Chapter 6

Request for Comments

6.1.1 Notice and Request for Comment - Proposed NI 51-102 and 51-102CP, Proposed Amendments to MI 45-102, Proposed Revocation of NI 62-102, Proposed Rescission of National Policy No. 3, National Policy No. 27, National Policy No. 31 and National Policy No. 50

NOTICE AND REQUEST FOR COMMENT

**PROPOSED NATIONAL INSTRUMENT 51-102 *CONTINUOUS DISCLOSURE OBLIGATIONS*,
FORM 51-102F1, FORM 51-102F2, FORM 51-102F3,
FORM 51-102F4, FORM 51-102F5, FORM 51-102F6, AND
COMPANION POLICY 51-102CP *CONTINUOUS DISCLOSURE OBLIGATIONS***

PROPOSED AMENDMENTS TO MULTILATERAL INSTRUMENT 45-102 *RESALE OF SECURITIES*

**PROPOSED REVOCATION OF NATIONAL INSTRUMENT 62-102
*DISCLOSURE OF OUTSTANDING SHARE DATA***

AND

**PROPOSED RESCISSION OF
NATIONAL POLICY NO. 3 *UNACCEPTABLE AUDITORS,*
NATIONAL POLICY NO. 27 *CANADIAN GENERALLY ACCEPTED ACCOUNTING PRINCIPLES,*
NATIONAL POLICY NO. 31 *CHANGE OF AUDITOR OF A REPORTING ISSUER*, AND
NATIONAL POLICY 50 *RESERVATIONS IN AN AUDITOR'S REPORT***

Introduction

We, the Canadian Securities Administrators (CSA), seek public comment on a harmonized set of continuous disclosure (CD) requirements. It is proposed that these comprehensive and uniform requirements will apply to all issuers, other than investment funds, that are reporting issuers in one or more Canadian jurisdictions.

The requirements are contained in proposed National Instrument 51-102 *Continuous Disclosure Obligations* (the Rule), Form 51-102F1 *Annual Information Form*, Form 51-102F2 *Management's Discussion & Analysis*, Form 51-102F3 *Material Change Report*, Form 51-102F4 *Business Acquisition Report*, Form 51-102F5 *Information Circular* and Form 51-102F6 *Statement of Executive Compensation* (the Forms). The Rule and the Forms will be referred to as the Instrument. Proposed Companion Policy 51-102 *Continuous Disclosure Obligations* (the Policy) provides guidance on how the CSA interpret and apply the Rule and the Forms.

We are also publishing for comment related National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (the Foreign Issuer Rule) together with an associated companion policy. See Notice and Request for Comment of Proposed National Instrument 71-102 – *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* for information about the Foreign Issuer Rule.

Substance, Purpose and Scope

The Instrument will:

- harmonize CD requirements among Canadian jurisdictions;
- replace existing local CD requirements;
- enhance the consistency of disclosure in the primary and secondary securities markets; and
- facilitate capital-raising initiatives such as an integrated disclosure system (IDS).

The Rule sets out the obligations of reporting issuers with respect to financial statements, annual information forms (AIFs), management discussion and analysis (MD&A), material change reporting, information circulars, proxies and proxy solicitation, restricted share disclosure, and certain other CD-related matters. It prescribes the Forms, most of which are derived from existing forms, but with some enhancements.

The Rule includes new requirements to file a) a business acquisition report (BAR) that is modeled on the significant acquisitions requirements for prospectuses, and b) material documents that affect the rights of securityholders.

The Rule grandfathers existing discretionary relief from CD requirements granted by a regulator or a securities regulatory authority. This provision applies only in the jurisdiction of the regulator or securities regulatory authority that has granted the relief. The first time a reporting issuer intends to rely on prior discretionary relief, in connection with a requirement under the Rule, it must inform the regulator in writing, describing the discretionary relief and the provision in the Rule that is substantially similar to the provision from which it has previously obtained relief.

The Rule does not address non-issuer filing obligations, such as insider reporting, except in the case of persons who solicit proxies from securityholders of reporting issuers.

We are developing a separate national instrument that will address the CD obligations of investment funds. We expect that rule to be adopted before, or at the same time as, the CD Rule.

Background

In January 2000 we published a *Concept Proposal for an Integrated Disclosure System* (see CSA Notices and Requests for Comment 44-401 and 51-401). IDS contemplates a streamlined offering process that incorporates by reference an issuer's CD. Harmonized, and in some cases upgraded, CD requirements are a precondition to implementing IDS.

In developing the Instrument and the Policy, we relied on summaries prepared by counsel of CD requirements in all Canadian jurisdictions, the U.S. and Australia.

The proposed requirements in the Rule concerning generally accepted accounting principles (GAAP) and generally accepted auditing standards (GAAS) reflect CSA Request for Comment 52-401 *Discussion Paper: Financial Reporting in Canada's Capital Markets,* published on March 16, 2001, and the responses to that document.

Summary of Significant Changes to Existing CD Requirements

- *Filing Deadlines* - Filing deadlines for annual and interim financial statements will be shortened.

- *Delivery* - Mandatory delivery of financial statements and MD&A to all securityholders will be eliminated. Issuers will only be obligated to deliver copies of these documents to securityholders that request them. Issuers will have to disclose annually in their AIFs and information circulars that the financial statements and MD&A are available without charge and how to obtain them.

