



REQUEST FOR COMMENTS

Notice and Request for Comment – Adoption of New Brunswick Implementing Instrument 51-801 Adopting National Instrument 51-102 *Continuous Disclosure*, Companion Policy 51-102CP and Forms 51-102F1, 51-102F2, 51-102F3, 51-102F4, 51-102F5, and 51-102F6

Introduction

On August 30, 2004, the New Brunswick Securities Commission (the “Commission”) approved publication for comment of Implementing Instrument 51-801 (“51-801”). Through 51-801, the Commission would adopt National Instrument 51-102 *Continuous Disclosure* (“NI-51-102”), the Companion Policy and Forms.

The text of [51-801](#) is being published concurrently with this Notice.

The text of NI 51-102 can be obtained from the following websites:

English: http://www.osc.gov.on.ca/Regulation/Rulemaking/Current/Part5/rule_20040402_51-102-cont-disc-ob.pdf

French: (Règlement) http://www.cvmq.com/Upload/fichier_pdf/norme/51-102fr.pdf
(Instruction générale) http://www.cvmq.com/Upload/fichier_pdf/norme/51-102IGfr.pdf

Background

Continuous disclosure goes to the heart of the closed system of securities regulation. It ensures that those who buy and sell on the secondary market have timely access to pertinent information about a company to enable them to make informed decisions. It also ensures that investors on both the primary and secondary markets have a complete and historical view of a company’s operations.

Substance and Purpose

The implementing instrument reflects the fact that New Brunswick is now in the closed system. It stipulates that an issuer that meets the content requirements for annual financial statements set out in NI 51-102 has met the requirements of the New Brunswick *Securities Act* (the “Act”). Similarly, interim financial statements that meet the content requirements of NI 51-102 are in compliance with the Act.

Where an issuer meets the requirements of 51-102 for the following:

- ◆ Filing annual financial statements
- ◆ Filing interim financial statements
- ◆ Delivering financial statements
- ◆ Completing material change forms
- ◆ Issuing material change news release
- ◆ Filing material change report
- ◆ Annual filing
- ◆ Completing information circular forms
- ◆ Filing information circulars

- ◆ Soliciting proxies and
- ◆ Sending information circulars

the issuer is exempt from the related requirements of the Act.

The implementing instrument also provides for a transition into the filing requirements.

Anticipated Costs and Benefits

New Brunswick is now harmonized with the closed system / reporting issuer jurisdictions in Canada. Issuers should see a decrease in their costs of compliance in New Brunswick with the elimination of the need to obtain exemptions or comfort letters in relation to continuous disclosure matters. There are no additional disclosure requirements imposed on issuers beyond those in NI 51-102.

Request for Comment

The Commission requests your comments on Local Implementing Instrument 51-801 as it applies to the application of NI 51-102 in New Brunswick. Comments are not being sought on NI 51-102, Companion Policy 51-102CP, or Forms 51-102F1, 51-102F2, 51-102F3, 51-102F4, 51-102F5, and 51-102F6.

How to Provide Your Comments

Please provide your comments by November 22, 2004 by addressing your submissions to:

Secretary
New Brunswick Securities Commission
133 Prince William Street, Suite 606
Saint John, N.B. E2L 2B5
Telephone: (506) 658-3060
Fax: (506) 658-3059
Toll Free (866) 933-2222 (within NB only)
E-mail: information@nbsc-cvmnb.ca

Questions

Please refer your questions to:

C. Suzanne Ball (506) 658-3060



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RULE 51-801 IMPLEMENTING

NATIONAL INSTRUMENT 51-102

Continuous Disclosure Obligations

Companion Policy 51-102CP

Form 51-102F1

Form 51-102F2

Form 51-102F3

Form 51-102F4

Form 51-102F5

Form 51-102F6

PART 1 -- DEFINITIONS

1.1 DEFINITIONS

1.1.1 In this Rule, "NI 51-102" means "National Instrument 51-102 *Continuous Disclosure Obligations*".

1.1.2 Each term used in this Rule that is defined or interpreted in Part 1 of NI 51-102 has the meaning ascribed to it in that Part.

PART 2 -- APPLICATION

2.1 APPLICATION

2.1.1 This Rule does not apply to investment funds.

PART 3 -- INTERRELATIONSHIP WITH LEGISLATION

3.1 ANNUAL FINANCIAL STATEMENTS -- CONTENT

3.1.1 The financial statements required under subsection 90(1) of the Act must include the statements, balance sheet and notes described in subsection 4.1(1) of NI 51-102.

3.1.2 Subsections 4.5(1), 4.8(4) and 4.8(6) and sections 4.2, 4.7, and 4.10 of NI 51-102 apply to financial statements required under section 90 of the Act and auditor's reports required under the rules, as if any reference to section 4.1 in sections 4.2, 4.5, 4.7, 4.8 and 4.10 of NI 51-102 is a reference to section 90 of the Act.

