Revised Canadian Securities Administrators Staff Notice 51-311

Frequently Asked Questions regarding
Regulation 51-102 respecting Continuous Disclosure Obligations

First published March 26, 2004, revised April 23, 2004, June 18, 2004, February 11, 2005 and May 4, 2007

Background

The framework set out in *Regulation 51-102 respecting Continuous Disclosure Obligations* ("Regulation 51-102") has been applicable since March 30, 2004. The most recent amendments to Regulation 51-102 came into effect on December 29, 2006. Those amendments clarify some provisions, address additional areas and streamline requirements.

Frequently asked questions on Regulation 51-102

Users of Regulation 51-102 should first consult Regulation 51-102 itself, its policy statement (the "Policy Statement"), and the instructions to the forms for answers to their questions about Regulation 51-102. To assist persons and companies that use Regulation 51-102, we have compiled a list of frequently asked questions (FAQs).

This list is not exhaustive, but does broadly represent the types of inquiries we have received.

Some terms we have used in these FAQs are defined in Regulation 51-102 or in National Instrument 14-101, *Definitions*.

We have divided the FAQs into the following categories:

A. Definitions
B. Financial statements
C. MD&A
D. Annual information forms (AIFs)
E. Business acquisition reports (BAR)
F. Information circulars and proxy solicitations
G. Filing material documents
H. Transition
I. Other

A. Definitions

A-1 **Q:** I am a scholarship plan. Am I an *investment fund*, and so not subject to Regulation 51-102?

A: A scholarship plan is an investment fund as defined in Regulation 51-102. As a result, scholarship plans are not subject to Regulation 51-102, but you should instead refer to *Regulation 81-106 respecting Investment Fund Continuous Disclosure*. [Amended May 4, 2007]

A-2 [Deleted May 4, 2007]

A-3 **Q:** I am a large debt issuer, but none of my securities are listed or quoted on a marketplace. Am I still a *venture issuer*?

A: Yes, any issuer without securities listed or quoted on a marketplace is a venture issuer. However, we published proposed amendments to Regulation 51-102 on March 29, 2007 that would amend the definition of venture issuer to remove debt-only issuers with total assets of over $25 million from the definition. If we adopt those amendments, then large debt-only issuers would be classified as non-venture issuers. [Amended May 4, 2007]

A-4 **Q:** I have securities listed on the TSX Venture Exchange (TSXV), and quoted on the Over-the-Counter Bulletin Board in the United States. Am I still a *venture issuer*?

A: You are still a venture issuer. As long as none of the marketplaces on which you are listed or quoted are identified in the definition of *venture issuer* in section 1.1 of Regulation 51-102, you are a venture issuer, regardless of how many marketplaces your securities are listed or quoted on. [Amended May 4, 2007]

A-5 **Q:** If I have securities listed on a junior exchange in Europe, am I a *venture issuer*?

A: You are not a venture issuer if you have securities listed or quoted on any marketplace outside of Canada and the United States other than the Alternative Investment Market of the London Stock Exchange or the market formerly known as OFEX (now the PLUS markets – see Question A-8). You must first determine if your securities are listed or quoted (instead of just admitted to trading), and if the facility is a marketplace as defined in Regulation 51-102.

When Regulation 51-102 was first implemented, we received inquiries regarding the Regulated Unofficial Market of the Frankfurt Stock Exchange (RUM) and the Unofficial Regulated Market of the Berlin-Bremen Stock Exchange (URM). While we were investigating those facilities, and to give certainty to industry, some jurisdictions issued blanket exemption orders so that issuers with securities traded on those facilities would be treated as venture issuers for the purposes of Regulation 51-102. Other jurisdictions issued discretionary orders, on a case-by-case basis. We later completed our review, and determined that trading on the RUM (now known as the Open Market) or URM does not constitute a listing or quotation. As a result, issuers that otherwise meet the definition of "venture issuer" with securities traded on those facilities are venture issuers for the purposes of Regulation 51-102. [Amended April 23, 2004, February 11, 2005 and May 4, 2007]

A-6 **Q:** According to the definition of *venture issuer* in section 1.1 of NI 51-102, if I am listed on an exchange registered as a "national securities exchange" under section 6 of the 1934 Act, I am not a *venture issuer*. How do I find out what exchanges are registered as national securities exchanges?