- *US GAAP* - Reporting issuers that have a class of securities registered under section 12 of the 1934 Act or are required to file reports under section 15(d) of the 1934 Act and that are not investment companies under the US Investment Company Act of 1940 (SEC issuers) will be permitted to file financial statements prepared in accordance with US GAAP, provided that for a two year period after starting to use US GAAP, their statements will have to be reconciled to Canadian GAAP.

- *Financial Institution GAAP Exemption* - The GAAP exemption for banks and insurance companies that exists in some jurisdictions will be removed.

- *AIFs* - Issuers of a specified size will be required to file an AIF, as already required in Ontario, Quebec and Saskatchewan.

- *MD&A* - All issuers will be required to file annual and interim MD&A, including issuers that currently have exemptions based on size in some jurisdictions.

- *Board Review of MD&A* – An issuer's board of directors will be required to review its annual and interim MD&A. British Columbia currently requires board approval of MD&A.

- *Discussion of Forward-Looking Information in MD&A* - MD&A will have to include a discussion of any forward-looking information disclosed in prior MD&A if, in light of intervening events and without that discussion, the earlier disclosure could mislead.

- *Disclosure Relating to Liquidity and Capital Resources, and Non-Independent Relationships in MD&A* - MD&A will have to contain disclosure relating to liquidity and capital resources, including off-balance sheet arrangements, and relationships and transactions with persons or entities that derive benefits from their non-independent relationship with the issuer or its related parties. These enhancements are based on recent SEC proposals (see SEC Release Nos. 33-8056 and 34-45321 dated January 22, 2002).

- *Critical Accounting Policies Disclosure in MD&A* - MD&A will have to disclose critical accounting policies that impact on the financial condition, results of operations and cash flows. See "Possible Changes to Instrument – Recent SEC Developments" below.

- *Equity Compensation Disclosure* - Information circulars will have to include new equity compensation plan disclosure similar to disclosure required under recent SEC amendments (see SEC Release Nos. 33-8048 and 34-45189 dated December 21, 2001).

- *Annual Filings* - The requirement to make an annual filing in lieu of an information circular (Form 28 in most jurisdictions) will be eliminated. The AIF will include supplementary disclosure items for issuers that do not distribute information circulars. Issuers that are not required to distribute information circulars and are exempt from filing an AIF will not have to provide the disclosure that is currently required in Form 28 or its equivalent.

- *Significant Acquisitions* - The Rule will include new requirements for disclosure concerning completed significant business acquisitions.

- *Filing of Documents Sent to Securityholders or Filed with the SEC* – The Rule will require issuers to file documents sent to their securityholders or filed with the SEC.

- *Material Documents* - The Rule will require issuers to file certain constating documents and other instruments that define or materially affect the rights of securityholders.

- *Language of Documents* – The Rule will permit documents to be filed in either English or French. Where a translation exists and is delivered to securityholders, the translation will also have to be filed no later than when it is delivered.

Summary of the Rule and Anticipated Costs and Benefits

Many reporting issuers now have to comply with differing requirements in more than one Canadian jurisdiction. Harmonized CD requirements will make it easier and less costly for entities that are reporting issuers in more than one Canadian jurisdiction to know and comply with CD obligations.

The proposed Rule contains some enhancements to existing requirements. It also simplifies or eliminates others. We believe that any incremental costs resulting from the changes are justified by the following considerations.

1. New deadlines for financial statements

The deadline for filing annual financial statements will be reduced to 90 days after year-end for senior issuers, and 120 days for all other issuers. The deadline for filing interim financial statements will be reduced to 45 days after period end for senior issuers, and remains at 60 days for all other issuers. If the issuer is required to comply with an earlier filing deadline under the laws of a foreign jurisdiction, the issuer will be required to comply with that deadline in Canada.

- This more timely disclosure will benefit the marketplace and will facilitate more timely analysis of reporting issuers' financial performance.

- To meet investor expectations, many issuers already publicly release their financial results well before the current filing deadlines.

- Filing is often delayed because of the requirement to deliver the statement to shareholders concurrently with filing. The elimination of delivery requirements should facilitate compliance with the earlier filing deadlines.

- The elimination of mandated delivery of financial statements to all shareholders should reduce printing and mailing costs.

- Smaller companies will have more time to file their financial statements than senior issuers. This is in recognition of the fact that smaller issuers may have fewer resources available for financial statement preparation and less access to auditing services than larger issuers.

- The shorter deadlines better align our requirements with investor demands, common issuer practice, and requirements in other jurisdictions such as the United States, the United Kingdom and Australia. In the United States, issuers have been subject to filing deadlines of 90 and 45 days for annual and interim statements for 30 years. The SEC is now proposing to shorten these deadlines even further. See "Possible Changes to Instrument – Recent SEC Developments".

2. SEC issuers permitted to use US GAAP and GAAS

SEC issuers will be permitted to file financial statements prepared in accordance with US GAAP. For the first two years after changing from Canadian to US GAAP, an SEC issuer will have to reconcile its statements to Canadian GAAP.

SEC issuers will also be permitted to file audit reports prepared in accordance with US generally accepted auditing standards (GAAS).

An SEC issuer can include an issuer incorporated or organized in Canada, with a majority of its shareholders, assets or operations in Canada.

- We expect flexibility for SEC issuers to reduce costs significantly for many issuers that must currently prepare two separate sets of financial statements.

