

COMPANION POLICY 71-102CP TO NATIONAL INSTRUMENT 71-102

Continuous Disclosure and Other Exemptions Relating to Foreign Issuers

PART 1 – GENERAL

1.1 Introduction and Purpose

- (1) National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (the “Instrument”) contains disclosure and other exemptions relating to foreign issuers, other than investment funds, that are reporting issuers in one or more Canadian jurisdictions.

The Instrument provides eligible foreign issuers with various options relating to the accounting principles used to prepare their financial statements and the auditing standards used to audit their annual financial statements.

The Instrument also provides broader relief from requirements of National Instrument 51-102 *Continuous Disclosure Obligations* (“NI 51-102”) for two sub-categories of eligible foreign issuers – SEC foreign issuers and designated foreign issuers – on the condition that they comply with the continuous disclosure (“CD”) requirements of the SEC or a designated foreign jurisdiction. SEC foreign issuers and designated foreign issuers are also exempted from certain other requirements of Canadian securities legislation, including insider reporting and early warning, that are not contained in NI 51-102.

- (2) This Companion Policy provides information about how the Canadian securities regulatory authorities interpret the Instrument, and should be read in conjunction with it.
- (3) The Instrument provides that certain persons and companies satisfy the requirements of Canadian securities legislation by complying with the requirements of certain foreign jurisdictions. The Canadian securities regulatory authorities consider that the requirements of the foreign regulators or foreign jurisdictions identified in the Instrument, as they concern continuous disclosure, AIF and MD&A, proxies and proxy solicitation, early warning and insider reporting, communication with beneficial owners of securities, and going private and related party transactions to adequately serve the purposes of Canadian securities legislation on the conditions set out in the Instrument.

1.2 Other Relevant Legislation

In addition to this Instrument, foreign issuers should consult the following non-exhaustive list of legislation to see how it may apply to them:

- (1) Implementing Legislation (the regulation, rule, ruling, order or other instrument that implements the Instrument in each applicable jurisdiction);
- (2) NI 51-102;
- (3) National Instrument 71-101 *The Multijurisdictional Disclosure System* (“NI 71-101”).

1.3 **Multijurisdictional Disclosure System**

- (1) NI 71-101 permits certain US incorporated issuers to satisfy specified Canadian CD requirements by using disclosure prepared in accordance with US requirements. The Instrument does not replace or alter NI 71-101. There are instances in which NI 71-101 and the Instrument offer similar relief to a reporting issuer, but other instances in which the relief available to a reporting issuer in one instrument differs from the relief available to the reporting issuer under the other instrument. Many issuers that are eligible for an exemption under the Instrument will be ineligible to rely on NI 71-101 and vice versa. For example, the Instrument defines a class of “SEC foreign issuers”. Not all US issuers referred to in NI 71-101 are SEC foreign issuers and not all SEC foreign issuers are US issuers.
- (2) An eligible US issuer may choose to use an exemption in the Instrument or NI 71-101. For example, section 17.1 of NI 71-101 grants an exemption from the insider reporting requirements to an insider of a US issuer that has securities registered under section 12 of the 1934 Act if the insider complies with the requirements of US federal securities law regarding insider reporting and files with the SEC any insider report required to be filed with the SEC. This relief goes beyond the exemption provided by section 4.9 of the Instrument which is not available to insiders of a SEDI issuer as defined in National Instrument 55-102 *System for Electronic Disclosure by Insiders (SEDI)* and requires that the insider of the SEC foreign issuer file with the applicable regulator or securities regulatory authority Canadian insider reports.

1.4 **Exemptions**

- (1) The exemptions contained in the Instrument are in addition to any exemptions that may be available to an issuer under any other applicable legislation.
- (2) If an issuer wishes to seek exemptive relief from NI 51-102 on grounds similar but not identical to those permitted under this Instrument, the issuer should apply for this relief under the exemptive provisions of NI 51-102.

1.5 Exemptions May Not Require Disclosure

Most of the exemptions in the Instrument are only available to a person or company that complies with a particular aspect of either US federal securities laws or the laws of a designated foreign jurisdiction. If those laws do not require the issuer to disclose, file or send any information, for example, because the issuer may rely on an exemption under those laws, then the issuer is not required to disclose, file or send any information in order to rely on the exemption contained in the Instrument.

