

1.1.2 Notice of Request for Comments - Proposed National Instrument 51-102 and Companion Policy 51-102CP, Continuous Disclosure Obligations, Proposed OSC Rule 51-801, Implementing National Instrument 51-102 Continuous Disclosure and Companion Policy 51-801CP

NOTICE OF REQUEST FOR COMMENTS

**PROPOSED NATIONAL INSTRUMENT 51-102 AND
COMPANION POLICY 51-102CP
CONTINUOUS DISCLOSURE OBLIGATIONS
PROPOSED ONTARIO SECURITIES
COMMISSION RULE 51-801
IMPLEMENTING NATIONAL INSTRUMENT 51-102
CONTINUOUS DISCLOSURE AND COMPANION
POLICY 51-801CP**

The Commission is publishing for comment in today's Bulletin:

- National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) which contains Form 51-102F1 *Annual Information Form* (AIF), Form 51-102F2 *Management Discussion and Analysis* (MD&A), Form 51-102F3 *Material Change Report* (MCR), Form 51-102F4 *Business Acquisition Report* (BAR), Form 51-102F5 *Information Circular* and Form 51-102F6 *Statement of Executive Compensation* (collectively the Forms);
- Companion Policy 51-102CP to NI 51-102 (the Policy);
- Notice and Request for Comment regarding NI 51-102, the Forms, the Policy and related amendments and revocations; and
- Commission Rule 51-801 *Implementing National Instrument 51-102 Continuous Disclosure Obligations* (the Implementing Rule) and its Companion Policy and Notice and Request for Comment.

The Notice relating to NI 51-102 also requests comment on:

1. the 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*;
2. the proposed revocation of National Instrument 62-102 *Disclosure of Outstanding Share Data*; and
3. amendments to Multilateral Instrument 45-102 *Resale of Securities*.

The Notice relating to the Implementing Rule also requests comment on:

1. proposed amendments to Commission Rule 56-501 *Restricted Shares*;
2. the proposed revocation of:
 - a) Commission Rule 51-501 *AIF & MD&A*
 - b) Commission Rule 52-501 *Financial Statements*
 - c) Commission Rule 54-501 *Prospectus Disclosure*
 - d) Commission Rule 62-102 *Disclosure of Outstanding Share Data*; and
3. the proposed rescission of
 - a) Companion Policy 51-501CP to Commission Rule 51-501 *AIF & MD&A*,
 - b) Companion Policy 52-501CP to Commission Rule 52-501 *Financial Statements*,
 - c) Commission Policy 52-601 *Applications for Exemptions from Preparation and Mailing of Interim Financial Statements, Annual Statements and Proxy Solicitation Material*; and
 - d) Commission Policy 51-603 *Reciprocal Filings*;

The documents are published in Chapter 6 of the Bulletin.

6.1.3 Notice and Request for Comment - Proposed OSC Rule 51-801 and Companion Policy 51-801CP, Proposed Amendments to OSC Rule 56-501, Proposed Revocation of OSC Rules 51-501, 52-501, 54-501 and 62-102, and Proposed Rescission of Companion Policy 51-501CP, Companion Policy 52-501CP, Commission Policy 52-601, and Commission Policy 51-603

NOTICE AND REQUEST FOR COMMENT

PROPOSED ONTARIO SECURITIES COMMISSION ("COMMISSION") RULE 51-801 IMPLEMENTING NATIONAL INSTRUMENT 51-102 CONTINUOUS DISCLOSURE OBLIGATIONS AND COMPANION POLICY 51-801CP IMPLEMENTING NATIONAL INSTRUMENT 51-102 CONTINUOUS DISCLOSURE OBLIGATIONS

PROPOSED AMENDMENTS TO COMMISSION RULE 56-501 RESTRICTED SHARES

**PROPOSED REVOCATION OF
COMMISSION RULE 51-501 AIF & MD&A
COMMISSION RULE 52-501 FINANCIAL STATEMENTS
COMMISSION RULE 54-501 PROSPECTUS DISCLOSURE AND
COMMISSION RULE 62-102 DISCLOSURE OF OUTSTANDING SHARE DATA**

AND

**PROPOSED RESCISSION OF
COMPANION POLICY 51-501CP TO COMMISSION RULE 51-501 AIF & MD&A,
COMPANION POLICY 52-501CP TO COMMISSION RULE 52-501 FINANCIAL STATEMENTS,
COMMISSION POLICY 52-601 APPLICATIONS FOR EXEMPTIONS FROM PREPARATION AND MAILING OF INTERIM
FINANCIAL STATEMENTS, ANNUAL FINANCIAL STATEMENTS AND PROXY SOLICITATION MATERIAL, AND
COMMISSION POLICY 51-603 RECIPROCAL FILINGS**

