

5.1.3 National Instrument 71-102 Continuous Disclosure and Other Exemptions Relating to Foreign Issuers

**NATIONAL INSTRUMENT 71-102
CONTINUOUS DISCLOSURE AND OTHER EXEMPTIONS RELATING TO FOREIGN ISSUERS**

Table of Contents

PART 1 DEFINITIONS AND INTERPRETATION

- 1.1 Definitions and Interpretation
- 1.2 Determination of Canadian Shareholders
- 1.3 Timing for Calculation of Designated Foreign Issuer and Foreign Reporting Issuer

PART 2 LANGUAGE OF DOCUMENTS

- 2.1 French or English
- 2.2 Filings Prepared in a Language other than French or English

PART 3 FILING AND SENDING OF DOCUMENTS

- 3.1 Timing of Filing of Documents
- 3.2 Sending of Documents to Canadian Securityholders

PART 4 SEC FOREIGN ISSUERS

- 4.1 Amendments and Supplements
- 4.2 Material Change Reporting
- 4.3 Financial Statements
- 4.4 AIFs and MD&A
- 4.5 Business Acquisition Reports
- 4.6 Proxies and Proxy Solicitation by the Issuer and Information Circulars
- 4.7 Proxy Solicitation by Another Person or Company
- 4.8 Disclosure of Voting Results
- 4.9 Filing of Certain News Releases
- 4.10 Filing of Certain Documents
- 4.11 Early Warning
- 4.12 Insider Reporting
- 4.13 Communication with Beneficial Owners of Securities
- 4.14 Going Private Transactions and Related Party Transactions
- 4.15 Change of Auditor
- 4.16 Restricted Securities

PART 5 DESIGNATED FOREIGN ISSUERS

- 5.1 Amendments and Supplements
- 5.2 Mandatory Annual Disclosure by Designated Foreign Issuer
- 5.3 Material Change Reporting
- 5.4 Financial Statements
- 5.5 AIFs & MD&A
- 5.6 Business Acquisition Reports
- 5.7 Proxies and Proxy Solicitation by the Issuer and Information Circulars
- 5.8 Proxy Solicitation by Another Person or Company
- 5.9 Disclosure of Voting Results
- 5.10 Filing of Certain News Releases
- 5.11 Filing of Certain Documents
- 5.12 Early Warning
- 5.13 Insider Reporting
- 5.14 Communication with Beneficial Owners of Securities
- 5.15 Going Private Transactions and Related Party Transactions
- 5.16 Change in Year-End
- 5.17 Change of Auditor
- 5.18 Restricted Securities

PART 6 FOREIGN TRANSITION ISSUERS

- 6.1 Application
- 6.2 Definition
- 6.3 Transitional Exemptions

PART 7 EFFECTIVE DATE

7.1 Effective Date

NATIONAL INSTRUMENT 71-102
CONTINUOUS DISCLOSURE AND OTHER EXEMPTIONS RELATING
TO FOREIGN ISSUERS

PART 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions and Interpretation

In this Instrument:

“AIF” means a completed Form 51-102F2 *Annual Information Form* or, in the case of an SEC foreign issuer, a completed Form 51-102F2 or an annual report or transition report under the 1934 Act on Form 10-K, Form 10-KSB, or Form 20-F;

“board of directors” means, for a person or company that does not have a board of directors, an individual or group that acts in a capacity similar to a board of directors;

“business acquisition report” means a completed Form 51-102F4 *Business Acquisition Report*;

“class” includes a series of a class;

“convertible security” means a security of an issuer that is convertible into, or carries the right of the holder to acquire, or of the issuer to cause the acquisition of, a security of the same issuer;

“designated foreign issuer” means a foreign reporting issuer

- (a) that does not have a class of securities registered under section 12 of the 1934 Act and is not required to file reports under section 15(d) of the 1934 Act;
- (b) that is subject to foreign disclosure requirements; and
- (c) for which the total number of equity securities owned, directly or indirectly, by residents of Canada does not exceed 10 per cent, on a fully-diluted basis, of the total number of equity securities of the issuer, calculated in accordance with sections 1.2 and 1.3;

“designated foreign jurisdiction” means Australia, France, Germany, Hong Kong, Italy, Japan, Mexico, the Netherlands, New Zealand, Singapore, South Africa, Spain, Sweden, Switzerland or the United Kingdom of Great Britain and Northern Ireland;

“exchangeable security” means a security of an issuer that is exchangeable for, or carries the right of the holder to acquire, or of the issuer to cause the acquisition of, a security of another issuer;

“exchange-traded security” means a security that is listed on a recognized exchange or is quoted on a recognized quotation and trade reporting system or is listed on an exchange or quoted on a quotation and trade reporting system that is recognized for the purposes of National Instrument 21-101 *Marketplace Operation* and National Instrument 23-101 *Trading Rules*;

“executive officer” of a reporting issuer means an individual who is

- (a) a chair of the reporting issuer;
- (b) a vice-chair of the reporting issuer;
- (c) the president of the reporting issuer;
- (d) a vice-president of the reporting issuer in charge of a principal business unit, division or function including sales, finance or production;
- (e) an officer of the reporting issuer or any of its subsidiaries who performed a policy-making function in respect of the reporting issuer; or
- (f) any other individual who performed a policy-making function in respect of the reporting issuer;

