CSA / ACVM

Canadian Securities Administrators

Autorités canadiennes en valeurs mobilières

Notice and Request for Comment

Changes to Proposed National Instrument 71-102
Continuous Disclosure and Other Exemptions Relating to Foreign Issuers, and
Companion Policy 71-102CP
Continuous Disclosure and Other Exemptions Relating to Foreign Issuers
(Second Publication)

Introduction

We, the Canadian Securities Administrators (CSA), have developed a nationally harmonized set of continuous disclosure (CD) requirements for reporting issuers, other than investment funds. The Notice and Request for Comment on Changes to Proposed National Instrument 51-102 *Continuous Disclosure Obligations* provides information about the proposed rule (the CD Rule).

Concurrently, we developed a nationally harmonized set of exemptions from CD and other requirements for eligible foreign reporting issuers. An eligible foreign reporting issuer is a reporting issuer, other than an investment fund, that is incorporated outside of Canada, except an issuer that has more than 50 percent of its voting shares held in Canada and one or more of the following is true: the majority of its directors and officers are Canadian residents, more than 50 percent of its assets are in Canada, or the business is principally administered in Canada. These exemptions will ease compliance for foreign issuers and increase their access to Canadian capital markets.

The exemptions are contained in a proposed rule, National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (the Rule). Companion Policy 71-102CP *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (the Policy) provides guidance on interpreting the Rule. We are publishing revised versions of the Rule and the Policy for further comment.

The Rule is expected to be adopted as a rule in each of Alberta, Manitoba, Ontario and Nova Scotia, as a commission regulation in Saskatchewan and Québec, and as a policy in all other jurisdictions represented by the CSA. British Columbia is publishing the Rule for comment under its rule-making process but has not yet determined whether it will adopt the Rule, in whole or in part. Please refer to the BC Notice published concurrently in British Columbia on this point.

Substance and Purpose

The Rule provides broad relief from the requirements of the CD Rule for two sub-categories of eligible foreign reporting issuers - SEC foreign issuers and designated foreign issuers - on the condition that they comply with the CD requirements of the SEC or a designated foreign jurisdiction. It also exempts SEC foreign issuers and designated foreign issuers from certain other requirements of Canadian securities legislation, including insider reporting and early warning, that are not contained in the CD Rule.

US-incorporated issuers will be able to rely on either the Rule or the exemptions already available to them under National Instrument 71-101 *The Multijurisdictional Disclosure System* (MJDS), or both. The Policy identifies the significant differences between the exemptions in the Rule and in MJDS.

Eligible foreign reporting issuers that have obtained discretionary exemptive relief from CD requirements will need to examine that relief in light of the grandfathering provisions in the CD Rule and consider whether they need new or additional relief. The exemptions in the Rule are in addition to any discretionary relief that foreign issuers may continue to rely on.

The Rule does not relieve foreign issuers that electronically file under National Instrument 13-101 *System for Electronic Document Analysis and Retrieval* (SEDAR), or their insiders, from the insider reporting requirements included in National Instrument 55-102 *System for Electronic Disclosure by Insiders* (SEDI).

The Rule does not relieve foreign issuers from the requirements of National Instrument 43-101 *Standards of Disclosure for Mineral Projects* or proposed National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities.*

We have previously published proposed National Instrument 81-106 *Investment Fund Continuous Disclosure* for comment. This instrument will cover the CD obligations of investment funds, including foreign investment funds.

Purpose and Summary of the Companion Policy

The purpose of the Policy is to assist users in understanding and applying the Rule and to explain how certain provisions of the Rule will be interpreted or applied. It contains discussions, explanations and examples primarily relating to:

- the interrelationship between the Rule and MJDS;
- the manner of calculating the number of voting securities owned by residents of Canada for the purposes of the definition of "eligible foreign reporting issuer";
- the availability of exemptions from insider reporting requirements;
- electronic delivery of documents;
- the applicability of NI 43-101 and NI 51-101; and
- the availability of other exemptions and applying for exemptive relief.

