

NOTICE OF COMMISSION APPROVAL OF
NATIONAL INSTRUMENT 54-101
COMMUNICATION WITH BENEFICIAL OWNERS OF SECURITIES OF A REPORTING ISSUER

AND

NATIONAL INSTRUMENT 54-102
INTERIM FINANCIAL STATEMENT AND REPORT EXEMPTION

On March 26, 2002, the Commission made National Instrument 54-101: *Communication with Beneficial Owners of Securities of a Reporting Issuer* ("NI 54-101") and National Instrument 54-102: *Interim Financial Statement and Report Exemption* ("NI 54-102") as Rules, and adopted Companion Policy 54-101CP to NI 54-101 (the "Companion Policy") as a Policy, under the *Securities Act* (Ontario) (the "Act"). On April 3, 2002, NI 54-101, the Companion Policy, and NI 54-102, were delivered to the Minister of Finance.

NI 54-101, the Companion Policy, NI 54-102, and the respective Notices, are published in Chapter 5 of the Bulletin.

**NOTICE OF NATIONAL INSTRUMENT 54-102
INTERIM FINANCIAL STATEMENT AND REPORT EXEMPTION**

The Commission has made, and the other members of the Canadian Securities Administrators (the "CSA" or "we") are planning to adopt National Instrument 54-102 *Interim Financial Statement and Report Exemption* ("the Instrument"). The full text of this Instrument follows this Notice and is also reproduced on the Commission's website at www.osc.gov.on.ca.

This Instrument deals with the sending of interim financial statements by a reporting issuer to registered and beneficial owners of its securities and is a reformulation of the portions of National Policy Statement No. 41 *Shareholder Communication* ("NP41") that pertain to supplemental mailing lists, including related blanket rulings, rules and other exemptions.

Effective Date

On March 26, 2002, the Commission made the Instrument as a rule under section 143 of the *Securities Act* (Ontario) (the "Act"). On April 3, 2002, the Instrument and the material required by the Act to be delivered to the Minister of Finance were delivered to the Minister. If the Minister approves the Instrument, or does not either reject the Instrument or return the Instrument to the Commission for further consideration, the Instrument will come into force on July 1, 2002.

The Commission has, concurrently with making the Instrument a rule, also made as a rule National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* (including Forms 54-101F1 through 54-101F9) ("NI 54-101") and adopted Companion Policy 54-101CP *Communication with Beneficial Owners of Securities of a Reporting Issuer*, all of which collectively replace the provisions of NP41 pertaining to communication with beneficial owners of securities of a reporting issuer.

On April 3, 2002, NI 54-101 and the related material required by the Act to be delivered to the Minister of Finance were delivered to the Minister. If the Minister approves NI 54-101, or does not either reject NI 54-101 or return NI 54-101 to the Commission for further consideration, NI 54-101 will come into force on July 1, 2002.

Each of the Instrument and NI 54-101 is expected to be also implemented as a rule in each of British Columbia, Alberta, Manitoba, Newfoundland, Nova Scotia and Quebec, as Commission regulation in Saskatchewan and as a policy in all other jurisdictions represented by the CSA.

Purpose of Instrument

The Instrument provides to a reporting issuer an exemption from the requirement in securities legislation to send interim financial statements or reports¹ to holders of the issuer's securities if the reporting issuer satisfies alternative requirements of the Instrument related to: (i) the release and filing of a news release containing a summary of the information contained in the statement or report (if the reporting issuer is not a mutual fund), (ii) the filing of the statement or report with the securities regulatory authority, (iii) the filing of the statement or report on all exchanges on which securities of the reporting issuer are listed, and (iv) the sending of the statement or report to persons or companies on a supplemental list that is established by the reporting issuer in accordance with the Instrument.

The exemption in the Instrument is substantially similar to the arrangement currently in place under NP41 and its related blanket rulings, deemed rules and other exemptions.

Previous Version Published for Comment

The Instrument was published for comment on February 27, 1998 (the "1998 Proposal"). Following publication, we received three comments and all comments were considered. The names of the

¹ In Ontario, section 79 of the *Securities Act* refers only to interim financial statements and not reports.

commenters, a summary of their comments and our responses are contained in Appendix "A" and Appendix "B" to this Notice. We thank all of those who made comments.

