

## **Notice and Request for Comment**

### **Proposed Amendments to National Instrument 51-102 *Continuous Disclosure Obligations* and Companion Policy 51-102CP *Continuous Disclosure Obligations***

**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***

#### **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 51-102 *Continuous Disclosure Obligations* (NI 51-102),
- Companion Policy 51-102CP *Continuous Disclosure Obligations* (51-102CP),
- National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (NI 71-102) and
- Companion Policy 71-102CP *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (71-102CP).

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 51-102 and 51-102CP.

Appendix C sets out a blackline showing proposed changes to NI 51-102 (except Form 51-102F3 *Material Change Report*, as no changes are being proposed to that form) and 51-102CP from the versions of those documents currently in force. The text of Form 51-102F6 is blacklined against the version of that form that would be in force on January 1, 2011 absent the changes proposed by this notice.

Appendix D sets out the proposed amendments to NI 71-102 and 71-102CP.

We invite comment on the proposed amendments to NI 51-102, 51-102CP, NI 71-102 and 71-102CP (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 51-102 sets out the obligations of reporting issuers, other than investment funds, for financial statements, management’s discussion and analysis, annual information forms, business acquisition reports, material change reports, information circulars, proxies and proxy solicitation, restricted share disclosure and certain other continuous disclosure-related matters. NI 71-102 provides exemptions from most continuous disclosure requirements and certain other requirements for certain foreign issuers (NI 51-102 and NI 71-102 are collectively referred to in this notice as the “continuous disclosure rules”).

The continuous disclosure 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 continuous disclosure 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. 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 filing 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 continuous disclosure 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. Similarly, we are proposing to amend the definition of “reverse takeover” to account for the fact that the comparable IFRS term “reverse acquisition” may be interpreted more narrowly than “reverse takeover” is in existing Canadian GAAP. The amended definition of “reverse takeover” is intended to capture, in an issuer’s filings, the same transactions as the current definition.

The proposed amendments to the continuous disclosure 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 continuous disclosure 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 1.4(8) of 51-102CP.

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.

#### ***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. NI 51-102 will require the filing 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 51-102 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 a reporting 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***

Part 14 of NI 51-102 includes transition provisions that provide reporting issuers with a 30 day extension to the filing deadline for the first IFRS interim financial report in respect of an interim period beginning on or after January 1, 2011. We believe this filing 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 additional time to file subsequent IFRS interim financial reports or the first IFRS annual financial statements as we believe the filing deadlines applicable to these financial statements are reasonable and appropriate after the initial changeover to IFRS.

***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 a reconciliation in paragraph 4.3(4)(c) and for an MD&A supplement in subsections 5.2(1.1) and (2) of NI 51-102.

In addition, NI 52-107 proposes, except in Ontario, that acquisition statements 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.

These proposed changes will apply in respect of any period relating to a financial year that begins on or after January 1, 2011.

Even though the proposed amendments to the continuous disclosure 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 continuous disclosure filings (for example, business acquisition reports) require the presentation of both annual and interim financial information. During the IFRS transition period, we recognize that these continuous disclosure documents will contain financial information prepared using both existing Canadian GAAP and IFRS.

### ***Housekeeping Amendments***

The CSA's mandate in bringing forth the proposed amendments is to revise the continuous disclosure 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 continuous disclosure rules and the amendment instruments that provide that the proposed amendments only apply to periods relating to financial years beginning on or after January 1, 2011. Thus, during the transition period,

- issuers filing financial statements prepared in accordance with existing Canadian GAAP will be required to comply with the versions of the continuous disclosure rules that contain existing Canadian GAAP terms and phrases.
- issuers filing financial statements that comply with IFRS will be required to comply with the versions of the continuous disclosure rules that contain IFRS terms and phrases.

After the transition period all issuers will be required to comply with the versions of the continuous disclosure 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 continuous disclosure rules on their websites:

- The existing versions of the continuous disclosure rules that contain existing Canadian GAAP terms and phrases, which apply to reporting issuers in respect of periods relating to financial years beginning before January 1, 2011.
- The new versions of the continuous disclosure rules that contain IFRS terms and phrases, which apply to reporting issuers 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 file 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 continuous disclosure rules refer to and rely on references to Canadian GAAP as most reporting 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 continuous disclosure 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 continuous disclosure rules that refer to current accounting terms.

### **Unpublished materials**

In proposing amendments to the continuous disclosure 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  
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Fax: (416) 593-8145  
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Please note that comments received will be made publicly available and posted at [www.osc.gov.on.ca](http://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:

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September 25, 2009