

**NOTICE OF PROPOSED RULE 72-502 AND
COMPANION POLICY 72-502CP
CONTINUOUS DISCLOSURE AND OTHER EXEMPTIONS
RELATING TO FOREIGN ISSUERS**

AND

**PROPOSED RESCISSION OF OSC POLICY 7.1,
THE RELATED ORDER AND RULES**

This notice is accompanied by proposed Rule 72-502 Continuous Disclosure and Other Exemptions relating to Foreign Issuers (the "Proposed Rule"), proposed Companion Policy 72-502CP (the "Proposed Policy") and the text of the proposed rescission of OSC Policy 7.1, the related Order and Rules, all of which are being published for comment.

Substance and Purpose of Proposed Rule

The substance and purpose of the Proposed Rule is to permit certain persons and companies to satisfy the news release, material change report, financial statement, AIF and MD&A, proxy and proxy solicitation, early warning, insider reporting and communication with beneficial owners of securities requirements in the Securities Act (the "Act") and the rules relating to certain foreign issuers by complying with comparable requirements of a foreign jurisdiction. A foreign issuer that is an SEC issuer may choose to comply with applicable U.S. federal securities law and securities exchange or Nasdaq requirements in lieu of Ontario requirements otherwise applicable. A foreign issuer that is a non-SEC issuer may choose to comply with foreign disclosure requirements (as defined in the Proposed Rule) in lieu of Ontario requirements otherwise applicable.

The Proposed Rule would replace Ontario Securities Commission Policy 7.1 Application of Requirements of the Securities Act to Certain Reporting Issuers ("Policy 7.1"), and the Order *In the Matter of Certain Reporting Issuers* (1980) OSCB 54 (the "Order"). The Order was amended by the Rules *In the Matter of Certain Reporting Issuers* (1997), 20 OSCB 1218, as amended by (1998), 21 OSCB 6436, (1999), 22 OSCB 6304, (2000), 23 OSCB 289 and (2000), 23 OSCB 8244, which in turn incorporated the deemed rule of the same name, (1980) OSCB 166 (the "First Rule"), *In the Matter of Certain Reporting Issuers* (1997), 20 OSCB 1219, as amended by (1998), 21 OSCB 6436, (1999), 22 OSCB 151, (2000), 23 OSCB 289 and (2000), 23 OSCB 8244, which in turn incorporated the deemed rule of the same name, (1984), 7 OSCB 1913 (the "Second Rule") and *In the Matter of Certain Reporting Issuers* (1997), 20 OSCB 1219, as amended by (1998), 21 OSCB 6435, (1999), 22 OSCB 151, (2000), 23 OSCB 289 and (2000), 23 OSCB 8244, which in turn incorporated the deemed rule of the same name, (1984), 7 OSCB 3247 (the "Third Rule") (defined collectively as the "Rules"). *In the Matter of Certain Reporting Issuers* (1997), 20 OSCB 1219, which in turn incorporated the deemed rule of the same name (1985), 8 OSCB 2915 (the "Fourth Rule"), which related to prompt offering qualifying system eligible issuers expired on December 31, 2000.

The Proposed Rule provides that persons and companies may satisfy the news release, material change report, financial statement, AIF and MD&A, proxy and proxy solicitation, early warning, insider reporting and communication with beneficial owners of securities requirements of the Act and the regulations relating to foreign issuers that are SEC registrants by complying with SEC requirements and filing the documents filed with the SEC. For U.S. domestic issuers, the documents filed will contain substantially similar disclosure to that which would be made under the requirements of Ontario securities legislation. Under U.S. federal securities law foreign private issuers are exempt from compliance with interim financial statement, proxy statement and insider reporting requirements of the 1934 Act. However, they must furnish to the SEC on Form 6-K, documents made public in their home jurisdiction, filed with a foreign stock exchange and made public or distributed to securityholders. Foreign private issuers are subject to requirements to file an annual report, management's discussion and analysis and to reconcile annual financial statements to U.S. GAAP. Attached as Schedule A to this notice is a summary of some of the disclosure requirements under U.S. federal securities law applicable to foreign private issuers.

Persons and companies may satisfy the news release, material change report, financial statement, AIF and MD&A, proxy and proxy solicitation, early warning, insider reporting and communication with beneficial owners of securities requirements of securities legislation in Ontario relating to foreign issuers that are not SEC registrants by complying with foreign disclosure requirements and filing documents prepared in accordance with foreign disclosure requirements in a designated foreign jurisdiction provided that the equity securities owned of record by residents of Canada represent 10 percent or less of the equity securities of the issuer on a fully diluted basis.

The Commission has initially designated the foreign jurisdictions of Australia, France, Germany, Hong Kong, Italy, Japan, Mexico, The Netherlands, New Zealand, Singapore, South Africa, Spain, Sweden, Switzerland and the United Kingdom.

The Commission considers that the continuous disclosure, AIF and MD&A, proxy and proxy solicitation, early warning, insider reporting requirements, communication with beneficial owners of securities, issuer bid, insider bid, going private transaction and related party transaction requirements of these jurisdictions are adequate in light of the purposes and principles of the Act. The Commission was satisfied based on its research that each of the jurisdictions designated for purposes of the definition of a non-SEC issuer demonstrated a continuous disclosure regulatory regime that was similar in objective and principle to that in Ontario. Various elements of a jurisdiction's continuous disclosure regime were examined by the Commission as part of its consideration. These elements included a jurisdiction's core issuer continuous disclosure requirements and obligations, the timeliness of disclosure of financial and other material information by issuers and a jurisdiction's requirements with respect to issuer communication with, and treatment of, its security holders. The Commission may designate additional foreign jurisdictions if it considers that the continuous disclosure, AIF and MD&A, proxy and proxy solicitation, early warning, insider reporting requirements, communication with beneficial owners of securities, issuer bid, insider bid, going private transaction and related party transaction requirements of the foreign jurisdiction are adequate in light of the purposes and principles of the Act. The Commission may also revoke a designation.

A foreign issuer that is eligible for an exemption from a requirement under the Proposed Rule and has obtained exemptive relief from the requirement under a Commission ruling may choose to rely upon the exemption in either the Proposed Rule or the ruling.

It will be necessary for foreign issuers that have existing exemptions from continuous disclosure and other requirements under Commission rulings to review the requirements to which they are subject in light of the reformulation process. Some exemptions may continue to be valid. However, the requirements to which the issuers are subject may have changed with the reformulation process. For example, if an issuer has an exemption from the requirement to prepare interim financial statements for the periods set out in section 77 of the Act and from the interim financial statement content requirements of the regulations, those exemptions continue to be valid, but the issuer is also subject to a requirement to file interim financial statements for the periods set out in subsection 2.2(2) of Rule 52-501 Financial Statements ("Rule 52-501").

Background

Existing Act, Regulation, Rules, Order and Policies

The Act imposes continuous disclosure, proxy and proxy solicitation, early warning and insider reporting requirements for all reporting issuers regardless of (i) their jurisdiction of incorporation or organization, (ii) how the issuer became a reporting issuer or (iii) how many security holders the issuer has in Ontario.

These obligations include the requirement to make timely disclosure of material changes, the requirement to file interim and annual financial statements and to send these statements to holders of voting securities or restricted shares, the requirement to file information circulars or annual filings under Form 28 to the regulation made under the Act (the "Regulation"). Rule 51-501 AIF and MD&A ("Rule 51-501") also requires reporting issuers to file an AIF and MD&A. Rule 52-501 imposes requirements as to the content of interim and annual financial statements and requires the filing of certain interim statements in addition to those required to be filed under the Act. The rule entitled In the Matter of Certain Reporting Issuers that incorporates by reference National Policy Statement No. 41 Shareholder Communication ("NP 41") provides a procedure to enable a reporting issuer to send security holder materials, including proxy-related materials and annual reports, to beneficial owners of its securities who are not registered holders of its securities. The Act also imposes obligations on offerors that acquire securities of a reporting issuer to file early warning reports and on insiders of reporting issuers to file insider reports. Rule 56-501 Restricted Shares ("Rule 56-501") imposes requirements concerning the creation of and disclosure about restricted shares. It also requires a reporting issuer to send all documents that it sends to its common shareholders to holders of restricted shares. Rule 61-501 Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions ("Rule 61-501") imposes disclosure, valuation and majority of minority approval requirements in respect of certain transactions. National Policy Statement No. 14 Acceptability of Currencies in Material Filed with Securities Regulatory Authorities ("NP 14"), National Policy Statement No. 27 Canadian Generally Accepted Accounting Principles, National Policy Statement No. 31 Change of Auditor of a Reporting Issuer, National Policy Statement No. 48 Future-Oriented Financial Information ("NP 48"), National Policy Statement No. 50 Reservations in an Auditor's Report and National Policy Statement No. 51 Change in the Ending Date of a Financial Year and in Reporting Status adopt financial disclosure policies.

In certain cases, the Act allows a reporting issuer to satisfy the continuous disclosure and other requirements imposed by the Act by complying with requirements of another jurisdiction or foreign jurisdiction. For example, section 82 of the Act provides that where the laws of the jurisdiction in which the reporting issuer was incorporated, organized or continued require the reporting issuer to file substantially the same information in that jurisdiction as is required by Part XVIII of the Act, the reporting issuer may comply with the Act by filing the news release, timely disclosure report, information circular or financial statements and auditor's report required by that jurisdiction. Similar provisions relating to

(i) the delivery of financial statements to security holders, (ii) information circulars, proxies and proxy solicitation and (iii) insider reporting are included in section 79 and subsections 88(1) and 121(1) of the Act, respectively.

In other cases, under clause 80(b)(ii) of the Act, the Commission may grant relief from certain continuous disclosure requirements of Part XVIII or the Regulation relating to that Part where in the opinion of the Commission to do so would not be prejudicial to the public interest and the reporting issuer ordinarily distributes financial information to security holders in a form, or at times, different from those required by the Act. The Commission, under clause 80(b)(iii) of the Act, may also grant relief where in the opinion of the Commission to do so would not be prejudicial to the public interest and the Commission is satisfied in the circumstances of the particular case that there is adequate justification for so doing. Similar provisions regarding proxy solicitation and insider reporting requirements are included in subsections 88(2) and 121(2) of the Act, respectively.

Beginning in 1980, the Commission promulgated the predecessor policy to Policy 7.1 and issued the Order and the Rules, providing exemptions to certain reporting issuers from certain reporting requirements of the Act.

Evolution of Securities Regulation

In 1980, OSC Policy No. 3-44 Application of Requirements of the Securities Act, 1978, to Certain Reporting Issuers (1980), OSCB 46 ("Policy 3-44") was published. It was amended and republished in 1982 as Policy 7.1 (1983) 4 OSCB 514E. Policy 7.1 was issued in order to respond to questions received by the Commission relating to the interpretation and application of the exemption provisions in the Act. The Policy provided guidance on these interpretation issues and also described the Order and the Rules made by the Commission in the exercise of its exempting powers.

The Order and Policy 7.1 created seven categories of reporting issuers, granted exemptions from certain continuous disclosure and other requirements and set out the Commission's interpretation with respect to the exemptions provided under Part XVIII, Part XIX and Part XXI of the Act.

Policy 7.1, the Order and the Rules evolved through a piecemeal process and were subject to the limitations of the exemptive authority granted by the Act. Since that time, other jurisdictions have adopted statutes similar to the Act, in 1991 the members of the Canadian Securities Administrators ("CSA") adopted the predecessor to National Instrument 71-101 The Multijurisdictional Disclosure System ("NI 71-101") which provides relief from continuous disclosure and other requirements for U.S. reporting issuers, and the Commission has granted relief to foreign issuers on a case-by-case basis as contemplated by CSA Notice 5, published at (1995) 18 OSCB 1893, that outlines the proposed Foreign Issuer Prospectus and Continuous Disclosure System and in other circumstances. In 1982, the SEC adopted an integrated disclosure regime for foreign issuers. Participation by Commission staff in the Standing Committees of the Technical Committee of IOSCO has increased the Commission's understanding of continuous disclosure and other requirements in foreign jurisdictions. In 1998 *Objectives and Principles of Securities Regulation* were published by the International Organization of Securities Commissions ("IOSCO") and in 2000 members of IOSCO were asked to complete self-assessments regarding compliance with each principle. In addition, most of Policy 7.1, the Order and the Rules were based on the concept in section 82 of the Act of jurisdiction of incorporation, continuance or organization. This standard is outdated given the similarity of the securities legislation adopted by other jurisdictions to Ontario's legislation, the authority of the Commission under section 143 of the Act to make rules, including rules varying the application of the Act to foreign issuers to facilitate compliance with requirements applicable or relating to reporting issuers pursuant to paragraph 143(1)36. As a result, the Commission has sought in the Proposed Rule to use the authority in section 143 to simplify and modernize the continuous disclosure and other exemptions for foreign issuers. Unlike Policy 7.1, the Order and the Rules, the scope of the Proposed Rule is limited to foreign issuers. Most of the exemptions granted to Canadian domestic issuers by Policy 7.1, the Order and the Rules are no longer necessary given the harmonization of disclosure requirements and regulations among jurisdictions.

The relief granted to Category "A", "B" and "C" issuers, those incorporated or organized under the laws of Canada or a province, in respect of the content and sending of financial statements is no longer necessary given amendments to the Regulation. The relief granted to Category "F" reporting issuers relating to the delivery of financial statements was necessary because of the different timing requirements under the *Securities Act* (Quebec) and the Act. These differences no longer apply. The concept of a Category "G" issuer has been eliminated as the relief granted to those issuers expired on December 31, 2000.

The relief granted by paragraph (7) of the Order to non-Canadian Category D issuers from the requirement for approval by the board of directors of annual financial statements has been deleted. Section 2.1(4) of Rule 52-501 requires that every financial statement filed under section 78 of the Act be reviewed by the audit committee, if any, and approved by the board.

