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

1. **Companion Policy 51-102CP to National Instrument 51-102 *Continuous Disclosure Obligations* is amended as follows:**

2. **Subsection 1.4(6) of the French version is amended by**

(a) striking out "le contrôle de" **and substituting** " une emprise sur " **and**

(b) adding "véritables" **after** "propriétaire".

3. **Section 1.5 is repealed and the following is substituted:**

"**1.5** **Plain Language Principles**

You should apply plain language principles when you prepare your disclosure including:

- using short sentences
- using definite everyday language
- using the active voice
- avoiding superfluous words
- organizing the document in clear, concise sections, paragraphs and sentences
- avoiding jargon
- using personal pronouns to speak directly to the reader
- avoiding reliance on glossaries and defined terms unless it facilitates understanding of the disclosure
- not relying on boilerplate wording

- avoiding abstract terms by using more concrete terms or examples
- avoiding multiple negatives
- using technical terms only when necessary and explaining those terms
- using charts, tables and examples where it makes disclosure easier to understand.

Question and answer bullet point formats are consistent with the disclosure requirements of the Instrument.".

4. Section 6.2 is repealed and the following is substituted:

"**6.2 AIF Disclosure of Asset-backed Securities**

(1) **Factors to consider** – Issuers that have distributed asset-backed securities under a prospectus are required to provide disclosure in their AIF under section 5.3 of Form 51-102F2. Issuers of asset-backed securities must determine which other prescribed disclosure is applicable and ought to be included in the AIF. Disclosure for a special purpose issuer of asset-backed securities will generally explain

- the nature, performance and servicing of the underlying pool of financial assets;
- the structure of the securities and dedicated cash flows; and
- any third party or internal support arrangements established to protect holders of the asset-backed securities from losses associated with non-performance of the financial assets or disruptions in payment.

The nature and extent of required disclosure may vary depending on the type and attributes of the underlying pool and the contractual arrangements through which holders of the asset-backed securities take their interest in such assets.

An issuer of asset-backed securities should consider the following factors when preparing its AIF:

1. The extent of disclosure respecting an issuer will depend on the extent of the issuer's on-going involvement in the conversion of the assets comprising the pool to cash and the distribution of cash to securityholders; this involvement may, in turn, vary dramatically depending on the type, quality and attributes of the assets comprising the pool and on the overall structure of the transaction.

2. Disclosure about the business and affairs of the issuer should relate to the financial assets underlying the asset-backed securities.

3. Disclosure about the originator or the seller of the underlying financial assets will often be relevant to investors in the asset-backed securities particularly where the originator or seller has an on-going involvement with the financial assets comprising the pool. For example, if asset-backed securities are serviced with the cash flows from a revolving pool of receivables, an evaluation of the nature and reliability of the future origination or the future sales of underlying assets by the seller to or through the issuer may be a critical aspect of an investor's investment decision.

To address this, the focus of disclosure respecting an originator or seller of the underlying financial assets should deal with whether there are current circumstances that indicate that the originator or seller will not generate adequate assets in the future to avoid an early liquidation of the pool and, correspondingly, an early payment of the asset-backed securities. Summary historical financial information respecting the originator or seller will ordinarily be adequate to satisfy the disclosure requirement applicable to the originator or seller in circumstances where the originator or seller has an ongoing relationship with the assets comprising the pool.

Financial information respecting the pool of assets to be described and analyzed in the AIF will consist of information commonly set out in servicing reports prepared to describe the performance of the pool and the specific allocations of income, loss and cash flows applicable to outstanding asset-backed securities made during the relevant period.

(2) **Underlying pool of assets** – Paragraph 5.3(2)(a) of Form 51-102F2 requires issuers of asset-backed securities that were distributed by way of prospectus to include financial disclosure relating to the composition of the underlying pool of financial assets, the cash flows from which service the asset-backed securities. Disclosure respecting the composition of the pool will vary depending upon the nature and number of the underlying financial assets. For example, in a geographically dispersed pool of financial assets, it may be appropriate to provide a summary disclosure based on the location of obligors. In the context of a revolving pool, it may be appropriate to provide details relating to aggregate outstanding balances during a year to illustrate historical fluctuations in asset origination due, for example, to seasonality. In pools of consumer debt obligations, it may be appropriate to provide a breakdown within ranges of amounts owing by obligors in order to illustrate limits on available credit extended.".