PART 2 – DEFINITIONS

2.1 Calculation of Voting Securities Owned by Residents of Canada

In order to qualify for any of the exemptions contained in the Instrument, other than the relief for “foreign transition issuers” in Part 6, an issuer must be an “eligible foreign issuer”. The definition of eligible foreign issuer is based upon the definition of foreign private issuer in Rule 405 of the 1933 Act and Rule 3b-4 of the 1934 Act. For the purposes of the definition of “eligible foreign issuer”, it is the CSA’s view that, in determining the outstanding voting securities that are directly or indirectly owned of record by residents of Canada, an issuer should use reasonable efforts to:

- (a) determine securities held of record by a broker, dealer, bank, trust company or nominee or any of them for the accounts of customers resident in Canada;
- (b) count securities beneficially owned by residents of Canada as reported on reports of beneficial ownership, including insider reports and early warning reports; and
- (c) assume that a customer is a resident of the jurisdiction or foreign jurisdiction in which the nominee has its principal place of business if, after reasonable inquiry, information regarding the jurisdiction or foreign jurisdiction of residence of the customer is unavailable.

The determination of the percentage of securities of the foreign issuer owned of record by residents of Canada should be made in the same manner for the purposes of paragraph (d) of the definition of “designated foreign issuer” and paragraph (d) of the definition of “foreign transition issuer” in section 6.2 of the Instrument. This method of calculation differs from that of NI 71-101, which only requires a calculation based on the address of record. Accordingly, some SEC foreign issuers may qualify for exemptive relief under NI 71-101 but not under this Instrument.

PART 3 – INSIDER REPORTS

3.1 Requirement to File Insider Reports on SEDI

Insiders of foreign issuers who voluntarily file under National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)* are required to file insider reports electronically under SEDI. The Instrument does not provide an exemption from filing insider reports in the form required by Canadian securities legislation if the foreign issuer is a SEDI filer. However, under NI 71-101 an insider of an eligible U.S. issuer, as defined NI 71-101, is exempt from the insider reporting requirements if the insider complies with U.S. federal securities law regarding insider reporting and files with the SEC any insider report required to be filed with the SEC. Consequently, insiders of NI 71-101 eligible issuers are also exempt from the requirement to file insider reports on SEDI.

Insiders of a foreign issuer that do not file under SEDAR, and who are therefore eligible to file insider reports under section 4.9 or 5.9 of the Instrument, must file the foreign form of insider report in paper form.

PART 4 – RESTRICTED SHARES

4.1 Exemptions

Sections 4.13 and 5.13 of the Instrument provide exemptions from the minority approval requirements of restricted share requirements found in Alberta Securities Commission Policy 1.2, Ontario Securities Commission Rule 56-501 and Policy Q-17 of the Commission des valeurs mobilières du Québec.

PART 5 – RESOURCE ISSUERS

5.1 Standards of Disclosure for Mineral Projects and Oil and Gas Activities

The Instrument does not provide an exemption from National Instrument 43-101 *Standards of Disclosure for Mineral Projects* or National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*. Issuers are reminded that those National Instruments apply to SEC foreign issuers and designated foreign issuers.

PART 6 – ACCOUNTING PRINCIPLES AND AUDITING STANDARDS FOR ELIGIBLE FOREIGN ISSUERS

6.1 Accounting Principles

- (1) Appendix A to this Policy contains a chart outlining the accounting principles permitted for annual and interim financial statements for foreign issuers.

- (2) Appendix B to this Policy contains a summary of the accounting principles permitted for the financial statements of a business or businesses acquired by a foreign issuer.
- (3) Subsection 7.1(1) of the Instrument specifies that an eligible foreign issuer may file financial statements prepared in accordance with accounting principles that cover substantially the same core subject matter as Canadian GAAP provided the notes to the financial statements include a reconciliation to Canadian GAAP. Subparagraph (f)(ii) of subsection 7.1(1) requires quantification of the effect of material differences between Canadian GAAP and the accounting principles used that relate to measurement in the issuer's financial statements, including a tabular reconciliation between net income reported in the issuer's financial statements and net income computed in accordance with Canadian GAAP. While the differences impacting net income must be presented in a tabular format, differences relating to assets, liabilities, retained earnings, and other aspects of the issuer's financial statements may be presented in a tabular format or some other format.

6.2 Auditing Standards

- (1) **Chart** – Appendix C to this Policy contains a chart outlining the auditing standards permitted for foreign issuers.
- (2) **Foreign GAAS Substantially Equivalent to Canadian GAAS** - Paragraph (3) of section 7.3 of the Instrument refers to an auditor's report prepared in accordance with auditing standards that are substantially equivalent to Canadian GAAS. The Canadian securities regulatory authorities are of the view that in order for auditing standards to be substantially equivalent to Canadian GAAS, they must require underlying audit work that is comparable in scope, nature and timing to the work required in connection with an audit in accordance with Canadian GAAS. For example, auditing standards of a foreign jurisdiction such as the United States are known to the Canadian securities regulatory authorities to be substantially equivalent to the standards of the CICA. Foreign issuers using auditors from foreign jurisdictions, with auditing standards and supervisions that are less well known to securities regulatory authorities or regulators, are encouraged to consult with staff of securities regulatory authorities or regulators in advance of filing of financial statements to resolve uncertainty as to whether the securities regulatory authority or regulator will consider a particular auditor or auditing standards to be acceptable.