3. Expenditure Analysis for Development-Stage Issuers

Development-stage issuers will have to provide a breakdown of material expenditures reported in their financial statements. Substantially similar requirements already exist in British Columbia and Québec.

- This is important information for assessing management performance.

4. New Reporting Issuers

An issuer will be required to commence filing annual and interim financial statements for the annual and interim period the filing deadline for which falls after the date the issuer becomes a reporting issuer.

Subject to GAAP, an issuer will not be required to provide comparative figures for interim financial statements for periods in which it was not a reporting issuer.

- This provides continuity between the financial disclosure in the document an issuer files to become a reporting issuer and the financial disclosure in its first set of financial statements filed under CD requirements.

5. All issuers to provide MD&A

All reporting issuers will now be required to prepare and file MD&A with their annual and interim financial statements. An issuer's board of directors will be required to review the MD&A. Similar requirements already exist in Ontario and British Columbia.

The new MD&A form contains the MD&A disclosure requirements already in place in various jurisdictions, but also has the enhancements described above under the heading "Summary of Significant Changes to Existing CD Requirements". Issuers may wish to consider the enhancements in the new MD&A form in preparing their current MD&A.

Disclosure of "trends" (formerly required in AIFs) will now be required in MD&A.

- Most reporting issuers are already subject to a requirement to prepare and file annual and interim MD&A.

- Investors, analysts and other market participants will have the same information to analyze and understand the financial performance of all issuers.

6. Issuers other than small businesses to file an AIF

All reporting issuers, other than small businesses with a market value of less than $75 million, will be required to file AIFs. "Small businesses" are issuers with assets and revenues of less than $10 million as of a specified date. This is different from the current test in Ontario, Québec and Saskatchewan, which exempts issuers that have shareholders' equity and revenues of less than $10 million.

A small business that is required to file an AIF under the Rule solely because the market value of its equity securities exceeds $75 million can later be exempt from the AIF requirement if its market value falls beneath the threshold for two consecutive years. Ontario and Saskatchewan currently require the market value of a small business to fall below this threshold for three years before it can rely on the exemption.

Disclosure of reverse takeovers will be required in AIFs, similar to the disclosure required under prospectus rules.

- It is important for investors to have access to a permanent and current disclosure base regarding an issuer, especially if the CSA implements a streamlined capital raising system such as IDS.

- Many issuers already prepare AIFs, either under the existing requirements in Ontario, Quebec and Saskatchewan, or because the issuer wishes to benefit from the reduced hold periods available under Multilateral Instrument 45-102 *Resale of Securities* (MI 45-102) or in order to use a short form prospectus under National Instrument 44-101 *Short Form Prospectus Distributions* (NI 44-101).

7. Significant business acquisitions

Reporting issuers will be required to file a BAR within 75 days after completion of a business acquisition. The BAR will include financial statements of the acquired business and pro forma financial information.

The main differences from the significant acquisitions disclosure requirements for prospectuses are as follows:

- Only completed business acquisitions will be reported in a BAR; there will be no requirement to disclose "probable significant acquisitions". If a proposed acquisition is a material change, the issuer will be required to comply with the material change reporting requirements.

- Issuers will not be required to disclose multiple unrelated acquisitions that collectively meet the significance tests.

- With respect to multiple related acquisitions that collectively meet the significance tests, issuers will be required to aggregate only those acquisitions that are not reflected in their last annual balance sheet.

- There will be no optional significance tests in the Rule. The significance tests will be based on the most recent annual audited financial statements of the issuer filed before completion of the acquisition.

- Under the prospectus rules, an issuer that acquires an oil & gas property may apply for an exemption allowing it to provide audited operating statements instead of full financial statements. This will be a blanket exemption under the CD Rule. The CSA will consider making a similar change for prospectuses.

- No separate filing will be necessary for significant dispositions. However, pro forma financial statements will have to be included in the notes to the next set of financial statements filed by the issuer. If the next set of financial statements are required to be filed within 30 days of the disposition, then the pro forma financial statements must be included in the subsequent set of financial statements filed by the issuer.

The Rule contains three provisions that will simplify the significant acquisitions reporting requirements for small businesses:

- an exemption from the income test (one of the three significance tests);

- an exemption from the requirement that the annual financial statements of the acquired business be audited, other than in the case of the statements for the most recent year; and

- a provision that in certain circumstances the auditor's report for a small business may contain a reservation relating to inventory.

The requirements for disclosure of significant acquisitions and dispositions will not apply to any transaction if the initial legally binding agreement concerning the transaction was entered into prior to the effective date of the Rule.

- Where an acquisition significantly changes an issuer, timely financial disclosure concerning the acquisition is important for investors.

- SEC issuers are already required to disclose business acquisitions in Form 8-K.

- Compliance with these new requirements will make it easier and less costly to comply with prospectus requirements for disclosure of significant acquisitions.

8. Proxy/Information Circular Requirements

The Rule will contain proxy solicitation and information circular requirements that are substantially similar to existing requirements.

The information circular form will be substantially similar to the existing form and will require disclosure of executive compensation in a form that is also substantially similar to the current form, except that the public float test will be replaced with an aggregate market value test.

