

**Notice of Amendments to
National Instrument 51-102 *Continuous Disclosure Obligations*,
Form 51-102F3 *Material Change Report*,
Companion Policy 51-102CP *Continuous Disclosure Obligations*,
National Instrument 52-108 *Auditor Oversight*,
Companion Policy 52-110CP to National Instrument 52-110 *Audit Committees* and
National Instrument 81-106 *Investment Fund Continuous Disclosure***

Introduction

We, the Canadian Securities Administrators (CSA), are implementing amendments to:

- National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102),
- its related Form 51-102F3 *Material Change Report* (Form 51-102F3),
- its companion policy (CP 51-102),
- National Instrument 52-108 *Auditor Oversight* (NI 52-108),
- Companion Policy 52-110CP to National Instrument 52-110 *Audit Committees* (CP 52-110), and
- National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106).

The text of these amendments is set out in Appendices C to H.

Substance and Purpose

The amendments that we are adopting will:

- add a new exemption from the information circular requirements in NI 51-102 for certain proxy solicitations made to the public by broadcast, speech or publication.
- provide guidance in CP 51-102 on what constitutes a solicitation to the public.
- revise the existing exemption in section 9.5 of NI 51-102 so that it applies to a person or company that solicits proxies, not just reporting issuers.

The text of these amendments is set out in Appendix C and E.

The exemption from the information circular requirements for certain proxy solicitations made to the public by broadcast, speech or publication generally corresponds to the exemption in subsection 150(1.2) of *Canada Business Corporations Act* (CBCA).

The amendments to section 9.5 of NI 51-102 extend the existing exemption to a person or company that solicits proxies and complies with substantially similar requirements of the laws under which the relevant reporting issuer is incorporated, organized or continued.

Implementation

The amendments have been made or are expected to be made by each member of the CSA.

In Ontario, the amendments to NI 51-102, Form 51-102F3, NI 52-108 and NI 81-106 (together, the Rules) set out in Appendices C, D, F and H have been made. Also, in Ontario, the amendments to CP 51-102 and CP 52-110 have been adopted. The amendments to the Rules and other required materials were delivered to the Minister of Finance on April 17, 2008. If the Minister does not approve or reject the amendments to the Rules or return them for further consideration, they will come into force on July 4, 2008.

In Québec, the national instruments described above are regulations made under section 331.1 of the Quebec Securities Act and the amendments to the instruments must be approved, with or without amendment, by the Minister of Finance. The amendments to the instruments will come into force on the date of their publication in the *Gazette officielle du Québec* or on any later date specified in the regulation. They must also be published in the Bulletin.

In Alberta, the consequential amendments set out in Appendix F require ministerial approval. Subject to receipt of ministerial approval, those consequential amendments will come into force on July 4, 2008. The Alberta Securities Commission will issue a separate notice advising of whether the Minister has approved or rejected the consequential amendments.

If all necessary ministerial approvals are obtained, the amendments will come into force on July 4, 2008. The amendments to CP 51-102 and CP 52-110 will come into effect at the same time as the amendments to NI 51-102.

Background

In 2001, amendments to the CBCA relaxed the rules relating to proxy solicitation. Similar amendments to the *Business Corporations Act (Ontario)*(OBCA) came into force in 2007. These amendments permit a dissident shareholder to solicit proxies without preparing and sending an information circular to shareholders if the solicitation is, in the prescribed circumstances, conveyed by public broadcast, speech or publication.

Although this corporate legislation exempts these types of solicitations, dissident shareholders of reporting issuers governed by that legislation were unable to take advantage of the exemptions because there was no corresponding exemption from the proxy solicitation and information circular provisions of NI 51-102. The amendments will now provide a corresponding exemption.

We published the amendments for comment on October 12, 2007. The comment period expired on January 11, 2008.

Summary of Written Comments Received by the CSA

We received submissions from 2 commenters, both of whom supported the proposed amendments. We have considered the comments received and thank the commenters.

The names of the 2 commenters and a summary of the comments on the proposed amendments, together with our responses, are in Appendix B to this notice.

Summary of Changes to the Proposed Amendments

See Appendix A for a summary of the changes made to the amendments as originally published.

Local Amendments

We have also:

- amended section 4.11(8) of NI 51-102 so that it will apply in Alberta and Manitoba.
- repealed sections 7.1(3), 7.1(4) and 9.1(3) of NI 51-102 and the corresponding provisions in Form 51-102F3 so that they will no longer apply in Quebec.
- amended section 1.7 of CP 51-102 to indicate that British Columbia has repealed its local audit committee rule and has adopted National Instrument 52-110 *Audit Committees* (NI 52-110).
- amended section 13.1 of CP 51-102 to update contact information for the Manitoba Securities Commission.
- amended NI 52-108 so that section 2.1 and Part 3 of that instrument will apply in Alberta, British Columbia and Manitoba.
- amended section 1.1 of CP 52-110 to indicate that New Brunswick has adopted NI 52-110 as a rule.
- repealed sections 11.2(3) and 12.2(3) of NI 81-106 so that they will no longer apply in Quebec.