Background

On June 21, 2002 we published for comment the first versions of the Rule and Policy (the 2002 Proposal). For additional background information on the 2002 Proposal, as well as a detailed summary of its contents, please refer to the notice that was published with those versions.

We recently published proposed National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (NI 52-107) and a related companion policy for comment. The portions of the Rule that addressed generally accepted accounting principles (GAAP) and generally accepted auditing standards (GAAS) have been removed, and inserted into NI 52-107. See Notice and Request for Comment on Proposed National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* for information on NI 52-107.

Summary of Written Comments Received by the CSA

We received a total of 34 submissions on the 2002 Proposal and the CD Rule. A summary of the comments on the 2002 Proposal together with our responses, except for the comments and responses relating to matters now included in NI 52-107, is contained in Appendix A to this notice. The comments and our responses relating to the CD Rule are set out as an appendix to Notice and Request for Comment on Changes to Proposed National Instrument 51-102 *Continuous Disclosure Obligations*. The comments and our responses to items relating to GAAP/GAAS requirements are set out as an appendix to Notice and Request for Comment on Proposed National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*.

After reviewing the comments and further considering the Rule and Policy, we are proposing a number of amendments to the 2002 Proposal.

Summary of Changes to the Proposed Rule

The Rule

Part 1 Definitions and Interpretation

- In response to comments received, we have expanded the definition of *AIF* to include a Form 10-KSB filed under the 1934 Act. Although the Form 10-KSB does not require identical disclosure to our AIF, we believe its requirements are adequate as an alternative form of AIF for those issuers entitled to use the Form 10-KSB in the United States.

- We have added definitions of “board of directors”, “class”, “executive officer”, “interim period”, “old financial year” and “transition year”. These terms were either used in the Rule, but previously not defined, or have become necessary because of the other changes to the Rule discussed below. The definitions are consistent with the definitions in the CD Rule. In addition, a definition has been added for “US market requirements” to simplify the various references in the Rule to the requirements of the US exchange or Nasdaq that may be applicable to the reporting issuer.

- We have added a definition of “NI 52-107”, and the definitions of “US GAAP” and “US GAAS” have been deleted, because the GAAP and GAAS requirements that were in the Rule have been deleted. Reporting issuers are referred to NI 52-107 to determine the accounting principles and auditing standards they must comply with.

Part 2 Language of Documents

- Eligible foreign reporting issuers filing a translated document must now attach a certificate as to the accuracy of the translation to the document, rather than file the certificate separately. This will ensure that any investor reviewing the document will have the certificate without having to locate it as a separate filing.

Part 3 Filing and Sending of Documents

- Issuers are now required to send copies of documents sent to their shareholders under the requirements of a foreign jurisdiction to shareholders resident in the local jurisdiction. The reference to the addresses of the securityholders as shown on the books of the issuer has been deleted, as it is inconsistent with the intention that issuers will send documents to their Canadian securityholders in the same manner as they are sent to their foreign securityholders.

Part 4 SEC Foreign Issuers

- We have amended portions of Part 4 to require SEC foreign issuers to comply with NI 52-107 when they file financial statements. Previously, SEC foreign issuers were required to comply with the GAAP and GAAS requirements that were set out in the 2002 Proposal. Since these requirements have all been moved to NI 52-107, the references have been updated.

- The exemptions in section 4.4 are designed to permit SEC foreign issuers to satisfy all of the requirements in the CD Rule relating to annual reports, AIFs, business acquisitions reports and MD&A by using their foreign documents. Accordingly, we have revised section 4.4 to clarify that the exemptions for SEC foreign issuers apply to the requirements to prepare and deliver certain CD documents, as well as the requirement to file the documents.

- Sections 4.3 and 4.4 have also been revised to require an SEC foreign issuer to send documents to its securityholders in the local jurisdiction, in the manner and at the same time as they are sent under US requirements. We believe that securityholders in the local jurisdiction should receive the same information as securityholders in the foreign jurisdiction.

- We now refer issuers to the definition of “going private transaction and related party transaction” in the local jurisdiction. This clarifies where issuers can find the definitions, as these terms are not defined in the Rule.