If a reorganization or similar restructuring transaction is to be submitted to a vote of securityholders, the existing forms of information circular in the local jurisdictions generally call for modified application of prospectus disclosure requirements for certain of the issuers involved in the transaction. The new form will make this requirement apply to a broader class of transactions and will require the disclosure for each entity the securities of which are being changed, exchanged, issued or distributed, as well as the resulting entities. The new form will require the disclosure prescribed by the appropriate form of prospectus "to the extent necessary to enable a reasonable securityholder to form a reasoned judgement".

A domestic issuer that solicits proxies with respect to a restructuring transaction involving an eligible foreign issuer (as defined in the Foreign Issuer Rule), will have the same relief from reconciliation requirements with regard to the financial statements of the foreign issuer as the foreign issuer itself will have under the Foreign Issuer Rule.

9. Restricted Share Disclosure Requirements

The Rule will require issuers with restricted shares outstanding to refer to them using appropriate, standardized terms. Issuers will also be required to provide certain disclosure regarding voting and participation rights attaching to restricted shares. The requirements for restricted shares will apply to information circulars, AIFs and documents sent to securityholders. They are similar to existing requirements in many jurisdictions.

We will not be maintaining an exemption from restricted share disclosure requirements that existed in Ontario Securities Commission (OSC) Rule 56-501and applied when Ontario residents owned less than two percent of the shares of each class of equity shares of the issuer.

10. Additional Filing Requirements

An issuer will have to file a copy of any document that it sends to securityholders. This is not a new requirement.

Issuers will also have to file any documents filed with the SEC that contain information not included in disclosure filed under another requirement of Canadian securities legislation.

Summary and Purpose of the Companion Policy

The purpose of the Companion Policy is to state the manner in which certain provisions of the Instrument will be interpreted or applied by the Canadian securities regulatory authorities. It contains discussions, explanations and examples primarily relating to:

- definitions contained in the Rule;
- the financial statement requirements of the Rule; and
- the BAR requirements of the Rule.

Related Amendments

1. Amendment, Rescission and Revocation of CSA Instruments

We plan to make changes to the short form prospectus distribution regime under NI 44-101 by replacing Forms 44-101F1 *AIF* and 44-101F2 *MD&A* with the AIF and MD&A forms under the Rule, and to make other conforming amendments.

We plan to make revisions to the software and filer manual used under National Instrument 13-101 *System for Electronic Document Analysis and Retrieval* in order to accommodate the filing requirements under the Rule.

We will separately publish proposed amendments to these national instruments.

Proposed amendments to MI 45-102, which reflect the proposed adoption of Form 51-102F1 *Annual Information Form*, are set out in Appendix A to this Notice.

We propose to rescind National Policy No. 3 *Unacceptable Auditors*, National Policy No. 27 *Canadian Generally Accepted Accounting Principles*, National Policy No. 31 *Change of Auditor of a Reporting Issuer*, and National Policy 50 *Reservations in an Auditor's Report*, and to revoke National Instrument 62-102 *Disclosure of Outstanding Share Data* (NI 62-102). These subjects are covered in the Rule.

2. Local Instruments

We propose to amend or repeal elements of local securities legislation and securities directions, including long form prospectus requirements, in conjunction with implementation of the Instrument. The Canadian securities regulatory authorities may publish these local changes, or proposed changes, separately in their local jurisdictions.

Appendix B to this Notice outlines proposed related amendments to, and revocations of, some provisions of Ontario Regulation 1015, R.R.O. 1990. Appendix B also contains some other information required to be published under the Securities Act (Ontario) (the Ontario Act).

The OSC is also separately publishing for comment proposed Rule 51-801 which is the local rule implementing the proposed Instrument in Ontario. Proposed Rule 51-801 prescribes some requirements for the purposes of the Act and provides exemptions from some CD requirements in the Ontario Act. Proposed Rule 51-801 also proposes to revoke certain OSC rules and to amend the provisions of another OSC rule. Other jurisdictions are also separately publishing similar local implementing rules.

Possible Changes to Instrument

1. Definitions

Under section 1.1(1) of the Rule, a term used in the Rule and defined in the securities statute of a local jurisdiction has the meaning given to it in the statute unless (a) the definition in that statute is restricted to a specific portion of the statute that does not govern continuous disclosure; or (b) the context otherwise requires. We are considering amending either the Rule or the Policy to list the jurisdictions in which the definitions in the Rule apply.

2. GAAP and GAAS Requirements

We are considering permitting SEC registrants to use US GAAP and US GAAS, as proposed in the Rule, for financial years beginning on or after January 1, 2003, even if the Rule as a whole does not become effective by that date. Accordingly, we will consider moving the GAAP and GAAS provisions into a separate national instrument or rule or adopting blanket orders or granting discretionary orders to allow this to happen. If we develop a separate national instrument that contains no material changes to the GAAP and GAAS provisions proposed in the Rule, and no material changes to those provisions are required as a result of comments received on the Rule, the separate national instrument could be implemented without a further comment period.

3. Delivery of Financial Statements and MD&A

The Rule will require an issuer to deliver financial statements and MD&A to a securityholder that requests them. We are considering requiring that if a securityholder requests one of these documents, the issuer must deliver both.

4. Currency Requirements

We are considering incorporating proposed National Instrument 52-102 *Use of Currencies* or an amended version of it in either the Rule or the GAAP and GAAS instrument mentioned above.

5. Change in Year End

We are considering incorporating a reformulated version of National Policy No. 51 *Changes in Ending Date of a Financial Year and in Reporting Status* in the Rule.