3.1.3 This section applies for financial years beginning on or after January 1, 2004.

3.2 INTERIM FINANCIAL STATEMENTS – CONTENT

3.2.1 The financial statements required under subsection 90(1) of the Act must include the statements, balance sheet and notes described in subsections 4.3(1) and 4.3(2) of NI 51-102.

3.2.2 Subsections 4.3(3), 4.3(4), 4.5(2), 4.8(4), 4.8(5), 4.8(7) and 4.8(8) and sections 4.4, 4.7 and 4.10 of NI 51-102 apply to financial statements required under subsection 90(1) of the Act as if any reference to section 4.3 in sections 4.4, 4.5, 4.7, 4.8 and 4.10 of NI 51-102 is a reference to subsection 90(1) of the Act.

3.2.3 This section applies for interim periods in financial years beginning on or after January 1, 2004.

3.3 FILING ANNUAL FINANCIAL STATEMENTS -- EXEMPTION

3.3.1 Section 90 of the Act does not apply to a reporting issuer that complies with subsections 4.5(1), 4.7(1), 4.7(2), 4.8(4) and 4.8(6) and sections 4.1, 4.2 and 4.10 of NI 51-102 for financial years beginning on or after January 1, 2004.

3.4 FILING INTERIM FINANCIAL STATEMENTS -- EXEMPTION

3.4.1 Subsection 90(1) of the Act does not apply to a reporting issuer that complies with subsections 4.5(2), 4.7(1), 4.7(3), 4.7(4), 4.8(4), 4.8(5), 4.8(7) and 4.8(8) and sections 4.3, 4.4, and 4.10 of NI 51-102 for interim periods in financial years beginning on or after January 1, 2004.

3.5 DELIVERING FINANCIAL STATEMENTS -- EXEMPTION

3.5.1 Section 91 of the Act does not apply to a reporting issuer that complies with section 4.6 of NI 51-102 in the case of

(a) annual financial statements for financial years beginning on or after January 1, 2004; and

(b) interim financial statements for interim periods in financial years beginning on or after January 1, 2004.

3.6 MATERIAL CHANGE REPORTS -- FORM

3.6.1 Except as otherwise provided in National Instrument 71-101 *The Multijurisdictional Disclosure System* and in National Instrument 71-102 *Continuous Disclosure and other Exemptions Relating to Foreign Issuers*, every report required under subsection 89(1)(b)

of the Act must be a completed Form 51-102F3 except that the reference in Item 3 of Form 51-102F3 to section 7.1 of NI 51-102 shall be read as referring to subsection 89(1)(a) of the Act and references in Items 6 and 7 of Form 51-102F3 to subsections 7.1(2) or 7.1(5) of NI 51-102 shall be read as referring to subsections 89(2), 89(3) or 89(4), respectively, of the Act.

3.7 ISSUANCE OF MATERIAL CHANGE NEWS RELEASE -- EXEMPTION

3.7.1 Subsection 89(1) of the Act does not apply to a reporting issuer that complies with paragraph 7.1(1)(a) of NI 51-102.

3.8 FILING MATERIAL CHANGE REPORT -- EXEMPTION

3.8.1 Subsection 89(1) of the Act does not apply to a reporting issuer that complies with paragraph 7.1(1)(b) of NI 51-102.

3.9 ANNUAL FILING -- EXEMPTION

3.9.1 Reporting issuers are exempt from subsection 93(2) of the Act.

3.10 INFORMATION CIRCULARS -- FORM

3.10.1 Except as otherwise provided in National Instrument 71-101 *The Multijurisdictional Disclosure System* and in National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*, an information circular referred to in clause (a) or (b) of subsection 101(1) of the Act must be a completed Form 51-102F5, from and after June 1, 2004.

3.11 FILING INFORMATION CIRCULAR -- EXEMPTION

3.11.1 Subsection 93(1) of the Act does not apply to a reporting issuer that complies with the requirement in section 9.3 of NI 51-102 to file an information circular, from and after June 1, 2004.

3.12 SOLICITATION OF PROXIES -- EXEMPTION

3.12.1 Section 100 of the Act does not apply to a reporting issuer that complies with subsection 9.1(1) of NI 51-102, from and after June 1, 2004.

3.13 SENDING INFORMATION CIRCULAR -- EXEMPTION

3.13.1 Section 101 of the Act does not apply to a reporting issuer that complies with subsection 9.1(3) of NI 51-102, from and after June 1, 2004.

PART 4 -- EFFECTIVE DATE AND TRANSITION

4.1 EFFECTIVE DATE

4.1.1 This Rule comes into force on September * 2004.

4.2 TRANSITION

4.2.1 Despite section 4.1, sections 3.1, 3.3 and paragraph 3.5(a) apply for financial years beginning on or after January 1, 2004.

4.2.1 Despite section 4.1, sections 3.2, 3.4 and paragraph 3.5(b) apply for interim periods in financial years beginning on or after January 1, 2004.

4.2.3 Despite section 4.1, sections 3.10, 3.11, 3.12 and 3.13 apply from and after June 1, 2004.