- The exemption for SEC foreign issuers from the change of auditor requirements has been deleted, as it duplicates an exemption for SEC issuers in the CD Rule, which all SEC foreign issuers would be able to rely on.

Part 5 Designated Foreign Issuers

- A new section 5.2 has been added that requires designated foreign issuers to disclose at least once a year that they are a designated foreign issuer and the name of their foreign regulatory authority. This provides notice to securityholders in Canada that they should not expect to receive the same materials they receive from other issuers.

- The requirement in section 5.2(c), now numbered 5.3(c), has been revised to require a designated foreign issuer to file a copy of any document disclosing material information that is disseminated to the public. This expands the original requirement to only file a document if the document is filed with or furnished to a foreign regulatory authority. This ensures investors have access to all relevant information about the issuer that the issuer has disseminated.

- Sections 5.3 and 5.4 of the 2002 Proposal, now numbered as sections 5.4 and 5.5, have been revised to require a designated foreign issuer to send documents to its securityholders in the local jurisdiction, in the manner and at the same time as they are sent under the foreign disclosure requirements. We believe that securityholders in the local jurisdiction should receive the same information as securityholders in the foreign jurisdiction.

- The exemptions in section 5.4, now numbered section 5.5, are designed to permit designated foreign issuers to satisfy all of the requirements in the CD Rule relating to annual reports, AIFs, business acquisitions reports and MD&A by using their foreign documents. Accordingly, we have revised section 5.5 to clarify that the exemptions for designated foreign issuers apply to the requirements to prepare and deliver certain CD documents, as well as the requirement to file the documents.

- We now refer issuers to the definition of "going private transaction and related party transaction" in the local jurisdiction. This clarifies where issuers can find the definitions, as these terms are not defined in the Rule.

- An exemption has been added for designated foreign issuers from the requirements relating to a notice of a change in year-end, as the CD Rule has been amended to add this requirement. Similar to the other exemptions given in the Rule to designated foreign issuers, as long as the issuer complies with its foreign disclosure requirements, and files a copy of its filings, it will be able to rely on the exemption in Canada.

Part 7 Accounting Principles and Auditing Standards for Eligible Foreign Issuers

- This Part has been deleted, as the GAAP and GAAS requirements are now contained in NI 52-107. We decided that, instead of duplicating acceptable accounting principles and auditing standards in the Rule, the CD Rule, and the proposed national long form prospectus instrument, National Instrument 41-102 *General Prospectus Requirements*, which has not yet been published for comment, it would be beneficial to

issuers and their advisors to set out all of the requirements for accounting principles, auditing standards and reporting currency in one national instrument.

The Policy

Part 1 General

- The portions of the Policy relating to accounting principles and auditing standards have been deleted as they are now addressed under NI 52-107 and its companion policy. In addition, a cross-reference to NI 52-107 has been added.

Part 4 Restricted Shares

- Part 4 has been deleted and replaced with a discussion of electronic delivery of documents. The discussion of restricted share treatment was deleted, as the exemption in the Rule was self-explanatory. The new discussion of electronic delivery of documents provides information on policies and staff notices that deal with the option of electronic delivery.

Part 5 Resource Issuers

- Part 5 has been expanded. It is now called *Exemptions Not Included*, and includes a section pointing out that designated foreign issuers do not have an exemption in the Rule from the requirement to deliver a notice if they are party to an amalgamation, arrangement, merger, winding-up, reverse takeover, reorganization or similar transaction. We do not propose to provide an exemption from this requirement, as we consider it important to know of any transaction that will have the effect of changing the continuous disclosure obligations under NI 51-102.

Part 6 Accounting Principles and Auditing Standards for Eligible Foreign Issuers

- This Part and its related appendices have been deleted. This discussion is now contained in the companion policy to NI 52-107.

- A new Part 6 *Exemptions* has been added. This Part:
  - clarifies that the exemptions in the Rule are in addition to other exemptions that may be available in the legislation;
  - discusses that issuers may be able to rely on a previously granted exemption, waiver or approval, and refers issuers to the relevant section in the CD Rule relating to this issue;
  - advises that an issuer that cannot rely on the exemptions under the Rule can apply for relief from the requirements of the CD Rule; and
  - notes that SEC foreign issuers can rely on the exemptions for SEC issuers in the CD Rule.