“foreign disclosure requirements” means the requirements to which a foreign reporting issuer is subject concerning the disclosure made to the public, to securityholders of the issuer or to a foreign regulatory authority

- (a) relating to the foreign reporting issuer and the trading in its securities; and
- (b) that is made publicly available in the foreign jurisdiction under
 - (i) the securities laws of the foreign jurisdiction in which the principal trading market of the foreign reporting issuer is located; or
 - (ii) the rules of the marketplace that is the principal trading market of the foreign reporting issuer;

“foreign regulatory authority” means a securities commission, exchange or other securities market regulatory authority in a designated foreign jurisdiction;

“foreign reporting issuer” means a reporting issuer, other than an investment fund, that is incorporated or organized under the laws of a foreign jurisdiction, unless

- (a) outstanding voting securities carrying more than 50 per cent of the votes for the election of directors are owned, directly or indirectly, by residents of Canada; and
- (b) any one or more of the following is true:
 - (i) the majority of the executive officers or directors of the issuer are residents of Canada;
 - (ii) more than 50 per cent of the consolidated assets of the issuer are located in Canada; or
 - (iii) the business of the issuer is administered principally in Canada;

“inter-dealer bond broker” means a person or company that is approved by the Investment Dealers Association under its By-Law No. 36 *Inter-Dealer Bond Brokerage Systems*, as amended, and is subject to its By-Law No. 36 and its Regulation 2100 *Inter-Dealer Bond Brokerage Systems*, as amended;

“interim period” means,

- (a) in the case of a year other than a transition year, a period commencing on the first day of the financial year and ending nine, six or three months before the end of the financial year, or
- (b) in the case of a transition year, a period commencing on the first day of the transition year and ending
 - (i) three, six, nine or twelve months, if applicable, after the end of the old financial year; or
 - (ii) twelve, nine, six or three months, if applicable, before the end of the transition year;

“investment fund” means a mutual fund or a non-redeemable investment fund;

“marketplace” means

- (a) an exchange;
- (b) a quotation and trade reporting system;
- (c) a person or company not included in paragraph (a) or (b) that
 - (i) constitutes, maintains or provides a market or facility for bringing together buyers and sellers of securities;
 - (ii) brings together the orders for securities of multiple buyers and sellers; and
 - (iii) uses established, non-discretionary methods under which the orders interact with each other, and the buyers and sellers entering the orders agree to the terms of a trade; or
- (d) a dealer that executes a trade of an exchange-traded security outside of a marketplace,

but does not include an inter-dealer bond broker;

“MD&A” means a completed Form 51-102F1 *Management’s Discussion & Analysis* or, in the case of an SEC foreign issuer, a completed Form 51-102F1 or management’s discussion and analysis prepared in accordance with Item 303 of Regulation S-K or Item 303 of Regulation S-B under the 1934 Act;

“multiple convertible security” means a security of an issuer that is convertible into, or exchangeable for, or carries the right of the holder to acquire, or of the issuer to cause the acquisition of, a convertible security, an exchangeable security or another multiple convertible security;

“Nasdaq” means Nasdaq National Market and Nasdaq SmallCap Market;

“NI 52-107” means National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*;

“non-redeemable investment fund” means any issuer

- (a) where contributions of securityholders are pooled for investment;
- (b) where securityholders do not have day-to-day control over the management and investment decisions of the issuer, whether or not they have the right to be consulted or to give directions; and
- (c) whose securities do not entitle the securityholder to receive on demand, or within a specified period after demand, an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets of the issuer;

“old financial year” means the financial year of a reporting issuer that immediately precedes its transition year;

“principal trading market” means the published market on which the largest trading volume in the equity securities of the issuer occurred during the issuer’s most recent financial year that ended before the date the determination is being made;

“published market” means, for a class of securities, a marketplace on which the securities have traded that discloses regularly in a publication of general and regular paid circulation or in a form that is broadly distributed by electronic means the prices at which those securities have traded;

“recognized exchange” means

- (a) in Ontario, an exchange recognized by the securities regulatory authority to carry on business as a stock exchange; and
- (b) in every other jurisdiction, an exchange recognized by the securities regulatory authority as an exchange, self-regulatory organization or self-regulatory body;

“recognized quotation and trade reporting system” means

- (a) in every jurisdiction other than British Columbia, a quotation and trade reporting system recognized by the securities regulatory authority under securities legislation to carry on business as a quotation and trade reporting system; and
- (b) in British Columbia, a quotation and trade reporting system recognized by the securities regulatory authority under securities legislation as a quotation and trade reporting system or as an exchange;

“SEC foreign issuer” means a foreign reporting issuer that

- (a) has a class of securities registered under section 12 of the 1934 Act or is required to file reports under section 15(d) of the 1934 Act; and
- (b) is not registered or required to be registered as an investment company under the *Investment Company Act of 1940* of the United States of America, as amended;

“SEDI issuer” has the meaning ascribed to that term in National Instrument 55-102 *System for Electronic Disclosure by Insiders (SEDI)*;

“transition year” means the financial year of reporting issuer in which the issuer changes its financial year-end;

“TSX” means the Toronto Stock Exchange;

“underlying security” means a security issued or transferred, or to be issued or transferred, in accordance with the terms of a convertible security, an exchangeable security or a multiple convertible security;

“U.S. market” means an exchange in the United States of America or Nasdaq; and

“U.S. market requirements” means the requirements of the U.S. market on which the reporting issuer’s securities are listed or quoted.