6. Recent SEC Developments

We are considering whether to change the Rule to reflect the following proposed changes to SEC requirements. See our requests for comment under the heading "Request for Comment" below;

- Filing Deadlines

  In Release No. 33-8089 dated April 12, 2002, the SEC proposed to shorten filing deadlines for annual and quarterly reports to 60 and 30 days from period end, respectively, for issuers with a public float of greater than US$75 million. US$75 million is the US threshold for being eligible to file a short form prospectus.

- Current Report Requirements

  In Release No. 33-8090 dated April 12, 2002, the SEC proposed to expand Form 8-K current report requirements to include certain disclosure concerning transactions in an issuer's securities by directors and officers of the issuer, and loans to directors and officers made or guaranteed by an issuer or its affiliates.

- Critical Accounting Policies Disclosure

  As noted above, the new MD&A form calls for disclosure of critical accounting policies that impact on an issuer's financial condition, results of operations and cash flows. In Release Nos. 33-8098 and 34-45907 dated May 10, 2002, the SEC proposes to require that MD&A in annual reports, registration statements and proxy and information statements include critical accounting policies disclosure that goes beyond the new MD&A form. Specifically, the SEC is considering requiring disclosure about the critical accounting estimates that are made by an issuer in applying its accounting policies and about the initial adoption by an issuer of an accounting policy that has a material impact on its financial presentation.

7. Significant Acquisitions Disclosure in Information Circulars

We are considering whether to expand item 13.2 of the Information Circular, which requires modified prospectus disclosure concerning issuers whose securities are being changed, exchanged, issued or distributed under certain transactions, to include disclosure concerning significant business acquisitions.

8. Significant Dispositions Disclosure

In February 2002, the Canadian Institute of Chartered Accountants issued for comment a new handbook section entitled "Impairment or Disposal of Long-Lived Assets", which deals with disclosure and accounting concerning significant business dispositions. We are monitoring this proposal and will consider whether changes to the significant disposition disclosure requirements of the Rule are appropriate.

9. Credit Supporters and Exchangeable Shares

We are considering whether, in the two situations described below, CD about an entity other than the issuer of securities itself would be more relevant to market participants than CD about the issuer. See also our specific requests for comment under the heading "Request for Comment" below.

- Credit Supporters

  If a credit supporter has provided a guarantee or alternative credit support for all or substantially all of the payments to be made under the securities of another issuer, it may be appropriate that there be CD about the credit supporter. A number of approaches could be taken to ensure that this CD is provided:

  (i) the CD obligations of the security issuer could be supplemented or replaced by a requirement that it also provide CD about the credit supporter;

  (ii) the security issuer could be exempted from some or all of its CD obligations on conditions including its filing of CD about the credit supporter; or

  (iii) the credit supporter itself could be deemed to be a reporting issuer with its own CD obligations.

  Credit supporter disclosure is not new; it is currently required for prospectuses. See NI 44-101 for the meaning of the terms "credit supporter" and "alternative credit support".

The CSA Committee that is revisiting the prospectus rules will be considering SEC Regulation SX 3-10 "Financial Statements of Guarantors and Issuers of Guaranteed Securities Registered or Being Registered". If that committee proposes changes to the prospectus requirements for credit supporters, we may propose corresponding changes to the Rule.

- Exchangeable Shares

"Exchangeable shares" are equity shares that are exchangeable, at the option of the holder, into shares (the "underlying shares") of the issuer's "parent issuer" (as defined below) and that provide the holder with economic and voting rights which are, as nearly as practicable (except for tax implications), equivalent to the underlying shares. The "parent issuer" is the issuer of the underlying shares and is the direct or indirect beneficial holder of all of the issued and outstanding voting securities of the exchangeable share issuer (other than the exchangeable shares).

Because CD about the parent issuer is more relevant to holders of exchangeable shares than CD about the issuer itself, we are considering requiring the issuer to provide CD about the parent issuer instead of about itself. Alternatively, we are considering exempting the exchangeable share issuer from CD requirements provided that, among other conditions, the parent issuer is either a reporting issuer or an SEC issuer, and the parent issuer files all its required CD in the appropriate jurisdictions.

Request for Comment

We request your comments on the Rule, each of the Forms, and the Companion Policy. We also request your comments on the proposed amendments to MI 45-102, rescission of Policies and revocation of NI 62-102 discussed above under the heading "Related Amendments".

In addition to any comments you may wish to make, we also invite comments on the following specific questions:

1. *Criteria for Determining Financial Statement Filing Deadlines* – The Rule uses TSE non-exempt company criteria to identify issuers subject to shortened filing deadlines for annual and interim financial statements and MD&A. Those criteria include having net tangible assets of at least $7.5 million, or in the case of oil and gas companies, proved developed reserves of at least $7.5 million. These criteria mean that the more stringent 90 and 45 day filing deadlines will apply to Canada's most senior issuers, many of which are currently subject to the same filing deadlines in the United States. They are different from the market value threshold that is proposed to trigger the AIF filing requirement in the Rule, in recognition of the fact that an issuer's market value is not always an appropriate way to assess its ability to prepare financial disclosure within shorter times.

   (a) Is it appropriate to use TSE non-exempt company criteria to determine deadlines for filing financial statements? If not, why not, and what other criteria should we consider?