Summary of Changes to Instrument

The Instrument has been revised from the 1998 Proposal, but is essentially the same. We are of the view that republication of the Instrument for comment is not required.

The following changes have been made:

- Paragraph 1.1(1) has been changed to include a definition of "supplemental list";
- Section 1.2 has been deleted as it merely restates general principles of agency law;
- Paragraph 2.1(a) has been revised to eliminate from the conditions to the exemption the condition that a news release be issued in the case of a reporting issuer that is a mutual fund and to clarify that a reporting issuer must comply with the timing requirements of securities legislation for filing and sending interim financial statements to be entitled to rely on the exemption;
- Section 2.2 clarifies that a reporting issuer relying on the exemption must send the interim financial statements to the holders set out in the supplemental list;
- Part 3 has been added to provide for transitional arrangements for a reporting issuer that has sent a return card to its security holders in accordance with NP 41 before the coming into force of the Instrument; and
- Part 4 has been added to provide for the effective date.

Rescission of NP41

Effective the date the Instrument and NI 54-101 come into force, NP41 will be rescinded.

Questions

Questions may be referred to:

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Appendix "A"

National Instrument 54-102

List of Commenters

Canadian Depository for Securities Limited

Fiducie Desjardins

Canadian Bankers Association

Appendix "B"

National Instrument 54-102

Summary of Comments Received and CSA Response

Background

This is a summary of the comments received by the CSA during the comment period following the publication of the 1998 Proposal.

The CSA received submissions from three commenters (listed in Appendix "A"). The CSA have considered the comments received.

Below are the summarized versions of the submissions with the CSA response.

Comments Regarding the Rule and CSA Response

NI 54-101

Reporting issuers should be required to send all securityholder materials, including interim financial statements, in accordance with the procedures established under the related NI 54-101.

CSA Response

The CSA disagree with this proposal and reiterates the position expressed on the same point in its response to comments on NI 54-101.

Compliance with the procedures set out in NI 54-101 is mandatory for reporting issuers that send proxy-related materials to beneficial owners. However, as explained in section 2.1 of the Companion Policy 54-101CP, Communication with Beneficial Owners of Securities of a Reporting Issuer, nothing precludes a reporting issuer from using the procedures set out in NI 54-101 for sending other securityholder materials.

Request Form

The exemption regarding interim financial statements for reporting issuers who are not required to hold an annual meeting should apply if a reporting issuer sends to its securityholders a response card annually. It should not be required that the response card be sent with the annual report or annual financial statements.

CSA Response

The CSA disagree and is of the view that the effective operation of this exemption is best facilitated by requiring that the request form be sent with the annual financial statements or annual report.

News Release

Mutual fund reporting issuers should be exempted from the requirement to issue a press release to be able to use the exemption for delivering interim financial statements.

Response

The CSA agree and a corresponding change has been made.

**NATIONAL INSTRUMENT 54-102
INTERIM FINANCIAL STATEMENT AND REPORT EXEMPTION**

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NATIONAL INSTRUMENT 54-102
INTERIM FINANCIAL STATEMENT AND REPORT EXEMPTION

PART 1 **DEFINITIONS**

- 1.1** (1) In this Instrument,
- "interim financial statement or report" means, for a reporting issuer,
- (a) the interim financial statement or quarterly financial statement, or
- (b) any other report for the first, second or third fiscal quarter
- required under securities legislation to be sent by the reporting issuer to registered holders of its securities;
- "NI 54-101" means National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*,
- "supplemental list" means the list referred to in Part 2.
- (2) Terms defined in NI 54-101 and used in this Instrument have the meanings ascribed to them in NI 54-101.