1.2 Determination of Canadian Shareholders

- (1) For the purposes of section 4.14 and paragraph (c) of the definition of “designated foreign issuer”, a reference to equity securities owned, directly or indirectly, by residents of Canada, includes
 - (a) the underlying securities that are equity securities of the foreign reporting issuer; and
 - (b) the equity securities of the foreign reporting issuer represented by an American depository receipt or an American depository share issued by a depository holding equity securities of the foreign reporting issuer.
- (2) For the purposes of paragraph (a) of the definition of “foreign reporting issuer”, securities represented by American depository receipts or American depository shares issued by a depository holding voting securities of the foreign reporting issuer must be included as outstanding in determining both the number of votes attached to securities owned, directly or indirectly, by residents of Canada and the number of votes attached to all of the issuer’s outstanding voting securities.

1.3 Timing for Calculation of Designated Foreign Issuer and Foreign Reporting Issuer

For the purposes of paragraph (c) of the definition of “designated foreign issuer”, paragraph (a) of the definition of “foreign reporting issuer” and section 4.14, the calculation is made,

- (a) if the issuer has not completed a financial year since becoming a reporting issuer, at the date that the issuer became a reporting issuer; and
- (b) for all other issuers,
 - (i) for the purpose of financial statement and MD&A filings under this Instrument, on the first day of the most recent financial year or year-to-date interim period for which operating results are presented in the financial statements or MD&A; and
 - (ii) for the purpose of other continuous disclosure filing obligations under this Instrument, on the first day of the issuer’s current financial year.

PART 2 LANGUAGE OF DOCUMENTS

2.1 French or English

- (1) A person or company must file a document required to be filed under this Instrument in either French or English.
- (2) Notwithstanding subsection (1), if a person or company files a document only in French or only in English but delivers to securityholders of an issuer a version of the document in the other language, the person or company must file that other version not later than when it is first delivered to securityholders.
- (3) In Québec, a reporting issuer must comply with linguistic obligations and rights prescribed by Québec law.

2.2 Filings Prepared in a Language other than French or English

- (1) If a person or company files a document that is required to be filed under this Instrument that is a translation of a document prepared in a language other than French or English, the person or company must file the document upon which the translation was based.

- (2) A foreign reporting issuer filing a document upon which the translation was based under subsection (1) must attach to the document a certificate as to the accuracy of the translation.

PART 3 FILING AND SENDING OF DOCUMENTS

3.1 Timing of Filing of Documents

A person or company filing a document under this Instrument must file the document at the same time as, or as soon as practicable after, the filing or furnishing of the document to the SEC or to a foreign regulatory authority.

3.2 Sending of Documents to Canadian Securityholders

If a person or company sends a document to holders of securities of any class under U.S. federal securities law, or the laws or requirements of a designated foreign jurisdiction, and that document is required to be filed under this Instrument, then the document must be sent in the same manner and at the same time, or as soon as practicable after, to holders of securities of that class in the local jurisdiction.

PART 4 SEC FOREIGN ISSUERS

4.1 Amendments and Supplements

Any amendments or supplements to disclosure documents filed by an SEC foreign issuer under this Instrument must also be filed.

4.2 Material Change Reporting

An SEC foreign issuer is exempt from securities legislation requirements relating to disclosure of material changes if the issuer

- (a) complies with the U.S. market requirements for making public disclosure of material information on a timely basis;
- (b) complies with foreign disclosure requirements for making public disclosure of material information on a timely basis, if securities of the issuer are not listed or quoted on a U.S. market;
- (c) promptly files each news release issued by it for the purpose of complying with the requirements referred to in paragraph (a) or (b);
- (d) complies with the requirements of U.S. federal securities law for filing or furnishing current reports to the SEC; and
- (e) files the current reports filed with or furnished to the SEC.

4.3 Financial Statements

An SEC foreign issuer satisfies securities legislation requirements relating to the preparation, approval, filing and delivery of its interim financial statements, and annual financial statements and auditor's reports on annual financial statements if it

- (a) complies with the requirements of U.S. federal securities law relating to interim financial statements, annual financial statements and auditor's reports on annual financial statements;
- (b) complies with the U.S. market requirements relating to interim financial statements and annual financial statements, if securities of the issuer are listed or quoted on a U.S. market;
- (c) files the interim financial statements, annual financial statements and auditor's reports on annual financial statements filed with or furnished to the SEC or a U.S. market;
- (d) complies with section 3.2 of this Instrument; and
- (e) complies with NI 52-107 as it relates to financial statements of the issuer that are included in any documents specified in paragraph (c).