Paragraph (9) of the Order provides that a reporting issuer that is subject to requirements for the distribution of financial statements to security holders under the laws of its jurisdiction of incorporation, continuance or organization is exempt

from section 79 of the Act. It is proposed that that relief be retained by amending Rule 52-501 to provide for that relief with respect to the financial statements so required to be distributed.

The relief granted by paragraph (10) of the Order to all domestic and foreign reporting issuers, other than mutual funds, from the requirement to send financial statements to holders of securities other than voting securities and restricted shares is proposed to be retained by amending Rule 52-501 to provide for that relief.

Attached as Schedule B to this notice is a Table of Concordance between the Order and the Rules implementing OSC Policy 7.1 and the Proposed Rule.

Recent Developments

Reconciliation to Canadian GAAP and Use of Foreign GAAP

The Proposed Rule does not require that the financial statements of foreign issuers prepared in accordance with foreign GAAP be reconciled to Canadian GAAP. Currently neither the Act nor the regulations require companies incorporated outside Canada to reconcile their continuous disclosure financial statements to Canadian GAAP. This is in contrast to prospectus filings where securities legislation contains a requirement for GAAP reconciliation. Over the years the Commission's practice has been to impose a continuous disclosure GAAP reconciliation requirement when a foreign issuer applied for and was granted other continuous disclosure relief (for example, relief from the requirement for quarterly financial statements or various insider and proxy related requirements).

Though staff initially considered imposing a Canadian GAAP reconciliation requirement in the Proposed Rule, this was reconsidered in light of the CSA's Discussion Paper 52-401 Financial Reporting in Canada's Capital Markets published in March 2001. Pending the resolution of the issues and questions contained in the Paper, the Proposed Rule does not impose a GAAP reconciliation requirement as a condition of the other continuous disclosure exemptions proposed under the Rule. This will be revisited once the overall approach to foreign GAAP has been determined at the CSA level. If necessary, amendments to the Proposed Rule will be made at that time.

On a related note, subsection 1(4) of the Regulation provides that where an issuer is incorporated or organized in a foreign jurisdiction, GAAP may, at the option of the issuer, mean the GAAP of the incorporating jurisdiction, but the notes to the financial statements must state which GAAP has been chosen. The Proposed Rule states that subsection 1(4) of the Regulation is applicable to foreign issuers relying on the Proposed Rule (i.e., the GAAP chosen must be stated in the notes to the financial statements). This represents a change from the Policy 7.1 approach which provided an exemption from subsection 1(4) of the Regulation for category D issuers incorporated, organized or continued under the laws of the United States or a state or territory of the United States.

National Approach to Foreign Issuer Continuous Disclosure

Commission staff have been working closely with staff of other members of the CSA on the development of a National Harmonized Continuous Disclosure rule. It is anticipated that the general approach to foreign issuers under the Proposed Rule will be incorporated into the National Harmonized Continuous Disclosure rule.

Proposed Foreign Issuer Prospectus and Continuous Disclosure System

It is proposed that Commission staff will no longer recommend that relief be granted to foreign issuers on a case-by-case basis on the terms set out in the continuous disclosure and proxy solicitation section of CSA Notice 5 Proposed Foreign Issuer Prospectus and Continuous Disclosure System. The relief contemplated by that notice is encompassed in the Proposed Rule.

Non-Continuous Disclosure Requirements/Relief Related to Foreign Issuers

The Proposed Rule provides certain exemptions from Ontario's continuous disclosure and other related requirements in certain circumstances. It does not provide exemptions from prospectus disclosure requirements, except in a few very limited areas (eg. NP 14 and NP 48). The CSA chairs have approved the development of a harmonized national long form prospectus regime in addition to the harmonized short form and shelf systems that already exist. As part of the development of the harmonized prospectus regime, the CSA will consider the prospectus regime specifically as it relates to foreign issuers. Part of that consideration will include a comprehensive review of IOSCO's *"International Disclosure Standards For Cross-Border Offerings and Initial Listings By Foreign Issuers"* that were issued in 1998 to determine if modifications to or relief for foreign issuers from the CSA's harmonized prospectus regime are appropriate.

Summary of Proposed Rule

Part 1. Section 1.1 sets out the definitions used in the Proposed Rule.

The Proposed Rule contemplates two categories of reporting issuers: "non-SEC issuer" and "SEC issuer", both of which come within the scope of the definition of "foreign issuer".

A "designated foreign jurisdiction" is defined as a foreign jurisdiction designated by the Commission under subsection 2.1(1) or (2) if the Commission has not revoked the designation under subsection 2.1(3). This term is used in the definition of "foreign regulatory authority".

A "foreign issuer" is defined as an issuer that is not incorporated or organized under the laws of Canada or a jurisdiction, unless (a) outstanding voting securities carrying more than 50 percent of the votes for the election of directors are owned of record directly or indirectly by residents of Canada; and (b) any one or more of (i) the majority of the senior officers or directors of the issuer are residents of Canada, (ii) more than 50 percent of the assets of the issuer are located in Canada, or (iii) the business of the issuer is administered principally in Canada.

The term "foreign regulatory authority" means a securities commission, stock exchange or other securities market regulatory authority in a designated foreign jurisdiction. It is used in the definition "foreign disclosure requirements" which means the requirements to which a foreign issuer is subject concerning disclosure made to a foreign regulatory authority relating to the foreign issuer and its securities that is made publicly available in a foreign jurisdiction under either the securities laws of the foreign jurisdiction in which the principal trading market of the foreign issuer is located or the rules of the exchange or other market that is the principal trading market of the foreign issuer.

A "non-SEC issuer" is defined as a foreign issuer that is not an SEC registrant, that is not a mutual fund or other investment company, and the total number of whose equity securities owned of record directly or indirectly by residents of Canada does not exceed ten percent of the number of equity securities of the issuer. Section 1.2 of the Proposed Rule interprets paragraph (d) of the definition of non-SEC issuer. The definition revises the definition contained in Policy 7.1, the Order and the Rules of "Category E reporting issuer", defined as a foreign issuer that is a reporting issuer solely because it has securities listed on the TSE. The revised definition is broader than the definition of "Category E reporting issuer" in that it encompasses issuers that distributed securities by prospectus or by securities exchange take-over bid circular before December 14, 1999 but did not list them on the TSE, and narrower in that it excludes SEC registrants. The Proposed Rule raises the *de minimis* threshold to ten percent from five percent in Policy 7.1, the Order and the Rules. In addition, to be consistent with other national and multilateral instruments, rules and proposed rules, the Commission is basing the calculation on owners of record directly or indirectly that are residents of Canada not registered security holders with addresses in Canada.¹ Furthermore, the Order and the Rules required that the total number of registered Canadian security holders of the class not exceed 300. The Commission removed this second part of the test so that the test is based on equity securities on a fully diluted basis.

A "principal trading market" is defined as the published securities market on which the greatest volume of trading in the equity securities of the issuer occurred during the financial year that ended before the date the determination is being made.

The term "restricted shares" has the meaning ascribed in Rule 56-501.

A "SEC issuer" is defined as a foreign issuer that (a) has a class of securities registered under section 12 of the 1934 Act or is required to file reports with the SEC under subsection 15(d) of the 1934 Act, and (b) is not registered or required to be registered as an investment company under the Investment Company Act of 1940 of the United States of America. The definition is based on the current definition of "Category D reporting issuer" contained in Policy 7.1, the Order and the Rules. The definition has also been revised to exclude issuers incorporated, continued or organized under the laws of Canada or a jurisdiction as that exclusion applied in the individual exempting provisions of the Order and the Rules. The definition encompasses both U.S. domestic issuers and foreign private issuers subject to the SEC's foreign integrated disclosure regime.

Part 2. Part 2 of the Proposed Rule sets out several general provisions.

Under subsection 2.1(1) the Commission designates certain foreign jurisdictions as designated foreign jurisdictions and under subsection 2.1(2) the Commission may designate additional foreign jurisdictions, the continuous disclosure, AIF and MD&A, proxy and proxy solicitation, early warning, insider reporting requirements, communication with beneficial owners of securities, issuer bid, insider bid, going private transaction and related party transaction requirements of which the Commission considers are adequate in light of the purposes and principles of the Act. Subsection 2.1(3) provides

¹ See, for example, section 2.14 of Multilateral Instrument 45-102.

that the Commission may revoke a designation if the foregoing requirements are no longer adequate.

Section 2.2 deals with timing of filing of documents in accordance with the Proposed Rule and provides that they must be filed contemporaneously with or as soon as practicable after the filing or furnishing of the documents to the SEC or the foreign regulatory authority.

Subsection 2.3(1) provides that the documents filed in accordance with the Proposed Rule must be in the English language. However, under subsection 2.3(2), if a document was translated from a document in a language other than English, the original document must be filed. Under subsection 2.3(3) a SEC issuer or non-SEC issuer must deliver to the Commission a certificate of translation.

Part 3. Part 3 of the Proposed Rule permits persons and companies to satisfy the news release, material change reporting, financial statement, AIF and MD&A, proxy and proxy solicitation, early warning, insider reporting and communication with beneficial owners of securities requirements of the Act and the rules relating to SEC issuers by complying with U.S. federal securities law and filing documents filed with the SEC.

Section 3.1. Section 3.1 provides that a SEC issuer is exempt from subsection 75(1) of the Act if the issuer complies with the requirements of the U.S. stock exchange or Nasdaq or foreign disclosure requirements for making public disclosure of material information on a timely basis and issues in Canada and files each news release issued for the purpose of making public disclosure of material information.

Section 3.2. Section 3.2 provides that a SEC issuer is exempt from subsection 75(2) of the Act if the issuer complies with the requirements of the U.S. federal securities law for filing or furnishing current reports and files those reports with the Commission. The requirement under U.S. federal securities law to file a current report for SEC issuers is more limited than the requirement of securities legislation to disclose material changes. However, a SEC issuer's continuous disclosure record in Ontario would be the same as that in the U.S.

Section 3.3. Subsection 3.3(1) provides that a SEC issuer satisfies the requirements of securities legislation relating to the preparation, filing and sending of interim financial statements and relating to the preparation, certification, filing and sending of annual financial statements and auditor's reports if the issuer complies with the requirements of U.S. federal securities law and of the U.S. exchange on which its securities are listed or Nasdaq relating to quarterly and annual reports, files those reports with the Commission and either sends to each holder of voting securities and of restricted shares in Ontario, or disseminates in Ontario selected financial information from, each financial statement included in the report, in the manner and at the time required under U.S. federal securities law and the requirements of the exchange or Nasdaq. The requirements regarding the timing for filing these statements has been eliminated in order to maintain consistency with NI 71-101 and proposed Foreign Issuer Disclosure and Prospectus System and with U.S. federal securities law under which foreign issuers are only required to file annual financial statements after they are filed or required to be filed with their home jurisdiction, provided it is within six months of the fiscal year end. This relief addresses the fact that issuers will not normally change the timing of their annual audit to meet foreign requirements.

In addition, this subsection consolidates and simplifies the various provisions in the Order and the Rules that dealt with the preparation, certification, filing and delivery of interim and annual financial statements.

Subsection 3.3(2) provides that despite subsection 3.3(1), subsection 1(4) of the Regulation applies to financial statements filed in accordance with subsection 3.3(1). Subsection 5.1(1) is a transitional provision that provides, in effect, that a SEC issuer must begin complying with subsection 1(4) of the Regulation the first time annual financial statements are filed after the effective date of the Proposed Rule. The Order and the Rules provided for an exemption from subsection 1(4) for Category D issuers incorporated, organized or continued under the laws of the U.S. or a state or territory of the U.S.

Section 3.4. Section 3.4 permits SEC issuers to satisfy requirements of securities legislation to file an AIF and MD&A by complying with the requirements of U.S. federal securities law relating to annual reports, quarterly reports and management's discussion and analysis, filing each annual report, quarterly report and management's discussion and analysis and sending each annual report, quarterly report and management's discussion and analysis to holders of voting securities and of restricted shares in Ontario in the manner and at the time required by U.S. federal securities law. This section is new and no similar provision is contained in Policy 7.1, the Order or the Rules. Rule 51-501 permits issuers, both domestic and foreign, to file a Form 10-K or Form 20-F as an AIF. The relief provided for SEC issuers is slightly different in that section 2.2 of the Proposed Rule requires the issuer to file the annual report contemporaneously with or as soon as practicable after the filing or furnishing of the document to the SEC, which in the case of U.S. domestic issuers would be within 90 days of the financial year end and of foreign private issuers would be within 180 days of the financial year end. Section 2.1 of Rule 51-501 requires the annual report to be filed within 140 days of the financial year end. A Form 10-K or Form 20-F must be filed the earlier of the date that is 140 days after the end of the financial year and a date that is nearly as practicable contemporaneously with the filing with the SEC. The result is that

Canadian domestic issuers must file a Form 20-F under Rule 51-501 within 140 days after the financial year end whereas foreign private issuers that are SEC issuers under the Proposed Rule must file a Form 20-F within 180 days after the financial year end.

Section 3.5. Section 3.5 permits a SEC issuer that has a class of securities registered under section 12 of the 1934 Act to satisfy the requirements of securities legislation relating to information circulars, proxies and proxy solicitation by complying with the requirements of U.S. federal securities law relating to proxy statements, proxies and proxy solicitation, filing all documents relating to the meeting that is filed with or furnished to the SEC and sending the documents to each security holder in Ontario in the manner and at the time required by U.S. federal securities law and the requirements of the U.S. exchange on which its securities are listed or Nasdaq.

Section 3.6. Section 3.6 permits a person or company, other than the issuer, to satisfy the requirements of securities legislation relating to information circulars, proxies and proxy solicitation with respect to a SEC issuer that has a class of securities registered under section 12 of the 1934 Act by complying with the requirements in paragraph 3.5(a), (b) and (c) of the Proposed Rule.

