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Canadian Securities Administrators

Autorités canadiennes en valeurs mobilières

Notice

Regulation to amend Regulation 51-102 respecting Continuous Disclosure Obligations, and Amendments to Policy Statement to Regulation 51-102 respecting Continuous Disclosure Obligations

Regulation to amend Regulation 52-107 respecting Acceptable Accounting Principles, Auditing Standards and Reporting Currency

Regulation to amend Regulation 71-102 respecting Continuous Disclosure and Other Exemptions relating to Foreign Issuers, and Amendments to Policy Statement to Regulation 71-102 respecting Continuous Disclosure and Other Exemptions relating to Foreign Issuers

Regulation to repeal Regulation No. 3 respecting Unacceptable Auditors

And

Request for Comment

Draft Regulation to amend Regulation 44-101 respecting Short Form Prospectus Distributions and Form 44-101F1 *Short Form Prospectus;*

Notice of adoption

Introduction

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

- Regulation 51-102 respecting Continuous Disclosure Obligations (Regulation 51-102), its related forms (the Forms) and policy statement (Policy Statement 51-102),
- Regulation 52-107 respecting Acceptable Accounting Principles, Auditing Standards and Reporting Currency (Regulation 52-107),
- Regulation 71-102 respecting Continuous Disclosure and Other Exemptions relating to Foreign Issuers (Regulation 71-102) and its related policy statement (Policy Statement 71-102)
- Regulation NO. 3 respecting Unacceptable Auditors

(collectively, the Regulations).

We are also proposing consequential amendments to Regulation 44-101 respecting Short Form Prospectus Distributions (Regulation 44-101) and Form 44-101F1 *Short Form Prospectus* (Form 44-101F1).

The Regulations

- harmonized continuous disclosure (CD) requirements among Canadian jurisdictions,
- replaced most existing local CD requirements, and
- provide exemptions for certain foreign issuers from certain CD requirements.

Regulation 51-102 sets out the obligations of reporting issuers, other than investment funds, for financial statements, management's discussion and analysis (MD&A), annual information forms (AIFs), business acquisition reports (BARs), material change reporting, information circulars, proxies and proxy solicitation, restricted share disclosure, and certain other CD-related matters. Regulation 52-107 sets out the accounting principles and auditing standards that apply to financial statements filed in a jurisdiction. Regulation 71-102 provides exemptions from most CD requirements and certain other requirements for certain foreign issuers.

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

In Ontario, the amendments to Regulation 51-102, the Forms, Regulation 52-107, and Regulation 71-102 (together, the Rules) and the consequential amendments have been made. Also, in Ontario, the amendments to Policy Statement 51-102 and Policy Statement 71-102 have been adopted. The amendments to the Rules, consequential amendments, and other required materials were delivered to the Minister of Government Services on October 13, 2006. If the Minister does not approve or reject the amendments to the Rules and the consequential amendments or return them for further consideration, they will come into force on December 29, 2006.

In Québec, the Regulations are regulations made under section 331.1 of the Act and the amendments to the Regulations must be approved, with or without amendment, by the Minister of Finance. The amendments to the Regulations 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.

Provided all necessary ministerial approvals are obtained, the amendments will come into force on December 29, 2006. The amendments to Policy Statement 51-102 and Policy Statement 71-102 will come into effect at the same time as the amendments to the Regulations.

Substance and Purpose
The amendments to the Regulations that we are adopting fall into the following three broad categories:

1. Amendments to clarify some provisions of the Regulations.

2. Amendments to address areas that a rule, form or policy statement does not address, including codifying discretionary exemptions that we have granted.

3. Amendments to streamline requirements in the Regulations.

Background
We published the draft amendments for comment on December 9, 2005, except in New Brunswick, where they were published on February 2, 2006. The comment period expired on March 9, 2006 (April 3, 2006 in New Brunswick).

Summary of Written Comments Received by the CSA
During the comment period, and shortly after the expiry of the comment period, we received submissions from 21 commenters. We have considered the comments received and thank all the commenters. The names of the 21 commenters and a summary of the comments on the draft amendments, together with our responses, are in Appendix B to this Notice.

After considering the comments, we have made changes to the amendments. However, as these changes are not material, we are not republishing the amendments for a further comment period. We are publishing further draft amendments, discussed below, for comment.

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

Consequential amendments
We are eliminating the following staff notices relating to continuous disclosure, as they are no longer necessary:

- CSA Staff Notice 51-308 *Filing of Management's Discussion and Analysis and Regulation 51-102 respecting Continuous Disclosure Obligations*
- CSA Staff Notice 52-307 *Auditor Oversight and Financial Statements Accompanied by an Audit Report Dated on or After March 30, 2004*

Request for comment

Amendments that have been made to Regulation 44-101 and Form 44-101F1 are set out in a separate document that is published together with this Notice. The amendments to Regulation

44-101 reflect changes to section 13.4 of Regulation 51-102 and the amendments to Form 44-101F1 reflect changes to the Form 51-102F2 *Annual Information Form*.

We welcome your comments on the draft Regulation to amend Regulation 44-101 and Form 44-101F1.

Please submit your comments on the draft amendments in writing on or before November 13, 2006. If you are not sending your comments by email, you should also forward a diskette containing the submissions (in Windows format, Word).

Deliver your comments to the address that follows.