   (b) Is your view affected by the fact that some issuers that are eligible to use the short form prospectus regime in NI 44-101 would have 120 days to file annual financial statements?

   (c) Is your view affected by the fact that the SEC has proposed imposing even shorter filing deadlines than the ones we have proposed, for issuers that have a public float of US$75 million and are therefore eligible to use the US short form prospectus regime? Why?

   (d) Is the $75 million criteria that is used in the Rule as one of the triggers of the AIF requirement, and in NI 44-101 for short form prospectus eligibility, appropriate?

2. *Elimination of Requirement to Deliver Financial Statements* – As noted above under "Summary of Significant Changes to Existing CD Requirements", the Rule will eliminate mandatory delivery of financial statements and MD&A to all securityholders. Issuers will only be obligated to deliver copies of these documents to securityholders that request them. Issuers will have to disclose annually in their AIFs and information circulars that the financial statements and MD&A are available without charge and how to obtain them. Do you agree with this approach? Why or why not? What approach would you suggest?

3. *SEC Developments* - Under the heading "Recent SEC Developments" above, we identify SEC Releases that propose changes to corporate disclosure requirements for SEC registrants.

   Should we change the Rule to reflect the proposed SEC requirements?

4. *Combination of Financial Statement and MD&A Filings* – We are considering amending the Rule so that financial statements and MD&A would have to be filed at the same time, as one filing. MD&A contains important discussion of financial statement disclosure, and is already subject to the same filing deadlines as financial statements.

   Should we combine financial statement and MD&A filing requirements?

5. *Disclosure of Restructuring Transactions in Information Circulars* - Item 13.2 of Form 51-102F5 *Information Circular* requires an issuer to provide disclosure regarding restructuring transactions.

   (a) Does the definition of "restructuring transaction" in item 13.2 require disclosure about the appropriate classes of transactions? If not, what kinds of transactions should be added or excluded, and why?

   (b) Should item 13.2 be expanded so that it applies to significant acquisitions of assets in exchange for securities?

   (c) Does item 13.2 require disclosure about the appropriate entities for any transaction that is subject to this item? If not, which entities should be added or excluded, and why?

   (d) The requirement in item 13.2 to include disclosure prescribed by the prospectus form is qualified by the words "to the extent necessary to allow a reasonable securityholder to form a reasoned investment decision". Is this clear enough? If not, how could we make the requirement clearer?

   (e) Would it be preferable to prescribe a separate form of information circular for certain restructuring transactions (such as reverse take-overs) similar to new CDNX Form 3B Information Required in an Information Circular for a Qualifying Transaction?

   (f) Should item 13.2 specify which disclosure items in the relevant prospectus forms must be given for certain transactions (such as reverse take-overs or issuances of exchangeable shares)?

6. *Significant acquisitions disclosure* -The proposed significance tests for business acquisitions in the Rule were the subject of extensive comments when the prospectus rules were being reformulated. The CSA analyzed the comments and finalized the tests in the prospectus rules. Several commenters said that significant acquisition disclosure should be required in CD, not just in prospectuses. Many commenters expressed the view that Canadian acquisition disclosure rules should parallel the SEC Rules. The significance tests proposed in the Rule are very similar to the SEC Rules and are consistent with the significance tests in the prospectus rules.

   The proposed Rule requires one, two or three years of financial statements depending on whether an acquisition is significant at a 20%, 40% or 50% threshold. Would it be better or worse to have only one threshold for determining significance with a requirement for two years of financial statements when the threshold is met? If you support this approach, what would you suggest as an appropriate threshold and why?

7. *Requirement to File Material Documents* – The Rule requires issuers to file constating documents and other instruments that materially affect the rights of securityholders or create a security.

   Would an acceptable alternative to filing be to require issuers to describe these documents in their AIFs or information circulars, rather than file them?

8. *Criteria for Identifying Small Issuers* - The proposed Rule distinguishes small issuers in different ways, for different purposes, as follows:

   - Issuers that are not "senior issuers" (that are TSE non-exempt) have more time to file their financial statements, MD&A and AIFs than senior issuers (see *Criteria for Determining Financial Statement Filing Deadlines* for more details);

   - Issuers that are "small businesses", based on a similar definition to that in the prospectus rules (less than $10 million for each of assets and revenue) are exempt from certain significant acquisition disclosure requirements;

   - Issuers that are small businesses (less than $10 million for each of assets and revenue) and have a market value not exceeding $75 million are not required to file an AIF;

   - For the purpose of Form 51-102F6 *Statement of Executive Compensation*, an "exempt issuer" must have revenue and a market value of less than $25 million.

Are these ways of identifying small issuers appropriate? Is there one definition that would be appropriate for all purposes? Why or why not?

9. *Approach to Regulation of Small Issuers* - The Rule includes some exemptions or alternative means of satisfying certain CD requirements for small businesses, as summarized immediately above. The anticipated costs and benefits of the Rule were discussed above. We invite comment on whether the cost-benefit analysis might differ for issuers of different sizes. We invite commenters to identify any provisions for which this might be the case, and to provide suggestions for disclosure alternatives that might be more appropriate for specific categories of issuer.

10. *Cost Benefit Analysis* - We believe that the costs and other restrictions on the activities of reporting issuers that will result from the Rule are proportionate to the goal of timely, accurate and efficient disclosure of information about reporting issuers. For more discussion of this, see the section above entitled Summary of Rule and Anticipated Costs and Benefits. We are interested in hearing the views of various market participants on any aspect of the costs and benefits of the Rule and we invite your comments specifically on this matter.

