

Canada's Continuous Disclosure Rules are Changing

Subject to ministerial approval, on March 30, 2004, Canada's securities regulators will implement a new rule, National Instrument 51-102 *Continuous Disclosure Obligations*, that will significantly change reporting issuers' continuous disclosure obligations. This rule will not apply to investment funds.

NI 51-102 will affect a wide range of continuous disclosure requirements, as summarized in the table on the following pages. Changes will include new filing deadlines and delivery requirements, the content of some disclosure documents, and new continuous disclosure reporting requirements.

Who is affected?

Generally, NI 51-102 will apply to every reporting issuer in Canada, other than investment funds. In some cases, the requirements will differ depending on what marketplace the issuer's securities are listed on. Foreign issuers will benefit from new exemptions under National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*.

Why are the rules changing?

Regulators are striving to meet two major goals:

- **One set of rules across Canada.** Historically, issuers reporting in more than one province have faced a different set of disclosure rules in each jurisdiction. NI 51-102 will benefit issuers by harmonizing the continuous disclosure requirements across Canada.
- **Improved disclosure standards.** Investors will receive higher quality information, on a timelier basis. Better disclosure should increase investors' confidence in continuous disclosure in Canada.

Make sure you're ready

NI 51-102 will come into force March 30, 2004, but specific provisions have different effective dates set out in the rule. Issuers will need to comply with the new filing deadlines and MD&A requirements starting with their first interim period for financial years beginning on or after January 1, 2004. This means that the first interim financial statements and MD&A that will be required to comply with NI 51-102 will be for first quarters ending on or after March 31, 2004.

For more details ...

This brochure summarizes many of the most significant changes between the current disclosure requirements and those in NI-51-102. For complete information about how the new requirements will affect you, please visit one of the websites listed on the last page to obtain copies of NI 51-102 and NI 71-102, and their related documents.

Additional requirements

There are other rules that, subject to ministerial approval, will take effect on March 30, 2004. You should refer to the following instruments, as they may also affect your continuous disclosure obligations:

- National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*
- National Instrument 52-108 *Auditor Oversight*
- Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*
- Multilateral Instrument 52-110 *Audit Committees*

This brochure has been prepared by staff of the Canadian Securities Administrators to summarize many of the key changes to the continuous disclosure regime and provide general guidance. It is only a summary and should not be considered or relied upon as legal advice. Interpretations and comments contained in the brochure do not replace or modify any provisions of the rules. You should refer to the specific rules, their forms and companion policies. Where appropriate, you should consult a lawyer with expertise in securities law for advice on how to comply. This document was last revised February 12, 2004.

Summary of Changes to Continuous Disclosure Rules

This table is provided for your convenience and should not be considered or relied upon as legal advice. It is not a complete list of the changes resulting from National Instrument 51-102, nor does it completely describe the changes referred to in the table. It is a brief summary designed to alert readers to some of the areas where requirements have changed. Please refer to NI 51-102 and its related documents for the full text of the requirements.

The “Previous Requirements” column refers to requirements in Alberta, British Columbia, Ontario and Québec.

	Previous Requirements	New Requirements	
		“Venture Issuers” Those with securities listed/quoted only on TSX Venture, CNQ, or OTC BB, and those with only unlisted securities	Other Issuers Those with securities listed on the TSX, a senior US marketplace, or a marketplace outside of Canada and the US
FINANCIAL STATEMENTS AND MD&A: FILING & DELIVERY (NI 51-102, Parts 4 and 5)			
Filing deadlines for financial statements and MD&A	Annual: 140 days Interim: 60 days	Annual: 120 days Interim: 60 days	Annual: 90 days Interim: 45 days
Delivery of annual financial statements and MD&A	Deliver to securityholders	Must ask securityholders each year if they wish to receive copies. If yes, deliver both documents at the same time.	
Filing of annual and interim MD&A	Only required for certain issuers & in certain jurisdictions	All reporting issuers are required to file both annual and interim MD&A	
FINANCIAL STATEMENTS AND MD&A: APPROVAL & REVIEW (NI 51-102, Parts 4 and 5)			
Board approval	Only required for annual financial statements in most jurisdictions	Board approval required for annual and interim financial statements and MD&A. (Board may delegate approval of interim statements and MD&A to its audit committee.)	
Disclosure of auditor review of interim financial statements	No previous requirement	Issuers must: <ul style="list-style-type: none"> • disclose, if auditor has not reviewed statements • explain, if auditor was unable to complete review • attach auditor’s review report, if it includes a reservation 	
MD&A CONTENT (NI 51-102, Part 5 and Form 51-102F1)			
Updates to forward-looking information	National Policy 48 and additional requirements in BC	Must discuss any forward-looking information disclosed in prior MD&A if, in light of intervening events and without that discussion, the earlier disclosure could be misleading	
Off-balance sheet transactions	No specific requirements	Must be disclosed if reasonably likely to have an effect on results of operations or financial condition	
Related party transactions	Similar disclosure only required in BC	Must discuss all transactions involving “related parties”	

