

**ALBERTA SECURITIES COMMISSION
NOTICE**

**Proposed Implementing Rule
and Consequential Amendments
Relating to
Proposed National Instrument 51-102
*Continuous Disclosure Obligations***

June 21, 2002

This Notice supplements the Canadian Securities Administrators ("CSA") Notices issued today concerning proposed National Instrument 51-102 *Continuous Disclosure Obligations* ("NI 51-102") and its related forms and companion policy, and proposed National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* ("NI 71-102") and its related companion policy.

In conjunction with proposed NI 51-102 and NI 71-102 and their related forms and companion policies, the Alberta Securities Commission (the "ASC") proposes to make, or to recommend, other changes to current Alberta securities laws and ASC policies, as described below. These local changes would be in addition to changes proposed to other national instruments, discussed in the CSA Notices.

Purpose and Effect of Local Changes

In general, the purpose of these local changes is to replace provisions of current Alberta securities laws and policies that apply to continuous disclosure and proxy solicitation by the new requirements of NI 51-102 (as varied by NI 71-102 for foreign issuers).

Despite these changes, the current Alberta rules and forms referred to in this Notice would continue to apply, if and to the extent that they do so today, to reporting issuers that are "investment funds", and for prospectuses or other disclosure documents that incorporate prospectus requirements. This limited retention of the current provisions would be temporary. Other CSA initiatives currently under way are expected to address continuous disclosure requirements for investment funds and financial statement requirements for prospectuses. Once all the new requirements are developed and implemented, the current provisions of the ASC Rules and the ASC Forms referred to below are likely to be repealed entirely.

Securities Act

The ASC proposes to recommend amendments to the *Securities Act* RSA 2000, substantially as follows:

1. The following definition would be added after paragraph (aa) of section 1:

(aa.1) "investment fund" means a mutual fund, a non-redeemable investment fund or a group scholarship plan;

2. Section 146 would be repealed and the following would be substituted:

Disclosure of material changes

146. A reporting issuer shall make disclosure of a material change in the manner prescribed by regulation

3. The heading "Interim financial statement" preceding section 148 would be amended by adding the words "of an investment fund".

4. Subsection (1) of section 148 would be repealed.

5. Section 149 would be amended by adding to the heading the words "of an investment fund".

6. The following would be added after section 149:

Financial statements of reporting issuers other than investment funds

149.1 A reporting issuer other than an Investment fund shall file financial statements prepared in accordance with, for the periods, and accompanied by the reports, if any, prescribed by regulation.

7. Section 150 would be amended

(a) by renumbering it as subsection (1);

(b) by adding the words "by an investment fund" after "filed"; and

(c) by adding the following:

(2) A reporting issuer other than an investment fund shall comply with the requirements prescribed by regulation concerning the sending of financial statements to security holders.

8. The heading "Filing of information circular" preceding section 152 would be amended by adding the words "of an investment fund".

9. Section 152 would be amended

(a) in subsection (1) by adding "that is an investment fund" before "sends"; and

- (b) in subsection (2) by striking out "the reporting issuer" and substituting "a reporting issuer that is an investment fund".

10. The following would be added after section 152:

Other continuous disclosure

152.1 A reporting issuer shall comply with the requirements prescribed by regulation for the purposes of this Part concerning the preparation, form, content, filing and delivery to security holders of information, in addition to information referred to in sections 146 through 151.

11. Section 154 would be amended

- (a) by striking out "In this Part" and substituting "For the purpose of section 157"; and
- (b) in paragraph (b) of subsection (b) by striking out "under section 155" and substituting "as prescribed by regulation".

12. Section 155 would be repealed.

13. Section 156 would be repealed.

14. The following would be added after section 157:

Proxies and Information Circulars

157.1(1) Any person or company that sends or is required to send an information circular or form of proxy to security holders of a reporting issuer shall comply with the requirements concerning the form, content, filing and sending to security holders of an information circular or a form of proxy.

- (2) A proxy executed by a security holder may confer the authority, and is subject to the restrictions, prescribed by regulation.

15. Paragraph (g) of subsection (1) of section 194 would be amended

- (a) by striking out "section 146(1) or (4)" and substituting "section 146";
- (b) by striking out "section 155" and "section 156(1)"; and
- (c) by adding "section 157.1" after "section 157(2)";

16. Section 212 would be amended by adding the following after subsection (1):

- (1.1) Subsection (1) does not apply in respect of requirements under Part 12 or Part 13 that apply to a reporting issuer other than an investment fund.

