

Notice and Request for Comment

**Proposed Amendments to
National Instrument 41-101
General Prospectus Requirements and
Companion Policy 41-101CP
*Companion Policy to National Instrument 41-101
General Prospectus Requirements***

and

**Proposed Amendments to
National Instrument 44-101
Short Form Prospectus Distributions and
Companion Policy 44-101CP
*to National Instrument 44-101
Short Form Prospectus Distributions***

and

**Proposed Amendments to
National instrument 44-102 *Shelf Distributions***

Introduction

We, the Canadian Securities Administrators (CSA), except the Autorité des marchés financiers and the New Brunswick Securities Commission, are publishing for a 90 day comment period proposed amendments to:

- National Instrument 41-101 *General Prospectus Requirements* (NI 41-101) and
- Companion Policy 41-101CP *Companion Policy to National Instrument 41-101 General Prospectus Requirements* (41-101CP).

We are not publishing for comment in this notice proposed amendments to Form 41-101F2 *Information Required in an Investment Fund Prospectus* (Form 41-101F2). Proposed amendments to Form 41-102F2 are expected to be published for comment in October 2009 with proposed amendments to National Instrument 81-106 *Mutual Fund Continuous Disclosure* and related consequential amendments including National Instrument 81-101 *Mutual Fund Prospectus Disclosure*.

We are also publishing for comment proposed amendments to:

- National Instrument 44-101 *Short Form Prospectus Distributions* (NI 44-101),
- Companion Policy 44-101CP to *National Instrument 44-101 Short Form Prospectus Distributions* (44-101CP) and
- National Instrument 44-102 *Shelf Distributions* (NI 44-102).

This notice forms part of a series of notices which address proposed changes to securities legislation arising from the upcoming changeover to International Financial Reporting Standards (IFRS).

Appendix A provides a summary of certain proposed amendments, including a list of the changes to accounting terms and phrases as well as a summary of the main transition changes relating to IFRS. Other proposed amendments are described in this notice.

Proposed Text

Appendix B sets out the proposed amendments to NI 41-101, including Form 41-101F1 *Information Required in a Prospectus* (Form 41-101F1), and 41-101CP.

Appendix C sets out a blackline showing proposed changes to NI 41-101, Form 41-101F1 and 41-101CP from the versions of those documents currently in force.

Appendix D sets out the proposed amendments to NI 44-101, including Form 44-101F1 *Short Form Prospectus* (Form 44-101F1), and 44-101CP.

Appendix E sets out a blackline showing proposed changes to Form 44-101F1.

Appendix F sets out the proposed amendments to NI 44-102.

We invite comment on the proposed amendments to NI 41-101, 41-101CP, NI 44-101, 44-101CP and NI 44-102 (the “proposed amendments”). As the proposed amendments relate primarily to the upcoming changeover to IFRS in Canada and need to be in place before January 1, 2011, we are not inviting comment on the provisions of the rules and policies that will not be affected by the changeover to IFRS (other than the “housekeeping” amendments described in this notice).

Background

NI 41-101 provides a comprehensive set of prospectus requirements for issuers. NI 44-101 sets out requirements for an issuer to file a prospectus in the form of a short form prospectus. NI 44-102 sets out requirements for a distribution under a short form prospectus using shelf procedures (NI 41-101, NI 44-101 and NI 44-102 are collectively referred to in this notice as “the prospectus rules”).

The prospectus rules refer to and rely on references to existing Canadian generally accepted accounting principles (GAAP), which are established by the Canadian Accounting Standards Board (AcSB) and published in the CICA (Canadian Institute of Chartered Accountants)

Handbook. Following a period of public consultation, the AcSB adopted a strategic plan to move financial reporting for Canadian publicly accountable enterprises to IFRS as issued by the International Accounting Standards Board (IASB). For financial years beginning on or after January 1, 2011, Canadian GAAP for publicly accountable enterprises will be IFRS incorporated into the CICA Handbook.

Substance and Purpose of the Proposed Amendments

The primary purpose of these changes is to accommodate the transition to IFRS. A small number of housekeeping changes are also being made. We are proposing to update the accounting terms and phrases in the prospectus rules to reflect the fact that, for financial years beginning on or after January 1, 2011, Canadian GAAP for publicly accountable enterprises will be IFRS incorporated into the CICA Handbook.

Summary of the Proposed Amendments

The proposed amendments are a result of amendments to National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (to be renamed *Acceptable Accounting Principles and Auditing Standards*) (NI 52-107) proposed to require domestic issuers to comply with IFRS. NI 52-107 sets out the accounting principles and auditing standards that apply to financial statements filed in a jurisdiction. We have also proposed amendments similar to those being proposed to National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) to maintain the harmony between the general prospectus requirements and the continuous disclosure and short form prospectus disclosure regimes. We refer you to our notice and request for comment on the proposed amendments to NI 51-102. Where appropriate, we have also included a number of amendments that either result from changes to other CSA rules as a result of the changeover to IFRS or are housekeeping amendments.