In making a determination of whether the foreign auditing standards are substantially equivalent to Canadian GAAS, auditors are referred, in particular, to the general standard of Canadian GAAS as set out in Section 5100 of the Handbook and its reference to an auditor's "objective state of mind". This standard, when read together with the objectivity standard for auditors contained in the Standards of Professional Conduct applicable to Canadian auditors in each jurisdiction, emphasizes the importance of the independence of the auditor. In the

view of the Canadian securities regulatory authorities, auditor independence is an essential element of Canadian GAAS and should be reflected, among other things, in the foreign GAAS applied in order for the foreign GAAS applied and Canadian GAAS to be considered substantially equivalent.

APPENDIX A

Accounting Principles Permitted for Annual and Interim Financial Statements of Eligible Foreign Issuers³

Accounting Principles:	Eligible Foreign Issuers ²		
	SEC Foreign Issuers ²	Designated Foreign Issuers ²	Other Eligible Foreign Issuers
Canadian GAAP			
US GAAP	No Canadian GAAP reconciliation required	Canadian GAAP reconciliation may be required ⁴	Canadian GAAP reconciliation required
International Accounting Standards(no reconciliation)			
Foreign Accounting Principles Used in an SEC Filing (Annual F/S reconciled to US GAAP)	if ≤ 10% Canadian shareholders		
Accounting Principles Accepted in the Designated Jurisdiction (no reconciliation)			
Foreign Comprehensive Accounting Principles reconciled to Canadian GAAP			

Notes

- 1 This decision chart provides general guidance and should be read in conjunction with National Instrument 71-102, Companion Policy 71-102CP and National Instrument 51-102. The decision chart does not relate to financial statements other than those of reporting issuers.
- 2 These terms are defined in the Instrument.

- 3 Foreign issuers who are not eligible foreign issuers are required to fully comply with National Instrument 51-102.
- 4 A Canadian GAAP reconciliation would not be required if the designated foreign jurisdiction accepts financial statements prepared in accordance with US GAAP. See the second last row of this chart.

APPENDIX B

Accounting Principles Permitted for Financial Statements of a Business or Related Businesses Acquired by an Eligible Foreign Issuer

If the Issuer's Financial Statements are prepared using:	Financial statements for an acquired business or related businesses in a Business Acquisition Report must be prepared in accordance with:	The <u>most recent annual and interim</u> financial statements for an acquired business or related businesses required in a Business Acquisition Report must be prepared in accordance with:
Canadian GAAP	Comprehensive accounting principles. ¹	Canadian GAAP or Comprehensive accounting principles ¹ reconciled to Canadian GAAP.
US GAAP	Comprehensive accounting principles. ¹	US GAAP or Comprehensive accounting principles ¹ reconciled to US GAAP.
International Accounting Standards	Comprehensive accounting principles. ¹	International Accounting Standards or Comprehensive accounting principles ¹ reconciled to International Accounting Standards.
Foreign Comprehensive Accounting Principles reconciled to Canadian GAAP	Comprehensive accounting principles. ¹	Canadian GAAP or Comprehensive accounting principles ¹ reconciled to Canadian GAAP.
Foreign Accounting Principles Used in an SEC Filing	Section 4.4 allows an SEC foreign issuer to satisfy the requirement for business acquisition reports by complying with SEC requirements for current reports.	
Accounting Principles Accepted in the Designated Jurisdiction	Section 5.4 allows a designated foreign issuer to satisfy the requirement for business acquisition reports by complying with the foreign disclosure requirements relating to business acquisitions.	

Notes

- 1 Comprehensive accounting principles are accounting principles that cover substantially the same core subject matter as Canadian GAAP, including recognition and measurement principles and disclosure requirements.
- 2 These terms are defined in the Instrument.

APPENDIX C

Auditing Standards Permitted for Eligible Foreign Issuers⁵

Auditing Standards:	Eligible Foreign Issuers ⁴		
	SEC Foreign Issuers ⁴	Designated Foreign Issuers ⁴	Other Eligible Foreign Issuers
Canadian GAAS			
US GAAS	1	1	1
International Standards of Auditing	1,2	1,2	1,2
Auditing Standards Accepted in the Designated Jurisdiction ³			
Other Auditing Standards substantially equivalent to Canadian GAAS	1,2	1,2	1,2

Notes

- 1 Audit Report must be accompanied by a statement disclosing any material differences in the form and content of the audit report compared to a Canadian GAAS audit report.
- 2 Audit Report must be accompanied by a statement confirming that the auditing standards applied are substantially equivalent to Canadian GAAS.
- 3 The auditing standards must meet the foreign disclosure requirements of the designated foreign jurisdiction that the issuer is subject to.
- 4 These terms are defined in the Instrument.
- 5 Foreign issuers who are not eligible foreign issuers are required to fully comply with NI 51-102.