Anne-Marie Beaudoin, Secretary
Autorité des marchés financiers
Stock Exchange Tower
800 Victoria Square
P.O. Box 246, 22nd Floor
Montréal, Québec
H4Z 1G3
Fax : (514) 864-8381
e-mail : consultation-en-cours@lautorite.qc.ca

Questions
Please refer your questions to any of:

Rosetta Gagliardi
Conseillère en réglementation
Autorité des marchés financiers
(514) 395-0558 ext. 4462
rosetta.gagliardi@lautorite.qc.ca

Carla-Marie Hait
Chief Accountant, Corporate Finance
British Columbia Securities Commission
(604) 899-6726 or (800) 373-6393 (if calling from B.C. or Alberta)
chait@bcsc.bc.ca

Michael Moretto
Manager, Corporate Finance
British Columbia Securities Commission
(604) 899-6767 or (800) 373-6393 (if calling from B.C. or Alberta)
mmoretto@bcsc.bc.ca

Blaine Young
Associate Director, Corporate Finance
Alberta Securities Commission
(403) 297-4220
blaine.young@seccom.ab.ca

Charlotte Howdle
Securities Analyst, Corporate Finance
Alberta Securities Commission
(403) 297-2990
charlotte.howdle@seccom.ab.ca

Ian McIntosh
Deputy Director, Corporate Finance
Saskatchewan Financial Services Commission – Securities Division
(306) 787-5867
imcintosh@sfsc.gov.sk.ca

Bob Bouchard

Director, Corporate Finance
Manitoba Securities Commission
(204) 945-2555
bbouchard@gov.mb.ca

David Coultice
Senior Legal Counsel, Corporate Finance
Ontario Securities Commission
(416) 204-8979
dcoultice@osc.gov.on.ca

Lisa Enright
Senior Accountant, Corporate Finance
Ontario Securities Commission
(416) 593-3686
lenright@osc.gov.on.ca

Allison McManus
Accountant, Corporate Finance
Ontario Securities Commission
(416) 593-2328
amcmanus@osc.gov.on.ca

Bill Slattery
Deputy Director, Corporate Finance and Administration
Nova Scotia Securities Commission
(902) 424-7355
slattejw@gov.ns.ca

Pierre Thibodeau
Securities Analyst, Corporate Finance
New Brunswick Securities Commission
(506) 643-7751
pierre.thibodeau@nbsc-cvmnb.ca

Amendments
The text of the amendments follow or can be found elsewhere on a CSA member website.

October 13, 2006

Appendix A
Summary of changes to published amendments

Regulation 51-102

Part 1 Definitions

- We have revised the definition of *restructuring transaction* to make it more consistent with the Toronto Stock Exchange's definition of back-door listing, and the TSX Venture Exchange's definition of reverse takeover.

- We have revised the definition of reverse takeover so it now refers to a transaction that an issuer is required to account for under its GAAP as a reverse takeover. Although the Regulation 51-102 definition of reverse takeover was intended to track the definition in the Handbook, it was not as broad as the definition in the Handbook.

- We have harmonized the definition of *solicit* with the definition in the *Canada Business Corporations Act*.

- We have revised the definition of venture issuer so issuers whose securities are listed on OFEX will be venture issuers.

- We have added interpretations of *affiliate* and *control*, as *affiliate* is now used in Part 13 of Regulation 51-102.

Part 4 Financial Statements

- We have not proceeded with the draft amendment to remove the request form. Issuers will still be required to send a request form annually to their securityholders.

- Issuers that send their financial statements to all their securityholders in order to rely on the exemption from having to send a request form and their financial statements on request, must send those statements within 140 days of their financial year end. This will permit issuers to send the statements with their proxy materials.

- We have revised the requirements relating to filing financial statements after a reverse takeover to ensure there is no gap in the financial record after a reverse takeover. This change relates to the new exemption we have added to Part 8 discussed below for acquisitions that are reverse takeovers.

Part 8 Business Acquisition Report

- We have added an exemption from Part 8 for acquisitions that are reverse takeovers. Issuers have to provide disclosure about the transaction in an information circular or material change report, or under section 4.10 of Regulation 51-102.

- We have revised the asset test in Part 8 to permit the optional test to be based on the acquired business' most recently completed interim period.

- We have revised section 8.3 to permit an issuer to calculate the significance of an acquisition based on the issuer's audited financial statements for the year before the issuer's most recent financial year. The issuer may use the older financial statements if it has not been required to file, and has not filed, its audited financial statements for its most recent year.

- We have modified the exemption in section 8.4 from having to include the most recent interim financial statements for the acquired business as follows:
    - the exemption only applies if the business does not constitute a material departure from the issuer's business or operations before the acquisition and the issuer will not account for the acquisition as a continuity of interests,
    - to rely on the exemption, the issuer only has to have included in a previously filed document the financial statements that would have been required in a prospectus, not full prospectus-level disclosure,
    - the exemption is also available if an issuer chooses to file the business acquisition report early, and

- there is now a corresponding exemption relating to the pro forma financial statements, if an issuer relies on the exemption relating to the interim financial statements.

- We have added an exemption from certain of the alternative business acquisition disclosure for acquisitions of oil and gas interests, if production, gross revenue, royalty expenses, production costs and operating income were nil for the business.

Part 9 Proxy Solicitation and Information Circulars

- We have revised the exemption from the proxy requirements so a person or company only has to file a copy of any information circular, form of proxy *or similar document* it sent in connection with the meeting – not *all materials* it sent.

Part 11 Additional Disclosure Requirements

- We have revised the requirement to issue a news release if an issuer re-states information in a document. The requirement only applies if the issuer re-states financial information for comparative periods in financial statements for reasons other than retroactive application of a change in an accounting standard or policy or a new accounting standard.

Part 12 Filing of Certain Documents

- An issuer will now only have to file an amendment to a previously filed document if the amendment is material. This will prevent issuers, for example, incorporated under the British Columbia *Business Corporations Act* from having to re-file their articles every time they file notify the corporate registry of a change of their directors.

Part 13 Exemptions

- We have revised the exemption for exchangeable share issuers as follows:
  - to provide that, if the parent issuer is both a Canadian reporting issuer and an SEC issuer, it must comply with Canadian laws for the exchangeable share issuer to rely on the exemption
  - to permit exchangeable share issuers to issue securities under the short-term debt exemption in Regulation 45-106 respecting Prospectus and Registration Exemptions,
  - to permit the parent issuer to rely on the insider reporting exemption if it holds designated exchangeable securities, provided it does not trade those securities.

- We have made the same change to credit support issuer exemption as to the exchangeable share issuer exemption. We have also revised the credit support issuer exemption as follows:
  - we have added the concept of *alternative credit support* from Regulation 44-101 respecting Short Form Prospectus Distributions to the exemption,
  - the designated credit support securities may be convertible debt or convertible preferred shares,
  - we have set out the specific column information the credit support issuer must include in its selective financial information, and clarified in what circumstances that information has to be filed, and
  - we have provided that the credit support issuer must state if it is relying on the credit supporter's financial statements and, if it can no longer rely on the credit supporter's financial statements, to modify its notice to reflect that change.

