PART 4: RULES APPLYING TO FINANCIAL YEARS BEGINNING BEFORE JANUARY 1, 2011**

**4.1 Definitions and Application —**

(1) In this Part:

**“Canadian GAAP - Part V”** means generally accepted accounting principles determined with reference to Part V of the Handbook applicable to public enterprises;

**“public enterprise”** means a public enterprise as defined in Part V of the Handbook.

(2) This Part applies to financial statements, financial information, operating statements and *pro forma* financial statements for periods relating to financial years beginning before January 1, 2011.

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**4.2 Acceptable Accounting Principles – General Requirements —**

- (1) Financial statements, other than financial statements delivered by registrants and acquisition statements, must be prepared in accordance with Canadian GAAP – Part V.
- (2) Financial statements and interim financial information delivered by a registrant to the securities regulatory authority, must be prepared in accordance with Canadian GAAP – Part V except that the financial statements and interim financial information must be prepared on a non-consolidated basis.
- (3) Financial statements must be prepared in accordance with the same accounting principles for all periods presented in the financial statements.
- (4) The notes to the financial statements must identify the accounting principles used to prepare the financial statements.

**4.3 Acceptable Auditing Standards – General Requirements —** Financial statements, other than acquisition statements, that are required by securities legislation to be audited must be audited in accordance with Canadian GAAS and be accompanied by an auditor's report that:

- (a) expresses an unmodified opinion;
- (b) identifies all financial periods presented for which the auditor has issued an auditor's report;
- (c) refers to the predecessor auditor's reports on the comparative periods, if the issuer or registrant has changed its auditor and one or more of the comparative periods presented in the financial statements were audited by the predecessor auditor; and
- (d) identifies the accounting principles used to prepare the financial statements.

**4.4 Acceptable Auditors —** An auditor's report filed by an issuer or delivered by a registrant must be prepared and signed by a person or company that is authorized to sign an auditor's report under the laws of a jurisdiction of Canada or a foreign jurisdiction, and that meets the professional standards of that jurisdiction.**4.5 Measurement and Reporting Currencies —**

- (1) The reporting currency must be disclosed on the face page of the financial statements or in the notes to the financial statements unless the financial statements are prepared in accordance with Canadian GAAP – Part V and the reporting currency is the Canadian dollar.
- (2) The notes to the financial statements must disclose the measurement currency if it is different than the reporting currency.

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**4.6 Credit Supporters —**

(1) Unless subsection 4.2(1) applies, if a credit support issuer files, or includes in a prospectus, financial statements of a credit supporter, the credit supporter's financial statements must:

- (a) be prepared in accordance with the accounting principles and audited in accordance with the auditing standards that apply under this Instrument if the credit supporter were to file financial statements referred to in paragraph 2.1(2)(b);
- (b) identify the accounting principles used to prepare the financial statements; and
- (c) disclose the reporting currency for the financial statements, and disclose the measurement currency if it is different than the reporting currency.

(2) If a credit support issuer files, or includes in a prospectus, summary financial information for the credit supporter or credit support issuer:

- (a) the summary financial information must:
  - (i) be prepared in accordance with the accounting principles that this Instrument requires to be used in preparing financial statements if the credit supporter or credit support issuer, as the case may be, were to file financial statements referred to in paragraph 2.1(2)(b);
  - (ii) identify the accounting principles used to prepare the summary financial information; and
  - (iii) disclose the reporting currency for the financial information, and disclose the measurement currency if it is different than the reporting currency; and
- (b) the amounts presented in the summary financial information must be derived from financial statements of the credit supporter or credit support issuer that, if required by securities legislation to be audited, are audited in accordance with the auditing standards that apply under this Instrument if the credit supporter or credit support issuer, as the case may be, were to file financial statements referred to in paragraph 2.1(2)(b).

**4.7 Acceptable Accounting Principles for SEC Issuers —**

(1) Despite subsections 4.2(1) and (3), financial statements of an SEC issuer that are filed with or delivered to a securities regulatory authority or regulator, other than acquisition statements, may be prepared in accordance with U.S. GAAP provided that, if the SEC issuer previously filed or included in a prospectus financial statements prepared in accordance with Canadian GAAP – Part V, the SEC issuer complies with the following:

- (a) the notes to the first two sets of the issuer's annual financial statements after the change from Canadian GAAP – Part V to U.S. GAAP and the notes to the issuer's interim financial statements for interim periods during those two years:
  - (i) explain the material differences between Canadian GAAP – Part V and U.S. GAAP that relate to recognition, measurement and presentation;

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(ii) quantify the effect of material differences between Canadian GAAP – Part V and U.S. GAAP that relate to recognition, measurement and presentation, including a tabular reconciliation between net income reported in the financial statements and net income computed in accordance with Canadian GAAP – Part V; and

(iii) provide disclosure consistent with disclosure requirements of Canadian GAAP – Part V to the extent not already reflected in the financial statements;

(b) financial information for any comparative periods that were previously reported in accordance with Canadian GAAP – Part V are presented:

(i) as previously reported in accordance with Canadian GAAP – Part V;

(ii) as restated and presented in accordance with U.S. GAAP; and

(iii) supported by an accompanying note that:

(A) explains the material differences between Canadian GAAP – Part V and U.S. GAAP that relate to recognition, measurement and presentation; and

(B) quantifies the effect of material differences between Canadian GAAP – Part V and U.S. GAAP that relate to recognition, measurement and presentation, including a tabular reconciliation between net income as previously reported in the financial statements in accordance with Canadian GAAP – Part V and net income as restated and presented in accordance with U.S. GAAP; and

(c) if the SEC issuer has filed financial statements prepared in accordance with Canadian GAAP – Part V for one or more interim periods of the current year, those interim financial statements are restated in accordance with U.S. GAAP and comply with paragraphs (a) and (b).

(2) The comparative information specified in subparagraph (1)(b)(i) may be presented on the face of the balance sheet and statements of income and cash flow or in the note to the financial statements required by subparagraph (1)(b)(iii).

**4.8 Acceptable Auditing Standards for SEC Issuers** — Despite section 4.3, financial statements of an SEC issuer that are filed with or delivered to the securities regulatory authority or regulator, other than acquisition statements, and that are required by securities legislation to be audited, may be audited in accordance with U.S. PCAOB GAAS if the financial statements are accompanied by an auditor's report prepared in accordance with U.S. PCAOB GAAS that:

(a) expresses an unqualified opinion;

(b) identifies all financial periods presented for which the auditor has issued an auditor's report;

(c) refers to the predecessor auditor's reports on the comparative periods, if the issuer has changed its auditor and one or more of the comparative periods presented in the financial statements were audited by the predecessor auditor; and

(d) identifies the accounting principles used to prepare the financial statements.

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**4.9 Acceptable Accounting Principles for Foreign Issuers** — Despite subsection 4.2(1), financial statements of a foreign issuer that are filed with or delivered to a securities regulatory authority or regulator, other than acquisition statements, may be prepared in accordance with one of the following accounting principles:

- (a) U.S. GAAP, if the issuer is an SEC foreign issuer;
- (b) IFRS;
- (c) accounting principles that meet the disclosure requirements for foreign private issuers, as that term is defined for the purposes of the 1934 Act, if:
  - (i) the issuer is an SEC foreign issuer;
  - (ii) on the last day of the most recently completed financial year the total number of equity securities of the issuer beneficially owned by residents of Canada does not exceed 10%, on a fully-diluted basis, of the total number of equity securities of the issuer; and
  - (iii) the financial statements include any reconciliation to U.S. GAAP required by the SEC;
- (d) accounting principles that meet the foreign disclosure requirements of the designated foreign jurisdiction to which the issuer is subject, if the issuer is a designated foreign issuer;
- (e) accounting principles that cover substantially the same core subject matter as Canadian GAAP – Part V, including recognition and measurement principles and disclosure requirements, if the notes to the financial statements:
  - (i) explain the material differences between Canadian GAAP – Part V and the accounting principles used that relate to recognition, measurement and presentation;
  - (ii) quantify the effect of material differences between Canadian GAAP – Part V and the accounting principles used that relate to recognition, measurement and presentation, including a tabular reconciliation between net income reported in the issuer's financial statements and net income computed in accordance with Canadian GAAP – Part V; and
  - (iii) provide disclosure consistent with Canadian GAAP – Part V requirements to the extent not already reflected in the financial statements.

**4.10 Acceptable Auditing Standards for Foreign Issuers** — Despite section 4.3, financial statements of a foreign issuer that are filed with or delivered to a securities regulatory authority or regulator, other than acquisition statements, that are required by securities legislation to be audited may, if the financial statements are accompanied by an auditor's report prepared in accordance with the same auditing standards used to conduct the audit and the auditor's report identifies the accounting principles used to prepare the financial statements, be audited in accordance with:

- (a) U.S. PCAOB GAAS, if the auditor's report:
  - (i) expresses an unqualified opinion;
  - (ii) identifies all financial periods presented for which the auditor has issued an auditor's report; and

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- (iii) refers to the predecessor auditor's reports on the comparative periods, if the issuer has changed its auditor and one or more of the comparative periods presented in the financial statements were audited by the predecessor auditor;
- (b) International Standards on Auditing, if the auditor's report is accompanied by a statement by the auditor that:
  - (i) describes any material differences in the form and content of the auditor's report as compared to an auditor's report prepared in accordance with Canadian GAAS; and
  - (ii) indicates that an auditor's report prepared in accordance with Canadian GAAS would express an unmodified opinion; or
- (c) auditing standards that meet the foreign disclosure requirements of the designated foreign jurisdiction to which the issuer is subject, if the issuer is a designated foreign issuer.

**4.11 Acceptable Accounting Principles for Acquisition Statements —**

- (1) Acquisition statements must be prepared in accordance with one of the following accounting principles:
  - (a) Canadian GAAP – Part V;
  - (b) U.S. GAAP;
  - (c) IFRS;
  - (d) accounting principles that meet the disclosure requirements for foreign private issuers, as that term is defined for the purposes of the 1934 Act, if:
    - (i) the issuer or the acquired business or business to be acquired is an SEC foreign issuer;
    - (ii) on the last day of the most recently completed financial year the total number of equity securities of the SEC foreign issuer beneficially owned by residents of Canada does not exceed 10%, on a fully-diluted basis, of the total number of equity securities of the SEC foreign issuer; and
    - (iii) the financial statements include any reconciliation to U.S. GAAP required by the SEC;
  - (e) accounting principles that meet the foreign disclosure requirements of the designated foreign jurisdiction to which the issuer or the acquired business or business to be acquired is subject, if the issuer or business is a designated foreign issuer;
  - (f) accounting principles that cover substantially the same core subject matter as Canadian GAAP – Part V, including recognition and measurement principles and disclosure requirements.
- (2) Acquisition statements must be prepared in accordance with the same accounting principles for all periods presented.
- (3) The notes to the acquisition statements must identify the accounting principles used to prepare the acquisition statements.