4.4 AIFs and MD&A

An SEC foreign issuer satisfies securities legislation requirements relating to the preparation, approval, filing and delivery of AIFs and MD&A if it

- (a) complies with the requirements of U.S. federal securities law relating to annual reports, quarterly reports, current reports and management's discussion and analysis;
- (b) files each annual report, quarterly report, current report and management's discussion and analysis filed with or furnished to the SEC;
- (c) complies with section 3.2 of this Instrument; and
- (d) complies with NI 52-107 as it relates to financial statements of the issuer that are included in any documents specified in paragraph (b).

4.5 Business Acquisition Reports

An SEC foreign issuer satisfies securities legislation requirements relating to the preparation and filing of business acquisition reports if it

- (a) complies with the requirements of U.S. federal securities law relating to business acquisition reports;
- (b) files each business acquisition report filed with or furnished to the SEC;
- (c) complies with section 3.2 of this Instrument; and
- (d) complies with NI 52-107 as it relates to financial statements that are included in any documents specified in paragraph (b).

4.6 Proxies and Proxy Solicitation by the Issuer and Information Circulars

An SEC foreign issuer satisfies securities legislation requirements relating to information circulars, proxies and proxy solicitation if it

- (a) complies with the requirements of U.S. federal securities law relating to proxy statements, proxies and proxy solicitation;
- (b) files all material relating to a meeting of securityholders that is filed with or furnished to the SEC;
- (c) sends each document filed under paragraph (b) to securityholders in the local jurisdiction in the manner and at the time required by U.S. federal securities laws and U.S. market requirements; and
- (d) complies with NI 52-107 as it relates to financial statements of the issuer that are included in any documents specified in paragraph (b).

4.7 Proxy Solicitation by Another Person or Company

- (1) A person or company, other than the SEC foreign issuer, satisfies securities legislation requirements relating to information circulars, proxies and proxy solicitation with respect to an SEC foreign issuer if the person or company complies with the requirements of subsection 4.6.
- (2) If a proxy solicitation is made with respect to an SEC foreign issuer by a person or company other than the SEC foreign issuer and the person or company soliciting proxies lacks access to the relevant list of securityholders of the SEC foreign issuer, the exemption in subsection (1) is not available, if
 - (a) the aggregate published trading volume of the class on the TSX and the TSX Venture Exchange exceeded the aggregate published trading volume of the class on all U.S. markets
 - (i) for the 12 calendar month period before commencement of the proxy solicitation, if there is no other proxy solicitation for securities of the same class in progress, or

- (ii) for the 12 calendar month period before commencement of the first proxy solicitation, if another proxy solicitation for securities of the same class is already in progress;
- (b) the information disclosed by the SEC foreign issuer in its most recent Form 10-K, Form 10-KSB or Form 20-F filed with the SEC under the 1934 Act demonstrated that paragraph (a) of the definition of “foreign reporting issuer” applied to the SEC foreign issuer; or
- (c) the person or company soliciting proxies reasonably believes that paragraph (a) of the definition of “foreign reporting issuer” applies to the SEC foreign issuer.

4.8 Disclosure of Voting Results

An SEC foreign issuer is exempt from securities legislation requirements relating to disclosure of securityholder voting results if the issuer

- (a) complies with the requirements of U.S. federal securities law relating to disclosure of securityholder voting results; and
- (b) files a copy of all disclosure of securityholder voting results filed with or furnished to the SEC.

4.9 Filing of Certain News Releases

An SEC foreign issuer is exempt from securities legislation requirements relating to the filing of news releases that disclose information regarding its results of operations or financial condition if the issuer

- (a) complies with the requirements of U.S. federal securities laws relating to the filing of news releases disclosing financial information; and
- (b) files a copy of each news release disclosing financial information that is filed with or furnished to the SEC.

4.10 Filing of Certain Documents

An SEC foreign issuer is exempt from securities legislation requirements relating to the filing of documents affecting the rights of securityholders and the filing of material contracts.

4.11 Early Warning

A person or company is exempt from the early warning requirements and acquisition announcement provisions of securities legislation in respect of securities of an SEC foreign issuer that has a class of securities registered under section 12 of the 1934 Act if the person or company

- (a) complies with the requirements of U.S. federal securities law relating to the reporting of beneficial ownership of equity securities of the SEC foreign issuer; and
- (b) files each report of beneficial ownership that is filed with or furnished to the SEC.

4.12 Insider Reporting

The insider reporting requirement does not apply to an insider of an SEC foreign issuer that has a class of securities registered under section 12 of the 1934 Act if

- (a) the SEC foreign issuer is not a SEDI issuer; and
- (b) the insider complies with the requirements of U.S. federal securities law relating to insider reporting.

4.13 Communication with Beneficial Owners of Securities

An SEC foreign issuer that has a class of securities registered under section 12 of the 1934 Act satisfies securities legislation requirements relating to communications with, delivery of materials to and conferring voting rights upon non-registered holders of its securities who hold their interests in the securities through one or more intermediaries if the issuer

- (a) complies with the requirements of Rule 14a-13 under the 1934 Act for any depositary and any intermediary whose last address as shown on the books of the issuer is in Canada; and
- (b) complies with the requirements of National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* with respect to fees payable to intermediaries, for any depositary and any intermediary whose last address as shown on the books of the issuer is in Canada.