Section 3.7. Section 3.7 presumes that outstanding voting securities carrying 50 percent or less of the votes for the election of directors are owned of record directly or indirectly by residents of Canada if the person or company making a proxy solicitation under section 3.6 of the Proposed Rule does not have access to the list of security holders of the issuer and none of the three conditions in section 3.7 are met.

Section 3.8. Section 3.8 grants an exemption from Rule 54-501 Prospectus Disclosure in Certain Information Circulars ("Rule 54-501") to a person or company filing and sending documents in accordance with section 3.5 or 3.6.

Section 3.9. Section 3.9 provides that if a SEC issuer complies with paragraphs 3.5(a), (b) and (c) of the Proposed Rule, the annual report filing requirement under subsection 81(2) of the Act does not apply.

Section 3.10. Subsection 3.10(1) grants an exemption from National Instrument 62-102 Disclosure of Outstanding Share Data ("NI 62-102") to a SEC issuer that has a class of securities registered under section 12 of the 1934 Act if the issuer complies with U.S. federal securities law relating to disclosure of outstanding share data. Subsection 3.10(2) grants an exemption from the early warning provisions in respect of securities of a SEC issuer that has a class of securities registered under section 12 of the 1934 Act if the person or company complies with U.S. federal securities law relating to reporting of beneficial ownership of equity securities.

Section 3.11. Section 3.11 provides an exemption from the insider reporting requirements to an insider of a SEC issuer that has a class of securities registered under section 12 of the 1934 Act, if the SEC issuer is not a SEDI issuer, the insider complies with the requirements of U.S. federal securities law regarding insider reporting and the insider files each insider report that is required to be filed with the SEC.

Section 3.12. Section 3.12 provides that a SEC issuer satisfies the requirements of securities legislation relating to communications with, delivery of materials to and conferring voting rights upon non-registered holders of its securities by complying with certain requirements of the 1934 Act and of the rule that incorporates by reference NP 41 or any successor instrument with respect to fees.

Section 3.13. Section 3.13 provides that despite the provisions of Part 3, National Instrument 43-101 Standards of Disclosure for Mineral Projects ("NI 43-101") applies to a person or company filing a disclosure document in accordance with Part 3.

The Commission does not propose to grant relief from NI 43-101 given that it is a new instrument developed by the CSA with significant input from the mining industry and Commission staff has not had sufficient experience as of yet to recommend whether and to what extent relief from NI 43-101 should be granted to foreign issuers.

Section 3.14. Section 3.14 provides that a SEC issuer satisfies the requirements of National Instrument 52-101 Future- Oriented Financial Information ("NI 52-101") by complying with the requirements of U.S. federal securities law relating to future-oriented financial information.

Sections 3.15, 3.16, 3.17 and 3.18. Sections 3.15, 3.16, 3.17 and 3.18 provide that a SEC issuer satisfies the requirements of National Instrument 52-102 Use of Currencies ("NI 52-102"), National Instrument 52-103 Change of Auditor ("NI 52-103"), National Instrument 52-104 Auditor's Report ("NI 52-104") and National Instrument 52-105 Change in the Ending Date of a Financial Year ("NI 52-105") by complying with the comparable requirements of U.S. federal securities law.

Sections 3.13 to 3.18, inclusive, are new and no similar provisions are contained in Policy 7.1 or the Order and the

Rules. The national instruments referred to in sections 3.14 to 3.18, inclusive, are not in force as of the date of this notice. A SEC issuer would be able to rely on an exemption in section 3.14 to 3.18 once the relevant national instrument is in force.

Section 3.19. Subsection 3.19(1) grants an exemption from Rule 56-501 with respect to a SEC issuer. Subsection 3.19(2) provides that despite subsection (1), section 2.3, other than paragraph 2.3(1)6., of Rule 56-501 applies to a preliminary prospectus or prospectus filed by a SEC issuer and a securities exchange take-over bid circular filed by a SEC issuer, if the offeree issuer is not a SEC issuer or non-SEC issuer.

Section 3.20. Section 3.20 grants an exemption from Rule 61-501 to an insider bid or issuer bid for securities of a SEC issuer and to a SEC issuer carrying out a going private transaction or related party transaction.

Part 4. Part 4 of the Proposed Rule provides that persons and companies satisfy certain reporting requirements of securities legislation relating to non-SEC issuers by complying with the comparable foreign disclosure requirements of a designated foreign jurisdiction. Part 4 of the Proposed Rule broadly extends the scope of relief granted to this category of reporting issuers from that provided in the Order and the Rules that it replaces.

Section 4.1. Section 4.1 provides that a non-SEC issuer is exempt from subsection 75(1) of the Act if the issuer complies with the foreign disclosure requirements for making public disclosure of material information on a timely basis and issues in Canada and files each news release issued for the purpose of complying with the requirements.

Section 4.2. Section 4.2 provides that a non-SEC issuer is exempt from subsection 75(2) of the Act if the issuer complies with the foreign disclosure requirements relating to disclosure of material information and files the documents filed with or furnished to the foreign regulatory authority.

Section 4.3. Section 4.3 provides that a non-SEC issuer satisfies the requirements of securities legislation relating to the preparation, filing and sending of interim financial statements and relating to the preparation, certification, filing and sending of annual financial statements and auditor's reports on annual financial statements if the issuer complies with the foreign disclosure requirements relating to interim and annual financial statements and auditor's reports, files these statements and sends to each holder of voting securities or of restricted shares in Ontario, or disseminates in Ontario selected financial information from, each financial statement required to be filed under paragraph 4.3(1)(b), in the manner and at the time required under foreign disclosure requirements.

Subsection 4.3(2) states that subsection 1(4) of the Regulation applies to financial statements filed in accordance with subsection 4.3(1). Subsection 5.1(2) is a transitional provision that provides, in effect, that a non-SEC issuer must begin complying with subsection 1(4) of the Regulation the first time annual financial statements are filed after the effective date of the Proposed Rule.

Section 4.4. Section 4.4 provides that a non-SEC issuer satisfies the requirements of securities legislation to file an AIF, other than an AIF under National Instrument 44-101 Short Form Prospectus Distributions ("NI 44-101"), and MD&A by complying with the foreign disclosure requirements relating to annual reports, quarterly reports and management's discussion and analysis, filing each annual report, quarterly report and management's discussion and analysis, and sending the annual report, quarterly report and management's discussion and analysis to holders of voting securities and of restricted shares in Ontario in the manner and at the time required by foreign disclosure requirements. As stated earlier, this section is new and no similar provision is contained in Policy 7.1, the Order or the Rules.

Section 4.5. Section 4.5 provides that a non-SEC issuer satisfies the requirements of securities legislation relating to information circulars, proxies and proxy solicitation by complying with the foreign disclosure requirements relating to proxy statements, proxies and proxy solicitation, filing all documents relating to the meeting and sending each document to security holders in Ontario in the manner and at the time required by foreign disclosure requirements.

Section 4.6. Section 4.6 provides that a person or company, other than the issuer, satisfies the requirements of securities legislation relating to information circulars, proxies and proxy solicitation with respect to a non-SEC issuer by complying with the requirements in paragraphs 4.5(a), (b) and (c) of the Proposed Rule.

Section 4.7. Section 4.7 presumes that outstanding voting securities carrying 50 percent or less of the votes for the election of directors are owned of record directly or indirectly by residents of Canada if the person or company making the proxy solicitation under section 4.6 does not have access to the list of security holders of the issuer and none of the conditions in section 4.7 are met.

Section 4.8. Section 4.8 grants an exemption from Rule 54-501 to a person or company filing and sending documents in accordance with section 4.5 or 4.6 of the Proposed Rule.

Section 4.9. Section 4.9 provides that if a non-SEC issuer complies with paragraphs 4.5(a), (b) and (c) of the Proposed Rule, the annual report filing requirement under subsection 81(2) of the Act does not apply.

Section 4.10. Subsection 4.10(1) grants an exemption from NI 62-102 to a non-SEC issuer if the issuer complies with foreign disclosure requirements relating to disclosure of outstanding share data. Subsection 4.10(2) grants an exemption to a person or company from the early warning provisions in respect of securities of a non-SEC issuer if the person or company complies with securities legislation relating to reporting of beneficial ownership of equity securities.

Section 4.11. Section 4.11 provides an exemption from the insider reporting requirements to an insider of a non-SEC issuer, if the non-SEC issuer is not a SEDI issuer, the insider complies with the foreign disclosure requirements regarding insider reporting and the insider files each insider report required to be filed with the foreign regulatory authority.

Section 4.12. Section 4.12 provides that a non-SEC issuer satisfies the requirements of securities legislation relating to the communication with, delivery of materials to and conferring rights upon non-registered holders of its securities by complying with foreign disclosure requirements and of the rule that incorporates NP 41 or any successor instrument with respect to fees.

Section 4.13. Section 4.13 clarifies that despite the provisions of Part 4, NI 43-101 applies to a person or company filing a disclosure document in accordance with Part 4.

Section 4.14. Section 4.14 provides that a non-SEC issuer satisfies the requirements of NI 52-101 by complying with the foreign disclosure requirements relating to future-oriented financial information.

Sections 4.15, 4.16, 4.17 and 4.18. Sections 4.15, 4.16, 4.17 and 4.18 provide that a non-SEC issuer satisfies the requirements of NI 52-102, NI 52-103, NI 52-104 and NI 52-105, respectively, by complying with the comparable foreign disclosure requirements.

The national instruments referred to in sections 4.14 to 4.18, inclusive, are not in force as of the date of this notice. A non-SEC issuer would be able to rely on an exemption in section 4.14 to 4.18 once the relevant national instrument is in force.

Section 4.19. Subsection 4.19(1) grants an exemption from Rule 56-501 in respect of a non-SEC issuer. Subsection 4.19(2) provides that despite subsection (1), section 2.3, other than paragraph 2.3(1)6., of Rule 56-501 applies to a preliminary prospectus or prospectus filed by a non-SEC issuer and a securities exchange take-over bid circular filed by a non-SEC issuer, if the offeree issuer is not a SEC issuer or non-SEC issuer.

Section 4.20. Section 4.20 grants an exemption from Rule 61-501 to an insider bid or issuer bid for securities of a non-SEC issuer and to a non-SEC issuer carrying out a going private transaction or related party transaction.

Part 5. Subsections 5.1(1) and (2) are transitional provisions relating to the requirement to comply with subsection 1(4) of the Regulation. Subsection 5.1(3) extends the relief granted by Policy 7.1, the Order and the Rules to Category E reporting issuers to July 1, 2004 and expands the scope of the relief.

Part 6. Section 6.1 provides that the Director may grant an exemption to the Proposed Rule, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

Part 7. Section 7.1 provides that the effective date of the Proposed Rule is July 1, 2002.

Summary of the Proposed Policy

The purpose of the Proposed Policy is to provide information relating to the manner in which the provisions of the Proposed Rule are intended to be interpreted or applied by the Commission.

Section 1.1 Subsection 1.1(1) states that the Proposed Rule provides that certain persons and companies satisfy the requirements of securities legislation in Ontario relating to news releases, material change reports, financial statements, AIF and MD&A, proxy solicitation, early warning, insider reporting and communication with beneficial owners of securities with respect to a foreign issuer by complying with corresponding requirements of the securities laws of a specified foreign jurisdiction.

Subsection 1.1(2) comments that some of the exemptive relief granted extends to disclosure in prospectuses, bid circulars and other documents and to the conduct of a bid or other transaction.

Subsection 1.1(3) notes that the purpose of the Proposed Rule is to reduce unnecessary and duplicative regulation for

foreign issuers while at the same time providing Ontario investors with adequate disclosure on which to base investment decisions. It further notes that the Proposed Rule may facilitate listings on the TSE and Ontario public offerings by foreign issuers.

Subsections 1.1(4) and (5) provide interpretation of the definitions of foreign issuer, non-SEC issuer and SEC issuer.

Section 1.2 Subsection 1.2(1) compares the scope of exemptive relief granted by NI 71-101 and the Rule.

Subsection 1.2(2) points out that U.S. domestic issuers may choose to use the exemptions provided in the Rule or NI 71-101 and Rule 71-801, the Implementing Rule for National Instrument 71-101 and provides an example of relief granted by NI 71-101 that goes beyond the relief granted by the Proposed Rule.

Subsection 1.2(3) discusses the interrelationship between the Rule and Rule 56-501 for SEC issuers using NI 71-101.

Section 2.1 Section 2.1 clarifies that an obligation only arises under subsection 75(1) of the Act if a material change as defined in the Act occurs. However, a SEC issuer is exempt from subsection 75(1) if the issuer issues in Canada and files each news release disclosing material information even if the material information does not constitute a material change.

Sections 2.2 and 2.3 Sections 2.2 and 2.3 discuss the exemptions granted by sections 3.3 and 4.3 of the Proposed Rule relating to the interim financial statements and annual financial statements and comment on the requirements of sections 77, 78 and 79 of the Act and Rule 52-501.

Section 2.4 Subsection 2.4(1) comments that there is no requirement to reconcile annual or interim financial statements in documents filed in accordance with the Proposed Rule to Canadian GAAP. Subsection 2.4(2) states that subsections 3.3(2) and 4.3(2) of the Proposed Rule provide that the requirement in subsection 1(4) of the Regulation to state in the notes to the financial statements which option has been applied in the choice of generally accepted accounting principles applies to financial statements filed in accordance with the Proposed Rule and notes the transitional provisions in subsections 5.1(1) and (2) of the Proposed Rule.

Section 2.5 Section 2.5 comments that sections 3.4 and 4.4 of the Proposed Rule grant an exemption from Rule 51-501 for eligible foreign issuers if certain conditions are met.

Section 2.6 Section 2.6 discusses the information circular and annual filing exemptions granted by the Proposed Rule. Subsection 2.6(2) points out that the exemptions from Rule 54-501 in sections 3.8 and 4.8 of the Proposed Rule are not available to a domestic reporting issuer if a meeting is being held to consider a statutory amalgamation, statutory arrangement, statutory merger or reorganization involving a SEC issuer or non-SEC issuer and a domestic reporting issuer.