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(4) If acquisition statements are prepared using accounting principles that are different from the issuer's GAAP, the acquisition statements for the most recently completed financial year and interim period that are required to be filed must be reconciled to the issuer's GAAP and the notes to the acquisition statements must:

(a) explain the material differences between the issuer's GAAP and the accounting principles used to prepare the acquisition statements that relate to recognition, measurement, and presentation;

(b) quantify the effect of material differences between the issuer's GAAP and the accounting principles used to prepare the acquisition statements that relate to recognition, measurement and presentation, including a tabular reconciliation between net income reported in the acquisition statements and net income computed in accordance with the issuer's GAAP; and

(c) provide disclosure consistent with the issuer's GAAP to the extent not already reflected in the acquisition statements.

(5) Despite subsections (1) and (4), if the issuer is required to reconcile its financial statements to Canadian GAAP – Part V, the acquisition statements for the most recently completed financial year and interim period that are required to be filed must be:

(a) prepared in accordance with Canadian GAAP – Part V; or

(b) reconciled to Canadian GAAP – Part V and the notes to the acquisition statements must:

(i) explain the material differences between Canadian GAAP – Part V and the accounting principles used to prepare the acquisition statements that relate to recognition, measurement, and presentation;

(ii) quantify the effect of material differences between Canadian GAAP – Part V and the accounting principles used to prepare the acquisition statements that relate to recognition, measurement and presentation, including a tabular reconciliation between net income reported in the acquisition statements and net income computed in accordance with Canadian GAAP – Part V; and

(iii) provide disclosure consistent with disclosure requirements of Canadian GAAP – Part V to the extent not already reflected in the acquisition statements.

**4.12 Acceptable Auditing Standards for Acquisition Statements —**

(1) Acquisition statements that are required by securities legislation to be audited must be audited in accordance with one of the following auditing standards:

(a) Canadian GAAS;

(b) U.S. PCAOB GAAS;

(c) U.S. AICPA GAAS, if the acquired business or business to be acquired is not an SEC issuer.



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- (2) Despite subsection (1), acquisition statements filed by or included in a prospectus of a foreign issuer may be audited in accordance with:
- (a) International Standards on Auditing, if the auditor's report is accompanied by a statement by the auditor that:
    - (i) describes any material differences in the form and content of the auditor's report as compared to an auditor's report prepared in accordance with Canadian GAAS; and
    - (ii) indicates that an auditor's report prepared in accordance with Canadian GAAS would express an unmodified opinion; or
  - (b) auditing standards that meet the foreign disclosure requirements of the designated foreign jurisdiction to which the issuer is subject, if the issuer is a designated foreign issuer.
- (3) Acquisition statements must be accompanied by an auditor's report prepared in accordance with the same auditing standards used to conduct the audit and the auditor's report must identify the accounting principles used to prepare the acquisition statements.
- (4) If acquisition statements are audited in accordance with paragraph (1)(a), the auditor's report must express an unmodified opinion.
- (5) If acquisition statements are audited in accordance with paragraph (1)(b) or (c), the auditor's report must express an unqualified opinion.
- (6) Despite paragraph (2)(a) and subsections (4) and (5) an auditor's report that accompanies acquisition statements may express a qualification of opinion relating to inventory if:
- (a) the issuer includes in the business acquisition report, prospectus or other document containing the acquisition statements, a balance sheet for the acquired business or business to be acquired that is for a date that is subsequent to the date to which the qualification relates; and
  - (b) the balance sheet referred to in paragraph (a) is accompanied by an auditor's report that does not express a qualification of opinion relating to closing inventory.

**4.13 Financial Information for Acquisitions Accounted for by the Issuer Using the Equity Method —**

- (1) If an issuer files, or includes in a prospectus, summarized financial information as to the assets, liabilities and results of operations 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, the financial information must:
- (a) meet the requirements in section 4.11 if the term "acquisition statements" in that section is read as "summarized financial information"; and
  - (b) disclose the reporting currency for the financial information, and disclose the measurement currency if it is different than the reporting currency.

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(2) If the financial information referred to in subsection (1) is for any completed financial year, the financial information must:

- (a) either:
  - (i) meet the requirements in section 4.12 if the term “acquisition statements” in that section is read as “summarized financial information”; or
  - (ii) be derived from financial statements that meet the requirements in section 4.12 if the term “acquisition statements” in that section is read as “financial statements from which is derived summarized financial information”; and
- (b) be audited, or derived from financial statements that are audited, by a person or company that is authorized to sign an auditor’s report under the laws of a jurisdiction of Canada or a foreign jurisdiction, and that meets the professional standards of that jurisdiction.

**4.14 Acceptable Accounting Principles for *Pro Forma* Financial Statements**

(1) *Pro forma* financial statements must be prepared in accordance with the issuer’s GAAP.

(2) Despite subsection (1), if an issuer’s financial statements have been reconciled to Canadian GAAP – Part V under subsection 4.7(1) or paragraph 4.9(e), the issuer’s *pro forma* financial statements must be prepared in accordance with, or reconciled to, Canadian GAAP – Part V.

(3) Despite subsection (1), if an issuer’s financial statements have been prepared in accordance with the accounting principles referred to in paragraph 4.9(c) and those financial statements are reconciled to U.S. GAAP, the *pro forma* financial statements may be prepared in accordance with, or reconciled to, U.S. GAAP.

**4.15 Acceptable Accounting Principles for Foreign Registrants —**

(1) Despite subsection 4.2(2), and subject to subsection (2), financial statements delivered by a foreign registrant may be prepared in accordance with one of the following accounting principles:

- (a) U.S. GAAP;
- (b) IFRS;
- (c) accounting principles that meet the disclosure requirements of a foreign regulatory authority to which the registrant is subject, if it is a foreign registrant incorporated or organized under the laws of that designated foreign jurisdiction;
- (d) accounting principles that cover substantially the same core subject matter as Canadian GAAP – Part V, including recognition and measurement principles and disclosure requirements, if the notes to the financial statements, interim balance sheets, or interim income statements:
  - (i) explain the material differences between Canadian GAAP – Part V and the accounting principles used that relate to recognition, measurement and presentation;

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(ii) quantify the effect of material differences between Canadian GAAP – Part V and the accounting principles used that relate to recognition, measurement, and presentation; and

(iii) provide disclosure consistent with disclosure requirements of Canadian GAAP – Part V to the extent not already reflected in the financial statements, interim balance sheets or interim income statements.

(2) Financial statements, interim balance sheets, and interim income statements delivered by a foreign registrant prepared in accordance with accounting principles specified in paragraph (1)(a), (b) or (d) must be prepared on a non-consolidated basis.

**4.16 Acceptable Auditing Standards for Foreign Registrants** — Despite section 4.3, financial statements delivered by a foreign registrant that are required by securities legislation to be audited may, if the financial statements are accompanied by an auditor's report prepared in accordance with the same auditing standards used to conduct the audit and the auditor's report identifies the accounting principles used to prepare the financial statements, be audited in accordance with:

(a) U.S. PCAOB GAAS or U.S. AICPA GAAS if the auditor's report expresses an unqualified opinion;

(b) International Standards on Auditing, if the auditor's report is accompanied by a statement by the auditor that:

(i) describes any material differences in the form and content of the auditor's report as compared to an auditor's report prepared in accordance with Canadian GAAS; and

(ii) indicates that an auditor's report prepared in accordance with Canadian GAAS would express an unmodified opinion; or

(c) auditing standards that meet the foreign disclosure requirements of the designated foreign jurisdiction to which the registrant is subject, if it is a foreign registrant incorporated or organized under the laws of that designated foreign jurisdiction.

**PART 5: EXEMPTIONS****5.1 Exemptions** —

(1) The regulator or securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite subsection (1), in Ontario, only the regulator may grant an exemption.

(3) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 Definitions opposite the name of the local jurisdiction.

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**5.2 Certain Exemptions Evidenced by Receipt —**

- (1) Subject to subsections (2) and (3), without limiting the manner in which an exemption may be evidenced, an exemption from this Instrument as it pertains to financial statements or auditor's reports included in a prospectus, may be evidenced by the issuance of a receipt for the prospectus or an amendment to the prospectus.
- (2) A person or company must not rely on a receipt as evidence of an exemption unless the person or company:
  - (a) sent to the regulator or securities regulatory authority, on or before the date the preliminary prospectus or the amendment to the preliminary prospectus or prospectus was filed, a letter or memorandum describing the matters relating to the exemption application, and indicating why consideration should be given to the granting of the exemption; or
  - (b) sent to the regulator or securities regulatory authority the letter or memorandum referred to in paragraph (a) after the date of the preliminary prospectus or the amendment to the preliminary prospectus or prospectus has been filed and receives a written acknowledgement from the securities regulatory authority or regulator that issuance of the receipt is evidence that the exemption is granted.
- (3) A person or company must not rely on a receipt as evidence of an exemption if the regulator or securities regulatory authority has before, or concurrently with, the issuance of the receipt for the prospectus, sent notice to the person or company that the issuance of a receipt does not evidence the granting of the exemption.
- (4) For the purpose of this section, a reference to a prospectus does not include a preliminary prospectus.

**5.3 Financial Years ending between December 21 and 31, 2010 —** Despite subsections 3.1(2) and 4.1(2), Part 3 may be applied by an issuer or registrant to all financial statements, financial information, operating statements and *pro forma* financial statements for 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.

**5.4 Rate-Regulated Activities —**

- (1) Despite subsections 3.1(2) and 4.1(2):
  - (a) Part 3 may be applied by a qualifying entity to all financial statements, financial information, operating statements and *pro forma* financial statements as if the expression "January 1, 2011" in subsection 3.1(2) were read as "January 1, 2012"; and
  - (b) if the qualifying entity relies on paragraph (a) in respect of a period, Part 4 must be applied as if the expression "January 1, 2011" in subsection 4.1(2) were read as "January 1, 2012".
- (2) For the purposes of subsection (1), a "qualifying entity" means a person or company that:
  - (a) has activities subject to rate regulation, as defined in Part V of the Handbook; and
  - (b) is permitted under Canadian GAAP to apply Part V of the Handbook.

