

Proposed Changes to Companion Policy 71-102CP

The following are proposed changes to Companion Policy 71-102CP to National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*

1. Proposed changes to subsection 1.1(1)

1.1 Introduction and Purpose

- (1) National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (the “Instrument”) provides broad relief from most of the requirements of National Instrument 51-102 *Continuous Disclosure Obligations* (“NI 51-102”) **and National Instrument 51-103 Ongoing Governance and Disclosure Requirements for Venture Issuers (“NI 51-103”)** for two sub-categories of foreign reporting 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 provincial and territorial securities legislation, including insider reporting and early warning, that are not contained in NI 51-~~102~~**102 or NI 51-103.**

2. Proposed changes to section 1.2

1.2 Other Relevant Legislation

In addition to the 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;
- (2.1) NI 51-103;**
- (3) National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* (“NI 52-107”); and
- (4) National Instrument 71-101 *The Multijurisdictional Disclosure System* (“NI 71-101”).

3. Proposed changes to section 6.2

6.2 SEC Foreign Issuers

NI 51-102 ~~contains~~ **and NI 51-103 contain** exemptions for SEC issuers from the change in year-end requirements in ~~NI 51-102, those rules,~~ SEC foreign issuers under the Instrument will also meet the definition of SEC issuers under NI 51-~~102, 102 and NI 51-103,~~ and so will be able to rely on the change in year-end exemption in NI 51-~~102, 102 or 51-103, as applicable.~~

4. Proposed changes to section 6.3

6.3 Foreign Reporting Issuers

The Instrument does not provide an exemption for any foreign reporting issuers from the requirement in section 4.9 of NI 51-~~102, 102 or section 33 of NI 51-103.~~ A foreign reporting issuer must deliver a notice if it has been a party to an amalgamation, arrangement, merger, winding-up, reverse takeover, reorganization or other transaction that will have the effect of changing its continuous disclosure obligations under NI 51-~~102, 102 or 51-103, as applicable.~~ The Instrument also does not provide an exemption for any foreign reporting issuers from the requirement to file disclosure materials under section 11.1 of NI 51-102 or **section 32 of NI 51-103, as applicable, or** to file a notice of change of status under section 11.2 of NI 51-~~102, 102 or section 33 of NI 51-103, as applicable.~~

5. Proposed changes to section 6.4

6.4 Auditor Oversight - Canadian Public Accountability Board, Certification and Audit Committees

Section 4.3 of the Instrument provides relief for an SEC foreign issuer relating to annual financial statements and auditors' reports on annual financial statements. Section 5.4 provides similar relief for a designated foreign issuer. Reporting issuers are subject to section 2.2 of National Instrument 52-108 *Auditor Oversight* ("NI 52-108") but may rely on the exemptions in sections 4.3 and 5.4 of the Instrument for relief from these obligations. Sections 4.3 and 5.4, however, do not provide relief from

- (a) the requirements in sections 2.1 and Part 3 of NI 52-108 imposed directly on a public accounting firm that issues an auditor's report with respect to the financial statements of a reporting issuer;
- (b) the certification requirements in National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* **and in subsections 8(4) and 10(3) of NI 51-103;** or

- (c) the audit committee requirements in National Instrument 52-110 *Audit Committees* **and in section 5 of NI 51-103**.

SEC foreign issuers and designated foreign issuers must look to those instruments for any exemptions that may be available to them.

6. Proposed changes to section 7.1

7.1 Exemptions

- (3) If an issuer wishes to seek exemptive relief from NI 51-102~~102~~, **NI 51-103** or other requirements of provincial and territorial securities legislation on grounds similar but not identical to those permitted under the Instrument, the issuer should apply for this relief under the exemptive provisions of NI 51-102, **NI 51-103** or other provincial and territorial securities legislation, as the case may be.