4.14 Going Private Transactions and Related Party Transactions

Securities legislation requirements relating to going private transactions and related party transactions, as those terms are used in securities legislation of the local jurisdiction, do not apply to an SEC foreign issuer carrying out a going private transaction or related party transaction if the total number of equity securities of the SEC foreign issuer owned, directly or indirectly, by residents of Canada, does not exceed 20 per cent, on a diluted basis, of the total number of equity securities of the SEC foreign issuer.

4.15 Change of Auditor

An SEC foreign issuer satisfies securities legislation requirements relating to a change of auditor if the issuer

- (a) complies with the requirements of U.S. federal securities laws relating to a change of auditor; and
- (b) files a copy of all materials relating to a change of auditor that are filed with or furnished to the SEC.

4.16 Restricted Securities

- (1) Securities legislation continuous disclosure requirements relating to restricted securities do not apply in respect of SEC foreign issuers.
- (2) Securities legislation minority approval requirements relating to restricted securities do not apply in respect of SEC foreign issuers.

PART 5 DESIGNATED FOREIGN ISSUERS

5.1 Amendments and Supplements

Any amendments or supplements to disclosure documents filed by a designated foreign issuer under this Instrument must also be filed.

5.2 Mandatory Annual Disclosure by Designated Foreign Issuer

To rely on this Part, a designated foreign issuer must, at least once a year, disclose in, or as an appendix to, a document that it is required by foreign disclosure requirements to send to its securityholders and that it sends to its securityholders in Canada

- (a) that it is a designated foreign issuer as defined in this Instrument;
- (b) that it is subject to the foreign regulatory requirements of a foreign regulatory authority; and
- (c) the name of the foreign regulatory authority referred to in paragraph (b).

5.3 Material Change Reporting

A designated foreign issuer is exempt from securities legislation requirements relating to disclosure of material changes if the issuer

- (a) complies with foreign disclosure requirements for making public disclosure of material information on a timely basis;
- (b) promptly files each news release issued by it for the purpose of complying with the requirements referred to in paragraph (a); and
- (c) files the documents disclosing the material information filed with or furnished to the foreign regulatory authority or disseminated to the public or securityholders of the issuer.

5.4 Financial Statements

A designated foreign issuer satisfies securities legislation requirements relating to the preparation, approval, filing and delivery of its interim financial statements, annual financial statements and auditor's reports on annual financial statements if it

- (a) complies with the foreign disclosure requirements relating to interim financial statements, annual financial statements and auditor's reports on annual financial statements;
- (b) files the interim financial statements, annual financial statements and auditor's reports on annual financial statements required to be filed with or furnished to the foreign regulatory authority;
- (c) complies with section 3.2 of this Instrument; and
- (d) complies with NI 52-107 as it relates to financial statements of the issuer that are included in any documents specified in paragraph (b).

5.5 AIFs & MD&A

A designated foreign issuer satisfies securities legislation requirements relating to the preparation, approval, filing and delivery of AIFs and MD&A if it

- (a) complies with the foreign disclosure requirements relating to annual reports, quarterly reports and management's discussion and analysis;
- (b) files each annual report, quarterly report and management's discussion and analysis required to be filed with or furnished to the foreign regulatory authority;
- (c) complies with section 3.2 of this Instrument; and
- (d) complies with NI 52-107 as it relates to financial statements of the issuer that are included in any documents specified in paragraph (b).

5.6 Business Acquisition Reports

A designated foreign issuer satisfies securities legislation requirements relating to the preparation and filing of business acquisition reports if it

- (a) complies with the foreign disclosure requirements relating to business acquisitions;
- (b) files each report in respect of a business acquisition required to be filed with or furnished to the foreign regulatory authority;
- (c) complies with section 3.2 of this Instrument; and
- (d) complies with NI 52-107 as it relates to financial statements that are included in any documents specified in paragraph (b).

5.7 Proxies and Proxy Solicitation by the Issuer and Information Circulars

A designated foreign issuer satisfies securities legislation requirements relating to information circulars, proxies and proxy solicitation if it

- (a) complies with the foreign disclosure requirements relating to proxy statements, proxies and proxy solicitation;
- (b) files all material relating to a meeting of securityholders that is filed with or furnished to the foreign regulatory authority;
- (c) complies with section 3.2 of this Instrument; and
- (d) complies with NI 52-107 as it relates to financial statements of the issuer that are included in any documents specified in paragraph (b).

5.8 Proxy Solicitation by Another Person or Company

- (1) A person or company, other than the designated foreign issuer, satisfies securities legislation requirements relating to information circulars, proxies and proxy solicitation with respect to a designated foreign issuer if the person or company satisfies the requirements of section 5.7.
- (2) If a proxy solicitation is made with respect to a designated foreign issuer by a person or company other than the designated foreign issuer and the person or company soliciting proxies lacks access to the relevant list of securityholders of the designated foreign issuer, the exemption in subsection (1) is not available, if
 - (a) the aggregate published trading volume of the class on the TSX and the TSX Venture Exchange exceeded the aggregate trading volume on securities marketplaces outside Canada
 - (i) for the 12 calendar months before commencement of the proxy solicitation, if there is no other proxy solicitation for securities of the same class in progress, or
 - (ii) for the 12 calendar month period before the commencement of the first proxy solicitation, if another proxy solicitation for securities of the same class is already in progress;
 - (b) the information disclosed by the designated foreign issuer in a document filed within the previous 12 months with a foreign regulatory authority, demonstrated that paragraph (a) of the definition of "foreign reporting issuer" applied to the designated foreign issuer; or
 - (c) the person or company soliciting proxies reasonably believes that paragraph (a) of the definition of "foreign reporting issuer" applies to the designated foreign issuer.