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**PART 6: REPEAL, TRANSITION AND EFFECTIVE DATE**

- 6.1 Repeal** — National Instrument 52-107 Acceptable Accounting Principles, Auditing Standards and Reporting Currency, which came into force on March 30, 2004, is repealed.
- 6.2 Effective Date** — This Instrument comes into force on January 1, 2011.
- 6.3 Existing Exemptions** — A person or company that has obtained an exemption from National Instrument 52-107 Acceptable Accounting Principles, Auditing Standards and Reporting Currency, in whole or in part, is exempt from any substantially similar provision of this Instrument to the same extent and on the same conditions, if any, as contained in the exemption, unless the regulator or securities regulatory authority has revoked that exemption.

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PART XXXVIII  
[*clause 2(l)*]

NATIONAL INSTRUMENT 71-102  
CONTINUOUS DISCLOSURE AND OTHER EXEMPTIONS  
RELATING TO FOREIGN ISSUERS

PART 1 DEFINITIONS AND INTERPRETATION

1.1 **Definitions and Interpretation** – In this Instrument:

“**AIF**” means a completed Form 51-102F2 *Annual Information Form* or, in the case of an SEC foreign issuer, a completed Form 51-102F2 or an annual report or transition report under the 1934 Act on Form 10-K, or Form 20-F;

“**business acquisition report**” means a completed Form 51-102F4 *Business Acquisition Report*;

“**class**” includes a series of a class;

“**convertible security**” means a security of an issuer that is convertible into, or carries the right of the holder to acquire, or of the issuer to cause the acquisition of, a security of the same issuer;

“**designated foreign issuer**” means a foreign reporting issuer:

- (a) that does not have a class of securities registered under section 12 of the 1934 Act and is not required to file reports under section 15(d) of the 1934 Act;
- (b) that is subject to foreign disclosure requirements in a designated foreign jurisdiction; and
- (c) for which the total number of equity securities owned, directly or indirectly, by residents of Canada does not exceed 10 per cent, on a fully-diluted basis, of the total number of equity securities of the issuer, calculated in accordance with sections 1.2 and 1.3;

“**designated foreign jurisdiction**” means Australia, France, Germany, Hong Kong, Italy, Japan, Mexico, the Netherlands, New Zealand, Singapore, South Africa, Spain, Sweden, Switzerland or the United Kingdom of Great Britain and Northern Ireland;

“**exchangeable security**” means a security of an issuer that is exchangeable for, or carries the right of the holder to acquire, or of the issuer to cause the acquisition of, a security of another issuer;

“**exchange-traded security**” means a security that is listed on a recognized exchange or is quoted on a recognized quotation and trade reporting system or is listed on an exchange or quoted on a quotation and trade reporting system that is recognized for the purposes of National Instrument 21-101 *Marketplace Operation* and National Instrument 23-101 *Trading Rules*;

“**executive officer**” means, for a reporting issuer, an individual who is:

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- (a) a chair, vice-chair or president;
- (b) a vice-president in charge of a principal business unit, division or function including sales, finance or production; or
- (c) performing a policy-making function in respect of the issuer;

**“financial statements”** has the same meaning as in section 1.1 of National Instrument 51-102 *Continuous Disclosure Obligations*;

**“foreign disclosure requirements”** means the requirements to which a foreign reporting issuer is subject concerning the disclosure made to the public, to securityholders of the issuer or to a foreign regulatory authority:

- (a) relating to the foreign reporting issuer and the trading in its securities; and
- (b) that is made publicly available in the foreign jurisdiction under:
  - (i) the securities laws of the foreign jurisdiction in which the principal trading market of the foreign reporting issuer is located; or
  - (ii) the rules of the marketplace that is the principal trading market of the foreign reporting issuer;

**“foreign regulatory authority”** means a securities commission, exchange or other securities market regulatory authority in a designated foreign jurisdiction;

**“foreign reporting issuer”** means a reporting issuer, other than an investment fund, that is incorporated or organized under the laws of a foreign jurisdiction, unless:

- (a) outstanding voting securities carrying more than 50 per cent of the votes for the election of directors are owned, directly or indirectly, by residents of Canada; and
- (b) any one or more of the following is true:
  - (i) the majority of the executive officers or directors of the issuer are residents of Canada;
  - (ii) more than 50 per cent of the consolidated assets of the issuer are located in Canada; or
  - (iii) the business of the issuer is administered principally in Canada;

**“inter-dealer bond broker”** means a person or company that is approved by the Investment Industry Regulatory Organization of Canada under its Rule 36 *Inter-Dealer Bond Brokerage Systems*, as amended, and is subject to its Rule 36 and its Rule 2100 *Inter-Dealer Bond Brokerage Systems*, as amended;

**“interim period”** means:

- (a) in the case of a year other than a non-standard year or a transition year, a period commencing on the first day of the financial year and ending nine, six or three months before the end of the financial year;
- (a.1) in the case of a non-standard year, a period commencing on the first day of the financial year and ending within 22 days of the date that is nine, six or three months before the end of the financial year; or



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(b) in the case of a transition year, a period commencing on the first day of the transition year and ending:

- (i) three, six, nine or twelve months, if applicable, after the end of the old financial year; or
- (ii) twelve, nine, six or three months, if applicable, before the end of the transition year;

**“marketplace”** means:

- (a) an exchange;
- (b) a quotation and trade reporting system;
- (c) a person or company not included in paragraph (a) or (b) that:
  - (i) constitutes, maintains or provides a market or facility for bringing together buyers and sellers of securities;
  - (ii) brings together the orders for securities of multiple buyers and sellers; and
  - (iii) uses established, non-discretionary methods under which the orders interact with each other, and the buyers and sellers entering the orders agree to the terms of a trade; or
- (d) a dealer that executes a trade of an exchange-traded security outside of a marketplace;

but does not include an inter-dealer bond broker;

**“MD&A”** means a completed Form 51-102F1 *Management’s Discussion & Analysis* or, in the case of an SEC foreign issuer, a completed Form 51-102F1 or management’s discussion and analysis prepared in accordance with Item 303 of Regulation S-K under the 1934 Act;

**“multiple convertible security”** means a security of an issuer that is convertible into, or exchangeable for, or carries the right of the holder to acquire, or of the issuer to cause the acquisition of, a convertible security, an exchangeable security or another multiple convertible security;

**“Nasdaq”** means Nasdaq National Market and Nasdaq SmallCap Market;

**“NI 52-107”** means National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*;

**“non-standard year”** means a financial year, other than a transition year, that does not have 365 days, or 366 days if it includes February 29;

**“old financial year”** means the financial year of a reporting issuer that immediately precedes its transition year;

**“principal trading market”** means the published market on which the largest trading volume in the equity securities of the issuer occurred during the issuer’s most recent financial year that ended before the date the determination is being made;

**“published market”** means, for a class of securities, a marketplace on which the securities have traded that discloses regularly in a publication of general and regular paid circulation or in a form that is broadly distributed by electronic means the prices at which those securities have traded;

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**“recognized exchange”** means:

- (a) in Ontario, an exchange recognized by the securities regulatory authority to carry on business as a stock exchange;
- (a.1) in Québec, a person or company authorized by the securities regulatory authority to carry on business as an exchange; and
- (b) in every other jurisdiction, an exchange recognized by the securities regulatory authority as an exchange, self-regulatory organization or self-regulatory body;

**“recognized quotation and trade reporting system”** means:

- (a) in every jurisdiction other than British Columbia, a quotation and trade reporting system recognized by the securities regulatory authority under securities legislation to carry on business as a quotation and trade reporting system; and
- (b) in British Columbia, a quotation and trade reporting system recognized by the securities regulatory authority under securities legislation as a quotation and trade reporting system or as an exchange;

**“SEC foreign issuer”** means a foreign reporting issuer that:

- (a) has a class of securities registered under section 12 of the 1934 Act or is required to file reports under section 15(d) of the 1934 Act; and
- (b) is not registered or required to be registered as an investment company under the *Investment Company Act of 1940* of the United States of America, as amended;

**“transition year”** means the financial year of a reporting issuer in which the issuer changes its financial year-end;

**“TSX”** means the Toronto Stock Exchange;

**“underlying security”** means a security issued or transferred, or to be issued or transferred, in accordance with the terms of a convertible security, an exchangeable security or a multiple convertible security;

**“U.S. market”** means an exchange in the United States of America or Nasdaq; and

**“U.S. market requirements”** means the requirements of the U.S. market on which the reporting issuer’s securities are listed or quoted.

## **1.2 Determination of Canadian Shareholders**

(1) For the purposes of section 4.14 and paragraph (c) of the definition of “designated foreign issuer”, a reference to equity securities owned, directly or indirectly, by residents of Canada, includes:

- (a) the underlying securities that are equity securities of the foreign reporting issuer; and
- (b) the equity securities of the foreign reporting issuer represented by an American depositary receipt or an American depositary share issued by a depositary holding equity securities of the foreign reporting issuer.

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(2) For the purposes of paragraph (a) of the definition of “foreign reporting issuer”, securities represented by American depositary receipts or American depositary shares issued by a depositary holding voting securities of the foreign reporting issuer must be included as outstanding in determining both the number of votes attached to securities owned, directly or indirectly, by residents of Canada and the number of votes attached to all of the issuer’s outstanding voting securities.

**1.3 Timing for Calculation of Designated Foreign Issuer and Foreign Reporting Issuer**

For the purposes of paragraph (c) of the definition of “designated foreign issuer”, paragraph (a) of the definition of “foreign reporting issuer” and section 4.14, the calculation is made:

- (a) if the issuer has not completed a financial year since becoming a reporting issuer, at the date that the issuer became a reporting issuer; and
- (b) or all other issuers:
  - (i) for the purpose of financial statement and MD&A filings under this Instrument, on the first day of the most recent financial year or year-to-date interim period for which financial performance is presented in the financial statements or MD&A; and
  - (ii) for the purpose of other continuous disclosure filing obligations under this Instrument, on the first day of the issuer’s current financial year.

**PART 2 LANGUAGE OF DOCUMENTS****2.1 French or English**

- (1) A person or company must file a document required to be filed under this Instrument in either French or English.
- (2) Notwithstanding subsection (1), if a person or company files a document only in French or only in English but delivers to securityholders of an issuer a version of the document in the other language, the person or company must file that other version not later than when it is first delivered to securityholders.
- (3) In Québec, a reporting issuer must comply with linguistic obligations and rights prescribed by Québec law.

**2.2 Filings Prepared in a Language other than French or English**

- (1) If a person or company files a document that is required to be filed under this Instrument that is a translation of a document prepared in a language other than French or English, the person or company must file the document upon which the translation was based.
- (2) A foreign reporting issuer filing a document upon which the translation was based under subsection (1) must attach to the document a certificate as to the accuracy of the translation.