Form 51-102F1 MD&A

- We have not proceeded with the draft amendments to the instructions regarding future oriented financial information. CSA will be proposing broad requirements relating to forward-looking information in late 2006.

- We have revised the liquidity disclosure in the MD&A to ensure that an issuer will have to provide more disclosure about potential defaults or arrears.

- We have added an exemption from the requirement to provide a fourth quarter discussion in the annual MD&A, if the issuer files a separate fourth quarter MD&A.

Form 51-102F2 AIF

- We have removed the requirement to incorporate BARs by reference into the AIF. Instead, the issuer must describe any significant acquisitions.

- We now require disclosure of bankruptcy and similar procedures that are proposed for the current financial year.

- We now require disclosure of stability ratings that an issuer requests. We are consequentially amending Form 44-101F1 to make the wording of the requirement consistent.

- We have revised the language requiring penalties and sanctions disclosure to be consistent with language in other parts of the form and in other forms.

Form 51-102F3 Material change report

- We have revised the new requirement to provide disclosure for restructuring transactions so it applies only if the issuer has an interest in the resulting entity.

Form 51-102F5 Information circular

- Item 9 of the form will only apply if the meeting is not an annual general meeting (AGM), there is no vote on executive compensation, directors are not being elected, and there is no matter being voted on that involves the issuer issuing securities. Item 10 of the form will only apply if the meeting is not an AGM, there is no vote on executive compensation, and directors are not being elected.

Form 51-102F6 Statement of executive compensation

- We have added additional guidance on how an issuer should disclose executive compensation when an external management company provides the issuer's management.

Policy Statement 51-102

- We have added additional guidance relating to the filing of business acquisition reports.

Summary of Comments
List of commenters

ADP Investor Communications
(March 6, 2006)

Amaranth Advisors (Canada) ULC
(April 17, 2006)

Bombardier Inc.
(March 9, 2006)

Borden Ladner Gervais LLP
(March 9, 2006)

La Caisse centrale Desjardins du Québec
(March 6, 2006)

The Canadian Advocacy Committee of Canadian CFA Societies
(March 8, 2006)

Canadian Bankers Association
(March 23, 2006)

Canadian Coalition for Good Governance
(March 9, 2006)

Canadian Investor Relations Institute
(March 9, 2006)

The Desjardins Group
(March 7, 2006)

Sean M. Farrell (McMillan Binch Mendelsohn)
(March 8, 2006)

The Securities Law Group of Fasken Martineau DuMoulin LLP
(March 9, 2006)

Paul G. Findlay (Borden Ladner Gervais LLP)
(March 22, 2006)

KPMG LLP
(March 9, 2006)

Macleod Dixon LLP
(March 9, 2006)

Sharon McNamara (Lang Michener LLP)
(January 12, 2006)

Miller Thomson Pouliot LLP
(March 9, 2006)

The Securities Law Group of Ogilvy Renault LLP
(March 9, 2006)

Osler, Hoskin & Harcourt LLP
(March 8, 2006)

Simon Romano (Stikeman Elliott LLP)
(February 20, 2006)

Securities Transfer Association of Canada
(March 3, 2006)

Summary of comments

	Summary of comment	CSA response
A. Answers in response to questions in CSA Notice:		
1. Should debt-only issuers be treated as venture issuers? Should an exchange listing of debt only affect the treatment of the issuer under Regulation 51-102? Should a foreign exchange listing of debt-only affect the treatment of a Canadian debt-only issuer?	Seven commenters felt that an exchange listing of debt securities should not affect the ability of a debt-only issuer to be treated as a venture issuer. The commenters cited the following reasons for their recommendations: • the distinction between debt securities and equity securities - debt securities constitute an entitlement to payment of principal and interest and rank in preference to equity holders, whereas equity holders participate in the overall financial performance of the issuer (seven commenters), • debtholders rely on the protections in trust indentures and those protections are sufficient (six commenters), • debt is issued under a contract negotiated between the issuer and investors which sets out the issuer's obligations, including disclosure obligations; legislation should not amend that business contract (one commenter), • the protections provided by the role of ratings agencies are sufficient (five commenters), • debt securities do not trade on stock exchanges, are held by a limited number of holders, are rarely traded and are rated by	The policy rationale behind the definition of venture issuer was that for smaller issuers as compared to larger issuers there was a disproportionate burden of complying with the continuous disclosure requirements. The CSA determined that it was appropriate to provide some accommodations for smaller issuers. We determined that exchange listing, rather than a total assets or market capitalization test provided the best proxy for size as it provided certainty to both issuers and investors. The definition of venture issuer has proven itself to be appropriate for equity issuers. Debt-only reporting issuers do not list debt securities in North America, although some debt-only issuers do list their debt on European exchanges, generally to satisfy certain "legal for life" requirements. Such issuers are no longer considered venture issuers under our current definition. The CSA considers the continuous disclosure requirements of Regulation 51-102 appropriate for debt-only issuers, most of which are large enough to comply with these requirements without any difficulty.