Anticipated Costs and Benefits

The benefits provided by the Rule are the reduction of duplicative regulation and the consequent increased access to Canadian capital markets by foreign issuers.

The Rule imposes no material costs on foreign issuers, but rather is intended to reduce costs and duplicative regulation.

Related Amendments

Ontario Amendments
In conjunction with this Notice and Request for Comment, the Ontario Securities Commission proposes the rescission of OSC Policy 7.1, the related rules and order. Appendix B contains further information in this regard.

The Ontario Securities Commission is separately publishing for comment proposed Rule 71-802 which is the local rule implementing the Rule in Ontario.

Unpublished Materials
In proposing the Rule, we have not relied on any significant unpublished study, report, or other written materials other than the self-assessments prepared by IOSCO members of compliance with *Objectives and Principles of Securities Regulation* published by IOSCO in September 1998.

Possible Changes to Instrument
Certain members of the CSA expect to publish Multilateral Instrument 52-108 *Auditor Oversight*, Multilateral Instrument 52-109 *Certification of Disclosure in Companies' Annual and Interim Filings* and Multilateral Instrument 52-110 *Audit Committees* for comment in 2003. If these instruments are adopted, we may have to revise the Policy. We will monitor the instruments to determine if changes will be required.

Request for Comments
We welcome your comments on the changes to, or this version of proposed, National Instrument 71-102, the companion policy, and related amendments.

Please submit your comments in writing on or before August 19, 2003. If you are not sending your comments by email, a diskette containing the submissions (in Windows format, Word) should also be forwarded.

Address your submission to all of the CSA member commissions, as follows:

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission – Securities Division
Manitoba Securities Commission
Ontario Securities Commission
Office of the Administrator, New Brunswick
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission

Newfoundland and Labrador Securities Commission
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Registrar of Securities, Nunavut

Deliver your comments **only** to the two addresses that follow. Your comments will be forwarded to the remaining CSA member jurisdictions.

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We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period.

Questions
Please refer your questions to any of:

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The text of the proposed Rule follows or can be found elsewhere on a CSA member website.

June 20, 2003

Appendix A

Summary of Comments and CSA Responses

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Summary of Comments and CSA Responses

Part I Background

On June 21, 2002 the CSA published for comment National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) and National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (NI 71-102). The comment period expired on September 19, 2002. The CSA received submissions from a total of 34 commenters identified in Schedule 1.

The CSA have considered the comments received and thank all commenters for providing their comments.

The questions contained in the CSA Notice to NI 71-102 (the Notice) and the comments received in response to them are summarized below. The item numbers below correspond to the question numbers in the Notices. Below the comments that respond to specific questions in the Notice, we have summarized several other comments relating to proposed NI 71-102.

Part II Comments in Response to CSA Notice

1. Costs and Benefits

Question: *What is your assessment of the costs and benefits of the Rule [NI 71-102]?*

One commenter said there will be significant cost savings due to acceptable reporting basis change, but there will also be a significant cost with respect to comparability.

Response: The CSA acknowledge that the method of comparing issuers that use Canadian GAAP to issuers that do not use, or reconcile to, Canadian GAAP will require adjustment in light of NI 71-102. However, the CSA believe this adjustment is appropriate where issuers either use International Accounting Standards, which the International Organization of Securities Commissions (IOSCO) has recommended be accepted, or have a de minimis *connection to Canada, such as a designated foreign issuer.*

2. Designated Foreign Issuers

Question: *Have we included the appropriate countries in the definition of "designated foreign jurisdiction"? If not, please explain in detail why any countries should be added or removed, with reference to the laws of that country.*

One commenter commented that the designated foreign jurisdictions are adequate as currently listed.