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**PART 3 FILING AND SENDING OF DOCUMENTS**

**3.1 Timing of Filing of Documents**

A person or company filing a document under this Instrument must file the document at the same time as, or as soon as practicable after, the filing or furnishing of the document to the SEC or to a foreign regulatory authority.

**3.2 Sending of Documents to Canadian Securityholders**

If a person or company sends a document to holders of securities of any class under U.S. federal securities law, or the laws or requirements of a designated foreign jurisdiction, and that document is required to be filed under this Instrument, then the document must be sent in the same manner and at the same time, or as soon as practicable after, to holders of securities of that class in the local jurisdiction.

**PART 4 SEC FOREIGN ISSUERS**

**4.1 Amendments and Supplements**

Any amendments or supplements to disclosure documents filed by an SEC foreign issuer under this Instrument must also be filed.

**4.2 Material Change Reporting**

An SEC foreign issuer satisfies securities legislation requirements relating to disclosure of material changes if the issuer:

- (a) complies with the U.S. market requirements for making public disclosure of material information on a timely basis;
- (b) complies with foreign disclosure requirements for making public disclosure of material information on a timely basis, if securities of the issuer are not listed or quoted on a U.S. market;
- (c) promptly files each news release issued by it for the purpose of complying with the requirements referred to in paragraph (a) or (b);
- (d) complies with the requirements of U.S. federal securities law for filing or furnishing current reports to the SEC; and
- (e) files the current reports filed with or furnished to the SEC.

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**4.3 Financial Statements**

An SEC foreign issuer satisfies securities legislation requirements relating to the preparation, approval, filing and delivery of financial statements and auditor's reports on annual financial statements if it:

- (a) complies with the requirements of U.S. federal securities law relating to financial statements and auditor's reports on annual financial statements;
- (b) complies with the U.S. market requirements relating to financial statements, if securities of the issuer are listed or quoted on a U.S. market;
- (c) files the financial statements and auditor's reports on annual financial statements filed with or furnished to the SEC or a U.S. market;
- (d) complies with section 3.2 of this Instrument; and
- (e) complies with NI 52-107 as it relates to financial statements of the issuer that are included in any documents specified in paragraph (c).

**4.4 AIFs and MD&A**

An SEC foreign issuer satisfies securities legislation requirements relating to the preparation, approval, filing and delivery of AIFs and MD&A if it:

- (a) complies with the requirements of U.S. federal securities law relating to annual reports, quarterly reports, current reports and management's discussion and analysis;
- (b) files each annual report, quarterly report, current report and management's discussion and analysis filed with or furnished to the SEC;
- (c) complies with section 3.2 of this Instrument; and
- (d) complies with NI 52-107 as it relates to financial statements of the issuer that are included in any documents specified in paragraph (b).

**4.5 Business Acquisition Reports**

An SEC foreign issuer satisfies securities legislation requirements relating to the preparation and filing of business acquisition reports if it:

- (a) complies with the requirements of U.S. federal securities law relating to business acquisition reports;
- (b) files each business acquisition report filed with or furnished to the SEC;
- (c) complies with section 3.2 of this Instrument; and
- (d) complies with NI 52-107 as it relates to financial statements that are included in any documents specified in paragraph (b).

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#### **4.6 Proxies and Proxy Solicitation by the Issuer and Information Circulars**

An SEC foreign issuer satisfies securities legislation requirements relating to information circulars, proxies and proxy solicitation if it:

- (a) complies with the requirements of U.S. federal securities law relating to proxy statements, proxies and proxy solicitation;
- (b) files all material relating to a meeting of securityholders that is filed with or furnished to the SEC;
- (c) sends each document filed under paragraph (b) to securityholders in the local jurisdiction in the manner and at the time required by U.S. federal securities laws and U.S. market requirements; and
- (d) complies with NI 52-107 as it relates to financial statements of the issuer that are included in any documents specified in paragraph (b).

#### **4.7 Proxy Solicitation by Another Person or Company**

(1) A person or company, other than the SEC foreign issuer, satisfies securities legislation requirements relating to information circulars, proxies and proxy solicitation with respect to an SEC foreign issuer if the person or company complies with the requirements of subsection 4.6.

(2) If a proxy solicitation is made with respect to an SEC foreign issuer by a person or company other than the SEC foreign issuer and the person or company soliciting proxies lacks access to the relevant list of securityholders of the SEC foreign issuer, subsection (1) is not available, if:

- (a) the aggregate published trading volume of the class on the TSX and the TSX Venture Exchange exceeded the aggregate published trading volume of the class on all U.S. markets:
  - (i) for the 12 calendar month period before commencement of the proxy solicitation, if there is no other proxy solicitation for securities of the same class in progress; or
  - (ii) for the 12 calendar month period before commencement of the first proxy solicitation, if another proxy solicitation for securities of the same class is already in progress;
- (b) the information disclosed by the SEC foreign issuer in its most recent Form 10-K or Form 20-F filed with the SEC under the 1934 Act demonstrated that paragraph (a) of the definition of “foreign reporting issuer” applied to the SEC foreign issuer; or
- (c) the person or company soliciting proxies reasonably believes that paragraph (a) of the definition of “foreign reporting issuer” applies to the SEC foreign issuer.

#### **4.8 Disclosure of Voting Results**

An SEC foreign issuer satisfies securities legislation requirements relating to disclosure of securityholder voting results if the issuer:

- (a) complies with the requirements of U.S. federal securities law relating to disclosure of securityholder voting results; and
- (b) files a copy of all disclosure of securityholder voting results filed with or furnished to the SEC.

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**4.9 Filing of Certain News Releases**

An SEC foreign issuer satisfies securities legislation requirements relating to the filing of news releases that disclose information regarding its financial performance or financial condition if the issuer:

- (a) complies with the requirements of U.S. federal securities laws relating to the filing of news releases disclosing financial information; and
- (b) files a copy of each news release disclosing financial information that is filed with or furnished to the SEC.

**4.10 Filing of Certain Documents**

Securities legislation requirements relating to the filing of documents affecting the rights of securityholders and the filing of material contracts do not apply to an SEC foreign issuer.

**4.11 Early Warning**

A person or company satisfies the early warning requirements and acquisition announcement provisions of securities legislation in respect of securities of an SEC foreign issuer that has a class of securities registered under section 12 of the 1934 Act if the person or company:

- (a) complies with the requirements of U.S. federal securities law relating to the reporting of beneficial ownership of equity securities of the SEC foreign issuer; and
- (b) files each report of beneficial ownership that is filed with or furnished to the SEC.

**4.12 Insider Reporting**

The insider reporting requirement does not apply to an insider of an SEC foreign issuer that has a class of securities registered under section 12 of the 1934 Act if the insider complies with the requirements of U.S. federal securities law relating to insider reporting.

**4.13 Communication with Beneficial Owners of Securities**

An SEC foreign issuer that has a class of securities registered under section 12 of the 1934 Act satisfies securities legislation requirements relating to communications with, delivery of materials to and conferring voting rights upon non-registered holders of its securities who hold their interests in the securities through one or more intermediaries if the issuer:

- (a) complies with the requirements of Rule 14a-13 under the 1934 Act for any depositary and any intermediary whose last address as shown on the books of the issuer is in Canada; and
- (b) complies with the requirements of National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* with respect to fees payable to intermediaries, for any depositary and any intermediary whose last address as shown on the books of the issuer is in Canada.

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**4.14 Business Combinations and Related Party Transactions**

Securities legislation requirements relating to business combinations and related party transactions in Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* do not apply to an SEC foreign issuer carrying out a business combination or related party transaction if the total number of equity securities of the SEC foreign issuer owned, directly or indirectly, by residents of Canada, does not exceed 20 per cent, on a diluted basis, of the total number of equity securities of the SEC foreign issuer.

**4.15 Change of Auditor**

An SEC foreign issuer satisfies securities legislation requirements relating to a change of auditor if the issuer:

- (a) complies with the requirements of U.S. federal securities laws relating to a change of auditor; and
- (b) files a copy of all materials relating to a change of auditor that are filed with or furnished to the SEC.

**4.16 Restricted Securities**

- (1) Securities legislation continuous disclosure requirements relating to restricted securities do not apply in respect of SEC foreign issuers.
- (2) Securities legislation minority approval requirements relating to restricted securities do not apply in respect of SEC foreign issuers.

**PART 5 DESIGNATED FOREIGN ISSUERS****5.1 Amendments and Supplements**

Any amendments or supplements to disclosure documents filed by a designated foreign issuer under this Instrument must also be filed.

**5.2 Mandatory Annual Disclosure by Designated Foreign Issuer**

To rely on this Part, a designated foreign issuer must, at least once a year, disclose in, or as an appendix to, a document that it is required by foreign disclosure requirements to send to its securityholders and that it sends to its securityholders in Canada:

- (a) that it is a designated foreign issuer as defined in this Instrument;
- (b) that it is subject to the foreign regulatory requirements of a foreign regulatory authority; and
- (c) the name of the foreign regulatory authority referred to in paragraph (b).

**5.3 Material Change Reporting**

A designated foreign issuer satisfies securities legislation requirements relating to disclosure of material changes if the issuer:

- (a) complies with foreign disclosure requirements for making public disclosure of material information on a timely basis;
- (b) promptly files each news release issued by it for the purpose of complying with the requirements referred to in paragraph (a); and
- (c) files the documents disclosing the material information filed with or furnished to the foreign regulatory authority or disseminated to the public or securityholders of the issuer.



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**5.4 Financial Statements**

A designated foreign issuer satisfies securities legislation requirements relating to the preparation, approval, filing and delivery of financial statements and auditor's reports on annual financial statements if it:

- (a) complies with the foreign disclosure requirements relating to financial statements and auditor's reports on annual financial statements;
- (b) files the financial statements and auditor's reports on annual financial statements required to be filed with or furnished to the foreign regulatory authority;
- (c) complies with section 3.2 of this Instrument; and
- (d) complies with NI 52-107 as it relates to financial statements of the issuer that are included in any documents specified in paragraph (b).

**5.5 AIFs & MD&A**

A designated foreign issuer satisfies securities legislation requirements relating to the preparation, approval, filing and delivery of AIFs and MD&A if it:

- (a) complies with the foreign disclosure requirements relating to annual reports, quarterly reports and management's discussion and analysis;
- (b) files each annual report, quarterly report and management's discussion and analysis required to be filed with or furnished to the foreign regulatory authority;
- (c) complies with section 3.2 of this Instrument; and
- (d) complies with NI 52-107 as it relates to financial statements of the issuer that are included in any documents specified in paragraph (b).