	arm's length rating agencies (one commenter), • investors in debt securities have different needs, resources, expectations, and remedies than equity investors (four commenters), and • it is inconsistent to treat debt issuers that may be of the same size and whose debt has the same characteristics, differently (five commenters).*)* Four of those commenters suggested the accommodations for debt-only issuers should be broader than for venture issuers. Two of the commenters suggested that at least debt issuers with approved ratings should be included in the definition. One commenter said debt-only issuers should not be treated as venture issuers as this would delay the release of information. The commenter noted that, since debt-only issuers provide information to credit rating agencies and private lenders on an on-going basis, the reporting requirements in Regulation 51-102 should not pose an unfair burden on the issuers. One commenter suggested that debt securities should only be issued under a prospectus as this would promote the development and liquidity of the market.	A significant number of debt-only issuers currently file their financial statements within the deadlines for non-venture issuers and many file an AIF. We acknowledge that debt is issued under a contract and that there are covenants in the trust indenture intended to protect debt investors, although we believe that the financial statements and MD&A, along with the other continuous disclosure filings required by Regulation 51-102, are necessary to provide debt investors with an overview of the financial condition of the issuer. While some large debt-only issuers list their debt on European exchanges, exchange listing does not provide an appropriate proxy for the size of debt-only issuers. To appropriately address the classification of debt-only issuers we intend to publish for comment separately a proposal to remove from the definition of venture issuer all debt-only issuers except for small debt-only issuers with total assets of $25 million or less. The question of whether issuers should be able to issue debt under prospectus exemptions is beyond the scope of this project.
2. Should we remove the requirement for	Five commenters agreed with removing	We have not proceeded with the proposal

the request form? If we retain it, should we amend the requirement? If we eliminate it, should we replace it with something else?	the requirement to send the request form. Three of the commenters noted that most shareholders could view the financial statements on SEDAR and felt the change would reduce company administration time and expenses. One of the commenters suggested the change would be welcomed by securityholders who have complained about duplicative, wasteful mailings. The commenter is also encouraging conforming changes to federal legislation that requires issuers to mail financial statements to all registered shareholders. One commenter noted that the process of requesting information should be simple, without significant cost to the investors, and should not rely on investors having access to the internet. One of the commenters said that, if CSA retains the request form, it should not prescribe the content of the request form, as it may be inconsistent with various corporate laws. Two commenters disagreed with removing the request form. One suggested applying a system of standing instructions similar to the one that applies to investment funds under Regulation 81-106. Both suggested that it would be helpful if CSA provided more guidance about what the request form should say. They also suggested that	to remove the request form. We decided that the best way to protect the fundamental right of securityholders to receive financial information is to continue putting the onus on the issuer to initiate the process by sending a request form. We were not satisfied that the request form was an onerous requirement. We also considered that the request form system had not been in effect long enough to conclude that it was not working or that we should change it. We have not added any further guidance regarding the content of the request form. Instead, we will continue to allow practice to develop around the system, based on market efficiencies. As part of the CSA's project to harmonize the Acts, we expect that provisions in the Acts that are inconsistent with Regulation 51-102 will be repealed. Until that is complete, implementing rules in the local jurisdictions exempt issuers from requirements in the Act, provided they comply with Regulation 51-102.

	issuers should use, or be required to use, the proxy form or voting instruction form instead of a separate request form. One felt that, if CSA required the request to be part of the proxy form, there would be no need to specify the content. The other suggested the CSA should require more prominence to the statement about how a securityholder may request the financial statements, and that issuers post their documents on their websites as required under Regulation 81-106. One of the commenters also suggested that the regional *Securities Acts* should be harmonized with Regulation 51-102 to eliminate inconsistencies. One example is s. 79(1) of the Ontario *Securities Act*.	
3. Do you agree with requiring an issuer to send its financial statements within 10 days of the filing deadline if it is relying on the exemption from having to send the statements on request?	One commenter did a survey of certain non-venture issuers during 2005. Of the 37 issuers sampled, all prepared and filed annual reports to shareholders, and 34 of them filed the reports within 10 days after the 90-day financial statement filing deadline. Given this, the commenter believed the proposed delivery deadline was reasonable. One commenter did not have a specific comment on the number of days within which issuers should have to deliver documents, but felt issuers should respond promptly. The commenter suggested a	We considered the various options suggested by the commenters. We have decided to continue to permit issuers to mail their financial statements and MD&A to all their securityholders within 140 days of their year-end. In coming to this decision, we considered the following: • the information is readily available on the internet • the market reacts to the information in the statements and MD&A as soon as they are released • market forces will encourage issuers to mail their information to securityholders that request them before

	deadline somewhere in the range of 10 calendar days seemed reasonable. One commenter suggested 10 days is not sufficient time to prepare the materials for mailing or to schedule annual general meetings. The commenter suggested extending the period to 30 days after the filing deadline. One commenter believes minor delays are acceptable for disclosure mailed to investors. However, if an issuer uses electronic disclosure, the commenter stated that there should be no delays for conventional distribution of statements to those investors that request written copies. Three commenters suggested the proposed regime would require issuers to either do two mailings – one with the financial statements and one later with proxy materials – or to advance the date of the annual general meeting up to avoid two mailings. Two of the commenters felt the first option would be expensive for issuers, and the second option would be difficult, either because meetings may be booked years in advance, or because it would further compress the time an issuer has to prepare its year-end and meeting materials. The three commenters suggested that continuing the current practice of mailing	the 140 day deadline; securityholders that have not requested the information are not prejudiced by the wait

	the financial statements with the proxy materials based on the current normal schedule for annual general meetings would be less costly for issuers and better for investors. One of the commenters suggested that issuers should still be required to provide copies of the financial statements and MD&A within 10 days of receiving a request, for securityholders that request the financial statements either before the issuer sends the information to everyone with the proxy materials or after the primary mailing.	
4. Is the information filed under Part 12 of Regulation 51-102 useful to investors? Do the benefits to investors outweigh the costs to issuers of complying with Part 12? Should we eliminate any of the requirements in Part 12?	Four commenters suggested that material contracts should not have to be filed for the one or more of the following reasons: • the costs outweighed the benefits (four commenters), particularly the legal and business risks associated with the burden of attempting to remove commercially sensitive information and preserving confidentiality, and the complication factor it adds to negotiations (one commenter) • summarizing material contracts should be sufficient when combined with existing disclosure requirements (four commenters), • the contract itself does not provide any additional material information to investors, and so is of questionable value (one commenter),	We have decided to retain the requirement to file material contracts, other than contracts entered into in the ordinary course of business. To address inconsistency in filings and confusion about what is in the *ordinary course of business*, we will develop further guidance for the policy statement in conjunction with a project to harmonize the long form prospectus requirements.