5. Subsection 8.7(6) is repealed and the following is substituted:

"(6) **Multiple Acquisitions** – If a reporting issuer has completed multiple acquisitions then, under subsection 8.4(5) of the Instrument, the pro forma financial statements must give effect to each acquisition completed since the beginning of the most recently completed financial year. The pro forma adjustments may be grouped by line item on the face of the pro forma financial statements provided the details for each transaction are disclosed in the notes.".

6. **The following subsection 8.7(8) is added after subsection 8.7(7):**

"(8) **Indirect Acquisitions** – Under the securities legislation of certain jurisdictions, it is generally an offence to make a statement in a document that is required to be filed under securities legislation, and that does not state a fact that is necessary to make the statement not misleading. When a reporting issuer acquires a business that has itself recently acquired another business or related businesses (an "indirect acquisition"), the reporting issuer should consider whether it needs to provide disclosure of the indirect acquisition in the business acquisition report, including historical financial statements, and whether the omission of these statements would cause the business acquisition report to be misleading, untrue or substantially incomplete. In making this determination, the reporting issuer should consider the following factors:

- if the indirect acquisition would meet any of the significance tests in section 8.3 of the Instrument when the reporting issuer applies each of those tests to its proportionate interest in the indirect acquisition of the business, and

- if the amount of time between the separate acquisitions is such that the effect of the first acquisition is not adequately reflected in the results of the business or related businesses the reporting issuer is acquiring.".

7. **Section 12.1 is amended**

(a) **by striking out** "This is a very narrow exception." **and substituting** "This carve out for a statutory or regulatory instrument is very narrow.";

(b) **by striking out** "it" **and substituting** "the carve out" **after** "For example,".

8. **Section 12.2 is repealed and the following is substituted:**

"**12.2 Contracts that Affect the Rights or Obligations of Securityholders –** Paragraph 12.1(1)(e) of the Instrument requires reporting issuers to file copies of contracts that can reasonably be regarded as materially affecting the rights of their securityholders generally. A warrant indenture is one example of this type of contract. We would expect that contracts entered into in the ordinary course of business would not usually affect the rights of securityholders generally, and so would not have to be filed under this paragraph.".

9. **Section 12.3 is repealed and the following is substituted:**

"**12.3 Material Contracts**

(1) **Definition –** Under subsection 1.1(1) of the Instrument, a material contract is defined as a contract that a reporting issuer or any of its subsidiaries is a party to, that is material to the reporting issuer. A material contract generally includes a schedule, side letter or exhibit referred to in the material contract and any amendment to the material contract. The

redaction and omission provisions in subsections 12.2(3) and (4) of the Instrument apply to these schedules, side letters, exhibits or amendments.

(2) **Filing Requirements –** Subject to the exceptions in paragraphs 12.2(2)(a) through (f) of the Instrument, subsection 12.2(2) of the Instrument provides an exemption from the filing requirement for a material contract entered into in the ordinary course of business. Whether a reporting issuer entered into a contract in the ordinary course of business is a question of fact that the reporting issuer should consider in the context of its business and industry.

Paragraphs 12.2(2)(a) through (f) of the Instrument describe specific types of material contracts that are not eligible for the ordinary course of business exemption. Accordingly, if subsection 12.2(1) of the Instrument requires a reporting issuer to file a material contract of a type described in these paragraphs, the reporting issuer must file that material contract even if the reporting issuer entered into it in the ordinary course of business.

(3) **Contract of Employment** – Paragraph 12.2(2)(a) of the Instrument provides that a material contract with certain individuals is not eligible for the ordinary course of business exemption, unless it is a "contract of employment". One way for reporting issuers to determine whether a contract is a contract of employment is to consider whether the contract contains payment or other provisions that are required disclosure under Form 51-102F6 as if the individual were a named executive officer or director of the reporting issuer.