One commenter asked how these 15 jurisdictions were selected and why other jurisdictions, which might be viewed as having equivalent or better frameworks in place, were excluded as designated foreign jurisdictions. For example, Norway merits as much as some of the countries noted for inclusion as a designated foreign jurisdiction. The commenter suggested there should be allowances in the final Rule for including other countries as designated foreign jurisdictions as the Commissions become more knowledgeable about practices in other countries. Another commenter suggested that South Korea should be included in the list.

Response: The CSA developed the list of 15 jurisdictions based on a number of factors, including: the CSA's experience gained from participation in IOSCO and other international organizations, staff's familiarity with requirements of certain jurisdictions arising from work relating to specific issuers, and the self-assessments (where available) prepared by IOSCO members of compliance with the Objectives and Principles of Securities Regulation published by IOSCO. We undertook research in certain areas where we thought this was appropriate. As a practical matter, we considered our list of countries against the list of countries from which our foreign issuers tend to come.

The fact that we have not included certain jurisdictions does not necessarily reflect any CSA position as to whether those jurisdictions have adequate GAAP and continuous disclosure requirements in light of the purposes and principles of our Securities Acts. We simply do not have the necessary degree of familiarity we require to make this determination for countries such as Norway and South Korea. We are continuing to study these requirements. At a future time, we may amend NI 71-102 to change the list of designated foreign jurisdictions.

3. 10% Threshold for Use of Foreign GAAP

Question: *Should we use the threshold of having not more than 10 percent equity security ownership in Canada for determining which foreign issuers may file financial statements prepared in accordance with the accounting principles accepted in the designated foreign jurisdiction, without a reconciliation to Canadian GAAP? If not, what threshold would be appropriate?*

One commenter said that, even with the threshold, there should at least be a transitional requirement to provide a reconciliation to Canadian GAAP rather than simply changing the accounting principles used.

Response: The CSA disagree in circumstances where there is a de minimis *connection to Canada, such as is the case for foreign issuers under NI 71-102. In those cases, the CSA believe the cost outweighs the benefit of requiring the reconciliation.*

4. 10% Threshold for Designated Foreign Issuer Status

Question: *Should we use the threshold of having not more than 10 percent equity security ownership in Canada for determining which foreign issuers may satisfy Canadian CD requirements by complying with the requirements of a designated foreign jurisdiction? If not, what threshold would be appropriate?*

One commenter commented that the 10% threshold is appropriate.

Response: This threshold has been retained in NI 71-102.

5. Exemption from NI 43-101 and NI 51-101

Question: *Do you agree that foreign issuers should not be exempt from the disclosure requirements of NI 43-101 and NI 51-101? Why or why not?*

One commenter agreed that they should not be exempt, as there are no significant issues that should allow them to receive this exemption.

Part III Other Comments on NI 71-102

One commenter commented that the definitions of eligible foreign issuer, designated foreign issuer and SEC foreign issuer were unclear.

Response: The definition of "eligible foreign issuer" has been revised to clarify it. We believe the other definitions are clear, particularly for the issuers that would be considered "designated foreign issuers" or "SEC foreign issuers".

One commenter said NI 71-102 would be less complex by stating that all documents must be filed, then listing exceptions.

Response: NI 71-102 is exemptive in nature. The filing requirements are set out in NI 51-102, with the exemptions in NI 71-102. Absent NI 71-102, all issuers would be subject to NI 51-102, which does set out all of the documents that must be filed. This is consistent with the CSA's approach to other exemptive instruments.

Certain commenters commented that designated foreign issuers should be required to provide reconciliation to Canadian GAAP if their financial statements are prepared in accordance with some other basis of accounting in order to provide comparability between domestic and foreign financial statements.

Response: Before deciding to accept financial statements prepared based on foreign accounting principles, the CSA reviewed the overall level of the continuous disclosure regime in the foreign jurisdiction. Where there is a de minimis *connection to Canada, such as is the case for designated foreign issuers under NI 71-102, and where the foreign regime provides overall satisfactory continuous disclosure, the CSA believe the cost outweighs the benefit of requiring a reconciliation to Canadian GAAP.*

One commenter suggested, in relation to the relief for eligible foreign issuers, that Canadian advisors may not have a sound understanding of the accounting principles in the foreign country – which may lead to incomplete and inaccurate reconciliation. Special regulatory attention may be necessary in these situations.