11. *Credit Supporters and Exchangeable Shares* – Under the heading "Possible Changes to the Instrument" above, we discuss certain changes to the Rule relating to credit supporters and exchangeable share issuers that we are considering incorporating into the Rule.

    (a) We describe three options for addressing CD obligations in credit supporter situations. What are your comments on the merits of these three options? If none of them are appropriate, please suggest other options and justify them.

    (b) We describe two options for addressing CD obligations in exchangeable share situations. What are your comments on the merits of these options? If neither of them are appropriate, please suggest other options and justify them.

    (c) In each of the credit supporter and exchangeable share situations, should we require the credit supporter or parent to comply with all CD obligations under the Rule, or should the credit supporter or parent only be required to file certain types of documents concerning the credit supporter, such as financial statements and MD&A?

    (d) Are there any other situations for which we should consider providing exemptions from the Rule? If so, give details of the situation, how often it occurs and explain why specific exemptions should be given.

How to Provide Your Comments

Please provide your comments by September 19, 2002.

Please address your submission to all of the CSA member commissions, as follows:
Alberta Securities Commission
British Columbia Securities Commission
Manitoba Securities Commission
Securities Administration Branch, New Brunswick
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Department of Justice, Government of the Northwest Territories
Nova Scotia Securities Commission
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut
Ontario Securities Commission
Office of the Attorney General, Prince Edward Island
Commission des valeurs mobilières du Québec
Saskatchewan Securities Commission
Registrar of Securities, Government of Yukon

You do not need to deliver your comments to all of the CSA member commissions. Please deliver your comments to the two addresses that follow, and they will be distributed to all other jurisdictions by CSA staff.

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British Columbia Securities Commission
PO Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, British Columbia
V7Y 1L2
Fax: (604) 899-6814
e-mail : pbrady@bcsc.bc.ca

Denise Brosseau, Secretary
Commission des valeurs mobilières du Québec
Stock Exchange Tower
800 Victoria Square
P.O. Box 246, 22nd Floor
Montréal, Québec
H4Z 1G3
Fax : (514) 864-6381
e-mail : consultation-en-cours@cvmq.com

If you are not sending your comments by e-mail, please send a diskette containing your comments (in DOS or Windows format, preferably Word).

We cannot keep submissions confidential because securities legislation in certain provinces requires that a summary of the written comments received during the comment period be published.

Questions

Please refer your questions to any of:

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June 21, 2002.

Additional Information

This Notice and Request for Comment refers to securities legislation administered by the CSA member commissions listed above and certain other documents. Additional information concerning the legislation can be found at the following public websites:

Alberta Securities Commission: www.albertasecurities.com
British Columbia Securities Commission: www.bcsc.bc.ca
Manitoba Securities Commission: www.msc.gov.mb.ca
New Brunswick Securities Administration Branch: www.gov.nb.ca
Securities Commission of Newfoundland and Labrador: www.gov.nf.ca/gsl/cca/s/
Nova Scotia Securities Commission: www.gov.ns.ca/nssc/
Ontario Securities Commission: www.osc.gov.on.ca
Prince Edward Island Office of the Attorney General: www.gov.pe.ca
Commission des valeurs mobilières du Québec: www.cvmq.com
Saskatchewan Securities Commission: www.ssc.gov.sk.ca

APPENDIX A

AMENDMENTS TO MULTILATERAL INSTRUMENT 45-102
RESALE OF SECURITIES

PART 1 AMENDMENTS TO MULTILATERAL INSTRUMENT 45-102

1.1 Definition of Current AIF – Multilateral Instrument 45-102 (MI 45-102) is amended by:

(1) deleting the definition of "current AIF" in section 1.1 and substituting the following:

"**"current AIF"** means

(a) an AIF that is a current AIF filed under NI 44-101 in at least one of the jurisdictions listed in Appendix B,

(b) an AIF that is a "current AIF" as defined in NP 47 filed under NP 47 in at least one of the jurisdictions listed in Appendix B,

(c) an AIF in the form required by NI 44-101 filed in at least one of the jurisdictions listed in Appendix B by an issuer not eligible to use NI 44-101 and containing audited financial statements for the issuer's most recently completed financial year,

(d) an AIF that is a current AIF filed under British Columbia Instrument 45-506 or Alberta Rule 45-501,

(e) a prospectus which has been filed in any jurisdiction that includes audited financial statements for the issuer's most recently completed financial year, other than:

(i) a short form prospectus filed under NI 44-101,

(ii) a short form prospectus filed under NP 47, or

(iii) a prospectus filed under a CPC instrument,

(f) a CPC information circular filed in any jurisdiction that includes:

(i) audited financial statements for the issuer's most recently completed financial year,

(ii) audited financial statements for the target issuer's most recently completed financial year, and

(iii) a pro forma balance sheet that gives effect to the qualifying transaction accompanied by a compilation report of an auditor,

(g) a current annual report on Form 10-K or Form 20-F under the 1934 Act for the issuer's most recently completed financial year filed in any jurisdiction by an issuer that has securities registered under Section 12 of the 1934 Act or has a reporting obligation under subsection 15(d) of the 1934 Act, and

(h) an AIF in the form required by NI 51-102F1 in respect of a financial year for which annual financial statements are required to have been filed under NI 51-102 or NI 51-103, as applicable;";

(2) inserting the following definitions immediately after the definition of "NI 44-101":

""NI 51-102" means National Instrument 51-102 Continuous Disclosure Obligations

"NI 51-103" means National Instrument 51-103 Continuous Disclosure and Other Exemptions Relating to Foreign Issuers";

(3) deleting section 3.1 of MI 45-102 and replacing it with the following:

"3.1 Current AIF

(1) An issuer that has not filed an AIF

(a) under NI 44-101,

(b) prior to the effective date of NI 44-101, under NP 47, or

(c) under NI 51-102 or NI 51-103,

may file a current AIF under this Instrument at any time.