	Previous Requirements	New Requirements	
		“Venture Issuers”	Other Issuers
Critical accounting estimates	No previous requirement	Exempt	Must identify and describe: each estimate; methodology used; underlying assumptions; and range of estimates from which the estimate was selected
New accounting policies	Only required for certain issuers & in certain jurisdictions	Must disclose any new accounting policies that have been adopted, or that issuer expects to adopt subsequent to most recently completed year	
Disclosure of contractual obligations	No previous requirement	Exempt	Must present a summary, in tabular form
Additional disclosure for venture issuers without significant revenue	Québec & BC had a requirement for additional disclosure in the financial statements for issuers in the development stage	Must provide a breakdown of certain costs, whether capitalized, deferred or expensed, unless the information is already provided in the financial statements	Not applicable
ANNUAL INFORMATION FORM (AIF) (NI 51-102, Part 6 and Form 51-102F2)			
Filing of AIF	AIF requirement in Ontario & Québec for certain issuers	Exempt	Must file an AIF each year
Filing deadline for AIF	Within 140 days of year-end	Exempt	Within 90 days of year-end
Content of AIF	Description of the company, its operations and prospects, and external factors	Exempt	Certain prospectus-type disclosure added Other new disclosure added (e.g. fundamental social or environmental policies; significant contracts) Some financial disclosure moved into MD&A
Disclosure by directors and executives	Must disclose past bankruptcies, penalties and sanctions that occurred while a director or officer	Exempt	Requirement expanded. Must provide disclosure if: bankruptcy occurred within one year of ceasing to be a director/officer; or, event that resulted in penalty or sanction occurred while a director/officer

	Previous Requirements	New Requirements	
		“Venture Issuers”	Other Issuers
MATERIAL CHANGE REPORTS (NI 51-102, Part 7 and Form 51-102F3)			
Confidential material change reports	Other than in Québec, may file confidential report if disclosure would be unduly detrimental in the opinion of the issuer	Issuer’s opinion that a confidential report is warranted must be arrived at in a reasonable manner If issuer becomes aware that trading with knowledge of a confidential material change occurs, must promptly disclose the change (as per existing Ontario requirements)	
BUSINESS ACQUISITION REPORTS (NI 51-102, Part 8 and Form 51-102F4)			
Detailed disclosure for acquisitions	Only required in a prospectus	Report, including financial statements of acquired businesses and pro forma statements, must be filed within 75 days of completion of a “significant acquisition”	
Required significance tests	Asset, investment and income tests	<ul style="list-style-type: none"> Asset test (issuer’s share of acquired business’ assets compared with issuer’s assets before acquisition) Investment test (issuer’s investment in acquired business compared with issuer’s assets before acquisition) 	<ul style="list-style-type: none"> Asset test Investment test Income test (issuer’s share of acquired business’ income compared with issuer’s income before acquisition)
Threshold for significance	Significant at 20%, 40% and 50% levels	Significant at 40% level only	Significant at 20% and 40% levels
Financial statements for acquired business	Varies by level of significance. Up to 3 years of financial statements required.	If meet 40% threshold, must provide <u>1 year</u> of audited financial statements of acquired business and subsequent interim statements	If meets 20% threshold, but less than 40%, must provide <u>1 year</u> of audited financial statements of acquired business and subsequent interim statements If meets 40% threshold, must provide <u>2 years</u> of audited financial statements of acquired business and subsequent interim statements
Exemptions	–	Not required if issuer files an information circular with information and financial statements required by information circular form or CPC filing statement under TSXV policies	