Response: Where an issuer intends to rely on the exemptions in NI 71-102, it is the responsibility of the issuer and its advisor to satisfy themselves that they can meet the conditions in, and obligations of, the exemptions. Relief for eligible foreign issuers does not imply a lesser scope or degree of regulatory review of the issuer's disclosure. The issuer would still be subject to regulatory review of its disclosure, and enforcement of its disclosure obligations.

Schedule 1 to Appendix A

List of Commenters

Accounting Standards Board - September 18, 2002

ADP Investor Communications - October 15, 2002

Assurance Standards Board Task Force
Canadian Institute of Chartered Accountants - September 19, 2002

ATCO Group - September 19, 2002

BDO Dunwoody LLP - September 19, 2002

Bennett Jones LLP - November 21, 2002

Boughton Peterson Yang Anderson Law Corporation - October 3, 2002

Canadian Advocacy Committee
AIMR (Association for Investment Management and Research) - September 19, 2002

Canadian Bankers' Association - October 11, 2002

Canadian Investor Relations Institute - September 27, 2002

Canadian Listed Company Association - September 19, 2002

Canadian Performance Reporting Board
Canadian Institute of Chartered Accountants - September 19, 2002

Canadian Printing Industries Association - December 17, 2002

Stuart Chalmers
Catalyst LLP - September 16, 2002

Collins Barrow Calgary LLP - September 18, 2002

Davies Ward Phillips & Vineberg LLP - September 19, 2002

Deloitte & Touche LLP - September 18, 2002

Ernst & Young LLP, Chartered Accountants - September 19, 2002

Douglas H. Hopkins - October 4, 2002

Imperial Oil Limited - September 19, 2002

Korea Stock Exchange - August 20, 2002

KPMG LLP - October 1, 2002

McLeod & Company - September 17, 2002

Ontario Teachers' Pension Plan Board - September 17, 2002

Parlee McLaws LLP - September 18, 2002

Bernard Pinsky - July 15, 2002

Power Corporation of Canada - July 23, 2002

PricewaterhouseCoopers - May 23, 2002

The Printing Equipment and Supply Dealers Association of Canada

Cascades Resources, a Division of Cascades Fine Papers Group Inc. - November 1, 2002

Research Capital Corporation - September 19, 2002

Social Investment Organization - September 19, 2002

Toronto Stock Exchange – October 2, 2002

TSX Venture Exchange - August 29, 2002

Zargon Oil & Gas Ltd. - October 8, 2002

Appendix B

Additional Information Required in Ontario, Notice of Proposed Rescission of OSC Policy 7.1, the Related Order and Rules and Request for Comment and Related Amendments to Ontario Securities Regulation (Second Publication)

Authority for the Rule

Paragraph 143(1)36 of the *Securities Act* (Ontario) (the "Act") which authorizes the Ontario Securities Commission (the "Commission") to make rules varying the Act for foreign issuers to facilitate, among other things, compliance with requirements applicable or relating to reporting issuers and the making of going private transactions and related party transactions where the foreign issuers are subject to requirements of the laws of other jurisdictions that the Commission considers are adequate in light of the purposes and principles of the Act provides the Commission with the authority to make the Rule.