**5.6 Business Acquisition Reports**

A designated foreign issuer satisfies securities legislation requirements relating to the preparation and filing of business acquisition reports if it:

- (a) complies with the foreign disclosure requirements relating to business acquisitions;
- (b) files each report in respect of a business acquisition required to be filed with or furnished to the foreign regulatory authority;
- (c) complies with section 3.2 of this Instrument; and
- (d) complies with NI 52-107 as it relates to financial statements that are included in any documents specified in paragraph (b).

**5.7 Proxies and Proxy Solicitation by the Issuer and Information Circulars**

A designated foreign issuer satisfies securities legislation requirements relating to information circulars, proxies and proxy solicitation if it:

- (a) complies with the foreign disclosure requirements relating to proxy statements, proxies and proxy solicitation;
- (b) files all material relating to a meeting of securityholders that is filed with or furnished to the foreign regulatory authority;

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- (c) complies with section 3.2 of this Instrument; and
- (d) complies with NI 52-107 as it relates to financial statements of the issuer that are included in any documents specified in paragraph (b).

**5.8 Proxy Solicitation by Another Person or Company**

(1) A person or company, other than the designated foreign issuer, satisfies securities legislation requirements relating to information circulars, proxies and proxy solicitation with respect to a designated foreign issuer if the person or company satisfies the requirements of section 5.7.

(2) If a proxy solicitation is made with respect to a designated foreign issuer by a person or company other than the designated foreign issuer and the person or company soliciting proxies lacks access to the relevant list of securityholders of the designated foreign issuer, subsection (1) is not available, if:

- (a) the aggregate published trading volume of the class on the TSX and the TSX Venture Exchange exceeded the aggregate trading volume on securities marketplaces outside Canada:
  - (i) for the 12 calendar months before commencement of the proxy solicitation, if there is no other proxy solicitation for securities of the same class in progress; or
  - (ii) for the 12 calendar month period before the commencement of the first proxy solicitation, if another proxy solicitation for securities of the same class is already in progress;
- (b) the information disclosed by the designated foreign issuer in a document filed within the previous 12 months with a foreign regulatory authority, demonstrated that paragraph (a) of the definition of “foreign reporting issuer” applied to the designated foreign issuer; or
- (c) the person or company soliciting proxies reasonably believes that paragraph (a) of the definition of “foreign reporting issuer” applies to the designated foreign issuer.

**5.9 Disclosure of Voting Results**

A designated foreign issuer satisfies securities legislation requirements relating to disclosure of securityholder voting results if the issuer:

- (a) complies with the foreign disclosure requirements relating to disclosure of securityholder voting results; and
- (b) files each report disclosing securityholder voting results that is filed with or furnished to a foreign regulatory authority.

**5.10 Filing of Certain News Releases**

A designated foreign issuer satisfies securities legislation requirements relating to the filing of news releases that disclose information regarding its financial performance or financial condition if the issuer:

- (a) complies with the foreign disclosure requirements relating to the filing of news releases disclosing financial information; and
- (b) files a copy of each news release disclosing financial information that is filed with or furnished to a foreign regulatory authority.

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**5.11 Filing of Certain Documents**

Securities legislation requirements relating to the filing of documents affecting the rights of securityholders and the filing of material contracts do not apply to a designated foreign issuer.

**5.12 Early Warning**

A person or company satisfies the early warning requirements and acquisition announcement provisions of securities legislation in respect of securities of a designated foreign issuer if the person or company:

- (a) complies with the foreign disclosure requirements relating to reporting of beneficial ownership of equity securities of the designated foreign issuer; and
- (b) files each report of beneficial ownership that is filed with or furnished to the foreign regulatory authority.

**5.13 Insider Reporting**

The insider reporting requirement does not apply to an insider of a designated foreign issuer if the insider complies with foreign disclosure requirements relating to insider reporting.

**5.14 Communication with Beneficial Owners of Securities**

A designated foreign issuer satisfies securities legislation requirements relating to communications with, delivery of materials to and conferring voting rights upon non-registered holders of its securities who hold their interests in the securities through one or more intermediaries if the issuer:

- (a) complies with foreign disclosure requirements relating to communication with beneficial owners of securities; and
- (b) complies with the requirements of National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* with respect to fees payable to intermediaries, for any depositary and any intermediary whose last address as shown on the books of the issuer is in Canada.

**5.15 Business Combinations and Related Party Transactions**

Securities legislation requirements relating to business combinations and related party transactions in Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions do not apply to a designated foreign issuer carrying out a business combination or related party transaction.

**5.16 Change in Year-End**

A designated foreign issuer satisfies securities legislation requirements relating to a change in year-end if the issuer:

- (a) complies with foreign disclosure requirements relating to a change in year-end; and
- (b) files a copy of all filings made under foreign disclosure requirements relating to the change in year-end.

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**5.17 Change of Auditor**

A designated foreign issuer satisfies securities legislation requirements relating to a change of auditor if the issuer:

- (a) complies with foreign disclosure requirements relating to a change of auditor; and
- (b) files a copy of all filings made under foreign disclosure requirements relating to the change of auditor.

**5.18 Restricted Securities**

- (1) Securities legislation continuous disclosure requirements relating to restricted securities do not apply in respect of designated foreign issuers.
- (2) Securities legislation minority approval requirements relating to restricted securities do not apply in respect of designated foreign issuers.

**PART 6 Repealed.** 8 Jly 2011 SR 41/2011 s19.

**PART 7 EFFECTIVE DATE****7.1 Effective Date**

This Instrument comes into force on March 30, 2004.

16 Apr 2004 SR 14/2004 s12; 10 Jne 2005 SR49/  
2005 s10; 5 Jan 2007 SR 115/2006 s6; 11 Jan  
2008 SR 128/2007 s7; 8 Jly 2011 SR 41/2011  
s19.

PART XXXIX  
[*clause 2(mm)*]

**NATIONAL INSTRUMENT 31-101  
NATIONAL REGISTRATION SYSTEM**

**Repealed.** 2 Oct 2009 SR 81/2009 s11.

PART XL  
[clause 2(nn)]

NATIONAL INSTRUMENT 81-106  
INVESTMENT FUND CONTINUOUS DISCLOSURE

PART I DEFINITIONS AND APPLICATIONS

1.1 Definitions - In this Instrument:

“**annual management report of fund performance**” means a document prepared in accordance with Part B of Form 81-106F1;

“**current value**” means, for an asset held by, or a liability of, an investment fund, the value calculated in accordance with Canadian GAAP;

“**education savings plan**” means an agreement between one or more persons and another person or organization, in which the other person or organization agrees to pay or cause to be paid, to or for one or more beneficiaries designated in connection with the agreement, scholarship awards;

“**EVCC**” means an employee venture capital corporation that does not have a restricted constitution, and is registered under Part 2 of the *Employee Investment Act* (British Columbia), R.S.B.C. 1996 c. 112, and whose business objective is making multiple investments;

“**independent review committee**” means the independent review committee of the investment fund established under National Instrument 81-107 *Independent Review Committee for Investment Funds*;

“**independent valuation**” means a valuation of the assets and liabilities, or of the venture investments, of a labour sponsored or venture capital fund that contains the opinion of an independent valuator as to the current value of the assets and liabilities, or of the venture investments, and that is prepared in accordance with Part 8;

“**independent valuator**” means a valuator that is independent of the labour sponsored or venture capital fund and that has appropriate qualifications;

“**interim management report of fund performance**” means a document prepared in accordance with Part C of Form 81-106F1;

“**interim period**” means, in relation to an investment fund:

- (a) a period of at least three months that ends six months before the end of a financial year of the investment fund; or
- (b) in the case of a transition year of the investment fund, a period commencing on the first day of the transition year and ending six months after the end of its old financial year;

“**investment fund**” means a mutual fund or a non-redeemable investment fund, and, for greater certainty in British Columbia, includes an EVCC and a VCC;

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**“labour sponsored or venture capital fund”** means an investment fund that is:

- (a) a labour sponsored investment fund corporation or a labour sponsored venture capital corporation under provincial legislation;
- (b) a registered or prescribed labour sponsored venture capital corporation as defined in the ITA;
- (c) an EVCC; or
- (d) a VCC;

**“management expense ratio”** means the ratio, expressed as a percentage, of the expenses of an investment fund to its average net asset value, calculated in accordance with Part 15;

**“management fees”** means the total fees paid or payable by an investment fund to its manager or one or more portfolio advisers or sub-advisers, including incentive or performance fees, but excluding operating expenses of the investment fund;

**“management report of fund performance”** means an annual management report of fund performance or an interim management report of fund performance;

**“material change”** means, in relation to an investment fund:

- (a) a change in the business, operations or affairs of the investment fund that would be considered important by a reasonable investor in determining whether to purchase or continue to hold securities of the investment fund; or
- (b) a decision to implement a change referred to in paragraph (a) made:
  - (i) by the board of directors of the investment fund or the board of directors of the manager of the investment fund or other persons acting in a similar capacity;
  - (ii) by senior management of the investment fund who believe that confirmation of the decision by the board of directors or such other persons acting in a similar capacity is probable; or
  - (iii) by senior management of the manager of the investment fund who believe that confirmation of the decision by the board of directors of the manager or such other persons acting in a similar capacity is probable;

**“material contract”** means, for an investment fund, a document that the investment fund would be required to list in an annual information form under Item 16 of Form 81-101F2 if the investment fund filed a simplified prospectus under National Instrument 81-101 *Mutual Fund Prospectus Disclosure*;

**“mutual fund in the jurisdiction”** means an incorporated or unincorporated mutual fund that is a reporting issuer in, or that is organized under the laws of, the local jurisdiction, but does not include a private mutual fund;

**“National Instrument 51-102”** means National Instrument 51-102 *Continuous Disclosure Obligations*;

**“National Instrument 81-107”** means National Instrument 81-107 *Independent Review Committee for Investment Funds*;

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“**net asset value**” means the value of the total assets of the investment fund less the value of the total liabilities of the investment fund, as at a specific date, determined in accordance with Part 14;

“**non-redeemable investment fund**” means an issuer:

- (a) whose primary purpose is to invest money provided by its securityholders;
- (b) that does not invest:
  - (i) for the purpose of exercising or seeking to exercise control of an issuer, other than an issuer that is a mutual fund or a non-redeemable investment fund; or
  - (ii) for the purpose of being actively involved in the management of any issuer in which it invests, other than an issuer that is a mutual fund or a non-redeemable investment fund; and
- (c) that is not a mutual fund;

“**quarterly portfolio disclosure**” means the disclosure prepared in accordance with Part 6;

“**scholarship award**” means any amount, other than a refund of contributions, that is paid or payable directly or indirectly to further the education of a beneficiary designated under an education savings plan;

“**scholarship plan**” means an arrangement under which contributions to education savings plans are pooled to provide scholarship awards to designated beneficiaries;

“**transition year**” means the financial year of an investment fund in which a change of year end occurs;

“**VCC**” means a venture capital corporation registered under Part 1 of the *Small Business Venture Capital Act* (British Columbia), R.S.B.C. 1996 c. 429 whose business objective is making multiple investments; and

“**venture investment**” means an investment in a private company or an investment made in accordance with the requirements of provincial labour sponsored or venture capital fund legislation or the ITA.