A: The SEC publishes the names of the registered national securities exchanges on its website at www.sec.gov/answers/exchanges.htm. [Amended May 4, 2007]

A-7 **Q:** When do I make the determination of whether or not I am a *venture issuer* for the purposes of Regulation 51-102?

A: The definition of *venture issuer* in section 1.1 in NI 51-102 sets out the times at which you determine if you are a venture issuer for the various requirements in Regulation 51-102. That time differs depending on the part of Regulation 51-102 you are applying. [Amended May 4, 2007]

A-8 **Q:** According to the definition of venture issuer, I will not lose my status as a venture issuer if I have securities quoted on the market known as OFEX. However, OFEX recently changed its name to PLUS. Will I still be a venture issuer if my securities are quoted on PLUS? [Added May 4, 2007]

A: Yes. We interpret the reference to "the market known as OFEX" in the definition of venture issuer as a reference to the PLUS markets operated by the PLUS Markets Group plc. The proposed amendments to Regulation 51-102 that were published for comment on March 29, 2007 included "housekeeping" amendments to the definition of venture issuer to reflect the change of name of OFEX to the PLUS Markets.

A-9 **Q:** We have recently completed a transaction that involves an operating non-public enterprise and a non-operating public enterprise (i.e. a shell company). The transaction resulted in the owners and management of the operating non-public enterprise acquiring control of the combined enterprise. The accounting principles applicable to the issuer refer to this transaction as a reverse takeover or a reverse acquisition, even though the accounting principles specify that this type of transaction is not a business combination because the non-operating public enterprise does not meet the definition of a business. Would this type of transaction be included in the definition of a reverse takeover under Regulation 51-102? [Added May 4, 2007]

A: Yes. Although these reverse takeover transactions are accounted for as capital transactions (because they are not business combinations), they are still considered to be reverse takeovers under accounting principles and are included in the definition of reverse takeover under Regulation 51-102.

B. Financial statements

B-1 **Q:** My auditors did not review my interim financial statements. As a result, under Regulation 51-102 my interim financial statements must be accompanied by a notice. What form should this notice take?

A: Regulation 51-102 does not specify the form of notice that should accompany the financial statements. The notice accompanies, but does not form part of, the financial statements. The notice will normally be provided on a separate page appearing immediately

before the financial statements, in a manner similar to an audit report that accompanies annual financial statements.

B-2 **Q:** Do I have to file a notice indicating that my interim financial statements have not been reviewed by my auditor, if a public accountant that is not my auditor, reviews them?

A: Yes. If your auditor does not review your interim financial statements, you must file the notice required by subsection 4.3(3) of Regulation 51-102, even if a public accountant reviews the statement. Refer to subsection 3.4(3) of the Policy Statement for a discussion of what is meant by "review" if your annual financial statements are audited in accordance with Canadian GAAS, or auditing standards other than Canadian GAAS. If your annual financial statements are audited in accordance with Canadian GAAS, the relevant requirements for a review of interim financial statements by the auditor are set out in the Handbook section 7050. [Amended May 4, 2007]

B-3 **Q:** Do I have to file a notice indicating that my interim financial statements have not been reviewed if only the current period, and not the comparative interim period, have been reviewed by my auditor?

A: Yes. The review of the interim financial statements must cover all periods presented in the statements (subsection 4.3(3) of Regulation 51-102). [Amended May 4, 2007]

B-4 **Q:** When does the annual request form under section 4.6 have to be sent?

A: Once a year – at any time during the year.

B-5 **Q:** If I send my annual financial statements to my securityholders, do I still have to send a request form under subsection 4.6(1) of Regulation 51-102 in respect of my interim financial statements?