The following provisions of the Act also provide the Commission with authority to make the Rule. Paragraph 143(1)22 authorizes the Commission to make rules prescribing requirements in respect of the preparation and dissemination and other use, by reporting issuers, of documents providing for continuous disclosure that are in addition to requirements under the Act. Paragraph 143(1)23 authorizes the Commission to make rules exempting reporting issuers from any requirement of Part XVIII of the Act. Paragraph 143(1)25 authorizes the Commission to make rules prescribing requirements in respect of financial accounting, reporting and auditing for purposes of the Act, the regulations and the rules. Paragraph 143(1)26 authorizes the Commission to make rules prescribing requirements for the validity and solicitation of proxies. Paragraph 143(1)27 authorizes the Commission to make rules providing for the application of Part XVIII (Continuous Disclosure) and Part XIX (Proxies and Proxy Solicitation) in respect of registered holders or beneficial owners of voting securities or equity securities of reporting issuers or other persons or companies on behalf of whom the securities are held, including requirements for reporting issuers, recognized clearing agencies, registered holders, registrants and other persons or companies who hold securities on behalf of persons or companies but who are not the registered holders. Paragraph 143(1)28 authorizes the Commission to make rules regulating take-over bids, issuer bids, insider bids, going private transactions and related party transactions, including early warning provisions. Paragraph 143(1)30 authorizes the Commission to make rules providing for exemptions from any requirement of Part XXI (Insider Trading and Self-Dealing) of the Act. Paragraph 143(1)39 authorizes the Commission to make rules requiring or respecting the media, format, preparation, form, content, execution, certification, dissemination and other use, filing and review of all documents required under or governed by the Act, the regulations or the rules, including financial statements, proxies and information circulars. Paragraph 143(1)49 authorizes the Commission to make rules varying the Act to permit or require methods of filing or delivery, to or by issuers,

security holders or others, of documents, information, reports or other communications required under or governed by Ontario securities law. Paragraph 143(1)56 authorizes the Commission to make rules providing for exemptions from or varying any or all of the time periods in the Act.

Alternatives Considered

The Commission considered whether to rescind OSC Policy 7.1, the Order and the Rules (each as defined below) and rely upon the continuous disclosure regime created by National Instrument 71-101 *The Multijurisdictional Disclosure System* and that contemplated by CSA Notice 95/04 outlining the proposed Foreign Issuer Prospectus and Continuous Disclosure System or amend the Act or make a rule to create a separate foreign issuer continuous disclosure regime. The Commission determined to reformulate OSC Policy 7.1, the Order and the Rules as a rule in a substantially simplified form. Initially, the Commission published proposed Rule 72-502 *Continuous Disclosure and other Exemptions Relating to Foreign Issuers* for comment on October 12, 2001. However, as noted in the Notice and Request for Comment for proposed National Instrument 71-102 published on June 21, 2002, it was determined that it would be preferable to publish the Rule for comment on a national basis rather than proceeding with a local rule in Ontario.

Notice of Proposed Rescission of OSC Policy 7.1, the Related Order and Rules

In Ontario, the Rule would replace Ontario Securities Commission Policy 7.1 Application of Requirements of the Securities Act to Certain Reporting Issuers ("OSC Policy 7.1"), and the Order *In the Matter of Certain Reporting Issuers* (1980) OSCB 54, as amended (the "Order"). The Order was amended by the Rules *In the Matter of Certain Reporting Issuers* (1997), 20 OSCB 1218, as amended by (1998), 21 OSCB 6436, (1999), 22 OSCB 6304, (2000), 23 OSCB 289, (2000), 23 OSCB 8244 and (2002), 25 OSCB 3699, which in turn incorporated the deemed rule of the same name, (1980) OSCB 166 (the "First Rule"), *In the Matter of Certain Reporting Issuers* (1997), 20 OSCB 1219, as amended by (1998), 21 OSCB 6436, (1999), 22 OSCB 151, (2000), 23 OSCB 289, (2000), 23 OSCB 8244 and (2002), 25 OSCB 3699, which in turn incorporated the deemed rule of the same name, (1984), 7 OSCB 1913 and *In the Matter of Certain Reporting Issuers* (1997), 20 OSCB 1219, as amended by (1998), 21 OSCB 6435, (1999), 22 OSCB 151, (2000), 23 OSCB 289, (2000), 23 OSCB 8244 and (2002), 25 OSCB 3699, which in turn incorporated the deemed rule of the same name, (1984), 7 OSCB 3247 (defined collectively as the "Rules"). *In the Matter of Certain Reporting Issuers* (1997), 20 OSCB 1219, which in turn incorporated the deemed rule of the same name (1985), 8 OSCB 2915, which related to prompt offering qualifying system eligible issuers expired on December 31, 2000.