The amendments we are publishing for comment will:

- Replace existing Canadian GAAP terms and phrases with IFRS terms and phrases.
- Change disclosure requirements in instances where IFRS contemplates different financial statements than existing Canadian GAAP.
- Provide a 30 day extension to the deadline for reporting issuers, other than investment funds, to include in a prospectus the first interim financial report in the year of adopting IFRS in respect of an interim period beginning on or after January 1, 2011.
- Clarify the existing provisions or amend or delete it where part or all of a provision is no longer accurate or appropriate.

Accounting Terms and Phrases

The proposed amendments include new terms and phrases that are consistent with those used in IFRS and replace terms and phrases used in existing Canadian GAAP.

The proposed amendments do not reflect the impact of exposure drafts or discussion papers from the IASB prior to their adoption into IFRS. The proposed definition of IFRS in National Instrument 14-101 *Definitions* (NI 14-101) would take into account amendments made from time to time.

The proposed amendments to the prospectus rules are not intended to substantively alter securities law requirements. For example, we are proposing to replace the existing Canadian GAAP term “results of operations” with the corresponding IFRS term “financial performance”. This is intended to be a change in terminology only.

The proposed amendments to the prospectus rules also include a number of new or revised definitions. For example, we have included a definition of “financial statements” to clarify that interim financial reports should be considered when interpreting references to financial statements in the prospectus rules. We have also included a definition of “forward-looking information”. Currently, definitions of “forward-looking information” are found in the securities acts of the various provinces and territories. As all of the acts may not be amended prior to January 1, 2011 to reflect the changeover to IFRS, we have defined forward-looking information in a manner consistent with IFRS.

Issuers that prepare financial statements in accordance with acceptable accounting principles other than IFRS may interpret any reference in the rules to a term or provision defined, or referred to, in IFRS as a reference to the corresponding term or provision in the other acceptable accounting principles. This is clarified in subsection 1.3(4) of 41-101CP.

A detailed list of the changes to accounting terms and phrases is set out in Appendix A to this notice.

Changes to Financial Statement Requirements

1. Reconciliations and transition opening statement of financial position required by IFRS 1
IFRS 1 requires the presentation of an opening IFRS statement of financial position at the date of transition to IFRS along with various reconciliations relating to the date of transition. We are requiring the opening IFRS statement of financial position to be presented in an issuer’s first IFRS interim financial report and first IFRS financial statements. We believe this disclosure is necessary to explain how the transition from previous GAAP to IFRS has affected an issuer’s reported financial position, financial performance and cash flows. This disclosure may not be included in interim financial reports for the second and third quarters. However, an issuer may file an IPO prospectus at a time when the second or third quarter interim financial report is required to be included in the prospectus, and the first quarter interim financial report is no longer required to be included in the prospectus. To obtain consistent disclosure in all prospectuses in the year of adopting IFRS, we have added a disclosure requirement to include these reconciliations and the opening IFRS statement of financial position in an issuer’s IPO prospectus.

2. Opening Statement of Financial Position

In certain instances, when an issuer applies an accounting policy retrospectively, makes a retrospective restatement of items in its financial statements or reclassifies items in its

financial statements, IAS 1 *Presentation of Financial Statements* requires the presentation of a statement of financial position as at the beginning of the earliest comparative period. Form 41-101F1 will require the disclosure of this opening statement of financial position in both annual financial statements and interim financial reports.

3. Presentation of Statement of Cash Flows

We have proposed amendments to reflect the financial statement presentation requirements in IFRS. NI 41-101 and existing Canadian GAAP require issuers to present a cash flow statement in their interim financial statements for the three month period ending on the last day of the interim period and the corresponding comparative interim period and, for periods other than the first interim period, the year to date period. As IFRS requires only a statement of cash flows for the year to date period and the corresponding comparative period, we have proposed amendments to only require a statement of cash flows for those periods.

4. Presentation of Statement of Comprehensive Income

We added disclosure requirements for the statement of comprehensive income based on the presentation options available under IFRS. If an issuer presents the components of profit or loss in a separate income statement, the separate income statement must be displayed immediately before the statement of comprehensive income.