	• agreements are not disclosure documents that a securityholder can read in isolation, given how fact-specific they are (one commenter), and • the requirement in Part 12 may conflict with exchange provisions and Part 5 of Regulation 51-102 allowing issuers to delay the public release of information, if it would be detrimental to the issuer (one commenter). One of the commenters suggested summarizing material contracts with change of control provisions would be sufficient. Three commenters said issuers should be required to file the documents contemplated in Part 12. One commenter referred specifically to documents that provide information about the organization of the entity, the rights a shareholder has, and identifying potential conflicts of interest. Another commenter said the information is not only useful, but is essential to be able to understand and evaluate a firm's financial disclosure. The commenter felt the relative cost is small and offset by large benefit. The commenter suggested that documents filed under this requirement should be clearly identified, filed in consistent categories on SEDAR, and should not be moved to the bottom of	

	the list as the issuer files further documents. The last commenter felt it was vital for securityholders (i) to have access to documents affecting their rights, (ii) to understand the issuer's capital structure, including its financial obligations, (iii) to be able to evaluate the material components of the issuer's business framework, and (iv) to have access to important information without the involvement of the issuer. The commenter suggested the "ordinary course of business" exemption should be limited. One commenter suggested CSA should either amend Part 12 of Regulation 51-102 or the policy statement to clarify the types of debt financing documents that need to be filed or the policy rationale underlying the need for filings under sections 12.1 and 12.2.	
5. Should we amend Form 51-102F6 to provide additional guidance relating to external management companies?	One commenter supported the draft amendment to the Form 51-102F6 as published for comment. The commenter felt the change provides sufficient guidance to issuers, but suggested the CSA should monitor compliance with the amendment and take more prescriptive action, if necessary, in the future. The commenter also suggested issuers should be required to provide a "total dollar amount" of the annual benefit	CSA is considering executive compensation as a whole. As part of that process, CSA will consider the possibility of requiring "total dollar amount" disclosure. With regard to the concern that the intention of the change was too broad, the CSA do not view this as a change to the current requirements, but a clarification. The executive compensation form already requires disclosure about persons that

	conferred on the named executive officers. The commenter noted some issuers are voluntarily providing this disclosure, and suggested it should be mandatory. One commenter suggested the proposal to delete “primary” should not substantially alter the meaning – it just recognizes that there may be more than one purpose of some arrangements. The commenter felt this is appropriate. However, the commenter expressed concern that the intention of the change was broader. If the intent of the change was to broaden the scope of the requirement to require disclosure of management arrangements with external management companies regardless of the purpose, then the commenter said CSA should not make the change. In particular, if the compensation of the management company employee is outside the control of the issuer or its board, then the issuer should not have to provide disclosure of that employee’s compensation. The commenter also noted that some external management companies have other clients in addition to the issuer, and that not all of their compensation is attributable to the issuer.	perform policy-making functions in respect of an issuer because of the definition of *executive officer*. If a reporting issuer’s executive management is provided through an external management company, we generally consider the executive officers of the external management company to be persons performing policy-making functions in respect of the issuer. The comment brings into focus, however, that the requirements have not been consistently applied or interpreted. As a result, we have added additional guidance to the executive compensation form to clarify the purpose of the form and its application to external management companies, and to address the allocation issue raised by the commenter.
B. General comments		
Amendments in general	Two commenters supported the amendments in general, subject to their specific comments.	We thank the commenters for their support.

SEC proposed “notice and access model”.	One commenter noted that the SEC has proposed an Internet “notice and access model” that goes further than CSA has proposed. The commenter suggested CSA should consider the implications of the SEC proposals, and generally of technological developments that make electronic delivery an increasingly viable alternative to traditional paper delivery.	We have not proposed moving to the SEC’s proposed notice and access model at this time. We understand that many investors in Canada still rely on mail-outs from the issuer, particularly of information circulars. We will monitor the progress of the SEC’s proposals, and may revisit this issue in the future.
(i) Definitions		
Definition of *executive officer*.	One commenter said that paragraph (d) of the proposed definition seemed incorrect, and that paragraph (c) should refer to “senior officer”.	We have deleted paragraph (c) of the definition, as it was redundant given paragraph (d). We disagree that paragraph (d) is incorrect.
Definition of *recognized exchange*.	One commenter suggested the additional proposed words in the definition could make every dealer a recognized exchange.	We have revised the proposed language to address this issue.
Definition of *restructuring transaction*.	One commenter suggested that the definition should not capture a reporting issuer that engages in some form of internal reorganization not involving its securityholders, as it currently appears to. The commenter also questioned whether paragraph (c) was referring to the legal ability or factual ability to elect the majority of new directors, and whether one should include any holdings in “new securityholders”, which the commenter suggested was an unclear term.	The last words in the definition exclude an internal reorganization that does not involve the issuer’s securityholders (“does not include … [another] transaction that does not alter a securityholder’s proportionate interest in the issuer”). We have revised the definition to use the same 50% test used by the Toronto Stock Exchange in its policy relating to back-door listings, and the TSX Venture Exchange in its Reverse Take-Over policy. We have added some additional guidance to the policy statement regarding the definition.

	One commenter suggested CSA should provide additional guidance to issuers to assist them in determining which types of transactions will constitute *restructuring transactions*, and to articulate more clearly the policy rationale underlying the need for the section 4.9 filing. This would help issuers decide if their transaction is a transaction "similar to" one contemplated in paragraphs (a) to (c) of the definition. The commenter questioned if the reference to "new securityholders" means registered holders or beneficial owners, and if it includes people acting jointly or in concert. If it means beneficial owners, the commenter noted the difficulty for issuers of determining who their beneficial securityholders are.	The purpose of paragraph (c) in the definition of *restructuring transaction* is to capture the same transactions as are caught by the TSXV as Reverse Take-overs, and the Toronto Stock Exchange as back-door listings. The Regulation 51-102 definition of *reverse takeover* does not include those transactions because they may involve the acquisition of assets, rather than securities. Under TSXV and TSX policies, Reverse Take-overs and back-door listings are generally subject to shareholder approval, and so comprehensive disclosure about the transaction would be provided in an information circular. Issuers that are not subject to either the TSXV or TSX requirements, and so do not require shareholder approval, are only required to file material change reports. In our experience, the disclosure about transactions in material change reports is significantly less comprehensive than disclosure in an information circular. For issuers listed on the TSXV or TSX, we do not expect there will be any change to their disclosure on this topic. Issuers not listed on the TSXV or TSX may trigger the disclosure item in the material change report because of this definition. *New securityholders* is referring to beneficial owners. While we recognize that it can be difficult for issuers to determine who their beneficial securityholders may be, given that most securities are registered through depositories, looking at registered shareholders only is not sufficient. We have revised the discussion in the policy