The text of these amendments appears in sections 2 to 6 of Appendix C, in Appendix D, in sections 1(a) and 1(c) of Appendix E, and in Appendix F, G and H.

The amendments to section 4.11(8) of NI 51-102 were required to be published for comment in Alberta and Manitoba, but not in the other jurisdictions. Similarly, the amendments to NI 52-108 were required to be published for comment in Alberta, British Columbia and Manitoba, but not in the other jurisdictions. No comments were received.

The amendments to sections 7.1(3), 7.1(4) and 9.1(3) of NI 51-102, the corresponding provisions in Form 51-102F3, and sections 11.2(3) and 12.2(3) of NI 81-106 were required to be published for comment in Quebec, but not in the other jurisdictions. These amendments were published for comment in Quebec on February 15, 2008 for a 30 day comment period. No comments were received.

The amendments to sections 1.7 and 13.1 of CP 51-102 and section 1.1 of CP 52-110 were not required to be published for comment.

New Document Types on SEDAR

As a result of the amendments, we will be adding three new document types to the filing type on SEDAR for “Proxy Solicitation Materials” by third party filers:

- In order to have the benefit of the exemption from the information circular requirements in section 9.2(4) of NI 51-102, a dissident shareholder must include certain information in the solicitation, and section 9.2(4)(c) requires the dissident to file the information with securities regulators. This information should be filed under the new document type for "Proxy solicitation - information".
- Section 9.2(5) of NI 51-102 provides that the exemption does not apply to a person or company that is proposing a significant acquisition or restructuring transaction under which securities of the person or company are to be changed, exchanged, issued or distributed, unless the person or company has filed certain information with securities regulators. This information should be filed under the new document type for "Proxy solicitation - proposed transaction".
- Section 9.2(6) of NI 51-102 provides that the exemption does not apply to a person or company that is nominating an individual for election as a director of the reporting issuer, unless the person or company has filed certain information about the proposed nominee with securities regulators. This information should be filed under the document type for "Proxy solicitation - nominee for election".

We expect that the new document types will be added to SEDAR in July 2008. Until then, third party filers that rely on the new exemption should use the “other” document type under the filing type for “Proxy Solicitation Materials” by third party filers.

When a third party filer uses these document types to make a filing on SEDAR, it will have to select the name of the relevant reporting issuer. As a result, the filings will appear under the reporting issuer’s filer profile on www.sedar.com. When the expected change to SEDAR is implemented, members of the public will also be able to search for proxy solicitation materials filed by third parties by using the “Search for Public Company Documents” function on sedar.com and selecting new search criteria for “Proxy Solicitation by Third Parties”.

Questions

Please refer your questions to any of:

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April 18, 2008

Appendix A

Summary of Changes to Published Amendments

NI 51-102

- We have made certain drafting changes.

CP 51-102

- We have made certain drafting changes.

Additional Local Amendments

NI 51-102 and Form 51-102F3

- We repealed sections 7.1(3), 7.1(4) and 9.1(3) of NI 51-102 and the corresponding provisions in Form 51-102F3 so that they will no longer apply in Quebec.

CP 51-102

- We amended section 1.7 of CP 51-102 to indicate that British Columbia has repealed its local audit committee rule and has adopted NI 52-110.
- We amended section 13.1 of CP 51-102 to update contact information for the Manitoba Securities Commission.

CP 52-110

- We amended section 1.1 of CP 52-110 to indicate that New Brunswick has adopted NI 52-110 as a rule.

NI 81-106

- We repealed sections 11.2(3) and 12.2(3) of NI 81-106 so that they will no longer apply in Quebec.

Appendix B

Summary of Comments

List of Commenters

Canadian Coalition for Good Governance
Ontario Teachers' Pension Plan

Summary of Comments

We received responses from 2 commenters. Both commenters supported the amendments.

Both commenters stated that further amendments are required to various Canadian business corporation and special incorporation statutes in order to modernize their respective proxy solicitation provisions and harmonize them with the model that will be in place in NI 51-102. The commenters encouraged the CSA to liaise with the responsible parties in the various Canadian jurisdictions which have incorporation statutes with proxy solicitation provisions that are inconsistent with those in NI 51-102 and encourage them to consider updating their legislation, in an effort to create consistent and updated proxy solicitation provisions across the country.

CSA Response

We thank the commenters for their input.

