

6.1.3 Notice and Request for Comments - Proposed Ontario Securities Commission Rule 81-801 Implementing National Instrument 81-106 Investment Fund Continuous Disclosure and Companion Policy 81-801CP Implementing National Instrument 81-106 Investment Fund Continuous Disclosure

NOTICE AND REQUEST FOR COMMENTS

PROPOSED ONTARIO SECURITIES COMMISSION RULE 81-801 IMPLEMENTING NATIONAL INSTRUMENT 81-106 INVESTMENT FUND CONTINUOUS DISCLOSURE AND COMPANION POLICY 81-801CP IMPLEMENTING NATIONAL INSTRUMENT 81-106 INVESTMENT FUND CONTINUOUS DISCLOSURE

Substance and Purpose

Proposed Commission Rule 81-801 *Implementing National Instrument 81-106 Investment Fund Continuous Disclosure* (the Proposed Implementing Rule) is a local Ontario rule implementing proposed National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106) in Ontario. Proposed Companion Policy 81-801CP 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 81-106. For a complete review of the substance and purpose of NI 81-106, please refer to the CSA Notice and Request for Comment regarding NI 81-106.

Summary

Sections 3.1 and 3.2 of the Proposed Implementing Rule provide that the financial statement content requirements of NI 81-106 apply to financial statements filed under the *Securities Act* (Ontario) (the Act).

Sections 3.3 and 3.4 of the Proposed Implementing Rule provide that the financial statement filing requirements contained in sections 77 and 78 of the Act do not apply to investment funds that are reporting issuers or to mutual funds in Ontario that comply with NI 81-106.

Section 3.5 of the Proposed Implementing Rule provides that the delivery requirements of section 79 of the Act do not apply if an investment fund that is a reporting issuer or a mutual fund in Ontario complies with the delivery requirements of Part 5 of NI 81-106.

Sections 3.6, 3.10 and 3.11 specify new forms for reports required under subsection 75(2), 86(1) and 81(1) of the Act.

Sections 3.7 and 3.8 of the Proposed Implementing Rule provide that the obligations contained in subsections 75(1) and 75(2) of the Act do not apply to reporting issuers that comply with subsection 11.2(1) of NI 81-106.

Section 3.9 exempts reporting issuers from subsection 81(2) of the Act.

Section 3.12 of the Proposed Implementing Rule provides that the requirement regarding solicitation of proxies in s. 85 of the Act does not apply to a reporting issuer that complies with subsection 12.2(1) of NI 81-106.

Section 3.13 provides that the requirement regarding information circulars in s. 86 of the Act does not apply to a reporting issuer that complies with subsection 12.2(2) of NI 81-106.

NI 81-106 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 all investment funds. The Act cannot be amended at this time to remove provisions which essentially duplicate those found in NI 81-106. Accordingly, the Proposed Companion Policy clarifies that investment funds need only refer to NI 81-106 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.

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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 XIX (Proxies and Proxy Solicitation) in respect of registered holders or beneficial owners of voting securities or reporting issuers or other persons or companies on behalf of whom the securities are held.

Paragraph 143(1)31 authorizes the Commission to make rules regulating mutual funds, including varying the application of Part XVIII (Continuous Disclosure) of the Act by prescribing additional disclosure requirements and requiring the use of particular forms.

Paragraph 143(1)34 authorizes the Commission to make rules regulating commodity pools, including varying the application of Part XVIII (Continuous Disclosure) of the Act by prescribing additional disclosure requirements and requiring the use of particular forms.

Paragraph 143(1)37 authorizes the Commission to regulate labour sponsored investment funds, including prescribing disclosure requirements in respect of their securities.

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)47 authorizes the Commission to regulate scholarship plans.

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 prescribing, 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 81-106, please see the CSA Notice and Request for Comment regarding NI 81-106.

Request for Comments

Interested parties are invited to make written submissions with respect to the Proposed Implementing Rule and Proposed Companion Policy. Submissions received by August 26, 2004 will be considered. Submissions should be addressed to:

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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).

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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.