## 1.2 Application

- (1) Except as otherwise provided in this Instrument, this Instrument applies to:
  - (a) an investment fund that is a reporting issuer; and
  - (b) subject to subsection (2), a mutual fund in the jurisdiction.
- (2) Despite paragraph (1)(b), in Alberta, British Columbia, Manitoba and Newfoundland and Labrador, this Instrument does not apply to a mutual fund that is not a reporting issuer.
- (3) In Saskatchewan, this Instrument does not apply to a Type B corporation within the meaning of *The Labour-sponsored Venture Capital Corporations Act* (Saskatchewan).

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(4) In Québec, this Instrument does not apply to a reporting issuer organized under:

- (a) an Act to establish the Fonds de solidarité des travailleurs du Québec (F.T.Q.) R.S.Q., chapter F-3.2.1;
- (b) an Act to establish Fondation, le Fonds de développement de la Confédération des syndicats nationaux pour la coopération et l'emploi (R.S.Q., chapter F-3.1.2); or
- (c) an Act constituting Capital régional et coopératif Desjardins, Loi constituant Capital régional et coopératif Desjardins (R.S.Q., chapter C-6.1).

### **1.3 Interpretation**

- (1) Each section, part, class or series of a class of securities of an investment fund that is referable to a separate portfolio of assets is considered to be a separate investment fund for the purposes of this Instrument.
- (2) Terms defined in National Instrument 81-102 *Mutual Funds*, National Instrument 81-104 *Commodity Pools* and National Instrument 81-105 *Mutual Fund Sales Practices* and used in this Instrument have the respective meanings ascribed to them in those Instruments except that references in those definitions to “mutual fund” must be read as references to “investment fund”.

### **1.4 Language of Documents**

- (1) A document that is required to be filed under this Instrument must be prepared in French or English.
- (2) If an investment fund files a document in French or in English, and a translation of the document into the other language is sent to a securityholder, the investment fund must file the translated document not later than when it is sent to the securityholder.
- (3) In Québec, the linguistic obligations and rights prescribed by Québec law must be complied with.

## **PART 2 FINANCIAL STATEMENTS**

### **2.1 Comparative Annual Financial Statements and Auditor’s Report**

- (1) An investment fund must file annual financial statements for the investment fund’s most recently completed financial year that include:
  - (a) a statement of net assets as at the end of that financial year and a statement of net assets as at the end of the immediately preceding financial year;
  - (b) a statement of operations for that financial year and a statement of operations for the immediately preceding financial year;
  - (c) statement of changes in net assets for that financial year and a statement of changes in net assets for the immediately preceding financial year;



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(d) a statement of cashflows for that financial year and a statement of cashflows for the immediately preceding financial year, unless it is not required by Canadian GAAP;

(e) a statement of investment portfolio as at the end of that financial year; and

(f) notes to the annual financial statements.

(2) Annual financial statements filed under subsection (1) must be accompanied by an auditor's report.

**2.2 Filing Deadline for Annual Financial Statements** - The annual financial statements and auditor's report required to be filed under section 2.1 must be filed on or before the 90<sup>th</sup> day after the investment fund's most recently completed financial year.

**2.3 Interim Financial Statements** - An investment fund must file interim financial statements for the investment fund's most recently completed interim period that include:

(a) a statement of net assets as at the end of that interim period and a statement of net assets as at the end of the immediately preceding financial year;

(b) a statement of operations for that interim period and a statement of operations for the corresponding period in the immediately preceding financial year;

(c) a statement of changes in net assets for that interim period and a statement of changes in net assets for the corresponding period in the immediately preceding financial year;

(d) a statement of cashflows for and as at the end of that interim period and a statement of cashflows for the corresponding period in the immediately preceding financial year, unless it is not required by Canadian GAAP;

(e) a statement of investment portfolio as at the end of that interim period; and

(f) notes to the interim financial statements.

**2.4 Filing Deadline for Interim Financial Statements** - The interim financial statements required to be filed under section 2.3 must be filed on or before the 60<sup>th</sup> day after the end of the most recent interim period of the investment fund.

**2.5 Approval of Financial Statements**

(1) The board of directors of an investment fund that is a corporation must approve the financial statements of the investment fund before those financial statements are filed or made available to securityholders or potential purchasers of securities of the investment fund.

(2) The trustee or trustees of an investment fund that is a trust, or another person or company authorized to do so by the constating documents of the investment fund, must approve the financial statements of the investment fund, before those financial statements are filed or made available to securityholders or potential purchasers of securities of the investment fund.

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**2.6 Acceptable Accounting Principles** - The financial statements of an investment fund must be prepared in accordance with Canadian GAAP as applicable to public enterprises.

**2.7 Acceptable Auditing Standards**

- (1) Financial statements that are required to be audited must be audited in accordance with Canadian GAAS.
- (2) Audited financial statements must be accompanied by an auditor's report prepared in accordance with Canadian GAAS and the following requirements:
  1. The auditor's report must not contain a reservation.
  2. The auditor's report must identify all financial periods presented for which the auditor has issued an auditor's report.
  3. If the investment fund has changed its auditor and a comparative period presented in the financial statements was audited by a different auditor, the auditor's report must refer to the former auditor's report on the comparative period.
  4. The auditor's report must identify the auditing standards used to conduct the audit and the accounting principles used to prepare the financial statements.

**2.8 Acceptable Auditors** - An auditor's report must be prepared and signed by a person or company that is authorized to sign an auditor's report by the laws of a jurisdiction of Canada, and that meets the professional standards of that jurisdiction.

**2.9 Change in Year End**

- (1) This section applies to an investment fund that is a reporting issuer.
- (2) Section 4.8 of National Instrument 51-102 applies to an investment fund that changes its financial year end, except that:
  - (a) a reference to "interim period" must be read as "interim period" as defined in this Instrument;
  - (b) a requirement under National Instrument 51-102 to include specified financial statements must be read as a requirement to include the financial statements required under this Part; and
  - (c) a reference to "filing deadline" in subsection 4.8(2) of National Instrument 51-102 must be read as a reference to the filing deadlines provided for under section 2.2 and 2.4 of this Instrument.
- (3) Despite section 2.4, an investment fund is not required to file interim financial statements for any period in a transition year if the transition year is less than nine months in length.

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- (4) Despite subsections 4.8(7) and (8) of National Instrument 51-102:
- (a) for interim financial statements for an interim period in the transition year, the investment fund must include as comparative information:
    - (i) a statement of net assets as at the end of its old financial year; and
    - (ii) a statement of operations, a statement of changes in net assets, and, if applicable, a statement of cashflows, for the interim period of the old financial year;
  - (b) for interim financial statements for an interim period in a new financial year, the investment fund must include as comparative information:
    - (i) a statement of net assets as at the end of the transition year; and
    - (ii) a statement of operations, a statement of changes in net assets, and, if applicable, a statement of cashflows, for the period that is one year earlier than the interim period in the new financial year.

**2.10 Change in Legal Structure** - If an investment fund that is a reporting issuer is party to an amalgamation, arrangement, merger, winding-up, reorganization or other transaction that will result in:

- (a) the investment fund terminating or ceasing to be a reporting issuer,
- (b) another entity becoming an investment fund,
- (c) a change in the investment fund's financial year end, or
- (d) a change in the name of the investment fund,

the investment fund must, as soon as practicable, and in any event not later than the deadline for the first filing required by this Instrument following the transaction, file a notice stating:

- (e) the names of the parties to the transaction;
- (f) a description of the transaction;
- (g) the effective date of the transaction;
- (h) if applicable, the names of each party that terminated or ceased to be a reporting issuer following the transaction and of each continuing entity;
- (i) if applicable, the date of the investment fund's first financial year end following the transaction; and
- (j) if applicable, the periods, including the comparative periods, if any, of the interim and annual financial statements required to be filed for the investment fund's first financial year following the transaction.

**2.11 Filing Exemption for Mutual Funds that are Non-Reporting Issuers** - A mutual fund that is not a reporting issuer is exempt from the filing requirements of section 2.1 for a financial year or section 2.3 for an interim period if:

- (a) the mutual fund prepares the applicable financial statements in accordance with this Instrument;
- (b) the mutual fund delivers the financial statements to its securityholders in accordance with Part 5 within the same time periods as if the financial statements were required to be filed;

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(c) the mutual fund has advised the regulator or securities regulatory authority that it is relying on this exemption not to file its financial statements; and

(d) the mutual fund has included in a note to the financial statements that it is relying on this exemption not to file its financial statements.

**2.12 Disclosure of Auditor Review of Interim Financial Statements**

- (1) This section applies to an investment fund that is a reporting issuer.
- (2) If an auditor has not performed a review of the interim financial statements required to be filed, the interim financial statements must be accompanied by a notice indicating that the interim financial statements have not been reviewed by an auditor.
- (3) If an investment fund engaged an auditor to perform a review of the interim financial statements required to be filed and the auditor was unable to complete the review, the interim financial statements must be accompanied by a notice indicating that the auditor was unable to complete a review of the interim financial statements and the reasons why.
- (4) If an auditor has performed a review of the interim financial statements required to be filed and the auditor has expressed a reservation in the auditor's interim review report, the interim financial statements must be accompanied by a written review report from the auditor.

**PART 3 FINANCIAL DISCLOSURE REQUIREMENTS**

**3.1 Statement of Net Assets** - The statement of net assets of an investment fund must disclose the following as separate line items, each shown at current value:

1. cash, term deposits and, if not included in the statement of investment portfolio, short term debt instruments
2. investments
3. accounts receivable relating to securities issued
4. accounts receivable relating to portfolio assets sold
5. accounts receivable relating to margin paid or deposited on futures or forward contracts.
6. amounts receivable or payable in respect of derivatives transactions, including premiums or discounts received or paid
7. deposits with brokers for portfolio securities sold short
8. accrued expenses
9. accrued incentive arrangements or performance compensation
10. portfolio securities sold short
11. liabilities for securities redeemed
12. liabilities for portfolio assets purchased
13. income tax payable
14. total net assets and securityholder's equity and, if applicable, for each class or series
15. net assets per security, or if applicable, per security of each class or series.