The CBCA Amendments

We understand that amendments to the *Canada Business Corporations Act* (CBCA) that came into force in 2001 relaxed the rules relating to proxy solicitation. These amendments can be summarized as follows:

- A person must not “solicit” proxies unless that person first prepares, files and delivers a proxy circular in the prescribed form (sections 150(1) and (2) of the CBCA).
- The definition of “solicit” and “solicitation” in section 147 of the CBCA was amended so that a “solicitation” does not include (among other things):
 - a public announcement (such as a speech in a public forum or press release) by a shareholder of how the shareholder intends to vote and the reasons for that decision, or
 - a communication, other than a solicitation by management, that is made to shareholders in any circumstances that may be prescribed.
- A dissident shareholder may solicit proxies without preparing and sending a proxy circular to shareholders if the solicitation is, in the prescribed circumstances, conveyed by

public broadcast, speech or publication (section 150(1.2) of the CBCA). Solicitations conveyed by these means must contain information about the identity of the shareholder, its percentage shareholdings and its interests in the matter being solicited. Before the advertisement or other form of communication is released, it must be delivered to the Director under the CBCA and the corporation.

Whether the CBCA Amendments are reflected in NI 51-102

Like the CBCA, the basic rule in NI 51-102 is that a person who “solicits” proxies must first prepare, send and file an information circular in the prescribed form (sections 9.1(2) and 9.3 of NI 51-102).

The definition of “solicit” in section 1.1 of NI 51-102 was largely harmonized with the definition of “solicit” and “solicitation” in the CBCA.

The amendments to NI 51-102 would provide an equivalent to section 150(1.2) of the CBCA.

Whether the CBCA Amendments are reflected in provincial and territorial business corporation acts

We understand that the proxy solicitation provisions in the Ontario Business Corporations Act and its regulations were amended to reflect the earlier changes to the CBCA. Those amendments came into force on August 1, 2007.

In BC and Québec, the *Business Corporations Act* (BC) and the *Companies Act* (Québec) do not include proxy solicitation requirements for companies that are reporting issuers. Those statutes do not define the term “solicit” for reporting issuers. Reporting issuers incorporated under those statutes can avail themselves of the proposed exemption in section 9.2(4) of NI 51-102.

We understand that the proxy rules in business corporations statutes and regulations in other provinces and territories have not been amended to reflect the earlier changes to the CBCA. Each member of the CSA in those jurisdictions has informed or expects to inform the corporate law regulator in their jurisdiction of these comments.

Whether the CBCA Amendments are reflected in federal financial sector legislation

We understand that the proxy solicitation provisions in the federal *Bank Act*, *Trust and Loans Companies Act* and *Insurance Companies Act* were amended to reflect the earlier changes to the CBCA, but that those amendments have not yet been proclaimed into force. The CSA has informed officials in the federal Department of Finance of these comments.

Appendix C

Amendments to National Instrument 51-102 *Continuous Disclosure Obligations*

1. **National Instrument 51-102 *Continuous Disclosure Obligations* is amended by this Instrument.**
2. **Subsection 4.11(8) is amended by striking out “Except in Alberta and Manitoba, if” and substituting “If”.**
3. **Subsections 7.1(3) and (4) are repealed.**
4. **Subsection 7.1(5) is amended by striking out “or (3)”.**
5. **Subsection 7.1(7) is amended by striking out “or (3)”.**
6. **Subsection 9.1(3) is repealed.**
7. **Section 9.2 is amended by adding the following after subsection (3):**
 - (4) Despite paragraph 9.1(2)(b), a person or company, other than management of a reporting issuer or a person or company acting on behalf of management, may solicit proxies from registered securityholders of a reporting issuer without sending an information circular, if
 - (a) the solicitation is made to the public by broadcast, speech or publication;
 - (b) soliciting proxies by broadcast, speech or publication is permitted by the laws under which the reporting issuer is incorporated, organized or continued and the person or company making the solicitation complies with the requirements, if any, of those laws relating to the broadcast, speech or publication;
 - (c) the person or company has filed the following information:
 - (i) the name and address of the reporting issuer to which the solicitation relates,
 - (ii) the information required under item 2, sections 3.2, 3.3 and 3.4 and paragraphs (b) and (d) of item 5 of Form 51-102F5 *Information Circular*,

- (iii) any information required to be disclosed in respect of the broadcast, speech or publication by the laws under which the reporting issuer is incorporated, organized or continued, and
 - (iv) a copy of any communication intended to be published; and
 - (d) the broadcast, speech or publication contains the information referred to in paragraphs (c)(i) to (iii).
- (5) Subsection (4) does not apply to a person or company that is proposing, at the time of the solicitation, a significant acquisition or restructuring transaction involving the reporting issuer and the person or company, under which securities of the person or company, or securities of an affiliate of the person or company, are to be changed, exchanged, issued or distributed, unless
 - (a) the person or company has filed an information circular or other document containing the information required by section 14.4 of Form 51-102F5 *Information Circular*; and
 - (b) the solicitation refers to that information circular or other document and discloses that the circular or other document is on SEDAR.
- (6) Subsection (4) does not apply to a person or company that is nominating or proposing to nominate, at the time of the solicitation, an individual, including himself or herself, for election as a director of the reporting issuer, unless
 - (a) the person or company has filed an information circular or other document containing the information required by Form 51-102F5 *Information Circular* in respect of the proposed nominee; and
 - (b) the solicitation refers to that information circular or other document and discloses that the circular or other document is on SEDAR.