17. Parts 12 and 13 would be further amended by striking out the phrase “a mutual fund” each time it occurs and substituting “an investment fund”.

ASC Rules and Forms

The ASC proposes to make Rule 51-801, implementing NI 51-102 and NI 71-102 in Alberta. The text of the proposed implementing Rule is set out in the Schedule to this Notice. This proposed Rule is drafted on the basis that amendments to the *Securities Act*, as described earlier in this Notice, are implemented. If such amendments are not implemented, a much more extensive and detailed implementing rule, with numerous specific references to current provisions of the *Securities Act*, would likely be required to implement NI 51-102 and NI 71-102.

This proposed implementing Rule prescribes NI 51-102, as varied by NI 71-102, for purposes of the continuous disclosure and proxy solicitation provisions of the *Securities Act*. The implementing Rule would also eliminate the ASC Rules and the ASC Forms listed below, except to the extent that they apply to investment funds or to prospectus requirements or other distribution disclosure that incorporates prospectus requirements:

ASC Rules

- section 143;
- section 144;
- section 145;
- section 146;
- section 147;
- section 148;
- section 151;
- section 160;
- section 162;
- section 163;
- section 164;
- section 165;
- section 166;
- section 167;
- section 168; and
- section 169.

ASC Forms

- Form 27 *Material Change Report Under Section 118(1)* [now subsection 146(1)] of the *Securities Act*;
- Form 28 *Annual Filing of Reporting Issuer*; and
- Form 30 *Information Circular*.

ASC Policies

The ASC proposes to amend ASC Policy 1.2 *Restricted Shares*:

- (a) by repealing section 2.1;
- (b) in section 2.5.1, by striking out the portion of the section preceding the words "shall include" and substituting "Directors' circulars";
- (c) by repealing section 2.5.2;
- (d) by repealing section 2.5.3;
- (e) in section 2.6.1 by adding "or" after "securities exchange take-over bid circular" and striking out the portion of the section commencing with "or information circular ...";
- (f) by repealing section 3.1; and
- (g) by repealing section 3.3.

We also propose to repeal ASC Policy 6.1 *Interpretation of Sections 184 and 123* [now sections 212 and 151, respectively] - *Applicability to Certain Reporting Issuers*.

Further Information

Please direct your questions concerning Alberta implementation of NI 51-102, NI 71-102 and the related documents to either of the following:

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**SCHEDULE
TO
ALBERTA SECURITIES COMMISSION NOTICE**

PROPOSED ASC RULE 51-801

**Implementing
National Instrument 51-102
Continuous Disclosure Obligations
and
National Instrument 71-102
*Continuous Disclosure And Other Exemptions
Relating To Foreign Issuers***

PART 1 DEFINITIONS

1.1 Definitions – In this Rule:

- (1) “NI 51-102” means National Instrument 51-102 *Continuous Disclosure Obligations*; and
- (2) “NI 71-102” means National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*

PART 2 DESIGNATION OF INSTRUMENTS

2.1 Designation for Purposes of Parts 12 and 13 of the Act

NI 51-102, subject to the provisions of NI 71-102, is prescribed for the purposes of Parts 12 and 13 of the Act.

PART 3 CERTAIN ASC RULES AND FORMS NO LONGER APPLY

3.1 ASC Rules Inapplicable

- (1) The provisions of the Alberta Securities Commissions Rules specified in subsection (2) do not apply, except:
 - (a) to an investment fund;
 - (b) for a prospectus; or
 - (c) for an offering memorandum, take-over bid circular or other disclosure document to the extent that it is required to include financial statement

disclosure in accordance with financial statement disclosure prescribed for a prospectus.

- (2) The following provisions of the Alberta Securities Commissions Rules are specified for the purpose of subsection (1):
- (a) section 143;
 - (b) section 144;
 - (c) section 145;
 - (d) section 146;
 - (e) section 147;
 - (f) section 148;
 - (g) section 151;
 - (h) section 160;
 - (i) section 162;
 - (j) section 163;
 - (k) section 164;
 - (l) section 165;
 - (m) section 166;
 - (n) section 167;
 - (o) section 168; and
 - (p) section 169.

3.2 ASC Forms Inapplicable

The following Alberta Securities Commissions forms do not apply to a reporting issuer other than an investment fund:

- (a) Form 27 *Material Change Report Under Section 118(1)* [now subsection 146(1)] of the *Securities Act*;
- (b) Form 28 *Annual Filing of Reporting Issuer*, and

(c) Form 30 *Information Circular*.

PART 4 EFFECTIVE DATE

4.1 Coming Into Force

This Rule comes into force on ●, 2003.