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**3.2 Statement of Operations** - The statement of operations of an investment fund must disclose the following information as separate line items:

1. dividend revenue
2. interest revenue
3. income from derivatives
4. revenue from securities lending
5. management fees, excluding incentive or performance fee
6. incentive or performance fees
7. audit fees
8. directors' or trustees' fees
  - 8.1 independent review committee fees
9. custodial fees
10. legal fees
  - 10.1 commissions and other portfolio transaction costs
11. securityholder reporting costs
12. capital tax
13. amounts that would otherwise have been payable by the investment fund that were waived or paid by the manager or a portfolio adviser of the investment fund.
14. provision for income tax
15. net investment income or loss for the period
16. realized gains or losses
17. unrealized gains or losses
18. increase or decrease in net assets from operations and, if applicable, for each class or series
19. increase or decrease in net assets from operations per security or, if applicable, per security of each class or series.

**3.3 Statement of Changes in Net Assets** - The statement of changes in net assets of an investment fund must disclose, for each class or series, the following as separate line items:

1. net assets at the beginning of the period to which the statement applies
2. increase or decrease in net assets from operations
3. proceeds from the issuance of securities of the investment fund
4. aggregate amounts paid on redemption of securities of the investment fund
5. securities issued on reinvestment of distributions
6. distributions, showing separately the amount distributed out of net investment income and out of realized gains on portfolio assets sold, and return of capital
7. net assets at the end of the period reported upon

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**3.4 Statement of Cashflows** - The statement of cashflows of an investment fund must disclose the following as separate line items:

1. net investment income or loss
2. proceeds of disposition of portfolio assets
3. purchase of portfolio assets
4. proceeds from the issuance of securities of the investment fund
5. aggregate amounts paid on redemption of securities of the investment fund
6. compensation paid in respect of the sale of securities of the investment fund

**3.5 Statement of Investment Portfolio**

(1) The statement of investment portfolio of an investment fund must disclose the following for each portfolio asset held or sold short:

1. the name of the issuer of the portfolio asset
  2. a description of the portfolio asset, including:
    - (a) for an equity security, the name of the class of the security;
    - (b) for a debt instrument not included in paragraph (c), all characteristics commonly used commercially to identify the instrument, including the name of the instrument, the interest rate of the instrument, the maturity date of the instrument, whether the instrument is convertible or exchangeable and, if used to identify the instrument, the priority of the instrument;
    - (c) for a debt instrument referred to in the definition of “money market fund” in National Instrument 81-102 *Mutual Funds*, the name, interest rate and maturity date of the instrument;
    - (d) for a portfolio asset not referred to in paragraph (a), (b) or (c), the name of the portfolio asset and the material terms and conditions of the portfolio asset commonly used commercially in describing the portfolio asset.
  3. the number or aggregate face value of the portfolio asset.
  4. the cost of the portfolio asset
  5. the current value of the portfolio asset
- (2) For the purposes of subsection (1), disclosure for a long portfolio must be segregated from the disclosure for a short portfolio.
- (3) For the purposes of subsection (1) and subject to subsection (2), disclosure must be aggregated for portfolio assets having the same description and issuer.
- (4) **Repealed.** 29 Jne 2012 SR 43/2012 s6.
- (5) **Repealed.** 29 Jne 2012 SR 43/2012 s6.
- (6) If an investment fund holds positions in derivatives, the investment fund must disclose in the statement of investment portfolio or the notes to that statement:

- (a) for long and short positions in options:

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- (i) the quantity of the underlying interest, the number of options, the underlying interest, the strike price, the expiration month and year, the cost and the current value; and
  - (ii) if the underlying interest is a future, information about the future in accordance with subparagraph (i);
- (b) for positions in futures and forwards, the number of futures and forwards, the underlying interest, the price at which the contract was entered into, the delivery month and year and the current value;
  - (c) for positions in swaps, the number of swap contracts, the underlying interest, the principal or notional amount, the payment dates, and the current value; and
  - (d) if a rating of a counterparty has fallen below the approved credit rating level.
- (7) If applicable, the statement of investment portfolio included in the financial statements of the investment fund, or the notes to the statement of investment portfolio, must identify the underlying interest that is being hedged by each position taken by the investment fund in a derivative.
- (8) An investment fund may omit the information required by subsection (1) about mortgages from a statement of investment portfolio if the statement of investment portfolio discloses:
- (a) the total number of mortgages held;
  - (b) the aggregate current value of mortgages held;
  - (c) a breakdown of mortgages, by reference to number and current value among mortgages insured under the *National Housing Act* (Canada), insured conventional mortgages and uninsured conventional mortgages;
  - (d) a breakdown of mortgages, by reference to number and current value, among mortgages that are pre-payable and those that are not pre-payable; and
  - (e) a breakdown of mortgages, by reference to number, current value, amortized cost and outstanding principal value, among groups of mortgages having contractual interest rates varying by no more than one quarter of one percent.
- (9) An investment fund must maintain records of all portfolio transactions undertaken by the investment fund.

### 3.6 Notes to Financial Statements

- (1) The notes to the financial statements of an investment fund must disclose the following:
- 1. the basis for determining current value and cost of portfolio assets and, if a method of determining cost other than by reference to the average cost of the portfolio assets is used, the method used

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2. if the investment fund has outstanding more than one class or series of securities ranking equally against its net assets, but differing in other respects:

- (a) the number of authorized securities of each class or series;
- (b) the number of securities of each class or series that have been issued and are outstanding;
- (c) the differences between the classes or series, including differences in sales charges, and management fees;
- (d) the method used to allocate income and expenses, and realized and unrealized capital gains and losses, to each class;
- (e) the fee arrangements for any class-level expenses paid to affiliates; and
- (f) transactions involving the issue or redemption of securities of the investment fund undertaken in the period for each class of securities to which the financial statements pertain.

3. to the extent the amount is ascertainable, the portion of the total client brokerage commissions, as defined in National Instrument 23-102 - *Use of Client Brokerage Commissions*, paid or payable to dealers by the investment fund for the provision of goods or services by the dealers or third parties, other than order execution.

4. the total cost of distribution of the investment fund's securities recorded in the statement of changes in net assets.

5. the net asset value per security as at the date of the financial statements compared to the net assets per security as shown on the statement of net assets, and an explanation of each of the differences between those amounts.

(2) If not disclosed elsewhere in the financial statements, an investment fund that borrows money must, in a note to the financial statements, disclose the minimum and maximum amount borrowed during the period to which the financial statements or management report of fund performance pertain.

**3.7 Inapplicable Line Items** - Despite the requirements of this Part, an investment fund may omit a line item from the financial statements for any matter that does not apply to the investment fund or for which the investment fund has nothing to disclose.

**3.8 Disclosure of Securities Lending Transactions**

(1) An investment fund must disclose, in the statement of investment portfolio included in the financial statements of the investment fund, or in the notes to the financial statements:

- (a) the aggregate dollar value of portfolio securities that were lent in the securities lending transactions of the investment fund that are outstanding as at the date of the financial statements; and
- (b) the type and aggregate amount of collateral received by the investment fund under securities lending transactions of the investment fund that are outstanding as at the date of the financial statements.



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(2) The statement of net assets of an investment fund that has received cash collateral from a securities lending transaction that is outstanding as of the date of the financial statements must disclose separately:

- (a) the cash collateral received by the investment fund; and
- (b) the obligation to repay the cash collateral.

(3) The statement of operations of an investment fund must disclose income from a securities lending transaction as revenue.

**3.9 Disclosure of Repurchase Transactions**

(1) An investment fund, in the statement of investment portfolio included in the financial statements of the investment fund, or in the notes to that statement, must, for a repurchase transaction of the investment fund that is outstanding as at the date of the statement, disclose:

- (a) the date of the transaction;
- (b) the expiration date of the transaction;
- (c) the nature and current value of the portfolio securities sold by the investment fund;
- (d) the amount of cash received and the repurchase price to be paid by the investment fund; and
- (e) the current value of the sold portfolio securities as at the date of the statement.

(2) The statement of net assets of an investment fund that has entered into a repurchase transaction that is outstanding as of the date of the statement of net assets must disclose separately the obligation of the investment fund to repay the collateral.

(3) The statement of operations of an investment fund must disclose income from the use of the cash received on a repurchase transaction as revenue.

(4) The information required by this section may be presented on an aggregate basis.

**3.10 Disclosure of Reverse Repurchase Transactions**

(1) An investment fund, in the statement of investment portfolio or in the notes to that statement, must, for a reverse repurchase transaction of the investment fund that is outstanding as at the date of the statement, disclose:

- (a) the date of the transaction;
- (b) the expiration date of the transaction;
- (c) the total dollar amount paid by the investment fund;
- (d) the nature and current value or principal amount of the portfolio securities received by the investment fund; and
- (e) the current value of the purchased portfolio securities as at the date of the statement.

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- (2) The statement of net assets of an investment fund that has entered into a reverse repurchase transaction that is outstanding as of the date of the financial statements must disclose separately the reverse repurchase agreement relating to the transaction at current value.
- (3) The statement of operations of an investment fund must disclose income from a reverse repurchase transaction as revenue.
- (4) The information required by this section may be presented on an aggregate basis.

### **3.11 Scholarship Plans**

(1) In addition to the requirements of this Part, an investment fund that is a scholarship plan must disclose, as of the end of its most recently completed financial year, a separate statement or schedule to the financial statements that provides:

- (a) a summary of education savings plans and units outstanding by year of eligibility, including:
  - (i) disclosure of the number of units by year of eligibility for the opening units, units purchased, units forfeited and the ending units;
  - (ii) disclosure of the principal amounts and the accumulated income per year of eligibility, and their total balances; and
  - (iii) a reconciliation of the total balances of the principal amounts and the accumulated income in the statement or schedule to the statement of net assets of the scholarship plan;
- (b) the total number of units outstanding; and
- (c) a statement of scholarship awards paid to beneficiaries, and a reconciliation of the amount of scholarship awards paid with the statement of operations.

(2) Despite the requirements of sections 3.1 and 3.2, an investment fund that is a scholarship plan may omit the “net assets per security” and “increase or decrease in net assets from operations per security” line items from its financial statements.

## **PART 4 MANAGEMENT REPORTS OF FUND PERFORMANCE**

**4.1 Application** - This Part applies to an investment fund that is a reporting issuer.

**4.2 Filing of Management Reports of Fund Performance** - An investment fund, other than an investment fund that is a scholarship plan, must file an annual management report of fund performance for each financial year and an interim management report of fund performance for each interim period at the same time that it files its annual financial statements or its interim financial statements for that financial period.