8. Section 9.5 is repealed and the following substituted:

9.5 Exemption

Sections 9.1 to 9.4 do not apply to a reporting issuer, or a person or company that solicits proxies from registered holders of voting securities of a reporting issuer, if

- (a) the reporting issuer or other person or company complies with the requirements of the laws relating to the solicitation of proxies under which the reporting issuer is incorporated, organized or continued;
- (b) the requirements referred to in subsection (a) are substantially similar to the requirements of this Part; and
- (c) the reporting issuer or other person or company files a copy of any information circular and form of proxy, or other documents that contain substantially similar information, promptly after the reporting issuer or other person or company sends the circular, form or other document in connection with the meeting.

9. This amendment comes into force July 4, 2008.

Appendix D

Amendments to Form 51-102F3 *Material Change Report*

- 1. Form 51-102F3 *Material Change Report* is amended by this Instrument.**
- 2. Form 51-102F3 is amended by,**
 - (a) in Item 6, striking out “or (3)” wherever it appears,**
 - (b) in the Instruction after Item 6, striking out “(4),” and**
 - (c) in the Instructions after Item 7, striking out “, (3)”.**
- 3. This amendment comes into force July 4, 2008.**

Appendix E

Amendments to Companion Policy 51-102CP *Continuous Disclosure Obligations*

1. Companion Policy 51-102CP *Continuous Disclosure Obligations* is amended:

- (a) **by striking out the word “Multilateral” and substituting the word “National”, and by striking out “or, in British Columbia, BC Instrument 52-509 *Audit Committees*” in section 1.7.**
- (b) **by adding the following after section 9.2:**

9.3 Proxy Solicitations Made to the Public by Broadcast, Speech or Publication

Subsection 9.2(4) of the Instrument provides an exemption from the proxy solicitation and information circular requirements for certain proxy solicitations made to the public by broadcast, speech or publication. The exemption permits securityholders to solicit proxies by public means, including a speech or broadcast, through a newspaper advertisement or over the Internet (provided that the solicitation contains certain information and that information is filed on SEDAR).

The exemption will only apply if the proxy solicitation is made to the public. Securities regulatory authorities generally consider a solicitation to be made to the public if it is disseminated in a manner calculated to effectively reach the marketplace. A solicitation to the public would generally include a solicitation that is made by:

- (a) a speech in a public forum; or
- (b) a press release, a statement or an advertisement provided through a broadcast medium or by a telephone conference call or electronic or other communication facility generally available to the public, or appearing in a newspaper, a magazine, a website or other publication generally available to the public.

A proxy solicitation to the public would generally not include a solicitation made by phone, mail or email to only a select group of securityholders of a reporting issuer.

- (c) **by striking out the address of the Manitoba Securities Commission in section 13.1 and substituting the following:**

Manitoba Securities Commission
500 - 400 St. Mary Avenue
Winnipeg, Manitoba
R3C 4K5

Attention: Corporate Finance

- 2. This amendment comes into force July 4, 2008.**

Appendix F

Amendments to National Instrument 52-108 *Auditor Oversight*

- 1. National Instrument 52-108 *Auditor Oversight* is amended by this Instrument.**
- 2. Subsection 1.2(2) is repealed.**
- 3. This amendment comes into force July 4, 2008.**

Appendix G

Amendments to Companion Policy 52-110CP to National Instrument 52-110 *Audit Committees*

- 1. Companion Policy 52-110CP to National Instrument 52-110 *Audit Committees* is amended in section 1.1 by,**
 - (a) inserting “New Brunswick,” after “Ontario,” and**
 - (b) striking out “New Brunswick,” after “a policy in”.**
- 2. This amendment comes into force July 4, 2008.**

Appendix H

Amendments to National Instrument 81-106 *Investment Fund Continuous Disclosure*

- 1. National Instrument 81-106 *Investment Fund Continuous Disclosure* is amended by this Instrument.**
- 2. Subparagraph 11.2(1)(c)(iii) is amended by striking out “or (3)” wherever it appears.**
- 3. Subsection 11.2(3) is repealed.**
- 4. Subsection 12.2(3) is repealed.**
- 5. This amendment comes into force July 4, 2008.**