	Previous Requirements	New Requirements	
		"Venture Issuers"	Other Issuers
INFORMATION CIRCULAR (NI 51-102, Part 9 and Forms 51-102F5 and 51-102F6)			
Reorganization or restructuring transaction subject to securityholder vote	Required disclosure varies by jurisdiction	Must now provide disclosure prescribed by form of prospectus, and disclosure requirement applies to a broader class of issuers involved in the transaction	
Other changes to information circular form	-	Changes include: level of routine indebtedness that directors need not disclose increases from \$25,000 to \$50,000; new disclosure of equity compensation plan information; may incorporate documents by reference; new penalties and sanctions disclosure about prospective directors	
Executive compensation disclosure	Varies by jurisdiction	Must disclose compensation of CEO, CFO, and top 3 other executives above \$150,000	
RESTRICTED SECURITY DISCLOSURE (NI 51-102, Part 10)			
Restricted security disclosure	Only required in Ontario and Québec, and only for restricted shares	Certain disclosure required in certain documents regarding all types of restricted securities	
ADDITIONAL FILING REQUIREMENTS (NI 51-102, Part 11)			
Securityholder voting results	No previous requirement	Exempt	Must disclose the results of votes held at meetings of securityholders
News releases	Filing of any news release, other than material change news releases, is optional	Must file copies of any news release regarding results of operations or financial condition	
Venture issuer status	No previous requirement	Must file a notice if an issuer becomes, or ceases to be, a venture issuer	
FILING OF CERTAIN DOCUMENTS (NI 51-102, Part 12)			
Material documents	Material contracts required to be filed with prospectuses only	Must file constating documents, by-laws, securityholder agreements, securityholders' rights plans and other similar documents Must file contracts that (a) create or materially affect the rights of securityholders or (b) are material to the issuer (other than contracts in the ordinary course of business) if they were entered into after January 1, 2002	

Exemptions from Continuous Disclosure Requirements

In addition to the less onerous requirements applicable to Venture Issuers, three other groups of issuers will not need to comply with certain aspects of NI 51-102.

■ **British Columbia issuers**

Issuers who report only in British Columbia are not required to comply with the following requirements:

- Business Acquisition Reports
- Filing of material documents
- Restricted security disclosure

■ **Exchangeable share issuers and Credit support issuers**

NI 51-102 exempts “exchangeable share issuers” from its requirements provided the issuer:

- files copies of its parent issuer’s documents, and
- sends copies of its parent issuer’s documents to its securityholders at the same time and in the same manner.

Insider reporting relief for insiders of exchangeable share issuers is also included.

NI 51-102 exempts “credit support issuers” from its requirements provided:

- the issuer’s parent guarantor is an MJDS issuer,
- the issuer files copies of its parent guarantor’s documents,
- the issuer sends copies of its parent guarantor’s documents to its securityholders at the same time and in the same manner, and
- the issuer provides certain segregated financial information about itself, if it has independent operations.

Insider reporting relief for insiders of credit support issuers is also included.

■ **Foreign issuers**

National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* provides certain exemptions to two classes of foreign issuers: “SEC foreign issuers” and “designated foreign issuers”.

These issuers are exempted from most of NI 51-102, and their insiders are exempt from insider reporting requirements provided the issuer is not a SEDI filer. No exemptions are provided from:

- portions of NI 51-102 (including change in corporate structure filing, change in status filing, and filing copies of documents sent to securityholders or filed with SEC);
- standards of disclosure for mineral projects and oil and gas activities; and
- portions of National Instrument 52-108 *Auditor Oversight*.