Substance and Purpose

Proposed Commission Rule 51-801 *Implementing National Instrument 51-102 Continuous Disclosure Obligations* (the "Proposed Implementing Rule") is a local Ontario rule implementing proposed National Instrument 51-102 *Continuous Disclosure Obligations* ("NI 51-102") in Ontario. Proposed Companion Policy 51-801CP to the proposed Implementing Rule (the "Proposed Companion Policy") provides information relating to the manner in which the Commission interprets or applies certain provisions of the Proposed Implementing Rule and NI 51-102. For a complete review of the substance and purpose of NI 51-102, please refer to the CSA Notice and Request for Comment regarding NI 51-102.

Summary

Sections 3.1 and 3.2 of the Proposed Implementing Rule provide that some of the financial statement filing requirements of NI 51-102 apply to financial statements filed under the Act.

Section 3.3 of the Proposed Implementing Rule provides that the delivery requirements of section 79 of the Act do not apply if a reporting issuer complies with the delivery requirements of section 4.12 of NI 51-102.

The Proposed Implementing Rule also specifies new forms for reports required under subsections 75(2), 81(2) and 86(1) of the Act.

The Proposed Implementing Rule also revokes Commission Rule 51-501 *AIF & MD&A*, Commission Rule 52-501 *Financial Statements*, Commission Rule 54-501 *Prospectus Disclosure* and Commission Rule 62-102 *Disclosure of Outstanding Share Data*. These rules are being revoked because the subject matter of these rules is now addressed by NI 51-102. The Proposed Implementing Rule also provides amendments to Commission Rule 56-501 *Restricted Shares* ("Commission Rule 56-501"). Commission Rule 56-501 contains requirements for issuers with restricted shares in several contexts including continuous disclosure obligations. The amendments to Commission Rule 56-501 provide that this rule will no longer apply to continuous disclosure documents, which subject matter is now governed by NI 51-102.

NI 51-102 includes certain requirements that are also dealt with in the Act. This is the result of the Commission's goal to produce one harmonized rule for continuous disclosure obligations applicable to reporting issuers in all jurisdictions. The Act cannot be amended at this time to remove provisions which essentially duplicate those found in NI 51-102. Accordingly, the Proposed Companion Policy clarifies that reporting issuers, other than investment funds, need only refer to NI 51-102 for their Ontario securities law requirements regarding continuous disclosure, proxies and proxy solicitation and do not have to refer to Parts XVIII and Part XIX of the Act, except for sections 76 and 87 of the Act.

Alternatives Considered

None.

Authority

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) 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 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 IX (Proxies and Proxy Solicitation) in respect of registered holders or beneficial owners of voting securities or equity securities or 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) 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, 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 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.

Anticipated Costs and Benefits

For a summary of the anticipated costs and benefits of NI 51-102 please see the CSA Notice and Request for Comment regarding NI 51-102.

Proposed Rescission of Policies

The Commission proposes to rescind:

- (a) Companion Policy 51-501CP to Commission Rule 51-501 ("Companion Policy 51-501CP");
- (b) Companion Policy 52-501CP to Commission Rule 52-501 ("Companion Policy 52-501CP");
- (c) Commission Policy 52-601 *Applications for Exemptions from Preparation and Mailing of Interim Financial Statements, Annual Financial Statements and Proxy Solicitation Material*; and
- (d) Commission Policy 51-603 *Reciprocal Filings*.

Companion Policy 51-501CP and Companion Policy 52-501CP are being rescinded in conjunction with the revocation of Commission Rule 51-501 and Commission Rule 52-501 that is contained in the Proposed Implementing Rule. Commission Policy 51-603 is being rescinded because the subject matter of this policy is covered by NI 51-102. Commission Policy 52-601 is being rescinded because the provisions of this policy are no longer applicable as a consequence of NI 51-102.

Request for Comments

Interested parties are invited to make written submissions with respect to the Proposed Implementing Rule, Proposed Companion Policy and proposed amendments, revocations and rescissions of rules and policies. Submissions received by September 19, 2002 will be considered. Submissions should be addressed to:

Request for Comments

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Secretary to the Commission
Ontario Securities Commission
20 Queen Street West, Suite 1903, Box 55
Toronto, Ontario M5H 3S8

Fax: (416) 593-2318
e-mail jstevenson@osc.gov.on.ca

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 requires that a summary of the written comments received during the comment period be published.

Questions may be referred to any of:

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Text of Proposed Rule

The text of the Proposed Implementing Rule and Proposed Companion Policy follows.