A: No. Subsection 4.6(5) is a complete exemption from having to send an annual request form, if you send your annual financial statements to your securityholders (other than holders of debt securities) within 140 days of year-end and in accordance with *Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer* ("Regulation 54-101"). You will still have to send a copy of your interim financial statements to any securityholder that requests a copy (subsection 4.6(3) of Regulation 51-102). [Amended May 4, 2007]

B-6 **Q:** My current auditor does not intend to register with the Canadian Public Accountability Board. As a result, I am changing my auditor in order to comply with *Regulation 52-108 respecting Auditor Oversight* ("Regulation 52-108"). Do I have to comply with the change of auditor requirements?

A: Yes, you must comply with the change of auditor requirements, even if the change in your auditor is only to comply with Regulation 52-108.

B-7 **Q:** Does the filing deadline in Regulation 51-102 for our annual financial statements and MD&A affect when we must hold our annual meeting and send our proxy-related materials? [Added February 11, 2005, amended May 4, 2007]

A: Under subsections 4.6(3) and 5.6(1) of Regulation 51-102, you must send your annual financial statements and MD&A by 10 calendar days after the filing deadline (a maximum of 100 days after your financial year end if you are a non-venture issuer, 130 days if you are a venture issuer) to all your securityholders who have previously requested these documents by either returning the request form or otherwise making a request. (If you receive a request after the filing deadline, the delivery deadline is 10 calendar days after you receive the request.)

As a result, the annual filing deadlines in Regulation 51-102 will, in effect, require you to either

- send your annual financial statements and MD&A within 10 days after the filing deadline for your financial year end to securityholders who previously requested them (if any). If the proxy-related materials are not available at that time, send those materials later, in a second mailing, in time for your annual meeting; or

- if you want to do only one mailing, rely on the exemption in subsections 4.6(5) and 5.6(3) from the requirement to send a request form and send financial statements and MD&A on request, by mailing your annual financial statements and MD&A with your proxy-related materials to your securityholders (other than holders of debt instruments), within 140 days after your financial year end and in accordance with Regulation 54-101.

B-8 [Deleted May 4, 2007]

B-9 **Q:** I am required to file financial statements for a reverse takeover acquirer under section 4.10 of Regulation 51-102. How do I file those documents on SEDAR? [Added May 4, 2007]

A: Financial statements required under section 4.10 of Regulation 51-102 for the reverse takeover acquirer are filed on SEDAR under the profile of the reporting issuer. You should file the financial statements within the same project that relates to the corresponding interim or annual period of the reporting issuer. You should attach the financial statements to the document type "Financial statements of operating entity".

B-10 **Q:** We are changing our year-end from February 28 to December 31. Our transition year will be the 10 months ending December 31, 2007 and our interim periods in the transition year will end on May 31, August 31 and November 30, 2007. Does subsection 4.8(5) of Regulation 51-102 require the filing of interim financial statements for the 3 months ending November 30, 2007? [Added May 4, 2007]

A: No, you are not required to file financial statements for the interim period ending on November 30, 2007.

C. MD&A

General

C-1 **Q:** Since my MD&A is filed with my financial statements, do my auditors have to review my MD&A before I file it?

A: Regulation 51-102 does not include a direct requirement for MD&A to be reviewed by an issuer's auditor. However, under CICA Handbook section 7500 *Auditor association with annual reports, interim reports and other public documents*, an auditor is deemed to be associated with MD&A corresponding to annual financial statements on which the auditor has issued an auditor's report. Also, an auditor is deemed to be associated with interim MD&A if the auditor has been engaged to audit or review the corresponding interim financial statements.

If an auditor is deemed to be associated with MD&A, the auditor must perform the procedures specified in section 7500 of the Handbook. The auditor's specific aims when performing those procedures are to: (a) determine whether the financial statements, and when applicable, the report of the auditor, have been accurately reproduced; and (b) consider whether any of the other information in the document raises questions regarding, or appears to be otherwise inconsistent with, the financial statements.