Definition of *venture issuer*.	One commenter suggested issuers listed on the Berlin-Bremen Stock Exchange (and similar exchanges) should be considered venture issuers, as any broker can list any eligible foreign issuer without the issuer's permission.	As noted in the answer to question A-5 on CSA Staff Notice 51-311, an issuer must have its securities *listed or quoted* (instead of just admitted to trading) outside of Canada and the United States on a *marketplace* (as defined in Regulation 51-102) to not be a venture issuer. Based on CSA's review of the Regulated Unofficial Market of the Frankfurt Stock Exchange (RUM) and the Unofficial Regulated Market of the Berlin-Bremen Stock Exchange (URM), trading on the RUM 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. We understand that the RUM and URM, although not other boards of the Frankfurt Stock Exchange and Berlin-Bremen Stock Exchange, will admit securities for trading without the permission of the issuer.
(ii) Financial statements		
Statement of comprehensive income.	One commenter suggested the CSA should impose a rigorous cost-benefit analysis of new rules and have a working principle of trying to eliminate a requirement if a new one is to be introduced.	After reviewing the current CICA approach to the statement of comprehensive income, we have decided not to proceed with this amendment. The Handbook does not require a separate statement of comprehensive income, so there is no need to change the Regulation to refer to it.
Filing and delivery of annual reports and	One commenter suggested that it is	We are aware of the concern raised in this

Ontario civil liability provisions.	possible that the sending of an annual report that includes the issuer's financial statements, and the filing of that annual report under Part 11 of Regulation 51-102, could be a "release" of a "document" under section 138.1 of the Ontario *Securities Act*. The commenter suggested the delivery and filing of an annual report, which is usually after the original filing of the financial statements, was not intended to expose the issuer to additional civil liability risk. The commenter suggested adding a subsection to section 4.6 to clarify that any financial statements sent to securityholders under section 4.6 are deemed to have been filed and made available on the date the financial statements were first filed, regardless of when they may be filed and made available (in an annual report) at a later date. The commenter also suggested adding a section to the policy statement to this effect, to clarify the impact of section 11.1 of Regulation 51-102 as it relates to civil liability.	comment. While we are considering this issue, responding at this time is not within the scope of the draft amendments to Regulation 51-102.
(iii) MD&A		
Additional disclosure regarding significant equity investees.	One commenter asked whether "significant equity investee" should be defined. The commenter also suggested the disclosure in section 5.7(1)(b) should be limited to contingent issuances that are *known* by the reporting issuer.	*Equity investee* is defined in section 1.1 of Regulation 51-102. Section 5.4 of the Policy Statement sets out when we will generally consider an equity investee to be significant. We believe this is sufficient guidance on the term *significant equity investee*.

	One commenter said the CSA should not change the rule to require this disclosure for the following reasons: (i) it is not appropriate to require disclosure in the MD&A if the accounting rules do not require financial information in the issuer's consolidated financial statements, (ii) the issuer may not be involved in preparing the information and so may not have access to the information to verify its accuracy; as a result, the issuer's CEO and CFO may not be able to provide the certification required under MI 52-109, (iii) the equity investee's financial statements may not be audited, it may not prepare interim financial statements, and it may not prepare financial statements within the time-frames contemplated in Regulation 51-102, and (iv) because the information may not be audited or verifiable by the issuer, the potential risk to the issuer under civil liability if the information contains a misrepresentation is too high.	We have not eliminated the requirement for summarized financial information about an issuer's significant equity investee or limited it to known contingent issuances. One purpose of the MD&A is to supplement the financial statements. We require issuers to provide other financial information in their MD&A that is not in the financial statements, such as the additional disclosure of expenditures for venture issuers without significant revenue. In addition, Regulation 51-102 defines *equity investee* as a business that the issuer has invested in and accounted for using the equity method. GAAP requires the equity method when the issuer has significant influence over an equity investee. This significant influence should allow the issuer to get financial information about the investee on a timely basis in order to both prepare the issuer's financial statements and to comply with the disclosure requirement. We do not think the disclosure requirement is too onerous, particularly since the issuer is only required to provide summary information, not a complete balance sheet and income statement for the equity investee.
Disclosure regarding current debt ratios.	One commenter suggested an issuer should be required to provide additional information in its MD&A regarding its	We have revised the liquidity disclosure in the MD&A to ensure that an issuer will have to provide more risk disclosure about

	current debt ratios, for both public and private debt. The commenter suggested adding a table disclosing (1) all significant debt covenants and ratios, (2) the level that must be maintained according to the debt indentures, and (3) the current level of the ratio as of the report date.	potential defaults or arrears. This will address the commenter's concern that the current disclosure is not sufficient to assess the issuer's real default risk. We do not propose at this time to require the detailed data disclosure suggested by the commenter.
Sensitivity analysis.	One commenter agreed with the proposal to remove the requirement to provide a sensitivity analysis relating to critical accounting estimates and replace it with instructions relating to quantitative and qualitative disclosure.	We thank the commenter for its support.
4th quarter MD&A	One commenter suggested that, if an issuer has disclosed and filed an MD&A for its 4th quarter, it should not have to discuss its 4th quarter in the MD&A in its annual report.	We have amended from section 1.10 to permit an issuer that has filed a 4th quarter MD&A to incorporate that MD&A into its annual MD&A.
(iv) Annual information forms (AIF)		
Incorporation by reference into an AIF.	Proposed section 6.1 of the policy statement notes that, if an issuer incorporates a document by reference into its AIF that itself incorporates another document by reference (an underlying document), the issuer should file the underlying document with its AIF. One commenter suggested this section should confirm that, if the issuer incorporates only *a portion* of a document by reference, the issuer only has to file an underlying document if the underlying document was incorporated by reference into that portion of the document.	We agree with the commenter's suggestion, and have clarified section 6.1 of the policy statement.