Section 2.7 Section 2.7 provides an example to illustrate that the exemption in subsection 3.10(2) of the Proposed Rule from the early warning provisions is conditional upon the person or company filing with the Commission all reports of beneficial ownership of equity securities filed with the SEC.

Section 2.8 Subsection 2.8(2) explains that insiders of foreign issuers (SEDAR) that voluntarily file under National Instrument 13-101 System for Electronic Document Analysis and Retrieval (SEDAR) are required to file insider reports under National Instrument 55-102 System for Electronic Data on Insiders (SEDI). Insiders of non-SEDAR filers may file the reports they file under section 4.11 of the Proposed Rule in paper form.

Section 2.9 Section 2.9 comments that the financial disclosure exemptions in sections 3.14, 3.15, 3.16, 3.17, 3.18, 4.14, 4.15, 4.16, 4.17 and 4.18 of the Proposed Rule extend to disclosure in prospectuses, information circulars, bid circulars and other documents in addition to financial statements, annual information forms and MD&A.

Section 2.10 Section 2.10 comments that sections 3.19 and 4.19 of the Proposed Rule grant an exemption from Rule 56-501 in respect of a SEC issuer and non-SEC issuer, respectively, and sets out the exceptions to the exemptive relief granted from the requirements of Rule 56-501.

Section 2.11 Section 2.11 comments that sections 3.20 and 4.20 of the Proposed Rule grant an exemption from Rule 61-501 in respect of SEC issuers and non-SEC issuers, respectively, and gives two examples of the application of the exemption to going private transactions and related party transactions.

Section 2.12 Section 2.12 comments that the exemptions in the Proposed Rule are not available if the foreign issuer is not a SEC issuer or non-SEC issuer as defined in the Proposed Rule.

Section 2.13 Section 2.13 discusses the transitional relief granted to category E reporting issuers.

Authority for Proposed Rule

Paragraph 143(1)36 of the Act authorizes the Commission to make rules varying the Act to foreign issuers to facilitate, among other things, compliance with requirements applicable or relating to reporting issuers and the making of issuer bids, insider bids, going private transactions and related party transactions where the foreign issuers are subject to requirements of the laws of other jurisdictions that the Commission considers are adequate in light of the purposes and principles of the Act provides the Commission with the authority to make the Proposed Rule.

The following provisions of the Act also provide the Commission with authority to make the Proposed Rule. Paragraph 143(1)22 authorizes the Commission to make rules prescribing requirements in respect of the preparation and dissemination and other use, by reporting issuers, of documents providing for continuous disclosure that are in addition to requirements under the Act. Paragraph 143(1)23 authorizes the Commission to make rules exempting reporting issuers from any requirement of Part XVIII of the Act. Paragraph 143(1)25 authorizes the Commission to make rules prescribing requirements in respect of financial accounting, reporting and auditing for purposes of the Act, the regulations and the rules. Paragraph 143(1)26 authorizes the Commission to make rules prescribing requirements for the validity and solicitation of proxies. Paragraph 143(1)27 authorizes the Commission to make rules providing for the application of Part XVIII (Continuous Disclosure) and Part XIX (Proxies and Proxy Solicitation) in respect of registered holders or beneficial owners of voting securities or equity securities of reporting issuers or other persons or companies on behalf of whom the securities are held, including requirements for reporting issuers, recognized clearing agencies, registered holders, registrants and other persons or companies who hold securities on behalf of persons or companies but who are not the registered holders. Paragraph 143(1)28 authorizes the Commission to make rules regulating take-over bids, issuer bids, insider bids, going private transactions and related party transactions, including early warning provisions. Paragraph 143(1)30 authorizes the Commission to make rules providing for exemptions from any requirement of Part XXI (Insider Trading and Self-Dealing) of the Act. Paragraph 143(1)39 authorizes the Commission to make rules requiring or respecting the media, format, preparation, form, content, execution, certification, dissemination and other use, filing and review of all documents required under or governed by the Act, the regulations or the rules, including financial statements, proxies and information circulars. Paragraph 143(1)49 authorizes the Commission to make rules varying the Act to permit or require methods of filing or delivery, to or by issuers, security holders or others, of documents, information, reports or other communications required under or governed by Ontario securities law. Paragraph 143(1)56 authorizes the Commission to make rules providing for exemptions from or varying any or all of the time periods in the Act.

Alternatives Considered

The Commission considered whether to rescind Policy 7.1, the Order and the Rules and rely upon the continuous disclosure regime created by NI 71-101 and that contemplated by CSA Notice 5 outlining the proposed Foreign Issuer Prospectus and Continuous Disclosure System or amend the Act or make a rule to create a separate foreign issuer continuous disclosure regime. The Commission determined to reformulate Policy 7.1, the Order and the Rules as a rule in a substantially simplified form. The continuous disclosure and other relief granted by the Proposed Rule is substantially broader than that granted by NI 71-101 or contemplated by the proposed Foreign Issuer Prospectus and Continuous Disclosure System in that it permits eligible foreign issuers that are not SEC registrants to file home country disclosure in lieu of documents in the form filed by domestic issuers.

Unpublished Materials

In proposing the Proposed Rule, the Commission has not relied on any significant unpublished study, report, or other written materials other than the self-assessments prepared by IOSCO members of compliance with the *Objectives and Principles of Securities Regulation* published by IOSCO in September 1998.

Anticipated Costs and Benefits

The benefit provided by the Proposed Rule is the reduction of duplicative regulation and the consequent increased access to the Ontario capital markets by foreign issuers. It also may be in the interests of Ontario investors to have greater access to securities of foreign issuers through listings on the TSE or prospectus offerings in Ontario.

The Proposed Rule imposes no material costs on foreign issuers, but rather seeks to reduce costs and duplicative regulation.

Regulations to be Amended

The Commission proposes to amend subsection 1(4) to delete the reference to the First Rule and amend section 161 of

the Regulation to refer to the Proposed Rule rather than the First Rule.

The Commission also proposes to amend the following provisions of the Regulation to refer to the Proposed Rule in order to create an exemption to the requirements contained in those provisions:

1. subsection 2(1);
2. subsection 2(2);
3. subsection 2(5);
4. subsection 176(1);
5. subsection 176(3);
6. subsection 176(9);
7. subsection 177(0.1);
8. section 178;
9. section 179;
10. subsection 180(2);
11. subsection 181; and
12. subsection 203.2(1).

Specific Requests for Comment

In addition to welcoming submissions on any provision of the Proposed Rule and Proposed Policy, the Commission seeks comment on the specific matters referred to below.

Definition of non-SEC issuer

Paragraph (d) of the definition of non-SEC issuer requires that the equity securities of a foreign issuer owned of record directly or indirectly by residents of Canada not exceed ten percent of the equity securities of the issuer on a fully diluted basis. Comment is sought as to whether this threshold is appropriate and if not what threshold would be appropriate and why.

Designated Foreign Jurisdictions

Section 2.1 of the Proposed Rule lists the foreign jurisdictions the Commission proposes to initially designate. Comment is sought as to whether the foreign jurisdictions designated are appropriate and whether other foreign jurisdictions should be designated in the Proposed Rule. If others are suggested, please provide justification for inclusion of the foreign jurisdictions.

Scope of Relief Granted

The Commission requests comment on whether the scope of the exemptions set out in the Proposed Rule is sufficient. Is there other relief that should be granted? If so, please explain what specific additional relief should be granted and the justification therefor.

Comments

Interested parties are invited to make written submissions with respect to the Proposed Rule and Proposed Policy. Submissions received no later than January 11, 2002 will be considered. Given that the date of expiry of the Rules implementing Policy 7.1 is July 1, 2002, submissions received after January 11, 2002 cannot be considered.

Submissions should be made in duplicate to:

c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 800, Box 55
Toronto, Ontario M5H 3S8

A diskette containing the submissions (in DOS or Windows format, preferably WordPerfect) should also be submitted. Comment letters submitted in response to requests for comment are placed on the public file and form part of the public record, unless confidentiality is requested. Although comment letters requesting confidentiality will not be placed on the public file, freedom of information legislation may require the Commission to make some letters available. Persons submitting comment letters should therefore be aware that the press and members of the public may be able to obtain access to any comment letters.

Questions may be referred to:

Kathy Soden or Joan Beck
Ontario Securities Commission
(416) 593-8149/(416) 593-8254
ksoden@osc.gov.on.ca
jbeck@osc.gov.on.ca

Text of Proposed Rule and Proposed Policy

The text of the Proposed Rule and Proposed Policy follow, together with footnotes that are not part of the Proposed Rule or Proposed Policy but have been included to provide background and explanation.

Text of Proposed Rescission of OSC Policy 7.1, the Order and the Rules

The text of the proposed rescission of OSC Policy 7.1, the Order and the Rules follows.

DATED: October 12, 2001.

SCHEDULE A

ONTARIO SECURITIES COMMISSION RULE 72-502 CONTINUOUS DISCLOSURE AND OTHER EXEMPTIONS RELATING TO FOREIGN ISSUERS

SEC FOREIGN PRIVATE ISSUER CONTINUOUS DISCLOSURE REGIME

- (1) The SEC has a separate disclosure regime for foreign private (non-government) issuers. The following sets out some of the reporting obligations for foreign private issuers:
 - (a) **Annual Reports on Form 20-F** - Form 20-F must be filed on an annual basis, within six months of the end of the fiscal year covered by the report, by all foreign private issuers (i) with a class of securities registered under the 1934 Act or (ii) who have made a public offering registered under the 1933 Act, but only if the securities sold to the public are held by 300 or more persons at the beginning of such fiscal year (except in the case of the year in which the securities are registered).
 - (b) **Interim Reports** - Foreign private issuers are required by U.S. federal securities law to file only annual reports. U.S. issuers are required to file quarterly reports on Form 10-Q. However, if foreign private issuers make interim reports available for legal reasons or as a matter of practice, they are required to be furnished to the SEC on Form 6-K. In addition, U.S. stock exchanges and markets usually require at least semi-annual financial reporting as a condition of listing or quotation.
 - (c) **Current Reports on Form 6-K** - Form 6-K requires that a foreign private issuer promptly furnish to the SEC and to each U.S. stock exchange on which its securities are listed significant information about the issuer or its subsidiaries that (i) must be made public in its country of domicile or incorporation pursuant to the law of that country, (ii) is filed with any foreign stock exchange on which its securities are listed and made public by such exchange or (iii) is distributed to its securityholders.

The information required to be furnished is that which is material with respect to the issuer and its subsidiaries concerning: changes in business, changes in management or control; acquisitions or dispositions of assets; bankruptcy or receivership; changes in registrant's certifying accountants; defaults upon senior securities; material increases or decreases in the amounts outstanding of securities or indebtedness; the results of the submission of matters to a vote of securityholders; transactions with directors, officers or principal securityholders; the granting of options or payments of other compensation to directors or officers; and any other information which the registrant deems of material importance to investors.

- (2) Foreign private issuers are exempt from the proxy requirements of the 1934 Act.
- (3) Officers, directors and ten percent shareholders are not required to file insider reports under section 16 of the 1934 Act although beneficial ownership reports (analogous to early warning reports) may be required under section 13 of the 1934 Act.

- (4) Foreign private issuers are also not required to comply with the Regulation FD, the SEC's prohibition on selective disclosure of material information.
- (5) Item 17 of Form 20-F requires the inclusion of a balance sheet as of the end of each of the two most recent fiscal years and consolidated statements of income, statements of cash flows and statements of other stockholders' equity for each of the two most recent fiscal years preceding the date of the audited balance sheet being filed. If the financial statements are not prepared in accordance with U.S. GAAP, they must be reconciled to U.S. GAAP on a quantitative basis.

Interim statements furnished on Form 6-K are not required to be reconciled to U.S. GAAP unless they are incorporated by reference into a registration statement to which a reconciliation requirement applies.