(4) **External Management and External Administration Agreements –** Under paragraph 12.2(2)(e) of the Instrument, external management and external administration agreements are not eligible for the ordinary course of business exemption. External management and external administration agreements include agreements between the reporting issuer and a third party, the reporting issuer's parent entity, or an affiliate of the reporting issuer, under which the latter provides management or other administrative services to the reporting issuer.

(5) **Material Contracts on which the Reporting Issuer's Business is Substantially Dependent –** Paragraph 12.2(1)(f) of the Instrument provides that a material contract on which the "reporting issuer's business is substantially dependent" is not eligible for the ordinary course of business exemption. Generally, a contract on which the reporting issuer's business is substantially dependent is a contract so significant that the reporting issuer's business depends on the continuance of the contract. Some examples of this type of contract include:

(a) a financing or credit agreement providing a majority of the reporting issuer's capital requirements for which alternative financing is not readily available at comparable terms;

(b) a contract calling for the acquisition or sale of substantially all of the reporting issuer's property, plant and equipment, long-lived assets, or total assets; and

(c) an option, joint venture, purchase or other agreement relating to a mining or oil and gas property that represents a majority of the reporting issuer's business.

(6) **Confidentiality Provisions –** Under subsection 12.2(3) of the Instrument, a reporting issuer may omit or redact a provision of a material contract that is required to be filed if an executive officer of the reporting issuer has reasonable grounds to believe that disclosure of the omitted or redacted provision would violate a confidentiality provision. A provision of the type described in paragraphs 12.2(4)(a), (b) or (c) of the Instrument may not be omitted or redacted even if disclosure would violate a confidentiality provision, including a blanket confidentiality provision covering the entire material contract.

When negotiating material contracts with third parties, reporting issuers should consider their disclosure obligations under securities legislation. A regulator or securities regulatory authority may consider granting an exemption to permit a provision of the type listed in subsection 12.2(4) of the Instrument to be redacted if:

(a) the disclosure of that provision would violate a confidentiality provision; and

(b) the material contract was negotiated before the adoption of the exceptions in subsection 12.2(4) of the Instrument.

The regulator may consider the following factors, among others, in deciding whether to grant an exemption:

(c) whether an executive officer of the reporting issuer reasonably believes that the disclosure of the provisions would be prejudicial to the interests of the reporting issuer; and

(d) whether the reporting issuer is unable to obtain a waiver of the confidentiality provision from the other party.

(7) **Disclosure Seriously Prejudicial to Interests of Reporting Issuer –** Under subsection 12.2(3) of the Instrument, a reporting issuer may omit or redact certain provisions of a material contract that is required to be filed if an executive officer of the reporting issuer reasonably believes that disclosure of the omitted or redacted provision would be seriously prejudicial to the interests of the reporting issuer. One example of disclosure that may be seriously prejudicial to the interests of the reporting issuer is disclosure of information in violation of applicable Canadian privacy legislation. However, in situations where securities legislation requires disclosure of the particular type of information, applicable privacy legislation generally provides an exemption for the disclosure. Generally, disclosure of information that a reporting issuer or other party has already publicly disclosed is not seriously prejudicial to the interests of the reporting issuer.

(8) **Terms Necessary for Understanding Impact on Business of Reporting Issuer –** A reporting issuer may not omit or redact a provision of a type described in paragraph 12.2(4)(a), (b), or (c) of the Instrument. Paragraph 12.2(4)(c) of the Instrument provides that a reporting issuer may not omit or redact "terms necessary for understanding the impact of the material contract on the business of the reporting issuer". Terms that may be necessary for understanding the impact of the material contract on the business of the reporting issuer include the following:

(a) the duration and nature of a patent, trademark, license, franchise, concession, or similar agreement;

(b) disclosure about related party transactions; and

(c) contingency, indemnification, anti-assignability, take-or-pay clauses, or change-of-control clauses.

(9) **Summary of Omitted or Redacted Provisions –** Under subsection 12.2(5) of the Instrument, a reporting issuer must include a description of the type of information that has been omitted or redacted in the copy of the material contract filed by the reporting issuer. A brief one-sentence description immediately following the omitted or redacted information is generally sufficient.".