Incorporation of BARs into an AIF.	One commenter noted that an issuer's incorporation by reference of a BAR into an AIF constitutes a "second release" of the BAR. This has significant implications for auditors and the issuer's directors and officers. It also has implications for issuers that file Form 40-Fs with the SEC. The commenter recommended deleting the requirement to incorporate BARs by reference into the AIF, and that a corresponding change be made to the Form 44-101F1.	We agree that the requirement triggered obligations in the US that we did not intend, so have amended the AIF form and the Form 44-101F1.
Penalties and sanctions disclosure.	One commenter suggested that the following terms be clarified: • "penalties and sanctions" – define and/or qualify by a materiality threshold • "regulatory authority" • "relating to securities legislation" – does this qualify both settlement agreements entered into with a regulatory authority and those with a court?	We have revised the language to be consistent with the language in Item 10, relating to disclosure about penalties or sanctions against directors or officers. The issuer will have to disclose all penalties or sanctions imposed by a securities regulatory authority, as defined in National Instrument 14-101 *Definitions*, or by a court relating to securities legislation. Penalties or sanctions imposed by other regulatory bodies or by courts generally will be subject to a materiality standard.
(v) Business acquisition reports (BAR)		
Filing of BARs - general	One commenter suggested the CSA should examine BAR requirements generally, as they are quite difficult and costly to comply with.	As noted in the CSA notice requesting comment on the draft amendments to Regulation 51-102, the CSA sent surveys to all issuers that filed BARs in the first year we implemented Regulation 51-102, to audit firms, and to investors, to find out the effect and usefulness of business acquisition reporting. The amendments we

		have proposed are a direct result of those surveys, and the suggestions we received.
Filing of BARs if prospectus or information circular was filed.	One commenter suggested that an issuer should not have to file a BAR if disclosure, including appropriate financial statements, was provided in a prospectus or information circular.	Shareholders have an expectation that an issuer will file a BAR after a significant acquisition. If an issuer does not file a BAR at all, its securityholders will not know that another document has been filed that has the relevant information. We have provided an exemption from having to update interim financial statements and pro formas in certain circumstances, and permitted the BAR to incorporate disclosure by reference. This offsets the cost of having to file the BAR when the issuer has already filed a prospectus or information circular.
	One commenter agreed with the proposed exemptions in subsections 8.4(4) and (6).	We have retained the proposed exemptions.
	One commenter suggested removing the condition in the exemption that a reasonable investor would not consider the acquired business to be the issuer's primary business going forward. The commenter noted that CSA has given no guidance on what the phrase means, so it is unclear.	We have revised the condition. It is now that the acquired business cannot constitute a material departure from the business or operations of the reporting issuer immediately before the acquisition.
Filing of BARs – parent and subsidiary.	One commenter suggested that a parent and subsidiary should not both have to file a BAR, as contemplated in section 8.1(5) of the policy statement. Instead, the parent should be able to simply refer to the subsidiary's BAR in a press release.	The purpose of the BAR requirement is to have appropriate financial disclosure about acquisitions that are significant to the reporting issuer. If the significant acquisition is made through a reporting subsidiary, but is still significant to the parent reporting issuer, it is appropriate for

		the parent to also file the BAR. It is an integral part of the parent's disclosure record, including forming part of its disclosure base if it files a short form prospectus.
Significance tests.	One commenter suggested either eliminating the income test altogether because it often leads to anomalous results, or replacing it with a revenue-based test, as is used in other statutes such as the *Competition Act*. The commenter felt the revenue test would likely be subject to fewer accounting adjustments than determining income from continuing operations. As a result, it would likely provide a more accurate gauge of the significance of an acquired business.	When we surveyed filers of BARs, we considered alternatives to the existing significance tests. We concluded a revenue-based test also has its limitations, and that the existing tests generally worked well. Issuers can apply for relief on a discretionary basis when the income test has an anomalous result that does not truly reflect the significance of the acquisition.
Auditor review of interim financial statements in a BAR.	One commenter suggested that an auditor should not have to review the interim financial statements included in a BAR, if the BAR is incorporated into a prospectus.	The reference in subsection 8.10(2) of the policy statement is for information purposes only. The requirement for an auditor to review the interim financial statements is in Regulation 44-101. We recently adopted a new Regulation 44-101, and reconsidering this issue is beyond the scope of the amendments to Regulation 51-102.
Compilation report.	One commenter strongly supported eliminating the compilation report, and recommended CSA make the same change to long form prospectuses.	We have forwarded the comment to the project group looking at long form prospectuses.
Pro forma financial statements for multiple acquisitions.	One commenter suggested there is a gap in the pro forma financial disclosure when an issuer does multiple significant	We already require the pro forma statements included in a BAR to reflect multiple acquisitions. We have clarified in

	acquisitions. In particular, when an issuer is filing a BAR in respect of a second significant acquisition in a year, the issuer would have to provide operating results for 12 consecutive months for the second acquisition, but not for the first acquisition, if the first acquisition was completed during the issuer's most recently completed financial year. The commenter was also concerned about the multiplicity of pro forma financial statements incorporated by reference into the subsequent short form prospectus. The commenter recommended • amending Regulation 51-102 to require the pro forma income statement to fully reflect all significant acquisitions made during the periods covered by the pro forma income statements • amending Item 11 of Regulation 44-101 to provide that, if an issuer incorporates more than one BAR into the short form prospectus, the issuer only has to incorporate the last set of pro forma financial statements • amending Item 11 of Regulation 44-101 to give an exemption from having to incorporate a BAR by reference into a short form prospectus if the results of the acquired business for a complete financial year have been reflected in the issuer's audited consolidated financial statements	the policy statement that the pro formas must reflect all significant acquisitions during the current financial year. With regard to the question of permitting an issuer to incorporate its last pro forma financial statement into a prospectus, we have referred this issue to the committee responsible for Regulation 44-101. The committee expects it will include this exemption in the draft amendments to Regulation 44-101 that will be published for comment in the fall of 2006. As part of the consequential amendments to Regulation 44-101, we have added an exemption from having to incorporate a BAR by reference if the issuer has incorporated the business's operations into the issuer's audited financial statements for at least a year.