**SCHEDULE B
ONTARIO SECURITIES COMMISSION
RULE 72-502
CONTINUOUS DISCLOSURE AND OTHER EXEMPTIONS
RELATING TO FOREIGN ISSUERS**

TABLE OF CONCORDANCE

<u>Policy 7.1 Rule</u>	<u>Proposed Rule 72-502</u>
7.1 - Rule third recital	Section 1.1 Definitions
7.1 - Rule "category A reporting issuer"	not retained
7.1 - Rule "category B reporting issuer"	not retained
7.1 - Rule "category C reporting issuer"	not retained
7.1 - Rule "category D reporting issuer"	"SEC issuer"
7.1 - Rule "category E reporting issuer"	Section 1.1 Definitions "SEC issuer" and "non-SEC issuer" ¹
7.1 - Rule "category F reporting issuer"	not retained
7.1 - "category G reporting issuer" (deleted from Rule December 31, 2000)	not retained
7.1 - Rule 4th recital - interpretation clause	not retained
7.1 - Rule (1) category D material change report exemption	Section 3.2 Material Change Reports
7.1 - Rule (2) category D and E interim financial statement content exemption	Subsection 3.3(1) Financial Statements Subsection 4.3(1) Financial Statements
7.1 - Rule (3) category E interim financial statement filing exemption	Subsection 3.3(1) Financial Statements Subsection 4.3(1) Financial Statements
7.1 - Rule (4) reporting issuer interim financial statement certification exemption	not retained (section 161 of Regulation amended) Rule 52-501 Financial Statements does not require certification of interim financial statements
7.1 - Rule (5) category D annual financial statement content exemption	Subsection 3.3(1) Financial Statements
7.1 - Rule (6) category E annual financial statement content exemption	Subsection 3.3(1) Financial Statements Subsection 4.3(1) Financial Statements
7.1 - Rule (7) category D annual financial statement board approval and certification exemption	Subsection 3.3(1) Financial Statements certification exemption but no board approval exemption

Policy 7.1 Rule

Proposed Rule 72-502

7.1 - Rule (8) category D annual and interim financial statement contemporaneous filing and delivery exemption	Subsection 3.3(1) Financial Statements
7.1 - Rule (9) reporting issuer financial statement delivery "corresponding requirement"	Amendments to Rule 52-501
7.1 - Rule (10) reporting issuer exemption from sending financial statements to holders of other than voting securities and restricted shares	Subsection 3.3(1) Financial Statements Subsection 4.3(1) Financial Statements Amendments to Rule 52-501
7.1 - Rule (11) reporting issuer annual filing exemption	Section 3.9 Exemption from Annual Filing Section 4.8 Exemption from Annual Filing
7.1 - Rule (12) category D insider reporting exemption	Section 3.11 Insider Reporting
7.1 - Addendum Rule (1) category D U.S. issuer section 1(4) Regulation exemption	Section 3.3(2) relief not retained
7.1 - Addendum Rule (2) category D interim financial statement delivery exemption	Section 3.3(1) Financial Statements requirement to send interim statements to security holders within 60 days not retained
Policy 7.1 F category D proxy statements	Section 3.5 Proxy Solicitation by the Issuer

¹ The non-SEC issuer definition is broader than category E reporting issuer in that it covers foreign issuers that became a reporting issuer by filing a prospectus, filing a securities exchange take-over bid circular before December 14, 1999 or listing on the TSE rather than just foreign issuers with securities listed on the TSE. Further, the non-SEC issuer *de minimis* test is no more than 10 percent of equity securities held by residents of Canada while the category E reporting issuer test is no more than five percent of the registered holders of the class of securities listed on the TSE are residents of Canada and the number of registered Canadian holders does not exceed 300. However, the exemptive relief granted to non-SEC issuers is narrower in that the Category E reporting issuer exemptions are not conditioned upon an issuer being subject to disclosure requirements of a designated foreign jurisdiction. Subsection 5.1(3) of the Rule extends the exemptive relief granted to Category E reporting issuers to July 1, 2004 and expands the scope of the relief.

ONTARIO SECURITIES COMMISSION RULE 72-502 CONTINUOUS DISCLOSURE AND OTHER EXEMPTIONS RELATING TO FOREIGN ISSUERS

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	1.2 Interpretation
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**ONTARIO SECURITIES COMMISSION RULE 72-502
CONTINUOUS DISCLOSURE AND OTHER EXEMPTIONS
RELATING TO FOREIGN ISSUERS^{1 2}**

¹ This proposed Rule would replace OSC Policy No. 7.1, an order of the Commission (1980) OSCB 54, the Rule *In the Matter of Certain Reporting Issuers*, (1980) OSCB 166, the Rule *In the Matter of Certain Reporting Issuers*, (1984), 7 OSCB 1913 and the Rule *In the Matter of Certain Reporting Issuers*, (1984), 7 OSCB 3247. Each of these rules came into force on March 1, 1997 and notice was provided at (1997), 20 OSCB 1186. These rules incorporate by reference Blanket Rulings of the same name. The expiration date of the rules was extended and notice published at (1998), 21 OSCB 6436 and (1999), 22 OSCB 6304. As published in a notice at (2000), 23 OSCB 289, the expiration date of the rules was further extended to July 1, 2002. The rules were amended in 2000 and notice published in (2000) 23 OSCB 8244. It is proposed that OSC Policy 7.1, the 1980 order and the 1997 rules, as amended, be rescinded on the effective date of the proposed Rule. The title of the proposed Rule has been changed to be more descriptive of the relief provided by the Rule. The Blanket Order *In the Matter of Certain Reporting Issuers* (1985), 8 OSCB 2915 which related to prompt offering qualification system eligible issuers expired on December 31, 2000. The relief granted by paragraph (9) of *In the Matter of Parts XVII and XX of the Securities Act* and *In the Matter of Certain Reporting Issuers* (1980) OSCB 54 from section 79 of the Act with respect to financial statements required to be distributed to security holders under the laws of the jurisdiction of incorporation, continuance or organization of the issuer is proposed to be retained by amending Rule 52-501 to provide for that relief. The relief granted by paragraph (10) of that order from the obligation to send financial statements to the holders of securities other than voting securities and restricted shares is also proposed to be retained by amending Rule 52-501. It is proposed that section 6 of the Regulation be amended to delete all of that section other than paragraph 6(1)(a) and replace it by Rule 51-503 Supplementary SEC Filings that requires domestic reporting issuers to file a document filed or furnished to the SEC under the 1933 Act or 1934 Act if the document contains information that has not been included in a document filed under another requirement of securities legislation. It is proposed that OSC Policy 51-603 Reciprocal Filings be rescinded. OSC Policy 51-603 states that all reporting issuers that are subject to SEC filing requirements shall file

PART 1 DEFINITIONS AND INTERPRETATION³

1.1 Definitions - In this Rule

"category E reporting issuer" means a reporting issuer

- (a) that is not incorporated, continued or organized under the laws of Canada or a province or territory of Canada,
- (b) that is not a SEC issuer or non-SEC issuer,
- (c) that became a reporting issuer solely by listing securities on the TSE before July 1, 2002,
- (d) of which the total number of securities of the class listed on the TSE registered in the names of residents of Canada does not exceed five percent of the total number of issued and outstanding securities of the class, and
- (e) of which the total number of holders of securities of the class listed on the TSE registered in the names of residents of Canada does not exceed 300;

"convertible security" means a security of an issuer that is convertible into, or carries the right of the holder to purchase or otherwise acquire, or of the issuer to cause the purchase or acquisition of, a security of the same issuer;

"designated foreign jurisdiction" means a foreign jurisdiction designated by the Commission under subsection 2.1(1) or (2) if the Commission has not revoked the designation under subsection 2.1(3);⁴

"exchangeable security" means a security of an issuer that is exchangeable for, or carries the right of the holder to purchase or otherwise acquire, or of the issuer to cause the purchase or acquisition of, a security of another issuer;

"early warning provisions" means

- (a) the requirements to issue and file news releases under subsections 101(1) and (2) of the Act,
- (b) the requirements to file reports under subsections 101(1) and (2) of the Act,
- (c) the moratorium provisions of subsection 101(3) of the Act, and
- (d) the requirements of NI 62-103;

"foreign disclosure requirements" means the requirements to which a foreign issuer is subject concerning disclosure made to a foreign regulatory authority

- (a) relating to the foreign issuer and its securities, and

certain documents concurrently with the filing of the documents with the SEC.

² It will be necessary for foreign issuers that have existing exemptions from continuous disclosure and other requirements under Commission rulings to review the requirements to which they are subject in light of the reformulation process. Some exemptions may continue to be valid. However, the requirements to which the issuers are subject may have changed with the reformulation process.

³ A general definition rule has been adopted as Rule 14-501 Definitions. It contains definitions of certain terms used in more than one rule. That rule also provides, among other things, that terms used in a rule and defined in section 1 of the Securities Act or subsection 1(2) of the Regulation will have the respective meanings given to them in the Securities Act or Regulation. Rule 14-501 also incorporates terms defined in National Instrument 14-101 Definitions and contains, among other things, definitions for terms used in more than one national or multilateral instrument.

⁴ The term "foreign jurisdiction" is defined in National Instrument 14-101 Definitions as "means a country other than Canada or a political subdivision of a country other than Canada".

- (b) that is made publicly available in the foreign jurisdiction under
 - (i) the securities laws of the foreign jurisdiction in which the principal trading market of the foreign issuer is located, or
 - (ii) the rules of the exchange or other market that is the principal trading market of the foreign issuer;

"foreign issuer" means an issuer that is not incorporated or organized under the laws of Canada or a jurisdiction,⁵ unless

- (a) outstanding voting securities carrying more than 50 percent of the votes for the election of directors are owned of record directly or indirectly by residents of Canada, and
- (b) any one or more of
 - (i) the majority of the senior officers or directors of the issuer are residents of Canada,
 - (ii) more than 50 percent of the assets of the issuer are located in Canada, or
 - (iii) the business of the issuer is administered principally in Canada;

"foreign regulatory authority" means a securities commission, stock exchange or other securities market regulatory authority in a designated foreign jurisdiction;

"multiple convertible security" means a security of an issuer that is convertible into, or exchangeable for, or carries the right of the holder to purchase or otherwise acquire, or of the issuer to cause the purchase or acquisition of, a convertible security, an exchangeable security or another multiple convertible security;

"Nasdaq" means Nasdaq National Market and Nasdaq SmallCap Market;

"NI 43-101" means National Instrument 43-101 Standards of Disclosure for Mineral Projects;

"NI 52-101" means National Instrument 52-101 Future-Oriented Financial Information;

"NI 52-102" means National Instrument 52-102 Use of Currencies;

"NI 52-103" means National Instrument 52-103 Change of Auditor;

"NI 52-104" means National Instrument 52-104 Auditor's Report;

"NI 52-105" means National Instrument 52-105 Change in the Ending Date of a Financial Year;

"NI 62-102" means National Instrument 62-102 Disclosure of Outstanding Share Data;

"NI 62-103" means National Instrument 62-103 The Early Warning System and Related Take-Over Bid and Insider Reporting Issues;

"non-SEC issuer" means a foreign issuer

- (a) that does not have a class of securities registered under section 12 of the 1934 Act and is not required to file reports with the SEC under subsection 15(d) of the 1934 Act,⁶
- (b) that is not a mutual fund or other investment company,
- (c) that is subject to the foreign disclosure requirements of a foreign regulatory authority, and

⁵ The term "jurisdiction" is defined in National Instrument 14-101 Definitions as "means a province or territory of Canada except when used in the term foreign jurisdiction".

⁶ The term "1934 Act" is defined in National Instrument 14-101 as "means the *Securities Exchange Act of 1934* of the United States of America, as amended from time to time".

- (d) as at the beginning of the financial year of the issuer, the total number of whose equity securities owned of record directly or indirectly by residents of Canada does not exceed 10 percent of the total number of equity securities of the issuer;

"NP 41" means the rule entitled In the Matter of Certain Reporting Issuers that incorporates by reference National Policy Statement No. 41 Shareholder Communication;

"principal trading market" means the published securities market on which the greatest volume of trading in the equity securities of the issuer occurred during the financial year that ended before the date the determination is being made;

"restricted shares" has the meaning ascribed to that term in Rule 56-501;

"Rule 52-501" means Rule 52-501 Financial Statements;

"Rule 54-501" means Rule 54-501 Prospectus Disclosure in Certain Information Circulars;

"Rule 56-501" means Rule 56-501 Restricted Shares;

"Rule 61-501" means Rule 61-501 Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions;

"SEC issuer" means a foreign issuer that

- (a) has a class of securities registered under section 12⁷ of the 1934 Act or is required to file reports with the SEC under subsection 15(d) of the 1934 Act,⁸ and
- (b) is not registered or required to be registered as an investment company under the Investment Company Act of 1940 of the United States of America;

"SEDI issuer" has the meaning ascribed to that term in National Instrument 55-102 System for Electronic Disclosure by Insiders (SEDI);

"TSE" means The Toronto Stock Exchange Inc.; and

"underlying security" means a security issued or transferred, or to be issued or transferred, in accordance with the terms of a convertible security, an exchangeable security or a multiple convertible security.

1.2 Interpretation - For the purposes of paragraph (d) of the definition of non-SEC issuer

- (a) the calculation for the foreign issuer's first year as a reporting issuer shall be made at the date the foreign issuer becomes a reporting issuer rather than as at the beginning of the financial year of the issuer; and
- (b) in determining the percentage of equity securities owned of record directly or indirectly by residents of Canada include
- (i) underlying securities that are equity securities of the foreign issuer, and

⁷ The SEC has a separate disclosure regime that applies to foreign private issuers, which does not require the filing of all the continuous disclosure and other materials required of U.S. domestic issuers. Consequently, non-U.S. SEC issuers may not file the U.S. domestic form of documents under this Rule because they are not required to be filed in that form with the SEC. For example, a U.K. issuer that is an SEC registrant would not be required to file with the Commission the proxy statement required by U.K. law and, if applicable, stock exchange rules because the issuer is not required to file the proxy statements with the SEC.

⁸ National Instrument 71-101 The Multijurisdictional Disclosure System ("NI 71-101") also provides the same or broader relief from certain requirements as provided by this Rule for certain United States incorporated foreign issuers. U.S. incorporated SEC issuers have been included in this Rule to clarify the application of certain requirements such as NI 43-101, to grant additional relief not granted by NI 71-101, such as from the disclosure of outstanding share data and early warning provisions and to create a cohesive continuous disclosure regime for foreign issuers.

- (ii) equity securities of the foreign issuer represented by an American depositary receipt or an American depositary share issued by a depositary holding equity securities of the foreign issuer.

PART 2 GENERAL

2.1 Designation of Foreign Jurisdictions

- (1) The Commission designates Australia, France, Germany, Hong Kong, Italy, Japan, Mexico, The Netherlands, New Zealand, Singapore, South Africa, Spain, Sweden, Switzerland and the United Kingdom as designated foreign jurisdictions.
- (2) The Commission may designate additional foreign jurisdictions the continuous disclosure, AIF and MD&A, proxy and proxy solicitation, early warning, insider reporting requirements, communication with beneficial owners of securities, issuer bid, insider bid, going private transaction and related party transaction requirements of which the Commission considers are adequate in light of the purposes and principles of the Act.
- (3) The Commission may revoke the designation of a designated foreign jurisdiction if it considers that the continuous disclosure, AIF and MD&A, proxy and proxy solicitation, early warning, insider reporting requirements, communication with beneficial owners of securities, issuer bid, insider bid, going private transaction and related party transaction requirements of the foreign jurisdiction are not adequate in light of the purposes and principles of the Act.