PART 2 **EXEMPTION FROM REQUIREMENT TO SEND INTERIM FINANCIAL STATEMENT OR REPORT**

- 2.1** **Exemption from Requirement To Send Interim Financial Statement or Report - A reporting issuer is exempt from the requirement of securities legislation to send an interim financial statement or report to registered holders of its securities if**
- (a) the reporting issuer, on or before the date the interim financial statement or report is filed under subparagraph (b)(i), issues a news release with a reasonable summary of the information contained in the interim financial statement or report, if the reporting issuer is not a mutual fund;
- (b) the reporting issuer concurrently
- (i) files the interim financial statement or report with the securities regulatory authority as required by securities legislation, together with the news release required by paragraph (a);
- (ii) files the interim financial statement or report with all exchanges on which securities of the reporting issuer are listed;
- (iii) sends the interim financial statement or report to the registered holders, and beneficial owners, of the securities whose names appear on the supplemental list established in accordance with section 2.2; and
- (c) the interim financial statement or report is for a financial quarter that ended

during the twelve-month period that commenced on

- (i) the date of the meeting referred to in subparagraph 2.2(a)(i), if the reporting issuer sent a request form in accordance with that subparagraph; or
- (ii) the date the reporting issuer sent the financial statements or annual report under paragraph 2.2(a)(ii), if the reporting issuer sent a request form in accordance with that subparagraph.

2.2 Establishment of Supplemental List - In order to establish a supplemental list for the purpose of section 2.1, a reporting issuer shall

- (a) send a request form under which a registered holder or beneficial owner of the securities may make, at no cost to the registered holder or beneficial owner, a request to receive the reporting issuer's interim financial statements or reports, with
 - (i) its proxy-related materials for a meeting of the holders of the securities; or
 - (ii) its financial statements or annual report, for a financial year, that it sends to the holders of the securities, if the reporting issuer is not required under corporate law to hold an annual meeting for which proxy-related materials are required to be sent to the holders of the securities; and
- (b) prepare a supplemental list that sets out the registered holders, and beneficial owners, of the securities that have requested its interim financial statements or reports by returning a completed request form to the reporting issuer.

PART 3 TRANSITIONAL

3.1 Issuers That Hold Annual Meetings

- (1) A reporting issuer that is required by corporate law to hold annual meetings of holders of its securities is exempt from the requirement of securities legislation to send an interim financial statement to registered holders of its securities if the reporting issuer,
 - (a) before the coming into force of this Instrument, sent a return card in accordance with NP 41 with the proxy-related materials for a meeting of the holders of its securities, permitting the holder to request that the holder be placed on a list of every person or company that requested the reporting issuer's interim financial statements;
 - (b) prepared or prepares a list that sets out every person or company that requested its interim financial statements by returning a completed return card to the reporting issuer; and
 - (c) sends the interim financial statement to each person or company whose name appears on the list prepared under paragraph (b), in accordance

with the timing requirements of securities legislation that would otherwise apply for sending the interim financial statement to registered holders of the securities.

- (2) The exemption provided in subsection (1) only applies in respect of sending interim financial statements for financial quarters that end during the twelve-month period that commences on the date of the meeting for which the proxy-related materials included a return card in accordance with subsection (1).

3.2 Issuers That Do Not Hold Annual Meetings

- (1) A reporting issuer that is not required under corporate law to hold annual meetings is exempt from the requirement of securities legislation to send an interim financial statement to registered holders of its securities if the reporting issuer
 - (a) before the coming into force of this Instrument, sent a return card in accordance with NP 41 with the financial statements or annual report, for a financial year, that it sent to the holders of the securities, permitting the holder to request that the holder be placed on a list of every person or company that requested the reporting issuer's interim financial statements;
 - (b) prepared or prepares a list that sets out every person or company that requested its interim financial statements by returning a completed return card to the reporting issuer; and
 - (c) sends the interim financial statement to each person or company whose name appears on the list prepared under paragraph (b) in accordance with the timing requirements of securities legislation that would otherwise apply for sending the interim financial statement to registered holders of the securities.
- (2) The exemption provided in subsection (1) only applies in respect of sending interim financial statements for financial quarters that end during the twelve-month period that commences on the date the reporting issuer sent the financial statements or annual report, for a financial year, together with the return card in accordance with subsection (1).

PART 4 EFFECTIVE DATE

- 4.1 Effective Date of Instrument** - This Instrument comes into force on July 1, 2002.