Handbook section 7500 specifies that the auditor should arrange to obtain the MD&A prior to its release and perform the procedures set out in the section. Further, when circumstances prevent the auditor from obtaining the MD&A prior to its release, the auditor should perform the procedures required by Handbook as soon as possible after its release, and consider advising the audit committee of the circumstances.

If the reporting issuer's annual financial statements are audited in accordance with auditing standards other than Canadian GAAS, then the auditor's association with, and the requirement for procedures relating to, annual and interim MD&A would be determined by those other auditing standards.

Form

C-2 **Q:** Do I have to duplicate in my MD&A information already included in the notes to the financial statements?

A: Information specifically required by Form 51-102F1 must be included in the MD&A, and simply cross-referencing to a note in the financial statements would not be sufficient. For example, although the various notes to the financial statements may include information about contractual obligations, Form 51-102F1 requires an issuer that is not a venture issuer to include in the MD&A a summary, in tabular form, of contractual obligations. In this example a cross-reference would not meet the Form 51-102F1 requirement.

Issuers should use their judgment to ensure the MD&A complements and supplements the financial statements. This may include a discussion and analysis, but not a repetition of details disclosed in notes to the financial statements that are not specifically required by Form 51-102F1.

C-3 [Deleted May 4, 2007]

C-4 [Deleted May 4, 2007]

C-5 [Deleted May 4, 2007]

C-6 [Deleted May 4, 2007]

D. Annual information forms (AIFs)

General

D-1 **Q:** Are there situations when a venture issuer may have to file an AIF?

A: Venture issuers do not have to file an AIF under Regulation 51-102. There are other policies or rules that require the filing of an AIF to benefit from those instruments. For example, to use the short form prospectus system under *Regulation 44-101 respecting Short Form Prospectus Distributions* ("Regulation 44-101"), a venture issuer must file an AIF. Similarly, if a TSXV listed issuer intends to complete a public offering by short form offering document under TSXV Policy 4.6, or an issuer wants to use the form of offering memorandum for qualifying issuers under *Regulation 45-106 respecting Prospectus and Registration Exemptions*, the issuer must file an AIF. [Amended May 4, 2007]

D-2 [Deleted May 4, 2007]

Form

D-3 **Q:** Can I use my information circular in connection with an arrangement or reverse takeover as an alternative form of AIF?

A: No. The acceptable alternative forms of annual information forms are set out in the definition of AIF in section 1.1 of Regulation 51-102. They include a Form 10-K, Form 10-KSB or Form 20-F for SEC issuers, as defined in Regulation 51-102. Information circulars are not acceptable alternative forms of AIFs. [Amended May 4, 2007]

E. Business acquisition reports (BAR)

E-1 **Q:** The optional significance tests in subsection 8.3(4) of Regulation 51-102 are based on financial information relating to my most recently completed interim period or financial year. In calculating the optional significance tests, can I use financial information relating to financial statements for a completed interim period or financial year that have not yet been approved by my board of directors or audit committee, and have not yet been filed?

A: Yes. However, you would want to consider the possibility that adjustments to the financial statements from subsequent review by your external auditors, audit committee or board of directors may change the results of the calculation. For example, the acquisition may be a significant acquisition based on the adjusted financial statements, when it initially did not meet the significance thresholds, in which case you may be in default of the BAR requirements. [Amended May 4, 2007]

E-2 **Q:** If I am acquiring a business, there are no financial statements, and confidentiality provisions prevent disclosure of certain information about the business, how do I file a BAR?

A: Paragraph 8.1(4) of the Policy Statement discusses the term "business" and indicates that whether or not the business previously prepared financial statements, an acquisition may be considered a business and trigger the requirement for financial statements in a BAR. As well, section 8.6 of the Policy Statement provides guidance on the preparation of divisional and carve-out financial statements. If an issuer is considering the acquisition of a business, it must consider its obligations under Regulation 51-102 to file a BAR and the issuer must plan its acquisition in a manner that will ensure it can meet those obligations.