OSC Policy 7.1 and the Order created seven categories of reporting issuers, granted exemptions from certain continuous disclosure and other requirements and set out the Commission's interpretation with respect to the exemptions provided under Part XVIII, Part XIX and Part XXI of the Act. The scope of OSC Policy 7.1 and the Order was both domestic and foreign issuers.

The scope of the Rule is limited to foreign issuers. The exemptions granted to Canadian domestic issuers by Policy 7.1, the Order and the Rules are no longer necessary given the harmonization of disclosure requirements and regulations among jurisdictions and in light of the publication for comment of the CD Rule.

Notice of the proposed rescission of Policy 7.1, the Order and Rules was first given on June 21, 2002, (2002) 25 OSCB 3829. No comments were received. However, since we are republishing NI 71-102 for comment again, we are once again providing an opportunity to comment on the proposed rescission of Policy 7.1, the Order and Rules.

Regulation Sections to be Amended

The Commission proposes to amend section 161 of the Regulation 1015 R.R.O. 1990 (the "Regulation") to refer to the Rule rather than the First Rule.

The Commission also proposes to amend subsection 203.2(1) of the Regulation to refer to the Rule in order to create an exemption to the requirement contained in that provision.

In our first publication for comment, we also proposed to amend subsection 1(4) of the Regulation. This will be done as described in the notice and request for comment for proposed National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*, which has been recently published.

Request for Comments on the Proposed Rescission of OSC Policy 7.1, the Related Order and Rules

Interested parties are invited to make written submissions with respect to the proposed rescission of OSC Policy 7.1, the related Order and Rules. Submissions received by July 23, 2003 will be considered. Submissions should be addressed to:

John Stevenson
Secretary to the Commission
Ontario Securities Commission
20 Queen Street West
Suite 800, Box 55
Toronto, Ontario M5H 3S8
Fax: (416) 593-2318
e-mail: jstevenson@osc.gov.on.ca

If you are not sending your comments by e-mail, please send a diskette containing your comments (in Windows format, Word).

We cannot keep submissions confidential because securities legislation requires that a summary of the written comments received during the comment period be published.

Proposed Rescission of OSC Policy 7.1, the Order and the Rules

OSC Policy 7.1 will be rescinded on the date that the Rule comes into force. The text of the proposed rescission of the Order and the Rules follows.

RESCISSION OF ONTARIO SECURITIES COMMISSION ORDER
IN THE MATTER OF PARTS XVII AND XX OF THE *SECURITIES ACT*

AND

IN THE MATTER OF CERTAIN REPORTING ISSUERS

AND

ONTARIO SECURITIES COMMISSION RULES
IN THE MATTER OF CERTAIN REPORTING ISSUERS

PART 1 RESCISSION

1.1 Rescission - The following instruments are rescinded

(a) Ontario Securities Commission Order In the Matter of Parts XVII and XX of the *Securities Act* and In the Matter of Certain Reporting Issuers (1980), OSCB 54, as amended,

(b) Ontario Securities Commission Rule In the Matter of Certain Reporting Issuers (1997), 20 OSCB 1218, as amended by (1999), 22 OSCB 151, (2000), OSCB 289, (2000), 23 OSCB 8244 and (2002) 25 OSCB 3699, that incorporates by reference the deemed rule (1980), OSCB 166, as amended,

(c) Ontario Securities Commission Rule In the Matter of Certain Reporting Issuers (1997), 20 OSCB 1219, as amended by (1999), OSCB 151, (2000), OSCB 289, (2000), 23 OSCB 8244 and (2002) 25 OSCB 3699, that incorporates by reference the deemed rule (1984), 7 OSCB 1913, as amended; and

(d) Ontario Securities Commission Rule In the Matter of Certain Reporting Issuers (1997), 20 OSCB 1219, as amended by (1999), OSCB 151, (2000), OSCB 289, (2000), OSCB 8244 and (2002) 25 OSCB 3699, that incorporates by reference the deemed rule (1984), 7 OSCB 3247 as amended.

PART 2 EFFECTIVE DATE

2.1 Effective Date - This rescission comes into force on the date that National Instrument 71-102 comes into force.