

Request for Comment

**Proposed Amendments to National Instrument 51-102 *Continuous Disclosure Obligations*,
Form 51-102F1, Form 51-102F2, Form 51-102F3, Form 51-102F4, Form 51-102F5, Form
51-102F6 and
Companion Policy 51-102CP *Continuous Disclosure Obligations***

**Proposed Amendments to National Instrument 52-107 *Acceptable Accounting Principles,
Auditing Standards and Reporting Currency***

And

**Proposed Amendments to 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***

Background

We, the Canadian Securities Administrators (CSA), are publishing for comment proposed amendments to

- National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102), its related forms (the Forms) and companion policy (CP 51-102),
- National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (NI 52-107), and
- National Instrument 71-102 *Continuous Disclosure and Other Exemptions relating to Foreign Issuers* (NI 71-102) and its related companion policy (CP 71-102) (collectively, the Instruments).

The Instruments

- harmonize continuous disclosure (CD) requirements among Canadian jurisdictions,
- replace most existing local CD requirements, and
- provide exemptions for certain foreign issuers from certain CD requirements.

NI 51-102 sets out the obligations of reporting issuers, other than investment funds, for financial statements, management's discussion and analysis (MD&A), annual information forms (AIFs), business acquisition reports (BARs), material change reporting, information circulars, proxies and proxy solicitation, restricted share disclosure, and certain other CD-related matters. NI 52-107 sets out the accounting principles and auditing standards that applies to financial statements filed in a jurisdiction. NI 71-102 provides exemptions from most CD requirements and certain other requirements for certain foreign issuers.

Since the CSA implemented the Instruments, we have monitored how they are working. We sent surveys to all issuers that filed BARs in the first year after we implemented NI 51-102, to

audit firms, and to investors, to find out the effect and usefulness of business acquisition reporting.

We are publishing the proposed amendments to the Instruments with this Notice. You can find them on websites of CSA members, including the following:

- www.bcsc.bc.ca
- www.albertasecurities.com
- www.sfsc.gov.sk.ca
- www.msc.gov.mb.ca
- www.osc.gov.on.ca
- www.lautorite.qc.ca

We are publishing

- amending instruments for
 - NI 51-102 (Appendix B)
 - the Forms (Appendix C)
 - NI 52-107 (Appendix D)
 - NI 71-102 (Appendix E)
- black-lined versions of CP 51-102 and CP 71-102 (Appendices F and G)

We are also publishing a black-lined version of NI 51-102 that integrates the proposed changes from the amending instrument (Appendix H).

Substance and purpose of the amendments

The proposed amendments to the Instruments fall into the following three broad categories:

1. Amendments to clarify some provisions of the Instruments.
2. Amendments to address areas that a rule, form or companion policy does not address, including codifying discretionary exemptions that we have granted.
3. Amendments to streamline requirements in the Instruments.

Summary of proposed amendments

We have summarized the significant proposed amendments in Appendix A. This is not a complete list of all the amendments.

For interim and annual financial statements relating to fiscal years beginning on or after October 1, 2006, Canadian generally accepted accounting principles will require a statement of comprehensive income. The amendments do not refer to this additional financial statement. However, we intend to amend the Instruments for this change before we adopt the amendments.

Alternatives considered

As discussed above, many of the amendments are intended to clarify the Instruments or to streamline requirements. One alternative to amending the Instruments was to address these issues by granting discretionary relief on a case-by-case basis. We rejected this option because

issuers must pay to apply for discretionary relief and it is an inefficient means of dealing with the issues.

We also considered whether we could address these issues by blanket order. However, not all jurisdictions have the power to make blanket orders.

Anticipated costs and benefits

We believe that the proposed amendments to the Instruments would reduce issuers' costs, as the amendments would address problems industry has had applying the Instruments and streamline some of the requirements. In particular, the changes we are proposing to the BAR requirement would reduce issuers' costs of filing a BAR.

Related amendments

We intend to eliminate the following national policy and staff notices relating to continuous disclosure, as they are no longer necessary:

- National Policy 3 *Unacceptable Auditors*
- CSA Staff Notice 11-305 *Withdrawal of CSA Staff Notice 42-301 and 52-301*
- CSA Staff Notice 51-307 *Status of proposed continuous disclosure rule*
- CSA Staff Notice 51-308 *Filing of Management's Discussion and Analysis and National Instrument 51-102 Continuous Disclosure Obligations*
- CSA Staff Notice 52-305 *Optional Use of US GAAP and US GAAS by SEC Issuers*
- CSA Staff Notice 52-307 *Auditor Oversight and Financial Statements Accompanied by an Audit Report Dated on or After March 30, 2004*

We are not proposing to amend any other rules, except in Quebec where National Policy 3, Unacceptable Auditors is a rule.