2.2 Timing of Filing - A person or company filing a document in accordance with this Rule shall file the document contemporaneously with or as soon as practicable after the filing or furnishing of the document to the SEC or foreign regulatory authority.

2.3 Language of Filing

- (1) A document filed in accordance with this Rule shall be in the English language.
- (2) Despite subsection (1), if the document filed in accordance with this Rule was translated from a document in a language other than English, the person or company required to file the document shall file the document upon which the translation was based.
- (3) A SEC issuer or non-SEC issuer filing a document upon which the translation was based under subsection (2) shall deliver to the Commission a certificate of translation from a lawyer, accountant or other translator.

PART 3 SEC ISSUERS

3.1 News Releases - A SEC issuer is exempt from subsection 75(1) of the Act if the issuer

- (a) complies with the requirements of the U.S. exchange on which its securities are listed or Nasdaq, as applicable, for making public disclosure of material information on a timely basis, if securities of the issuer are listed on a U.S. exchange or quoted on Nasdaq;
- (b) complies with foreign disclosure requirements for making public disclosure of material information on a timely basis, if securities of the issuer are not listed on a U.S. exchange or quoted on Nasdaq; and
- (c) issues in Canada and files each news release issued for the purpose of complying with the requirements referred to in paragraph (a) or (b).⁹

3.2 Material Change Reports - A SEC issuer is exempt from subsection 75(2) of the Act if the issuer

⁹ The news release disclosure requirements under the requirements of the U.S. exchanges or Nasdaq are generally broader than the requirements under the Act to disclose "material changes".

- (a) complies with the requirements of U.S. federal securities law¹⁰ for filing or furnishing current reports to the SEC; and
- (b) files the current report filed with or furnished to the SEC.

3.3 Financial Statements

- (1) A SEC issuer satisfies the requirements of securities legislation relating to the preparation, filing and sending of interim financial statements and relating to the preparation, certification, filing and sending of annual financial statements and auditor's reports on annual financial statements by¹¹
 - (a) complying with the requirements of U.S. federal securities law relating to quarterly reports and annual reports;
 - (b) complying with the requirements of the U.S. exchange on which securities of the issuer are listed or Nasdaq relating to annual financial statements and interim financial statements, if securities of the issuer are listed on a U.S. exchange or quoted on Nasdaq;
 - (c) filing each quarterly report and annual report filed with or furnished to the SEC, a U.S. exchange or Nasdaq; and
 - (d) sending to each holder of voting securities or of restricted shares whose last address as shown on the books of the SEC issuer is in Ontario, or disseminating in Ontario selected financial information from, each financial statement required to be filed under paragraph (c), in the manner and at the time required to be sent to security holders or disseminated under U.S. federal securities law and the requirements of the U.S. exchange on which securities of the issuer are listed or Nasdaq.
- (2) Despite subsection 3.3(1), subsection 1(4) of the Regulation applies to financial statements filed in accordance with subsection 3.3(1).¹²

3.4 AIFs and MD&A - A SEC issuer satisfies the requirements of securities legislation to file an AIF¹³ and MD&A¹⁴ by

- (a) complying with the requirements of U.S. federal securities law relating to annual reports, quarterly reports and management's discussion and analysis;
- (b) filing each annual report, quarterly report and management's discussion and analysis filed with or furnished to the SEC; and
- (c) sending each annual report, quarterly report and management's discussion and analysis to each holder of voting securities and of restricted shares whose last address as shown on the books of the SEC issuer is

¹⁰ The term "U.S. federal securities law" is defined in National Instrument 14-101 as "means the federal statutes of the United States of America concerning the regulation of securities markets and trading in securities and the regulations, rules, forms and schedules under those statutes, all as amended from time to time".

¹¹ Under U.S. federal securities law foreign private issuers are only required to file annual financial statements after they are filed or required to be filed with their home jurisdiction, provided it is within six months of the fiscal year end. The relief provided addresses the fact that issuers will not normally change the timing of their annual audit to meet foreign requirements.

¹² Subsection 1(4) of the Regulation permits foreign issuers to present financial statements in accordance with generally accepted accounting principles in their home country, if the notes to the financial statements state which option has been applied in the choice of generally accepted accounting principles.

¹³ The term "AIF" is defined in Rule 14-501 as "means an annual information form filed under Ontario securities law".

¹⁴ The term "MD&A" is defined in Rule 14-501 as "means management's discussion and analysis of financial condition and results of operations prepared in accordance with Ontario securities law". The term "annual MD&A" is defined in Rule 51-501 AIF and MD&A as "means, for an issuer, a MD&A for the annual financial statements of the issuer". The term "interim MD&A" is defined in Rule 51-501 as "means, for an issuer, a MD&A for the interim financial statements of the issuer".

in Ontario in the manner and at the time required by U.S. federal securities law.¹⁵

- 3.5 Proxy Solicitation by the Issuer** - A SEC issuer that has a class of securities registered under section 12 of the 1934 Act satisfies the requirements of securities legislation relating to information circulars, proxies and proxy solicitation by
- (a) complying with the requirements of U.S. federal securities law relating to proxy statements, proxies and proxy solicitation;
 - (b) filing all documents relating to the meeting that are filed with or furnished to the SEC; and
 - (c) sending each document required to be filed under paragraph (b) to each security holder whose last address as shown on the books of the SEC issuer is in Ontario in the manner and at the time required by U.S. federal securities law and the requirements of the U.S. exchange on which securities of the issuer are listed or Nasdaq.
- 3.6 Proxy Solicitation by Another Person or Company** - A person or company, other than the issuer, that solicits proxies with respect to a SEC issuer that has a class of securities registered under section 12 of the 1934 Act satisfies the requirements of securities legislation relating to information circulars, proxies and proxy solicitation by fulfilling the requirements of paragraphs 3.5(a), (b) and (c).
- 3.7 Determination of Eligibility** - If a proxy solicitation is made under section 3.6 and the person or company soliciting proxies lacks access to the relevant list of security holders of the issuer, it will be conclusively presumed that paragraph (a) of the definition of foreign issuer is not satisfied, unless
- (a) the aggregate published trading volume of the class on the TSE, Bourse de Montréal Inc. and the Canadian Venture Exchange Inc. exceeded the aggregate published trading volume of the class on national securities exchanges in the United States of America and Nasdaq for the 12 calendar month period before commencement of the proxy solicitation or, if another proxy solicitation for securities of the same class is in progress, the 12 calendar month period before commencement of the first proxy solicitation already in progress;
 - (b) disclosure that paragraph (a) of the definition of foreign issuer was satisfied had been made by the issuer in its Form 10-K or Form 20-F most recently filed with the SEC; or
 - (c) the person or company soliciting proxies has actual knowledge that paragraph (a) of the definition of foreign issuer is satisfied.
- 3.8 Prospectus Disclosure in Certain Information Circulars** - Rule 54-501 does not apply to a person or company filing and sending documents in accordance with section 3.5 or 3.6.¹⁶
- 3.9 Exemption from Annual Filing** - Subsection 81(2) of the Act does not apply to a SEC issuer if the issuer complies with paragraphs 3.5(a), (b) and (c).
- 3.10 Disclosure of Outstanding Share Data and Early Warning**
- (1) A SEC issuer that has a class of securities registered under section 12 of the 1934 Act is exempt from NI 62-102 if the issuer
 - (a) complies with the requirements of U.S. federal securities law relating to disclosure of outstanding share data; and
 - (b) files each report disclosing outstanding share data that is filed with the SEC.

¹⁵ Each of National Instrument 44-101 Short Form Prospectus Distributions and Rule 51-501 AIF and MD&A permits issuers, both domestic and foreign, to file a Form 10-K or Form 20-F as an AIF. Rule 51-501 permits issuers to satisfy interim MD&A requirements by complying with the interim MD&A requirements of Form 10-Q under the 1934 Act. SEC foreign private issuers are not required to file interim MD&A. Therefore, generally, non-U.S. foreign issuers will not file interim MD&A under section 3.4 of this Rule.

¹⁶ Section 4.1 of Rule 71-801 Implementing the Multijurisdictional Disclosure System grants an exemption from Rule 54-501 for information circulars and dissident circulars relating to U.S. incorporated SEC issuers.

- (2) A person or company is exempt from the early warning provisions in respect of securities of a SEC issuer that has a class of securities registered under section 12 of the 1934 Act if the person or company
- (a) complies with the requirements of U.S. federal securities law relating to reporting of beneficial ownership of equity securities; and
 - (b) files each report of beneficial ownership that is filed with the SEC.
- 3.11 Insider Reporting** - The insider reporting requirements do not apply to an insider of a SEC issuer that has a class of securities registered under section 12 of the 1934 Act if
- (a) the SEC issuer is not a SEDI issuer;
 - (b) the insider complies with the requirements of U.S. federal securities law regarding insider reporting; and
 - (c) the insider files each insider report that is filed with the SEC.¹⁷
- 3.12 Communication with Beneficial Owners of Securities of a Reporting Issuer** - A SEC issuer satisfies the requirements of securities legislation relating to communications with, delivery of materials to and conferring voting rights upon non-registered holders of its securities who hold their interests in the securities through one or more intermediaries by
- (a) complying with the requirements of Rule 14a-13 under the 1934 Act for any depository and any intermediary whose last address as shown on the books of the issuer is in Canada; and
 - (b) complying with the requirements of NP 41 or any successor instrument to NP 41 with respect to fees payable to intermediaries, for any depository and any intermediary whose last address as shown on the books of the issuer is in Canada.
- 3.13 Standards of Disclosure for Mineral Projects** - Despite the provisions of this Part, NI 43-101 applies to a person or company filing a disclosure document in accordance with this Part.
- 3.14 Future-Oriented Financial Information** - A SEC issuer satisfies the requirements of NI 52-101 by complying with the requirements of U.S. federal securities law relating to future oriented financial information.
- 3.15 Use of Currencies** - A SEC issuer satisfies the requirements of NI 52-102 by complying with the requirements of U.S. federal securities law relating to the use of currencies.
- 3.16 Change of Auditor** - A SEC issuer satisfies the requirements of NI 52-103 by complying with the requirements of U.S. federal securities law relating to a change of auditor.
- 3.17 Auditor's Report** - A SEC issuer satisfies the requirements of NI 52-104 by complying with the requirements of U.S. federal securities law relating to the basis of accounting, auditing and reporting.
- 3.18 Change in the Ending Date of a Financial Year** - A SEC issuer satisfies the requirements of NI 52-105 by complying with the requirements of U.S. federal securities law relating to a change in the ending date of a financial year.
- 3.19 Restricted Shares**
- (1) Rule 56-501 does not apply in respect of a SEC issuer.
 - (2) Despite subsection (1)
 - (a) section 2.3, other than paragraph 2.3(1)6., of Rule 56-501 applies to
 - (i) a preliminary prospectus or prospectus filed by a SEC issuer, and

¹⁷ Insiders of foreign private issuers are exempt from filing insider reports under U.S. federal securities law. Section 3.11 consequently operates to grant an exemption for the filing of insider reports for insiders of non-U.S. foreign issuers.

- (ii) a securities exchange take-over bid circular filed by a SEC issuer, if the offeree issuer is not a SEC issuer or non-SEC issuer; and

(b) section 4.2 of Rule 56-501 applies in respect of a SEC issuer.

3.20 Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions - Rule 61-501 does not apply to

- (a) an insider bid or issuer bid for securities of a SEC issuer; or
- (b) a SEC issuer carrying out a going private transaction or related party transaction.

PART 4 NON-SEC ISSUERS

4.1 News Releases - A non-SEC issuer is exempt from subsection 75(1) of the Act if the issuer

- (a) complies with the foreign disclosure requirements for making public disclosure of material information on a timely basis; and
- (b) issues in Canada and files each news release issued for the purpose of complying with the requirements referred to in paragraph (a).¹⁸

4.2 Material Change Reports - A non-SEC issuer is exempt from subsection 75(2) of the Act if the issuer

- (a) complies with the foreign disclosure requirements relating to disclosure of material information relating to the issuer; and
- (b) files the documents disclosing the material information filed with or furnished to the foreign regulatory authority.

4.3 Financial Statements

- (1) A non-SEC issuer satisfies the requirements of securities legislation relating to the preparation, filing and sending of interim financial statements and relating to the preparation, certification, filing and sending of annual financial statements and auditor's reports on annual financial statements by
 - (a) complying with the foreign disclosure requirements relating to interim financial statements, annual financial statements and auditor's reports on annual financial statements;
 - (b) filing the interim financial statements, annual financial statements and auditor's reports on annual financial statements required to be filed with or furnished to the foreign regulatory authority; and
 - (c) sending to each holder of voting securities or of restricted shares whose last address as shown on the books of the non-SEC issuer is in Ontario, or disseminating in Ontario selected financial information from, each financial statement required to be filed under paragraph (b), in the manner and at the time required to be sent to security holders or disseminated under the foreign disclosure requirements.¹⁹
- (2) Despite subsection 4.3(1), subsection 1(4) of the Regulation applies to financial statements filed in accordance with subsection 4.3(1).

4.4 AIFs and MD&A - A non-SEC issuer satisfies the requirements of securities legislation to file an AIF, other than an AIF filed under National Instrument 44-101 Short Form Prospectus Distributions, and MD&A by

¹⁸ It may be that the news release disclosure requirements under the requirements of the stock exchanges or other market are broader than the requirements under the Act to disclose "material changes".

¹⁹ The effect of this Rule is that both SEC reporting issuers and non-SEC reporting issuers are exempt from the requirement to prepare interim financial statements to the extent that they are not required to do so under home jurisdiction requirements or stock exchange or Nasdaq rules.