(2) An issuer filing a current AIF as defined in paragraphs (d), (e), (f) or (g) of the definition of current AIF shall file a notice on SEDAR:

(a) advising that it has filed a current AIF, and

(b) identifying the SEDAR project number under which the current AIF was filed."

PART 2 EFFECTIVE DATE

2.1 Effective Date – This Amendment comes into force on •.

APPENDIX B

RELATED AMENDMENTS TO ONTARIO SECURITIES REGULATION

AND

ADDITIONAL INFORMATION REQUIRED IN ONTARIO

Provisions of Regulation to be Revoked or Amended

1. The Ontario Securities Commission ("the Commission") proposes to revoke the following provisions of the Regulation made under the *Securities Act* (Ontario) (the Act) R.R.O. 1990 Reg. 1015, as am. (the "Regulation"):

   subsection 2(3);

   sections 3, 5, 6 and 176 to 181 inclusive; and

   Forms 27, 28 30 and 40.

2. The Commission proposes to amend the following provisions of the Regulation to refer to proposed National Instrument 51-102 *Continuous Disclosure Obligations* (the "Rule"), to proposed National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* and to National Instrument 81-106 *Investment Funds Continuous Disclosure* in order to expand the exemptions to the requirements contained in those provisions:

   subsections 2(1), 2(2), 2(5) and 2(6).

3. The Commission proposes to replace references to Form 27 with references to Form 51-102F3 in the following provisions of the Regulation:

   clause 4(a)(ii) and section 35 of Schedule 1 to the Regulation.

4. The Commission proposes to replace references to OSC Policy Statement 5.10 with references to the Rule and to National Instrument 81-106 *Investment Funds Continuous Disclosure* in the following provisions of the Regulation:

   sections 34 and 50 of Schedule 1 to the Regulation.

5. The Commission proposes to amend section 34 of Schedule 1 to the Regulation by adding a reference to the Rule and to National Instrument 81-106 *Investment Funds Continuous Disclosure*.

Authority for the Rule

The following provisions of the Act provide the Commission with authority to adopt the proposed Rule.

Paragraph 143(1)22 authorizes the Commission to prescribe 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 the requirements under the Act, including requirements in respect of an annual report, an annual information form and supplemental analysis of financial statements.

Paragraph 143(1)23 authorizes the Commission to exempt reporting issuers from any requirement of Part XVIII (Continuous Disclosure) of the Act.

Paragraph 143(1)24 authorizes the Commission to require issuers or other persons and companies to comply, in whole or in part, with Part XVIII (Continuous Disclosure), or rules made under paragraph 143(1)22 of the Act.

Paragraph 143(1)25 authorizes the Commission to prescribe requirements in respect of financial accounting, reporting and auditing for the purposes of the Act, the regulations and the rules.

Paragraph 143(1)26 authorizes the Commission to prescribe requirements for the validity and solicitation of proxies.

Paragraph 143(1)38 authorizes the Commission to prescribe requirements in respect of reverse take-overs including requirements for disclosure that are substantially equivalent to that provided by a prospectus.

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 and all documents determined by the regulations or the rules to be ancillary to the documents, including financial statements, proxies and information circulars.

Paragraph 143(1)44 authorizes the Commission to vary the Act to permit or require the use of an electronic or computer-based system for the filing, delivery or deposit of:

i. documents or information required under or governed by the Act, the regulations or rules, and

ii. documents determined by the regulations or rules to be ancillary to documents required under or governed by the Act, the regulations or rules.

Paragraph 143(1)49 authorizes the Commission to vary the Act to permit or require methods of filing or delivery, to or by the Commission, issuers, registrants, security holders or others, of documents, information, notices, books, records, things, orders, authorizations or other communications required under or governed by Ontario securities laws.

Paragraph 143(1)56 authorizes the commission to make rules providing for exemptions from or varying any or all time periods in the Act.

Alternatives Considered

The Instrument contains provisions which are intended to harmonize existing obligations under securities legislation in the jurisdictions. The only alternative to those provisions that the Commission considered was the status quo of having differing requirements in various jurisdictions. The Commission decided to harmonize because the following is one of the fundamental principles that the Commission is to have regard to under section 2.1 of the Act: “The integration of capital markets is supported and promoted by the sound and responsible harmonization and co-ordination of securities regulation regimes.”

The Instrument also includes provisions which either impose additional continuous disclosure obligations or remove existing obligations (the “Additional Provisions”) from those presently found under the Act, the Regulation or the rules thereunder. The Commission considered whether to implement the Additional Provisions by local rule. However, the Commission followed the principle quoted above and determined to implement the Additional Provisions in the Instrument.