Transition Provision – Extension for Inclusion of First IFRS Interim Financial Report

To maintain the harmony between the prospectus regime and the continuous disclosure regime, Item 38 of Form 41-101F1 includes transition provisions that provide reporting issuers with a 30 day extension to the deadline for including in a prospectus the first IFRS interim financial report in respect of an interim period beginning on or after January 1, 2011. This extension only applies to reporting issuers (other than investment funds). We believe this extension should be provided as the first IFRS interim financial report will be due not long after the filing of the Canadian GAAP annual financial statements. We recognize that boards of directors, audit committees, and in some cases auditors, will require additional time to review and approve the first set of IFRS financial statements. It should also be noted that other jurisdictions which transitioned to IFRS also granted filing extensions for the first IFRS filing, even though they only require issuers to file on a half-yearly basis.

We have not provided reporting issuers with an extension to the deadline for including in a prospectus subsequent IFRS interim financial reports or the first IFRS annual financial statements as we believe the deadlines applicable to these financial statements are reasonable and appropriate after the initial changeover to IFRS.

The CSA regulators will generally not grant exemptive relief to an issuer to extend a deadline for including financial information in a prospectus. While we recognize that some issuers filing their IPO prospectuses may face difficulties in complying with the financial statement disclosure requirements as a result of the changeover to IFRS, we do not believe it is appropriate to grant exemptive relief to an issuer to allow it to proceed with an IPO with a prospectus that does not include current financial information.

Amendments from NI 52-107

Among other things, the proposed changes to NI 52-107 eliminate the requirement in section 4.1 of that instrument for an SEC issuer that previously used Canadian GAAP and changed to US GAAP to reconcile its financial statements to Canadian GAAP for two years.

Consequently, we propose to remove the related requirements for an MD&A supplement in Item 8.3 of Form 41-101F1. This change will apply in respect of any period relating to a financial year that begins on or after January 1, 2011.

In addition, NI 52-107 proposes, except in Ontario, that acquisition statements in respect of probable and completed acquisitions be permitted to be prepared in accordance with Canadian GAAP applicable to private enterprises in certain circumstances. Changes are being made to Part 8 of NI 51-102 and 51-102CP to address this proposal. As a result, this option would be available to an issuer in respect of acquisition statements included in the issuer's prospectus for probable and completed acquisitions. These proposed changes will apply to a prospectus which includes or incorporates by reference acquisition statements for any period relating to a financial year that begins on or after January 1, 2011.

Proposed changes to other CSA rules, including NI 52-107 and NI 14-101, are being published for comment concurrently with this notice.

Even though the proposed amendments to the prospectus rules replace existing Canadian GAAP terms and phrases with IFRS terms and phrases, the proposed amendments include references to "Canadian GAAP". This is because NI 14-101 will continue to define "Canadian GAAP" to mean generally accepted accounting principles determined with reference to the CICA Handbook. Once the AcSB incorporates IFRS into the Handbook, the Handbook will contain two versions of Canadian GAAP for publicly accountable enterprises:

- IFRS for financial years beginning on or after January 1, 2011 (the mandatory effective date) (proposed Part I of the Handbook), and
- the standards constituting Canadian GAAP before the mandatory effective date (proposed Part IV of the Handbook).

Certain prospectus filings require the presentation of both annual and interim financial information. During the IFRS transition period, we recognize that prospectuses may contain financial information in respect of an issuer prepared using both existing Canadian GAAP and IFRS. For example, an IPO prospectus filed in 2011 may include annual financial statements prepared in accordance with Canadian GAAP and an interim financial report that complies with IFRS.

Housekeeping Amendments

The CSA's mandate in bringing forth the proposed amendments is to revise the prospectus rules to accommodate the adoption of IFRS. Where appropriate, we have also included a number of amendments that are housekeeping amendments. These housekeeping amendments are described in Part C of Appendix A.

Transition

After the IFRS changeover date on January 1, 2011, non calendar year-end issuers will continue to prepare financial statements in accordance with existing Canadian GAAP until the start of their new financial year. To accommodate for this, we are proposing to include transition provisions in the prospectus rules and the amendment instruments that provide that the proposed amendments only apply to a preliminary prospectus, an amendment to a preliminary prospectus, a final prospectus or an amendment to a final prospectus of an issuer which includes or incorporates by reference financial statements of the issuer in respect of periods relating to financial years beginning on or after January 1, 2011. Thus, during the transition period,

- issuers only including or incorporating by reference financial statements prepared in accordance with existing Canadian GAAP will be required to comply with the versions of the prospectus rules that contain existing Canadian GAAP terms and phrases.
- issuers including or incorporating by reference financial statements that comply with IFRS will be required to comply with the versions of the prospectus rules that contain IFRS terms and phrases.

After the transition period all issuers will be required to comply with the versions of the prospectus rules that contain IFRS terms and phrases.