- (a) complying with the foreign disclosure requirements relating to annual reports, quarterly reports and management's discussion and analysis;
- (b) filing each annual report, quarterly report and management's discussion and analysis required to be filed with the foreign regulatory authority; and
- (c) sending each annual report, quarterly report and management's discussion and analysis to each holder of voting securities and of restricted shares whose last address as shown on the books of the non-SEC issuer is in Ontario in the manner and at the time required by the foreign disclosure requirements.²⁰

4.5 Proxy Solicitation by the Issuer - A non-SEC issuer satisfies the requirements of securities legislation relating to information circulars, proxies and proxy solicitation by

- (a) complying with the foreign disclosure requirements relating to proxy statements, proxies and proxy solicitation;
- (b) filing all documents relating to the meeting that are filed with the foreign regulatory authority; and
- (c) sending each document required to be filed under paragraph (b) to each security holder whose last address as shown on the books of the non-SEC issuer is in Ontario in the manner and at the time required by the foreign disclosure requirements.

4.6 Proxy Solicitation by Another Person or Company - A person or company, other than the issuer, that solicits proxies with respect to a non-SEC issuer satisfies the requirements of securities legislation relating to information circulars, proxies and proxy solicitation by fulfilling the requirements of paragraphs 4.5(a), (b) and (c).

4.7 Determination of Eligibility - If a proxy solicitation is made under section 4.6 and the person or company soliciting proxies lacks access to the relevant list of security holders of the issuer, it will be conclusively presumed that paragraph (a) of the definition of foreign issuer is not satisfied, unless

- (a) the aggregate published trading volume of the class on the TSE, Bourse de Montréal Inc. and the Canadian Venture Exchange Inc. exceeded the aggregate published trading volume on securities markets outside Canada for the 12 calendar month before commencement of the proxy solicitation, or, if another proxy solicitation for securities of the same class is in progress, the 12 calendar month period before commencement of the first proxy solicitation already in progress;
- (b) disclosure that paragraph (a) of the definition of foreign issuer was satisfied had been made by the issuer in a document recently filed with the foreign regulatory authority; or
- (c) the person or company soliciting proxies has actual knowledge that paragraph (a) of the definition of foreign issuer is satisfied.

4.8 Prospectus Disclosure in Certain Information Circulars - Rule 54-501 does not apply to a person or company filing and sending documents in accordance with section 4.5 or 4.6.

4.9 Exemption from Annual Filing - Subsection 81(2) of the Act does not apply to a non-SEC issuer if the issuer complies with paragraphs 4.5(a), (b) and (c).

4.10 Disclosure of Outstanding Share Data and Early Warning

- (1) A non-SEC issuer is exempt from NI 62-102 if the issuer
 - (a) complies with the foreign disclosure requirements relating to disclosure of outstanding share data; and
 - (b) files each report disclosing outstanding share data that is filed with the foreign regulatory authority.
- (2) A person or company is exempt from the early warning provisions in respect of securities of a non-SEC issuer if the person or company

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This provision is consistent with National Instrument 71-101 but has been extended to foreign issuers that are not SEC registrants.

- (a) complies with the foreign disclosure requirements relating to reporting of beneficial ownership of equity securities; and
 - (b) files each report of beneficial ownership that is filed with the foreign regulatory authority.
- 4.11 Insider Reporting** - The insider reporting requirements do not apply to an insider of a non-SEC issuer if
 - (a) the non-SEC issuer is not a SEDI issuer;
 - (b) the insider complies with the foreign disclosure requirements regarding insider reporting; and
 - (c) the insider files each insider report that is filed with the foreign regulatory authority.
- 4.12 Communication with Beneficial Owners of Securities of a Reporting Issuer** - A non-SEC issuer satisfies the requirements of securities legislation relating to communications with, delivery of materials to and conferring voting rights upon non-registered holders of its securities who hold their interests in the securities through one or more intermediaries by
 - (a) complying with foreign disclosure requirements regarding communication with beneficial owners of securities; and
 - (b) complying with the requirements of NP 41 or any successor instrument to NP 41 with respect to fees payable to intermediaries, for any depositary and any intermediary whose last address as shown on the books of the issuer is in Canada.
- 4.13 Standards of Disclosure for Mineral Projects** - Despite the provisions of this Part, NI 43-101 applies to a person or company filing a disclosure document in accordance with this Part.
- 4.14 Future-Oriented Financial Information** - A non-SEC issuer satisfies the requirements of NI 52-101 by complying with the foreign disclosure requirements relating to future-oriented financial information.
- 4.15 Use of Currencies** - A non-SEC issuer satisfies the requirements of NI 52-102 by complying with the foreign disclosure requirements relating to the use of currencies.
- 4.16 Change of Auditor** - A non-SEC issuer satisfies the requirements of NI 52-103 by complying with the foreign disclosure requirements relating to a change of auditor.
- 4.17 Auditor's Report** - A non-SEC issuer satisfies the requirements of NI 52-104 by complying with the foreign disclosure requirements relating to the basis of accounting, auditing and reporting.
- 4.18 Change in the Ending Date of a Financial Year** - A non-SEC issuer satisfies the requirements of NI 52-105 by complying with the foreign disclosure requirements relating to a change in the ending date of a financial year.
- 4.19 Restricted Shares**
 - (1) Rule 56-501 does not apply in respect of a non-SEC issuer.
 - (2) Despite subsection (1)
 - (a) section 2.3, other than paragraph 2.3(1)6., of Rule 56-501 applies to
 - (i) a preliminary prospectus or prospectus filed by a non-SEC issuer, and
 - (ii) a securities exchange take-over bid circular filed by a non-SEC issuer, if the offeree issuer is not a SEC issuer or non-SEC issuer; and
 - (b) section 4.2 of Rule 56-501 applies in respect of a non-SEC issuer.
- 4.20 Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions** - Rule 61-501 does not apply to
 - (a) an insider bid or issuer bid for securities of a non-SEC issuer; or

- (b) a non-SEC issuer carrying out a going private transaction or related party transaction.

PART 5 TRANSITION

5.1 Transition

- (1) Despite subsection 3.3(2), subsection 1(4) of the Regulation does not apply to interim financial statements filed by a SEC issuer in accordance with subsection 3.3(1) before the first time the SEC issuer files annual financial statements after the effective date of this Rule.
- (2) Despite subsection 4.3(2), subsection 1(4) of the Regulation does not apply to interim financial statements filed by a non-SEC issuer in accordance with subsection 4.3(1) before the first time the non-SEC issuer files annual financial statements after the effective date of this Rule.
- (3) From July 1, 2002 until July 1, 2004 a category E reporting issuer is exempt from
 - (a) Rule 51-501 AIF and MD&A;
 - (b) section 2.1 of Rule 52-501 if the annual financial statements are
 - (i) prepared in compliance with the laws of the foreign jurisdiction of incorporation, continuance, organization of the issuer, and
 - (ii) filed not later than the earlier of
 - A. 24 hours after they are filed with any other governmental agency, and
 - B. 140 days after the end of the financial year; and
 - (c) section 2.2 of Rule 52-501 and the requirement to prepare and file interim financial statements for periods for which interim financial statements are not required to be prepared under the laws of the foreign jurisdiction of incorporation, continuance or organization of the issuer, if the issuer
 - (i) is not required by the laws of the foreign jurisdiction to prepare statements for the periods referred to in section 77 of the Act, and
 - (ii) files the financial statements filed with the TSE.

PART 6 EXEMPTION

- 6.1 Exemption** - The Director may grant an exemption to this Rule, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

PART 7 EFFECTIVE DATE

- 7.1 Effective Date** - This Rule comes into force on July 1, 2002.

ONTARIO SECURITIES COMMISSION COMPANION POLICY 72-502CP

CONTINUOUS DISCLOSURE AND OTHER EXEMPTIONS RELATING TO FOREIGN ISSUERS

PART 1 GENERAL

1.1 Application and Purpose

- (1) Rule 72-502 Continuous Disclosure and Other Exemptions relating to Foreign Issuers (the "Rule") provides that certain persons and companies satisfy the requirements of securities legislation in Ontario relating to news releases, material change reports, financial statements, AIFs and MD&A, proxy solicitation, early warning, insider reporting and communication with beneficial owners of securities with respect to a foreign issuer by complying with corresponding requirements of the securities laws of a specified foreign

jurisdiction, subject to certain limitations. Certain foreign issuers are also exempt from the requirements of Rule 54-501 Prospectus Disclosure in Certain Information Circulars ("Rule 54-501"), Rule 56-501 Restricted Shares ("Rule 56-501"), Rule 61-501 Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions ("Rule 61-501") and certain financial disclosure and other requirements. No exemption is granted from the requirements of National Instrument 43-101 Standards of Disclosure for Mineral Projects ("NI 43-101").

- (2) In most circumstances, the exemptive relief granted does not extend to disclosure in prospectuses, take-over bid circulars or issuer bid circulars or to the conduct of a bid or other transaction. However, several of the financial disclosure exemptions extend to disclosure in prospectuses, bid circulars and other documents and a broad exemption from Rule 61-501 is granted to certain foreign issuers. Similarly, an exemption is granted from Rule 56-501.
- (3) The purpose of the Rule is to reduce unnecessary and duplicative regulation for foreign issuers while at the same time providing Ontario investors with adequate disclosure on which to base investment decisions. The Rule may facilitate listings on the TSE and Ontario public offerings by foreign issuers.
- (4) The Rule categorizes a foreign issuer as a SEC issuer or a non-SEC issuer. A SEC issuer is a foreign issuer that (a) has a class of securities registered under section 12 of the 1934 Act or is required to file reports with the SEC under subsection 15(d) of the 1934 Act, and (b) is not registered or required to be registered as an investment company under the Investment Company Act of 1940 of the United States of America. A non-SEC issuer is a foreign issuer
 - (a) that does not have securities registered under section 12 of the 1934 Act and is not required to file reports with the SEC under subsection 15(d) of the 1934 Act,
 - (b) that is not a mutual fund or other investment company,
 - (c) that is subject to the foreign disclosure requirements of a foreign regulatory authority in a designated foreign jurisdiction, and
 - (d) not more than 10 per cent of the equity securities of which on a fully diluted basis are owned by Canadian residents.

The Commission has initially designated Australia, France, Germany, Hong Kong, Italy, Japan, Mexico, The Netherlands, New Zealand, Singapore, South Africa, Spain, Sweden, Switzerland and the United Kingdom as designated foreign jurisdictions. The Commission considers that the continuous disclosure, AIF and MD&A, proxy and proxy solicitation, early warning, insider reporting requirements, communication with beneficial owners of securities, issuer bid, insider bid, going private transaction and related party transaction requirements of these jurisdictions are adequate in light of the purposes and principles of the Act.

There is no *de minimis* threshold for ownership by Canadian residents of equity securities of SEC issuers. This is consistent with the recognition of U.S. federal securities law reflected in National Instrument 71-101 The Multijurisdictional Disclosure System ("NI 71-101"). The Commission has determined that recognition of principal trading market securities regulation of non-SEC issuers is consistent with principles of international comity and that the 10 percent *de minimis* threshold for ownership by Canadian residents of equity securities is appropriate. Canadian market capitalization represents approximately three per cent of market capitalization worldwide.

- (5) The definition of foreign issuer is based upon the definition of foreign private issuer in Rule 405 of the 1933 Act and Rule 3b-4 of the 1934 Act. For the purposes of the definition of "foreign issuer", it is the Commission's view that, in determining the outstanding voting securities that are directly or indirectly owned of record by residents of Canada, an issuer should use reasonable efforts to
 - (a) determine securities held of record by a broker, dealer, bank, trust company or nominee for any of them for the accounts of customers resident in Canada,
 - (b) count securities beneficially owned by residents of Canada as reported on reports of beneficial ownership, and
 - (c) assume that a customer is a resident of the jurisdiction or foreign jurisdiction in which the nominee has its principal place of business if, after reasonable inquiry, information regarding the jurisdiction or

foreign jurisdiction of residence of the customer is unavailable.

The determination of the percentage of the equity securities of the foreign issuer owned of record by residents of Canada for the purposes of paragraph (d) of the definition of non-SEC issuer should be made in the same manner. Section 1.2 of the Rule also provides interpretation regarding the definition of non-SEC issuer.

1.2 Multijurisdictional Disclosure System

- (1) NI 71-101 provides the same or broader relief from certain requirements as provided by the Rule for certain United States incorporated foreign issuers. U.S. incorporated SEC issuers have been included in the Rule to clarify the application of certain requirements such as NI 43-101, to grant additional relief not granted by NI 71-101, such as from the disclosure of outstanding share data and early warning provisions and to create a cohesive continuous disclosure regime for foreign issuers.
- (2) An eligible U.S. issuer may choose to use an exemption in the Rule or NI 71-101 and Rule 71-801, the Implementing Rule for National Instrument 71-101 The Multijurisdictional Disclosure System. For example, section 17.1 of NI 71-101 grants an exemption from the insider reporting requirements to an insider of a U.S. issuer that has securities registered under section 12 of the 1934 Act if the insider complies with the requirements of U.S. federal securities law regarding insider reporting and files with the SEC any insider report required to be filed with the SEC. This relief goes beyond the exemption provided by section 3.11 of the Rule which is not available to insiders of a SEDI issuer as defined in National Instrument 55-102 System for Electronic Disclosure by Insiders (SEDI) and requires that the insider of the SEC issuer file with the Commission the insider report filed with the SEC.
- (3) Section 3.19 of the Rule grants a SEC issuer filing a preliminary prospectus or prospectus an exemption from the requirements of Rule 56-501 other than paragraphs 2.3(1)1. to 5., inclusive. If a SEC issuer files a prospectus in accordance with NI 71-101, this carve-out from the relief granted by the Rule is inapplicable as subsection 1.2(3) of Rule 56-501 provides that the issuer is not subject to section 2.3 of Rule 56-501.

PART 2 STATEMENT OF POLICIES

2.1 Timely Disclosure - The news release disclosure requirements of the U.S. exchanges and Nasdaq, like those of the Canadian exchanges, are frequently broader than the requirements under the Act to disclose "material changes". Subsection 75(1) only needs to be complied with if a material change as defined in the Act occurs. A SEC issuer is exempt from subsection 75(1) of the Act if the issuer issues in Canada and files with the Commission each news release issued under foreign requirements to make public disclosure of material information on a timely basis whether or not the material information constitutes a material change.