5.9 Disclosure of Voting Results

A designated foreign issuer is exempt from securities legislation requirements relating to disclosure of securityholder voting results if the issuer

- (a) complies with the foreign disclosure requirements relating to disclosure of securityholder voting results; and
- (b) files each report disclosing securityholder voting results that is filed with or furnished to a foreign regulatory authority.

5.10 Filing of Certain News Releases

A designated foreign issuer is exempt from securities legislation requirements relating to the filing of news releases that disclose information regarding its results of operations or financial condition if the issuer

- (a) complies with the foreign disclosure requirements relating to the filing of news releases disclosing financial information; and
- (b) files a copy of each news release disclosing financial information that is filed with or furnished to a foreign regulatory authority.

5.11 Filing of Certain Documents

A designated foreign issuer is exempt from securities legislation requirements relating to the filing of documents affecting the rights of securityholders and the filing of material contracts.

5.12 Early Warning

A person or company is exempt from the early warning requirements and acquisition announcement provisions of securities legislation in respect of securities of a designated foreign issuer if the person or company

- (a) complies with the foreign disclosure requirements relating to reporting of beneficial ownership of equity securities of the designated foreign issuer; and
- (b) files each report of beneficial ownership that is filed with or furnished to the foreign regulatory authority.

5.13 Insider Reporting

The insider reporting requirement does not apply to an insider of a designated foreign issuer if

- (a) the designated foreign issuer is not a SEDI issuer; and
- (b) the insider complies with the foreign disclosure requirements relating to insider reporting.

5.14 Communication with Beneficial Owners of Securities

A designated foreign issuer satisfies securities legislation requirements relating to communications with, delivery of materials to and conferring voting rights upon non-registered holders of its securities who hold their interests in the securities through one or more intermediaries if the issuer

- (a) complies with foreign disclosure requirements relating to communication with beneficial owners of securities; and
- (b) complies with the requirements of National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* with respect to fees payable to intermediaries, for any depository and any intermediary whose last address as shown on the books of the issuer is in Canada.

5.15 Going Private Transactions and Related Party Transactions

Securities legislation requirements relating to going private transactions and related party transactions, as those terms are used in securities legislation of the local jurisdiction, do not apply to a designated foreign issuer carrying out a going private transaction or related party transaction.

5.16 Change in Year-End

A designated foreign issuer satisfies securities legislation requirements relating to a change in year-end if the issuer

- (a) complies with foreign disclosure requirements relating to a change in year-end; and
- (b) files a copy of all filings made under foreign disclosure requirements relating to the change in year-end.

5.17 Change of Auditor

A designated foreign issuer satisfies securities legislation requirements relating to a change of auditor if the issuer

- (a) complies with foreign disclosure requirements relating to a change of auditor; and
- (b) files a copy of all filings made under foreign disclosure requirements relating to the change of auditor.

5.18 Restricted Securities

- (1) Securities legislation continuous disclosure requirements relating to restricted securities do not apply in respect of designated foreign issuers.
- (2) Securities legislation minority approval requirements relating to restricted securities do not apply in respect of designated foreign issuers.

PART 6 FOREIGN TRANSITION ISSUERS

6.1 Application

This Part only applies in Ontario.

6.2 Definition

In this section, “foreign transition issuer” means an issuer

- (a) that is not incorporated or organized under the laws of Canada or a jurisdiction of Canada;

- (b) that is not an SEC foreign issuer or a designated foreign issuer;
- (c) that became a reporting issuer solely by listing securities on the TSX before March 30, 2004;
- (d) of which the total number of securities of the class listed on the TSX registered in the names of residents of Canada does not exceed 5 per cent of the total number of issued and outstanding securities of the class; and
- (e) of which the total number of holders of securities of the class listed on the TSX registered in the names of residents of Canada does not exceed 300.

6.3 Transitional Exemptions

Until January 1, 2005, a foreign transition issuer is exempt from

- (a) securities legislation requirements to file business acquisition reports, AIFs and MD&A;
- (b) securities legislation requirements relating to the preparation, approval and filing of annual financial statements and auditor's reports thereon if the annual financial statements are
 - (i) prepared in compliance with the laws of the foreign jurisdiction of incorporation or organization of the issuer; and
 - (ii) filed not later than the earlier of
 - (A) promptly after they are filed with any other governmental agency or securities market regulatory authority; and
 - (B) 140 days after the end of the financial year; and
- (c) securities legislation requirements relating to the preparation, approval and filing of interim financial statements, if the interim financial statements are
 - (i) prepared in compliance with the laws of the foreign jurisdiction of incorporation or organization of the issuer; and
 - (ii) filed not later than the earlier of
 - (A) promptly after they are filed with any other governmental agency or securities market regulatory authority; and
 - (B) 60 days after the end of the interim period.