E-2.1 **Q:** Is an investment in equity securities of another company that is accounted for by the issuer using the cost method considered an acquisition of a business under subsection 8.1(1) of Regulation 51-102?

A: No. An investment accounted for by the cost method is not considered an acquisition of a business under subsection 8.1(1) of Regulation 51-102. However, investments that are consolidated or are accounted for by the equity method or by proportionate consolidation are considered acquisitions of a business as discussed in subsection 8.1(1). [Added June 18, 2004]

E-3 **Q:** If I acquire a business that will be accounted for by the equity method and the acquisition qualifies for the exemption in section 8.6, does my BAR have to name the auditor of the investee and indicate that the auditor of the investee has not consented?

A: Section 8.6 of the Regulation 51-102 does not require an issuer to name the auditor of the financial information or underlying financial statements or to include the auditor's report on the financial information or underlying financial statements. As a result, the issuer does not have to disclose the absence of consent from the auditor of the investee.

E-4 **Q:** If an issuer's subsidiary acquires shares in itself from interests outside the consolidated group, is that acquisition subject to the "step-by-step" provisions in Part 8 of Regulation 51-102?

A: Yes, the acquisition by the subsidiary of shares in itself increases the issuer's proportionate interest in the subsidiary and so should be considered a step acquisition by the issuer. The provisions in section 8.11 for step-by-step acquisitions apply if the acquisition is a significant acquisition. [Added June 18, 2004]

F. Information circulars and proxy solicitations

F-1 [Deleted May 4, 2007]

G. Filing material documents

G-1 **Q:** Do material documents, such as constating documents or material contracts, dated before March 30, 2004 have to be filed under the filing requirements? When do they have to be filed?

A: Any constating documents, including articles of incorporation, that are dated before March 30, 2004 must be filed under the filing requirements, as long as they are still effective (Part 12 of Regulation 51-102). The documents must be filed no later than when you first file an AIF under Regulation 51-102, if you are not a venture issuer (section 12.3 of Regulation 51-102). If you are a venture issuer, you must file the document within 120 days of the end of your first financial year beginning on or after January 1, 2004 (clause 12.3(b) of Regulation 51-102). However, if the making of the document constitutes a material change for the issuer, the document must be filed no later than the time of filing a material change report (section 12.3 of Regulation 51-102). [Amended May 4, 2007]

G-2 **Q:** Do the original forms of constating documents or material contracts that have been amended before March 30, 2004 have to be filed under the filing requirements?

A: Only the current versions of documents have to be filed - that is, the documents, as amended, not the original forms that no longer apply.

G-3 **Q:** Will material contracts be public documents?

A: Yes.

H. Transition

Financial statements

H-1 [Deleted May 4, 2007]

H-2 [Deleted May 4, 2007]

H-3 [Deleted May 4, 2007]

H-4 [Deleted May 4, 2007]

H-5 [Deleted May 4, 2007]

MD&A

H-6 [Deleted May 4, 2007]

H-7 [Deleted May 4, 2007]

H-7.1 [Deleted May 4, 2007]

AIFs

H-8 [Deleted May 4, 2007]

H-9 [Deleted May 4, 2007]

General

H-10 [Deleted May 4, 2007]

H-11 [Deleted May 4, 2007]

H-12 **Q:** Effective June 1, 2004, Regulation 51-102 has replaced the previous form of executive compensation disclosure in Ontario – Form 40 – with Form 51-102F6. However, Item 17.1 of the Ontario long form prospectus – Form 41-501F1 – requires executive compensation disclosure in Form 40. What form of executive compensation disclosure do I give in my Ontario long form prospectuses?

A: You should provide disclosure of executive compensation in your Form 41-501F1 using Form 51-102F6. [Added June 18, 2004, Amended May 4, 2007]

I. Other

I-1 [Deleted May 4, 2007]

I-2 [Deleted May 4, 2007]

I-3 [Deleted May 4, 2007]

I-4 [Deleted May 4, 2007]

May 4, 2007