	incorporated by reference into the prospectus • at least *permitting* issuers to prepare the pro forma income statement in the BAR on a basis that includes all significant acquisitions made during or after the period covered by the statement	
(vi) Proxy solicitation		
Exemption from sections 9.1 to 9.4.	One commenter suggested the amendments to section 9.5 expanded the current proxy solicitation exemption. The commenter recommended CSA clarify what it intends to capture with the reference to "all other material sent … in connection with the meeting".	The amendment is not intended to expand the exemption. Our intention is to ensure that an issuer relying on the exemption has to file the documents it sends in connection with the meeting on SEDAR, just as it would have to file an information circular prepared under Part 9. We have replaced the reference to "all other material" to more accurately reflect our intention.
New sections 7.3 and 7.4 of Form 51-102F5.	One commenter questioned whether current section 7.3 of Form 51-102F5 will be repealed and replaced by proposed sections 7.3 and 7.4.	Sections 7.3 and 7.4 will be added as new sections, in addition to current section 7.3. We have corrected the number so they are now sections 7.2.1 and 7.2.2.
(vii) Additional filing requirements		
Requirement to file copy of disclosure material filed with another regulator.	One commenter noted that most issuers file the same disclosure material with all regulators at the same time. The commenter suggested CSA should give examples of what it intended to capture with this requirement in the Policy Statement so it is clear what it intends to capture.	On occasion, the regulators may not require an issuer to file the same documents, or an issuer may make a voluntary filing with only one regulator. However, to effectively act as an issuer's principal regulator on behalf of other jurisdictions, it is important that the jurisdiction have access to all the same information as other regulators while doing continuous disclosure and other reviews.

		This requirement ensures a jurisdiction can act effectively and efficiently as principal regulator.
Issuance of news release when documents are re-filed or re-stated.	One commenter suggested an issuer should only have to issue a news release when it re-files a document, not when it re-states information in a document. The commenter noted that an issuer might decide to re-state information that appeared in a document to make it more current. For example, an issuer may update information that appeared in its previous annual information form in its current AIF, without the original AIF having been materially deficient in the first place. In those cases, the commenter felt the issuer should not have to issue a news release. If the re-stated information were a material change, the issuer would already have to issue a news release under Part 5 of Regulation 51-102.	We have changed the requirement to refer only to restatements of financial information for comparative periods. This focuses the requirement on restatements of financial statements, as opposed to updating information in previously filed documents to make the information more current.
	One commenter suggested the requirement was too broad, because it could capture simple errors in which incorrect information filed differs materially from the correct information in the related news release. In addition, the cover letter filed with the re-filing is sufficient without requiring a news release.	We disagree that the requirement should not capture simple errors when the correct information is in the related news release. An investor will not know whether the correct information is in the filing, or the related news release. The cover letter with the new filing is also not sufficient, as an investor that looked at the original filing will not know that the issuer has replaced the original document with a new one.
Filing of voting results.	One commenter provided a copy of a study it did on compliance with section 11.3 of	We thank the commenter for sharing the results of its study and we may give the

	Regulation 51-102. Based on the study, the commenter suggested the requirement to disclose results of voting should be revised as follows: • to require the report to be filed within a specified period of time, rather than "promptly" • to require a detailed breakdown of the votes cast in the notice, and • to eliminate the exemption for venture issuers.	issues raised in the study further consideration.
(viii) Exemptions		
Exchangeable share issuer and credit support issuer exemptions – filing copies of documents filed with SEC.	One commenter suggested CSA should clarify the words "in the manner and at the time required by U.S. laws and any U.S. marketplace" in the exemptions. The commenter questioned, in particular, whether posting of documents on the issuer's website, as proposed by the New York Stock Exchange, would be permitted, given that the same proposal has not been made in Canada.	We believe the wording is clear. If the parent issuer's or credit supporter's securities are listed on the NYSE, and the NYSE permits posting in lieu of delivery to the holders of the underlying securities or credit supporter's securities, then that would be "in the manner and at the time required by … any U.S. marketplace". We have revised the language to make it clear that, if the parent issuer or credit support issuer is a Canadian reporting issuer, it must comply with Canadian delivery requirements.
Insider reporting relief relating to exchangeable security issuers.	One commenter noted that, in most exchangeable share structures, the exchange right is exercised through the parent issuer acquiring the exchangeable share in exchange for its securities. As a result, given the wording in paragraph 13.3(3)(c), the parent would always have to file insider reports.	We have revised the language to exclude securities acquired through the exercise of the exchange right, provided the exchangeable shares are immediately cancelled by the parent issuer.

Credit support issuer exemption – full and unconditional guarantee.	One commenter suggested that the requirement that the holder be entitled to payment from the credit supporter within 15 days is unclear. CSA should specify whether or not the 15 days includes any grace period. The commenter suggested the 15 days should only commence after any grace periods have elapsed. The commenter also questioned why the concept of *alternative credit support* that is in Regulation 44-101 is not in the credit support exemption in Regulation 51-102.	We have not revised the rule to refer to grace periods. If the grace period is at the option of the holder of the securities, then the holder still has the right to receive payment. This means it is still within the definition. If the grace period is not at the option of the holder, we could have extended the 15-day period or not specified any time period. As we do not have any information suggesting 15 days does not reflect market practice, we have not extended the 15 days. We are not satisfied it would be appropriate for the rule to not specify any time period. We have revised the exemption to add the concept of *alternative credit support* from Regulation 44-101.
Credit support issuer exemption – selected financial information for issuers with more than minimal operations independent of credit supporter.	One commenter suggested that CSA should provide guidance as to what operations it would consider "minimal operations" for the purposes of the exemption, or provide the policy rationale for the selected financial information required under paragraph 13.4(2)(g).	We have revised the wording in Regulation 51-102 to be more specific about when a credit support issuer has more than minimal operations.