

- 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 and to Commission Form 41-501F1, 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

CHANGES TO 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 AND TO COMMISSION FORM 41-501F1

**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**

Introduction

The Commission is publishing for comment a revised version of proposed Commission Rule 51-801 *Implementing National Instrument 51-102 Continuous Disclosure Obligations* (the “Proposed Implementing Rule”).

Substance and Purpose

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. The Proposed Implementing Rule and the Proposed Companion Policy are together referred to as the Implementing Instrument.

Background

On June 21, 2002 we published for comment the first version of NI 51-102 and the Proposed Implementing Instrument (the 2002 Proposal). For additional background information on the 2002 Proposal, as well as a detailed summary of its contents, please refer to the notice that was published with those versions.

On the same date as publication of this Notice, the Canadian Securities Administrators (CSA) are publishing for comment a revised version of NI 51-102. For a summary of the changes made to NI 51-102, please refer to the CSA Notice and Request for comment regarding NI 51-102.

Comments

We received no comments on the Implementing Instrument that was part of the 2002 Proposal.

Summary of Changes to the Proposed Implementing Rule

No material changes have been made to the Proposed Companion Policy that was published with the 2002 Proposal.

After further considering the Proposed Implementing Rule, we are proposing a number of amendments to it.

Request for Comments

The following sections have all been added to the Implementing Rule since the 2002 Proposal: 3.3., 3.4, 3.5, 3.7, 3.8, 3.11, 3.12 and 3.13. Each of these sections provide exemptions from certain requirements of the Act. NI 51-102 includes certain requirements that are also dealt with in the Act. This is a 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, these new sections of the Implementing Rule exempt reporting issuers from certain provisions of the Act if an issuer complies with specified provisions of NI 51-102. These new exemptions will also mean that issuers who need relief from a requirement that is essentially duplicated in both the Act and NI 51-102 will not have to apply for relief from both provisions.

Section 3.9 of the Implementing Rule is also new. It exempts issuers from subsection 81(2) of the Act, which is the requirement to make an annual filing in lieu of an information circular (Form 28). Form 51-102F1 (the AIF) requires supplementary disclosure (very similar to the disclosure required in Form 28) from 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.

Subsection 4.2 (2) of the Implementing Rule has also been added since the 2002 Proposal. This would amend item 8.5 of Form 41-501F1 *Information Required in a Prospectus*, to require that MD&A be prepared in accordance with Form 51-102F2.

Anticipated Costs and Benefits

We believe that the considerations set out in the notice accompanying the 2002 Proposal that justify any incremental costs of NI 51-102 are still valid.

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.

Request for Comments

Interested parties are invited to make written submissions on the changes to the Proposed Implementing Rule or to Part 8 of Form 41-501. Submissions received by August 19, 2003 will be considered. Submissions should be addressed to:

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Request for Comments

If you are not sending your comments by e-mail, please send a diskette containing your comments (in Windows format, 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 follow.