**4.3 Filing of Annual Management Report of Fund Performance for an Investment Fund that is a Scholarship Plan** - An investment fund that is a scholarship plan must file an annual management report of fund performance for each financial year at the same time that it files its annual financial statements.

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**4.4 Contents of Management Reports of Fund Performance** - A management report of fund performance required by this Part must:

- (a) be prepared in accordance with Form 81-106F1; and
- (b) not incorporate by reference information from any other document that is required to be included in a management report of fund performance.

**4.5 Approval of Management Reports of Fund Performance**

- (1) The board of directors of an investment fund that is a corporation must approve the management report of fund performance of the investment fund before the report is filed or made available to a holder or potential purchaser of securities of the investment fund.
- (2) The trustee or trustees of an investment fund that is a trust, or another person or company authorized to do so by the constating documents of the investment fund, must approve the management report of fund performance of the investment fund before the report is filed or made available to a holder or potential purchaser of securities of the investment fund.

**PART 5 DELIVERY OF FINANCIAL STATEMENTS AND MANAGEMENT REPORTS OF FUND PERFORMANCE****5.1 Delivery of Certain Continuous Disclosure Documents**

- (1) In this Part, “**securityholder**” means a registered holder or beneficial owner of securities issued by an investment fund.
- (2) Subject to section 5.2 or section 5.3, an investment fund must send to a securityholder, by the filing deadline for the document, the following:
  - (a) annual financial statements;
  - (b) interim financial statements;
  - (c) if required to be prepared by the investment fund, the annual management report of fund performance;
  - (d) if required to be prepared by the investment fund, the interim management report of fund performance.
- (3) An investment fund must apply the procedures set out in National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* when complying with this Part.
- (4) Despite subsection (3), National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* does not apply to an investment fund with respect to a requirement under this Part if the investment fund has the necessary information to communicate directly with a beneficial owner of its securities.

**5.2 Sending According to Standing Instructions**

- (1) Subsection 5.1(2) does not apply to an investment fund that requests standing instructions from a securityholder in accordance with this section and sends the documents listed in subsection 5.1(2) according to those instructions.

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- (2) An investment fund relying on subsection 5.2(1) must send, to each securityholder, a document that:
- (a) explains the choices a securityholder has to receive the documents listed in subsection 5.1(2);
  - (b) solicits instructions from the securityholder about delivery of those documents; and
  - (c) explains that the instructions provided by the securityholder will continue to be followed by the investment fund until they are changed by the securityholder.
- (3) If a person or company becomes a securityholder of an investment fund, the investment fund must solicit instructions in accordance with subsection (2) from the securityholder as soon as reasonably practicable after the investment fund accepts a purchase order from the securityholder.
- (4) An investment fund must rely on instructions given under this section until a securityholder changes them.
- (5) At least once a year, an investment fund must send each securityholder a reminder that:
- (a) the securityholder is entitled to receive the documents listed in subsection 5.1(2);
  - (b) the investment fund is relying on delivery instructions provided by the securityholder;
  - (c) explains how a securityholder can change the instructions it has given; and
  - (d) the securityholder can obtain the documents on the SEDAR website and on the investment fund's website, if applicable, and by contacting the investment fund.

**5.3 Sending According to Annual Instructions**

- (1) Subsection 5.1(2) does not apply to an investment fund that requests annual instructions from a securityholder in accordance with this section and sends the documents listed in subsection 5.1(2) according to those instructions.
- (2) Subsection (1) does not apply to an investment fund that has previously relied on subsection 5.2(1).
- (3) An investment fund relying on subsection 5.3(1) must send annually to each securityholder a request form the securityholder may use to instruct the investment fund as to which of the documents listed in subsection 5.1(2) the securityholder wishes to receive.
- (4) The request form described in subsection (3) must be accompanied by a notice explaining that:
- (a) the securityholder is providing delivery instructions for the current year only; and
  - (b) the documents are available on the SEDAR website and on the investment fund's website, if applicable, and by contacting the investment fund.

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**5.4 General**

- (1) If a securityholder requests any of the documents listed in subsection 5.1(2), an investment fund must send a copy of the requested documents by the later of:
  - (a) the filing deadline for the requested document; and
  - (b) 10 calendar days after the investment fund receives the request.
- (2) An investment fund must not charge a fee for sending the documents referred to in this Part and must ensure that securityholders can respond without cost to the solicitations of instructions required by this Part.
- (3) Investment funds under common management may solicit one set of delivery instructions from a securityholder that will apply to all of the investment funds under common management held by that securityholder.
- (4) Despite subsection 7.1(3), for the purposes of delivery to a securityholder, an investment fund may bind its management report of fund performance with the management report of fund performance for one or more other investment funds if the securityholder holds each investment fund.

- 5.5 Websites** - An investment fund that is a reporting issuer and that has a website must post to the website any documents listed in subsection 5.1(2) no later than the date that those documents are filed.

**PART 6 QUARTERLY PORTFOLIO DISCLOSURE**

- 6.1 Application** - This Part applies to an investment fund that is a reporting issuer, other than a scholarship plan or a labour sponsored or venture capital fund.

**6.2 Preparation and Dissemination**

- (1) An investment fund must prepare quarterly portfolio disclosure that includes:
  - (a) a summary of investment portfolio prepared in accordance with Item 5 of Part B of Form 81-106F1 as at the end of:
    - (i) each period of at least three months that ends three or nine months before the end of a financial year of the investment fund; or
    - (ii) in the case of a transition year of the investment fund, each period commencing on the first day of the transition year and ending either three, nine or twelve months, if applicable, after the end of its old financial year; and
  - (b) the total net asset value of the investment fund as at the end of the periods specified in (a)(i) or (ii).
- (2) An investment fund that has a website must post to the website the quarterly portfolio disclosure within 60 days of the end of the period for which the quarterly portfolio disclosure was prepared.
- (3) An investment fund must promptly send the most recent quarterly portfolio disclosure, without charge, to any securityholder of the investment fund, upon a request made by the securityholder 60 days after the end of the period to which the quarterly portfolio disclosure pertains.

**PART 7 BINDING AND PRESENTATION****7.1 Binding of Financial Statements and Management Reports of Fund Performance**

- (1) An investment fund must not bind its financial statements with the financial statements of another investment fund in a document unless all information relating to the investment fund is presented together and not intermingled with information relating to the other investment fund.
- (2) Despite subsection (1), if a document contains the financial statements of more than one investment fund, the notes to the financial statements may be combined and presented in a separate part of the document.
- (3) An investment fund must not bind its management report of fund performance with the management report of fund performance for another investment fund.

**7.2 Multiple Class Investment Funds**

- (1) An investment fund that has more than one class or series of securities outstanding that are referable to a single portfolio must prepare financial statements and management reports of fund performance that contain information concerning all of the classes or series.
- (2) If an investment fund has more than one class or series of securities outstanding, the distinctions between the classes or series must be disclosed in the financial statements and management reports of fund performance.

**PART 8 INDEPENDENT VALUATIONS FOR LABOUR SPONSORED OR VENTURE CAPITAL FUNDS**

**8.1 Application** - This Part applies to a labour sponsored or venture capital fund that is a reporting issuer.

**8.2 Exemption from Requirement to Disclose Individual Current Values for Venture Investments** - Despite item 5 of subsection 3.5(1), a labour sponsored or venture capital fund is exempt from the requirement to present separately in a statement of investment portfolio the current value of each venture investment that does not have a market value if:

- (a) the labour sponsored or venture capital fund discloses in the statement of investment portfolio:
  - (i) the cost amounts for each venture investment;
  - (ii) the total cost of the venture investments;
  - (iii) the total adjustment from cost to current value of the venture investments; and
  - (iv) the total current value of the venture investments;
- (b) the labour sponsored or venture capital fund discloses in the statement of investment portfolio tables showing the distribution of venture investments by stage of development and by industry classification including:
  - (i) the number of venture investments in each stage of development and industry class;

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(ii) the total cost and aggregate current value of the venture investments for each stage of development and industry class; and

(iii) the total cost and aggregate current value of venture investments for each stage of development and industry class as a percentage of total venture investments;

(c) for a statement of investment portfolio contained in annual financial statements, the labour sponsored or venture capital fund has obtained an independent valuation relating to the value of the venture investments or to the net assets of the fund and has filed the independent valuation concurrently with the filing of the annual financial statements;

(d) for a statement of investment portfolio contained in interim financial statements, the labour sponsored or venture capital fund obtained and filed the independent valuation referred to in paragraph (c) in connection with the preparation of the most recent annual financial statements of the labour sponsored or venture capital fund; and

(e) the labour sponsored or venture capital fund has disclosed in the applicable financial statements that an independent valuation has been obtained as of the end of the applicable financial year.

**8.3 Disclosure Concerning Independent Valuator** - A labour sponsored or venture capital fund that obtains an independent valuation must include, in the statement of investment portfolio contained in its annual financial statements, or in the notes to the annual financial statements,

(a) a description of the independent valuator's qualifications; and

(b) a description of any past, present or anticipated relationship between the independent valuator and the labour sponsored or venture capital fund, its manager or portfolio adviser.

**8.4 Content of Independent Valuation** - An independent valuation must provide the aggregate current value of the venture investments or the net assets of the labour sponsored or venture capital fund as at the fund's financial year end.

**8.5 Independent Valuator's Consent** - A labour sponsored or venture capital fund obtaining an independent valuation must:

(a) obtain the independent valuator's consent to its filing; and

(b) include a statement in the valuation report, signed by the independent valuator, in substantially the following form:

"We refer to the independent valuation of the [net assets/venture investments] of [name of labour sponsored or venture capital fund] as of [date of financial year end] dated. We consent to the filing of the independent valuation with the securities regulatory authorities."

## PART 9 ANNUAL INFORMATION FORM

**9.1 Application** - This Part applies to an investment fund that is a reporting issuer.

**9.2 Requirement to File Annual Information Form**- An investment fund must file an annual information form if the investment fund has not obtained a receipt for a prospectus during the last 12 months preceding its financial year end.























































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**Item 6      Other Material Information**

Provide any other material information relating to the investment fund not otherwise required to be disclosed by this Part including information required to be disclosed pursuant to an order or exemption received by the investment fund.

10 Jne 2005 SR 49/2005 s11; 10 Nov 2006 SR  
104/2006 s8; 25 Jly 2008 SR 59/2008 s5; 29 Aug  
2008 SR 72/2008 s6; 8 Jly 2011 SR 41/2011 s20;  
29 Jne 2012 SR 43/2012 s6.