2.2 Interim Financial Statements

- (1) Section 3.3 of the Rule states that a SEC issuer satisfies the requirements of securities legislation relating to the preparation, filing and sending of interim financial statements by complying with the comparable requirements of U.S. federal securities law. Section 4.3 grants a comparable exemption to non-SEC issuers.
- (2) Sections 3.3 and 4.3 of the Rule thereby grant eligible foreign issuers an exemption from the requirements of sections 77 and 79 of the Act and section 2.2 of Rule 52-501 Financial Statements ("Rule 52-501") regarding interim financial statements.
- (3) Certain foreign issuers are required to file quarterly reports with the SEC but are under no SEC obligation to deliver quarterly financial statements to security holders. The Rule relieves these issuers from the requirement to deliver quarterly reports filed under section 77 of the Act if there is no obligation under U.S. federal securities law or exchange or Nasdaq requirements to deliver the quarterly report.

2.3 Annual Financial Statements

- (1) Section 3.3 of the Rule states that a SEC issuer satisfies the requirements of securities legislation relating to the preparation, certification, filing and sending of annual financial statements and auditor's reports on annual financial statements by complying with the comparable requirements of U.S. federal securities law. Section 4.3 grants a comparable exemption to non-SEC issuers.

- (2) Sections 3.3 and 4.3 of the Rule thereby grant eligible foreign issuers an exemption from the requirements of sections 78 and 79 of the Act and section 2.1 of Rule 52-501 regarding annual financial statements.
- (3) Section 2.1(4) of Rule 52-501 mandates approval by the board of directors of an issuer for annual financial statements filed with the Commission. The Rule does not grant an exemption from that requirement. The signature requirements of section 2.1(4) of Rule 52-501 relate only to the filed copies of the financial statements. Sections 3.3 and 4.3 of the Rule provide that a foreign issuer is not required to certify its financial statements filed under section 78 of the Act. Section 79 of the Act does not require that the signatures also appear on copies distributed to security holders, although the laws of another jurisdiction or foreign jurisdiction may impose such a requirement.

2.4 Generally Accepted Accounting Principles "GAAP"

- (1) There is no requirement to reconcile annual and interim financial statements in documents filed in accordance with the Rule to Canadian GAAP.
- (2) Subsections 3.3(2) and 4.3(2) of the Rule provide that the requirement in subsection 1(4) of the Regulation to state in the notes to the financial statements which option has been applied in the choice of generally accepted accounting principles applies to financial statements filed in accordance with the Rule. Section 5.1 of the Rule provides that, despite subsections 3.3(2) and 4.3(2), subsection 1(4) of the Regulation does not apply to interim financial statements filed before the filing of the first annual financial statements after the effective date of the Rule.

2.5 AIF and MD&A

- (1) Rule 51-501 AIF and MD&A ("Rule 51-501") requires all reporting issuers to file an AIF in the form of Form 44-101F1. That form includes MD&A disclosure. Part 4 of Rule 51-501 also requires interim MD&A.
- (2) Sections 3.4 and 4.4 of the Rule grant an exemption from Rule 51-501 for eligible foreign issuers if certain conditions are met.

2.6 Information Circulars or Annual Filings

- (1) Section 3.5 of the Rule provides that a SEC issuer that has a class of securities registered under section 12 of the 1934 Act satisfies the requirements of securities legislation relating to information circulars, proxies and proxy solicitation by complying with the comparable requirements of U.S. federal securities law. A similar exemption exists for non-SEC issuers in section 4.5.
- (2) Sections 3.8 and 4.8 of the Rule grant an exemption to a SEC issuer that has a class of securities registered under section 12 of the 1934 Act and non-SEC issuer, respectively, from Rule 54-501 that requires prospectus disclosure in information circulars sent to holders of voting securities in respect of a meeting (a) for which proxies are being solicited; and (b) that is being held to consider a statutory amalgamation, statutory arrangement, statutory merger or reorganization involving the reporting issuer and another issuer, under which securities are to be distributed to security holders of the reporting issuer.

As a result, prospectus disclosure in the form required under securities legislation is not required in these circulars filed by an eligible foreign issuer. Further, financial statements included or incorporated by reference in an information circular or dissident circular sent to holders of voting securities of a SEC issuer that has a class of securities registered under section 12 of the 1934 Act or non-SEC issuer are not required to be reconciled to Canadian GAAP.

If a meeting is being held to consider a statutory amalgamation, statutory arrangement, statutory merger or reorganization involving a SEC issuer or non-SEC issuer that is not a reporting issuer and a domestic reporting issuer, the proxy solicitation exemption under the Rule is inapplicable. The SEC issuer or non-SEC issuer is not subject to a requirement to file an information circular. The domestic reporting issuer could apply to the Director of the Commission under Rule 54-501 for relief from the requirement to include in its information circular prospectus disclosure regarding the SEC issuer or non-SEC issuer in the form required by securities legislation.

- (3) The annual report requirement under subsection 81(2) of the Act applies to all reporting issuers other than those required to send an information circular under clause 86(1)(a) of the Act. Unless exempt from such requirement by an order under section 80 of the Act, the Commission is of the view that the annual report requirement applies to a reporting issuer that is not required to send an information circular to its security

holders because, for example, all outstanding voting securities of the issuer are held directly or indirectly by one person or company. An example of this would be a reporting issuer that is a wholly-owned subsidiary of another company and has outstanding debt securities held by the public.

The Commission is of the view that subsection 81(2) of the Act is applicable to issuers that are subject to clause 86(1)(a) of the Act but do not comply with that clause. Sections 3.9 and 4.9 of the Rule grant an exemption to SEC issuers and non-SEC issuers, respectively, from the requirement to file an annual report under subsection 81(2) of the Act if the issuer complies with paragraphs 3.5(a), (b) and (c) or 4.5(a), (b) and (c) of the Rule, respectively.

2.7 Disclosure of Outstanding Share Data and Early Warning - Subsections 3.10(1) and 4.10(1) of the Rule grant an exemption from NI 62-102 Disclosure of Outstanding Share Data to a SEC issuer that has a class of securities registered under the 1934 Act and non-SEC issuer, respectively, if the issuer complies with foreign requirements relating to disclosure of outstanding share data and files with the Commission the foreign disclosure. Subsections 3.10(2) and 4.10(2) grant an exemption to a person or a company from the requirement to file early warning reports and the moratorium provisions under Part XX of the Act and from compliance with NI 62-103 relating to securities of a SEC issuer that has a class of securities registered under the 1934 Act or non-SEC issuer, respectively, if the person or company complies with foreign requirements relating to reporting of beneficial ownership of equity securities and files with the Commission the foreign form of report of beneficial ownership. For example, a person or company must file with the Commission the Schedule 13D filed with the SEC after acquiring the beneficial ownership of equity securities of a SEC issuer representing more than five percent of the class of equity securities and all other reports of beneficial ownership of equity securities filed with the SEC.

2.8 Insider Reports

(1) Sections 3.11 and 4.11 of the Rule grant an exemption to an insider of an eligible foreign issuer from the obligation to comply with the insider reporting requirements provided that the insider complies with requirements of U.S. federal securities law or foreign disclosure requirements, as applicable, regarding insider reporting and files each insider report that is filed with the SEC or the foreign regulatory authority, as applicable.

(2) Insiders of foreign issuers (SEDAR) that voluntarily file under National Instrument 13-101 System for Electronic Document Analysis and Retrieval (SEDAR) are required to file insider reports electronically under SEDI. However, under NI 71-101 an insider of an eligible U.S. issuer is exempt from the insider reporting requirements if the insider complies with U.S. federal securities law regarding insider reporting and files with the SEC any insider report required to be filed with the SEC. Consequently, insiders of NI 71-101 eligible issuers are also exempt from the requirement to file insider reports on SEDI. Insiders of a non-SEC issuer that voluntarily files under SEDAR are not eligible to file insider reports under section 4.11 of the Rule. Only insiders of a non-SEC issuer that does not file under SEDAR are eligible to file insider reports under section 4.11. They would file the foreign form of insider reports in paper form.

2.9 Financial Disclosure - Sections 3.14, 3.15, 3.16, 3.17, 3.18, 4.14, 4.15, 4.16, 4.17 and 4.18 of the Rule provide that SEC issuers and non-SEC issuers satisfy requirements of securities legislation relating to future oriented financial information, use of currencies, change of auditor, auditor's report and change in the ending date of a financial year by complying with comparable foreign requirements. These exemptions extend to disclosure in prospectuses, information circulars, bid circulars and other documents in addition to financial statements, annual information forms and MD&A.

2.10 Restricted Shares - Sections 3.19 and 4.19 of the Rule grant an exemption from Rule 56-501 in respect of a SEC issuer and non-SEC issuer, respectively. The exemptions from the requirements of Rule 56-501 extend to news releases, material change reports, financial statements, AIFs and MD&A, information circulars, rights offering circulars, certain bid circulars, offering memoranda and other documents. Section 2.3, other than paragraph 2.3(1)6., of Rule 56-501 continues to apply to a preliminary prospectus or prospectus filed by a SEC issuer or non-SEC issuer and to a securities exchange take-over bid circular filed by a SEC issuer or non-SEC issuer, if the offeree issuer is not a SEC issuer or non-SEC issuer.

2.11 Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions - Sections 3.20 and 4.20 of the Rule grant an exemption from Rule 61-501 in respect of SEC issuers and non-SEC issuers, respectively. The exemption applies to a SEC issuer or non-SEC issuer as an issuer carrying out a going private transaction or related party transaction. In a case where, for example, a SEC issuer proposes to take private an Ontario incorporated subsidiary that is a reporting issuer, the Ontario incorporated subsidiary is still subject to the enhanced disclosure, minority approval and valuation requirements of Rule 61-501 unless an exemption in Rule 61-501 is available. Similarly, if a SEC issuer purchases assets from an Ontario

incorporated reporting issuer that is a related party of the SEC issuer, the transaction may be a related party transaction for both parties. If it is, the Rule exempts the SEC issuer from the related party transaction requirements of Rule 61-501 but the Ontario incorporated issuer remains subject to Rule 61-501.

- 2.12 Foreign Issuers that do not qualify as SEC issuers or non-SEC issuers** - If a foreign issuer is not a SEC issuer and the number of equity securities of the issuer owned by residents of Canada is not *de minimis* within the terms of the Rule in that it exceeds 10 percent of the aggregate number of equity securities worldwide on a fully diluted basis, the issuer and other persons and companies must comply with Ontario news release, material change report, financial statement, AIF and MD&A, proxy statement, annual report, early warning, insider reporting and communication with beneficial owners of securities of a reporting issuer and other requirements unless discretionary relief is granted. Further, subject to the transitional exemptive relief granted to Category E reporting issuers by subsection 5.1(3) of the Rule, the Rule does not provide exemptions to foreign issuers that are not SEC issuers and are not subject to foreign disclosure requirements of a designated foreign jurisdiction. The Commission may require that an ineligible foreign issuer reconcile its financial statements to Canadian GAAP as a condition of granting discretionary relief.
- 2.13 Transition for Category E Reporting Issuers** - The Rule replaces Commission Policy 7.1 Application of Requirements of the Securities Act to Certain Reporting Issuers and the related order and rules ("Policy 7.1"). Policy 7.1 granted certain exemptions to category E reporting issuers, foreign issuers with securities listed on the TSE, five per cent or less of the listed securities registered in the names of Canadian residents and 300 or less Canadian registered holders of the securities. Category E reporting issuers that are not SEC issuers and are not subject to foreign disclosure requirements of a designated foreign jurisdiction are not eligible for relief under the Rule. Subsection 5.1(3) of the Rule continues the relief granted by Policy 7.1 for a two year grandfathering period and extends the relief to an exemption from Rule 51-501.

**RESCISSION
OF ONTARIO SECURITIES COMMISSION POLICY 7.1
APPLICATION OF REQUIREMENTS OF THE
SECURITIES ACT TO CERTAIN REPORTING ISSUERS**

PART 1 RESCISSION

- 1.1 Rescission** - OSC Policy 7.1 Application of Requirements of the *Securities Act* to Certain Reporting Issuers is rescinded.

PART 2 EFFECTIVE DATE

- 2.1 Effective Date** - This rescission comes into force on July 1, 2002.

**RESCISSION
OF ONTARIO SECURITIES COMMISSION ORDER
IN THE MATTER OF PARTS XVII AND XX OF THE SECURITIES ACT**

AND

IN THE MATTER OF CERTAIN REPORTING ISSUERS

AND

**ONTARIO SECURITIES COMMISSION RULES
IN THE MATTER OF CERTAIN REPORTING ISSUERS**

PART 1 RESCISSION

- 1.1 Rescission** - The following instruments
- (a) Ontario Securities Commission Order In the Matter of Parts XVII and XX of the *Securities Act* and In the Matter of Certain Reporting Issuers (1980) OSCB 54, as amended,
 - (b) Ontario Securities Commission Rule In the Matter of Certain Reporting Issuers (1997) 20 OSCB 1218, as amended by (1999) 22 OSCB 151, (2000) OSCB 289 and (2000) 23 OSCB 8244, that incorporates by reference the deemed rule (1980) OSCB 166, as amended, and

(c) Ontario Securities Commission Rule In the Matter of Certain Reporting Issuers (1997) 20 OSCB 1219, as amended by (1999) OSCB 151, (2000) OSCB 289 and (2000) OSCB 8244, that incorporates by reference the deemed rules (1984), 7 OSCB 1913 and (1984), 7 OSCB 3247 as amended,

are rescinded.

PART 2 EFFECTIVE DATE

2.1 Effective Date - This rescission comes into force on July 1, 2002.