PART 7 EFFECTIVE DATE

7.1 Effective Date

This Instrument comes into force on March 30, 2004.

COMPANION POLICY 71-102CP
CONTINUOUS DISCLOSURE AND OTHER EXEMPTIONS RELATING TO FOREIGN ISSUERS

PART 1 GENERAL

1.1 Introduction and Purpose

- (1) National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (the "Instrument") provides broad relief from most of the requirements of National Instrument 51-102 *Continuous Disclosure Obligations* ("NI 51-102") for two sub-categories of foreign reporting issuers – SEC foreign issuers and designated foreign issuers – on the condition that they comply with the continuous disclosure ("CD") requirements of the SEC or a designated foreign jurisdiction. SEC foreign issuers and designated foreign issuers are also exempted from certain other requirements of provincial and territorial securities legislation, including insider reporting and early warning, that are not contained in NI 51-102.
- (2) This Companion Policy provides information about how the provincial and territorial securities regulatory authorities interpret the Instrument, and should be read in conjunction with it.

1.2 Other Relevant Legislation

In addition to the Instrument, foreign issuers should consult the following non-exhaustive list of legislation to see how it may apply to them:

- (1) implementing legislation (the regulation, rule, ruling, order or other instrument that implements the Instrument in each applicable jurisdiction);
- (2) NI 51-102;
- (3) National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* ("NI 52-107"); and
- (4) National Instrument 71-101 *The Multijurisdictional Disclosure System* ("NI 71-101").

1.3 Multijurisdictional Disclosure System

- (1) NI 71-101 permits certain U.S. incorporated issuers to satisfy specified Canadian CD requirements by using disclosure prepared in accordance with U.S. requirements. The Instrument does not replace or alter NI 71-101. There are instances in which NI 71-101 and the Instrument offer similar relief to a reporting issuer, but other instances in which the relief available to a reporting issuer in one instrument differs from the relief available to the reporting issuer under the other instrument. Many issuers that are eligible for an exemption under the Instrument will be ineligible to rely on NI 71-101 and vice versa. For example, the Instrument defines a class of "SEC foreign issuers". Not all U.S. issuers referred to in NI 71-101 are SEC foreign issuers and not all SEC foreign issuers are U.S. issuers.
- (2) An eligible U.S. issuer may choose to use an exemption in the Instrument or NI 71-101. For example, section 17.1 of NI 71-101 grants an exemption from the insider reporting requirement to an insider of a U.S. issuer that has securities registered under section 12 of the 1934 Act if the insider complies with the requirements of U.S. federal securities law regarding insider reporting and files with the SEC any insider report required to be filed with the SEC. This relief goes beyond the exemption provided by section 4.12 of the Instrument which is not available to insiders of a SEDI issuer as defined in National Instrument 55-102 *System for Electronic Disclosure by Insiders* (SEDI).

1.4 Exemptions May Not Require Disclosure

Most of the exemptions in the Instrument are only available to a person or company that complies with a particular aspect of either U.S. federal securities laws or the laws of a designated foreign jurisdiction. If those laws do not require the issuer to disclose, file or send any information, for example, because the issuer may rely on an exemption under those laws, then the issuer is not required to disclose, file or send any information to rely on the exemption contained in the Instrument.

PART 2 DEFINITIONS

2.1 Foreign Reporting Issuers

To qualify for any of the exemptions contained in the Instrument, other than the relief for “foreign transition issuers” in Part 6, the issuer in question must be a “foreign reporting issuer”. The definition of foreign reporting issuer is based upon the definition of foreign private issuer in Rule 405 of the 1933 Act and Rule 3b-4 of the 1934 Act. For the purposes of the definition of “foreign reporting issuer”, it is the CSA’s view that

- (a) in calculating the percentage of assets located in Canada, the issuer should look to the value of the assets recorded in its most recent consolidated financial statements, either annual or interim; and
- (b) in determining the outstanding voting securities that are owned, directly or indirectly, by residents of Canada, an issuer should
 - (i) use reasonable efforts to identify securities held by a broker, dealer, bank, trust company or nominee or any of them for the accounts of customers resident in Canada;
 - (ii) count securities beneficially owned by residents of Canada as reported on reports of beneficial ownership, including insider reports and early warning reports; and
 - (iii) assume that a customer is a resident of the jurisdiction or foreign jurisdiction in which the nominee has its principal place of business if, after reasonable inquiry, information regarding the jurisdiction or foreign jurisdiction of residence of the customer is unavailable.

The determination of the percentage of securities of the foreign issuer owned by residents of Canada should be made in the same manner for the purposes of paragraph (c) of the definition of “designated foreign issuer” and paragraph (d) of the definition of “foreign transition issuer” in section 6.2 of the Instrument. This method of calculation differs from that of NI 71-101, which only requires a calculation based on the address of record. Accordingly, some SEC foreign issuers may qualify for exemptive relief under NI 71-101 but not under the Instrument.

