

NOTICE OF REQUEST FOR COMMENTS

PROPOSED NATIONAL INSTRUMENT 71-102 AND COMPANION POLICY 71-102CP CONTINUOUS DISCLOSURE AND OTHER EXEMPTIONS RELATING TO FOREIGN ISSUERS PROPOSED ONTARIO SECURITIES COMMISSION RULE 71-802 IMPLEMENTING NATIONAL INSTRUMENT 71-102

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

- National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (NI 71-102);
- Companion Policy 71-102CP to NI 71-102 (the Policy);
- Notice and Request for Comment regarding NI 71-102, the Policy and related amendments and revocations; and
- Commission Rule 71-802 *Implementing National Instrument 71-102 Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* and its Notice and Request for Comment.

The Notice relating to NI 71-102 also requests comment on the proposed rescission of the following:

1. OSC Policy 7.1 *Application of Requirements of the Securities Act to Certain Reporting Issuers*;
2. 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;
3. 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;
4. 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), that incorporates by reference the deemed rule (1984), 7 OSCB 1913, as amended; and
5. 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 rule (1984), 7 OSCB 3247 as amended.

The documents are published in Chapter 6 of the Bulletin.

6.1.7 Notice and Request for Comment - Proposed Rule 71-802, Implementing National Instrument 71-102 Continuous Disclosure and Other Exemptions Relating to Foreign Issuers

NOTICE AND REQUEST FOR COMMENT

PROPOSED RULE 71-802 IMPLEMENTING NATIONAL INSTRUMENT 71-102 CONTINUOUS DISCLOSURE AND OTHER EXEMPTIONS RELATING TO FOREIGN ISSUERS

Substance and Purpose

Proposed Rule 71-802 Implementing National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (the "Proposed Implementing Rule") is a local Ontario rule implementing National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* ("NI 71-102") in Ontario. The Proposed Implementing Rule contains exemptions from certain provisions of the *Securities Act* (Ontario) (the "Act") and rules made under the Act that are necessary in order to implement NI 71-102.

Summary

The Proposed Implementing Rule provides that the following do not apply to SEC foreign issuers and designated foreign issuers, as defined in NI 71-102, provided that they comply with the requirements of NI 71-102:

- Material change reporting requirements of proposed National Instrument 51-102 *Continuous Disclosure Obligations* ("NI 51-102") and Rule 51-801 *Implementing National Instrument 51-102 Continuous Disclosure Obligations*
- Annual Report, AIF, Business Acquisition Reports and MD & A requirements of NI 51-102
- Restricted share continuous disclosure requirements in NI 51-102 and minority approval requirements in OSC Rule 56-501 *Restricted Shares*

The Proposed Implementing Rule provides that the following do not apply to persons or companies in respect of securities of SEC foreign issuers and designated foreign issuers, provided that they comply with the requirements of NI 71-102:

- Early warning requirements and acquisition announcement provisions of sections 101 and 102 of the Act and National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues*

Finally, the Proposed Implementing Rule provides that OSC Rule 61-501 *Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions* does not apply to:

- A SEC foreign issuer carrying out a going private transaction or a related party transaction if the total number of equity securities of the SEC foreign issuer owned of record, directly or indirectly by residents of Canada does not exceed 20 per cent on a fully diluted basis
- A designated foreign issuer carrying out a going private transaction or related party transaction

Alternatives Considered

None.

Authority

Paragraph 143(1)36 of the Act authorizes the Ontario Securities Commission (the "Commission") to make rules varying the Act for foreign issuers to facilitate, among other things, compliance with requirements applicable or relating to reporting issuers and the making of 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 Implementing Rule.

The following provisions of the Act also provide the Commission with authority to make the Proposed Implementing 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 (Continuous Disclosure) 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 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.

Anticipated Costs and Benefits

For a summary of the anticipated costs and benefits of NI 71-102 see CSA Notice and Request for Comment regarding NI 71-102.

Comments

Interested parties are invited to make written submissions with respect to the Proposed Implementing Rule. Submissions received by September 19, 2002 will be considered. Submissions should be addressed to the Commission at the following address:

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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:

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Text of Proposed Rule

The text of the Proposed Implementing Rule follows.