

ROYAL TRUST CORPORATION OF CANADA
CIBC MELLON GLOBAL SECURITIES SERVICES COMPANY
STATE STREET TRUST COMPANY CANADA

August 28, 2003.

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

c/o Ms. Rosann Youck, Chair of the Continuous Disclosure Harmonization Committee
British Columbia Securities Commission
PO Box 10142 Pacific Centre
701 West Georgia Street
Vancouver, British Columbia V7Y 1L2

and

Ms. Denise Brosseau, Secretary
Commission des valeurs mobilières du Québec
Stock Exchange Tower
800 Victoria Square
P.O. Box 246, 22nd Floor
Montreal, Quebec H4Z 1G3

Dear Sirs,

**PROPOSED NATIONAL INSTRUMENT 51-102
CONTINUOUS DISCLOSURE OBLIGATIONS**

The undersigned three providers of custody services appreciate the opportunity to provide comments on the proposed National Instrument 51-102 *Continuous Disclosure Obligations*, (“NI 51-102”), which was published for comment on June 20, 2003. Our three companies are Canada’s major providers of custody services and, collectively, have assets under administration of **\$2.3 trillion**. Our clients include administrators of large institutional funds – pension plans, mutual funds, insurance companies, domestic and foreign financial institutions, corporations, governments and their investment managers.

Individually, our companies are:

- Royal Trust Corporation of Canada (“RT”), is a wholly-owned subsidiary of Royal Bank of Canada, which serves investors as trustee and custodian. RT ranks first in Canada in terms of assets under administration, with over \$1.4 trillion. RT is the 10th largest custodian in the world.
- CIBC Mellon Global Securities Services Company (“CIBCM”) is No. 2 in Canada based on corporate and institutional assets under administration of \$525 billion. CIBCM is part of the Mellon Group of Companies, which ranks as the 5th largest custodian in the world.
- State Street Trust Company Canada (“SSTCC”) is a wholly-owned subsidiary of State Street Corporation and is the third largest custodian in Canada, as ranked by assets. SSTCC provides services to several of the largest institutional investors in Canada. State Street Corporation is the largest custodian worldwide.

The comments we are now submitting relate specifically to the institutional investors which we serve, that is, the pension plan sponsors, mutual funds, financial institutions, corporations and governments which have appointed one of us as their trustee and/or custodian.

Our basic concerns with NI 51-102 are that (1) its requirements governing delivery of shareholder materials are not harmonized with those of National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* (“NI 54-101”) and that (2) where these requirements are in conflict, it is unclear which Instrument governs. This disharmony and confusion will undoubtedly cause shareholders to be disenfranchised, deficient corporate governance and significant unnecessary costs.

From a practical perspective, the NI 51-102 requirements give rise to a plethora of unanswered questions. The proposed situation is so complex that, rather than detail it in this letter, we feel it would be more productive to discuss the intricacies with you or your delegate at your convenience, and we would be happy to do so. However, in the meantime, we set out below a few high-level examples:

- 1) NI 54-101 requires **intermediaries** to obtain one **one-time-only** instruction from beneficial owners as to receipt of financial statements, proxy materials, etc. issued by all the issuers whose securities are held by the beneficial owner (“relevant issuers”). NI 51-102, on the other hand, requires **each issuer** to ask, on an **annual** basis, their beneficial owners who have requested material under NI 54-101 whether they want to receive annual and interim financial statements and the MD&A (but not proxy materials).

If the rules are not harmonized, beneficial owners, who have already told their intermediary that they want to receive certain material, will be confused and irate at receiving annual solicitations -- from multiple issuers -- about some, but not all, of this material. Issuers and intermediaries will be confused, too: as there is no deadline for responding to the annual solicitations, they will not be sure about the wishes of beneficial owners who do not respond annually.

- 2) NI 51-102 does not apply to the distribution of proxy materials, which is still subject to NI 54-101. Beneficial owners, who have requested their intermediary under NI 54-101 to send them materials, will continue to receive them for relevant issuers. If, however, these same beneficial owners do not respond annually to each relevant issuer under NI 51-102, they will not receive the financial statements of those issuers.

There are any number of reasons why a beneficial owner may not respond. One likely scenario is that, as beneficial owners have through the years been used to communicating with their intermediary, they may assume that their one-time-only instructions to the intermediary under NI 54-101 will stand in future, notwithstanding annual requests from relevant issuers. Another scenario is that they may simply despair at being inundated with annual requests from each relevant issuer.

Receipt by a beneficial owner of proxy materials without the related financial statements is an untenable situation. Such a beneficial owner may want to vote but may not do so without the financial statements. Worse, he or she may go ahead and vote anyway. This would be a severe deficiency from a corporate governance point of view, and call into question the integrity of the vote.

- 3) There is no indication in NI 51-102, from a practical perspective, how the annual instructions to issuers are to be captured and maintained, or by whom. Presumably this responsibility would fall to the intermediaries for the Objecting Beneficial Owners (“OBOs”). Intermediaries have already been required to make significant programming changes to deal with NI 54-101. Under NI 51-102 they would be faced with making yet more costly and illogical system changes to accommodate an unrealistically large number of combinations and permutations in beneficial owners’ requests for materials on an issuer-by-issuer basis.
- 4) NI 51-102 requires issuers to pay to send financial statements to shareholders who request them. Under NI 54-101, some issuers have been refusing to pay to send material to OBOs. As financial statements are typically mailed together with proxy materials, would these issuers now agree to pay to send proxy materials to OBOs? We believe they should be required to do so.

The issues created by the disharmony between NI 54-101 and proposed NI 51-102 are extremely complex. We urge you to give favourable consideration to harmonizing the two Instruments. If, for some reason, this cannot be achieved, at the very least it should be made clear which of the two Instruments governs in the case of conflict.

Our two companies are anxious to assist in making the requirements effective, efficient and workable from an industry perspective. We would be happy to take part in further consultations and discuss these issues with you or your delegate at your convenience. Our contacts for this purpose are noted below.

Yours truly,

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OF CANADA



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