2.2 Investment Funds

Generally, the definition of “investment fund” would not include a trust or other entity that issues securities which entitle the holder to substantially all of the net cash flows generated by: (i) an underlying business owned by the trust or other entity, or (ii) the income-producing properties owned by the trust or other entity. Examples of trusts or other entities that are not included in the definition are business income trusts, real estate investment trusts and royalty trusts.

PART 3 INSIDER REPORTS

3.1 Requirement to File Insider Reports on SEDI

Insiders of foreign issuers who voluntarily file under National Instrument 13-101 *System for Electronic Document Analysis and Retrieval* (SEDAR) are required to file insider reports electronically under SEDI. The Instrument does not provide an exemption from filing insider reports in the form required by provincial and territorial securities legislation if the foreign issuer is a SEDI filer. However, under NI 71-101 an insider of an eligible U.S. issuer, as defined in NI 71-101, is exempt from the insider reporting requirement if the insider complies with U.S. federal securities law regarding insider reporting and files with the SEC any insider report required to be filed with the SEC. Consequently, insiders of NI 71-101 eligible issuers are also exempt from the requirement to file insider reports on SEDI.

PART 4 FILING OF DISCLOSURE DOCUMENTS

4.1 Filing of Disclosure Documents on SEDAR

A foreign issuer does not have to file multiple copies of a foreign disclosure document that it is filing to satisfy the conditions of more than one exemption under the Instrument. The issuer need only file the document in one SEDAR category, and under any other applicable SEDAR category may provide an appropriate reference to the location of the filed document. For example, a foreign issuer may wish to file its U.S. Form 20F to satisfy the conditions relating to both the AIF exemption and the MD&A exemption. The foreign issuer could file the Form 20 on SEDAR under either of the AIF category or the MD&A category, and under the other category would file a letter giving the SEDAR project number that the Form 20F is filed under.

PART 5 ELECTRONIC DELIVERY OF DOCUMENTS

5.1 Electronic Delivery of Documents

Any documents required to be sent under the Instrument may be sent by electronic delivery, as long as such delivery is made in compliance with Québec Staff Notice, *The Delivery of Documents by Electronic Means*, in Québec, and National Policy 11-201 *Delivery of Documents by Electronic Means*, in the rest of Canada.

PART 6 EXEMPTIONS NOT INCLUDED

6.1 Resource Issuers - Standards of Disclosure for Mineral Projects and Oil and Gas Activities

The Instrument does not provide an exemption from National Instrument 43-101 *Standards of Disclosure for Mineral Projects* or National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*. Issuers are reminded that those National Instruments apply to SEC foreign issuers and designated foreign issuers.

6.2 SEC Foreign Issuers

NI 51-102 contains exemptions for SEC issuers from the change in year-end requirements in NI 51-102. SEC foreign issuers under the Instrument will also meet the definition of SEC issuers under NI 51-102, and so will be able to rely on the change in year-end exemption in NI 51-102.

6.3 Foreign Reporting Issuers

The Instrument does not provide an exemption for any foreign reporting issuers from the requirement in section 4.9 of NI 51-102. A foreign reporting issuer must deliver a notice if it has been a party to an amalgamation, arrangement, merger, winding-up, reverse takeover, reorganization or other transaction that will have the effect of changing its continuous disclosure obligations under NI 51-102. The Instrument also does not provide an exemption for any foreign reporting issuers from the requirement to file disclosure materials under section 11.1 of NI 51-102 or to file a notice of change of status under section 11.2 of NI 51-102.

6.4 Auditor Oversight - Canadian Public Accountability Board

Section 4.3 of the Instrument provides relief for an SEC foreign issuer relating to annual financial statements and auditors' reports on annual financial statements. Section 5.4 provides similar relief for a designated foreign issuer. Reporting issuers are subject to section 2.3 of National Instrument 52-108 *Auditor Oversight* ("NI 52-108") but may rely on the exemptions in sections 4.3 and 5.4 of the Instrument for relief from these obligations. Sections 4.3 and 5.4, however, do not provide relief from the requirements applicable in jurisdictions other than Alberta, British Columbia and Manitoba in sections 2.1, 2.2 and Part 3 of NI 52-108 imposed directly on a public accounting firm that issues an auditor's report with respect to the financial statements of a reporting issuer.

PART 7 EXEMPTIONS

7.1 Exemptions

- (1) The exemptions contained in the Instrument are in addition to any exemptions that may be available to an issuer under any other applicable legislation.
- (2) Issuers that have been given an exemption, waiver or approval by a regulator or securities regulatory authority before the Instrument and NI 51-102 came into effect, may be entitled to continue to rely on that exemption, waiver or approval. Issuers should refer to section 13.2 of NI 51-102 to determine in what circumstances the prior exemption, waiver or approval is available and what the reporting issuer must do to continue to rely on it.
- (3) If an issuer wishes to seek exemptive relief from NI 51-102 or other requirements of provincial and territorial securities legislation on grounds similar but not identical to those permitted under the Instrument, the issuer should apply for this relief under the exemptive provisions of NI 51-102, or other provincial and territorial securities legislation, as the case may be.