Unpublished materials

In proposing amendments to the Instruments, we have not relied on any significant unpublished study, report, or other written materials, except the results of the BAR survey we referred to above.

Request for comments

We welcome your comments on the proposed amendments to the Instruments. In addition to any general comments you may have, we also invite comments on the following specific amendments.

1. *Venture issuers and debt-only issuers* – NI 51-102 distinguishes between venture issuers and issuers that are not venture issuers for some requirements. For example, venture issuers do not have to file annual information forms and have longer to file their financial statements than issuers that are not venture issuers. We made this distinction because we recognized that some types of issuers and their investors may have different disclosure needs and constraints. We are considering whether issuers that issue only debt to the public merit similar accommodations and, if so, whether or how the listing of debt securities, either on a Canadian or foreign exchange, might alter that consideration. (At present, even a large unlisted reporting issuer of

debt is a venture issuer under NI 51-102, but a similar issuer with debt listed on a foreign exchange would not be.) Should debt-only issuers be treated as venture issuers? Should an exchange listing of debt only affect the treatment of the issuer under NI 51-102 and more specifically should a foreign exchange listing of debt only affect the treatment of a Canadian debt-only issuer?

2. *Request form* – We propose amending section 4.6 of NI 51-102 to remove the requirement for issuers to send a request form to their shareholders each year. We have not changed the requirement for issuers to mail their financial statements and MD&A to any shareholder that requests them, or to disclose in the information circular how the shareholders may request the financial statements and MD&A.

- a) Do you agree that we should remove the requirement to deliver an annual request form? Why?
- b) If we retain it, should we amend the requirement to specify
 - (i) when and how an issuer should send the request form, or
 - (ii) the content of the request form?
- c) Are there any other changes we should make to the request form, if we retain it?
- d) If we eliminate the request form, is there an alternative we could propose to replace the request form that would allow shareholders to request the financial statements and MD&A?

3. *Delivery of financial statements* – Under NI 51-102, an issuer must mail its financial statements to any securityholder that requests them. An issuer is exempt from this requirement if it mails its statements to all its securityholders. We propose to clarify in the exemption when the issuer has to deliver the financial statements to rely on the exemption.

We believe the delivery deadline should be the same if an issuer is sending the statements on request, or to all its securityholders under the exemption. We think it is important that securityholders that want paper copies of the financial statements have prompt access to them once they are filed. Their access should not be affected by the issuer relying on an exemption. As we recognize that an issuer may need time to copy the statements after filing them, we have extended the delivery deadline to no later than 10 days after the filing deadline. Do you agree with this change?

4. *Filing of certain documents* – Although we have not proposed specific amendments to Part 12 of NI 51-102, we are considering streamlining it. Under Part 12, an issuer must file

- its articles of incorporation, amalgamation, continuation, other constating document, or by-laws
- copies of securityholder or voting trust agreements, securityholder rights plans, or other documents affecting the rights of securityholders generally

- copies of material contracts entered into outside the ordinary course of business

For each of the above requirements,

- a) Is the filed information useful to investors?
- b) Do the benefits to investors outweigh the costs to issuers complying with the requirement?
- c) Should we eliminate the requirement? Why?

5. *Guidance on Executive Compensation* –NI 51-102 defines “executive officer” to include any person who performed a policy-making function in respect of the issuer. If a reporting issuer’s executive management is provided through an external management company, we would generally consider the executive officers of the external management company to be persons performing policy-making functions in respect of the issuer. Consequently, the requirements in NI 51-102, including the disclosure in Form 51-102 F6 *Statement of Executive Compensation*, that apply to executive officers would generally apply to the executive officers of the external management company.

National Policy 41-201 *Income Trust and Other Indirect Offerings* sets out our views about how the existing regulatory framework applies to non-corporate issuers such as income trusts. It also sets out how we expect an income trust to provide executive compensation disclosure for the executives of the underlying operating entity.

Should we amend Form 51-102F6 to provide additional guidance on these matters, or are the existing instructions sufficient?

Please submit your comments on the proposed amendments to the Instruments in writing on or before March 9, 2006. If you are not sending your comments by email, you should also forward a diskette containing the submissions (in Windows format, Word).

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
Autorité des marchés financiers
New Brunswick Securities Commission
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 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 amendments follows or can be found elsewhere on a CSA member website.

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