To further assist issuers and their advisors and to increase transparency, during the transition period certain jurisdictions will post two different unofficial consolidations of the prospectus rules on their websites:

- The existing versions of the prospectus rules that contain existing Canadian GAAP terms and phrases, which apply to a preliminary prospectus, an amendment to a preliminary prospectus, a final prospectus or an amendment to a final prospectus of an issuer which includes or incorporates by reference financial statements of the issuer in respect of periods relating to financial years beginning before January 1, 2011.
- The new versions of the prospectus rules that contain IFRS terms and phrases, which apply to a preliminary prospectus, an amendment to a preliminary prospectus, a final prospectus or an amendment to a final prospectus of an issuer which includes or incorporates by reference financial statements of the issuer in respect of periods relating to financial years beginning on or after January 1, 2011.

Alternatives Considered

Instead of proposing these amendments, we considered leaving the existing Canadian GAAP terms and phrases in the rules and issuing a notice to the effect that, if an issuer is required or permitted under NI 52-107 to include or incorporate by reference in a prospectus financial statements that comply with IFRS, then the issuer may interpret any reference in the rules to

a term or provision defined, or referred to, in existing Canadian GAAP as a reference to the corresponding term or provision in IFRS.

We decided not to proceed with this option for several reasons. Leaving the existing Canadian GAAP terms and phrases in the rules raises the potential for significant confusion as these terms will become less well known as time passes. In addition, the use of different terminology in securities legislation and accounting rules detracts from the goal of moving to a global accounting language.

Anticipated Costs and Benefits

A description of the anticipated costs and benefits of adopting IFRS as the basis for financial reporting in Canada is included in the notice accompanying the proposed changes to NI 52-107 (the NI 52-107 notice).

The prospectus rules refer to and rely on references to Canadian GAAP as most issuers currently prepare their financial statements in accordance with Canadian GAAP. For financial years beginning on or after January 1, 2011, Canadian GAAP for publicly accountable enterprises will be IFRS incorporated into the CICA Handbook. As a result, the proposed amendments are necessary to adapt our rules to the new IFRS environment.

Although there are costs contemplated under the NI 52-107 notice relating to the transition to IFRS, the preparation of all prospectus filings using the same terminology as used in the financial statements provides more meaningful information to investors. Issuers and their advisors will benefit by having prospectus rules that refer to current accounting terms.

Unpublished materials

In proposing amendments to the prospectus rules, we have not relied on any significant unpublished study, report, or other written materials.

Publications in Quebec and New Brunswick

The Autorité des marchés financiers and the New Brunswick Securities Commission are publishing for comment today a staff notice that sets out the substantive proposed changes reflected in the proposed amendments published in the other CSA jurisdictions. Because of the legal obligation to publish amending instruments simultaneously in French and English in Québec and New Brunswick, and because the French IFRS terminology is still in a state of flux, publication for comment of proposed amendments in these provinces is presently not feasible. It is expected that the Autorité des marchés financiers and the New Brunswick Securities Commission will publish for comment corresponding proposed amendments, in French and in English, during the first quarter of 2010. However, market participants in Québec and New Brunswick are encouraged to comment on the substantive proposed changes presented in the staff notices and on the amendments published by the other CSA jurisdictions.

Comments

We request your comments on the proposed amendments outlined above. Please provide your comments in writing by December 24, 2009. If you are not sending your comments by

email, an electronic file containing the submissions should also be provided (Windows format, Word).

Address your submission to the following Canadian securities regulatory authorities:

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

Deliver your comments **only** to the address that follows. Your comments will be distributed to the other participating CSA member jurisdictions.

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8
Fax: (416) 593-8145
E-mail: jstevenson@osc.gov.on.ca

Please note that comments received will be made publicly available and posted at www.osc.gov.on.ca and the websites of certain other securities regulatory authorities. We cannot keep submissions confidential because securities legislation in certain provinces requires that a summary of the written comments received during the comment period be published.

Questions

Please refer your questions to any of:

Allan Lim
Manager, Corporate Finance
British Columbia Securities Commission
(604) 899-6780
alim@bcsc.bc.ca

Charlotte Howdle
Senior Securities Analyst, Corporate Finance
Alberta Securities Commission
(403) 297-2990
charlotte.howdle@asc.ca

Alex Poole
Legal Counsel, Corporate Finance
Alberta Securities Commission
(403) 297-4482
alex.poole@asc.ca

Ian McIntosh
Deputy Director, Corporate Finance
Saskatchewan Financial Services Commission - Securities Division
(306) 787-5867
ian.mcintosh@gov.sk.ca

Bob Bouchard
Director, Corporate Finance
Manitoba Securities Commission
(204) 945-2555
bob.bouchard@gov.mb.ca

Matthew Au
Senior Accountant, Corporate Finance
Ontario Securities Commission
(416) 593-8132
mau@osc.gov.on.ca

Bill Slattery
Deputy Director, Corporate Finance and Administration
Nova Scotia Securities Commission
(902) 424-7355
slattejw@gov.ns.ca

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