These issuers can obtain the exemptions by:

- complying with requirements of SEC or foreign jurisdiction,
- filing copies of foreign documents, and
- sending copies of documents to Canadian securityholders at same time, and same manner, as they are sent to foreign securityholders.

Additional Requirements Taking Effect March 30, 2004

Subject to ministerial approval, on March 30, 2004, two additional rules will be effective in all Canadian jurisdictions – National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*, and National Instrument 52-108 *Auditor Oversight*. Also subject to ministerial approval, on March 30, 2004 in all Canadian jurisdictions except British Columbia, Multilateral Instrument 52-109 *Certification of Disclosure in Issuer's Annual and Interim Filings* and Multilateral Instrument 52-110 *Audit Committees* will come into effect. These four rules will affect issuers' financial reporting practices.

■ **National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency***

All issuers and registrants that file or deliver financial statements to a securities regulatory authority will have to comply with the requirements of NI 52-107. NI 52-107 will not apply to investment funds. In general, NI 52-107 requires that the financial statements be

- prepared in accordance with Canadian generally accepted accounting principles (GAAP)
- audited in accordance with Canadian generally accepted auditing standards (GAAS) and be accompanied by an auditor's report that, among other things, does not contain a reservation.

In addition, the auditor must be authorized to sign an auditor's report by a Canadian jurisdiction or foreign jurisdiction, and meet the professional standards of that jurisdiction.

Exemptions from the general requirements for Canadian GAAP and GAAS are provided for "SEC issuers" and "foreign issuers", who are permitted to use other specified accounting principles and auditing standards.

NI 52-107 also sets out the accounting principles and auditing standards that may be used for acquisition statements and pro forma financial statements filed with a prospectus, business acquisition report, or other document.

■ **National Instrument 52-108 *Auditor Oversight***

When a reporting issuer is required to file its financial statements accompanied by an auditor's report, NI 52-108 will require the reporting issuer to have the auditor's report prepared by a public accounting firm that

- participates in the oversight program of the Canadian Public Accountability Board (CPAB), and
- complies with restrictions or sanctions imposed by the CPAB.

Other than in Alberta, British Columbia and Manitoba, NI 52-108 will also require a public accounting firm that prepares an auditor's report with respect to the financial statements of a reporting issuer to

- participate in the CPAB oversight program,
- comply with any sanctions or restrictions imposed by the CPAB, and
- provide notice, in certain situations, of any restrictions or sanctions imposed by the CPAB to their audit clients and the securities regulator.

■ **Multilateral Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings**

An issuer's Chief Executive Officer and Chief Financial Officer will have to certify annual and interim financial statements and MD&A as well as the annual information form. They will have to certify, among other things, that

- they have reviewed the documents to be certified,
- the documents do not contain any misrepresentations or omit material facts,
- the financial statements and other financial information fairly present the issuer's financial condition, results of operation and cash flow,
- they have designed disclosure controls and procedures and internal control over financial reporting,
- they have evaluated the effectiveness of the disclosure controls and procedures and caused the issuer to disclose their conclusions regarding their evaluation, and
- they have caused the issuer to disclose certain changes in the internal control over financial reporting.

Issuers will need to certify the first three items listed for financial years and interim periods beginning on or after January 1, 2004. The last three items listed above are not required in certificates relating to financial years ending on or before March 30, 2005.

■ **Multilateral Instrument 52-110 Audit Committees**

MI 52-110 will require every issuer to have an audit committee to which the external auditor must directly report. Subject to certain limited exceptions, MI 52-110 will prescribe the composition, responsibilities and reporting obligations of audit committees. Certain exemptions are provided for venture issuers, controlled companies and US listed issuers.

Issuers will need to comply with MI 52-110 commencing on the earlier of: (i) their first annual meeting after July 1, 2004; and (ii) July 1, 2005.

The following Canadian securities commissions publish copies of some or all of the rules discussed above on their websites:

British Columbia Securities Commission
www.bpsc.bc.ca

Alberta Securities Commission
www.albertasecurities.com

Ontario Securities Commission
www.osc.gov.on.ca

Commission des valeurs mobilières du Québec
www.cvmq.com