

Notice

Regulation to amend *Regulation 51-102 respecting Continuous Disclosure Obligations, including Form 51-102F2 Annual Information Form, and Form 51-102F5 Information Circular*

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

Regulation to amend *Regulation 52-110 respecting Audit Committees*

Regulation to amend *Regulation 58-101 respecting Disclosure of Corporate Governance Practices*

Regulation to amend *Regulation Q-28 respecting General Prospectus Requirements*

Request for Comment

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

Draft Regulation to amend *Regulation 52-109 respecting Certification of Disclosure in Issuers' Annual and Interim Filings*

Draft Regulation to amend *Regulation 71-102 respecting Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*

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

Draft Regulation to amend *Regulation 52-108 respecting Auditor Oversight*

This notice is in two parts. Part A of this notice sets out amendments that we have made to *Regulation 51-102 respecting Continuous Disclosure Obligations* (Regulation 51-102) and other regulations.

Part B of this notice sets out additional proposed amendments to Regulation 51-102 and other regulations.

Part A: Notice of Adoption

Introduction

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

- Regulation 51-102,
- its related Form 51-102F2 *Annual Information Form* and Form 51-102F5 *Information Circular* (the Forms), and
- its policy statement (Policy Statement 51-102).

We are also implementing consequential and other amendments to:

- *Regulation 52-110 respecting Audit Committees* (Regulation 52-110),

- *Regulation 58-101 respecting Disclosure of Corporate Governance Practices* (Regulation 58-101).

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 and the Forms (together, the Rules), the consequential and other amendments and the local amendments have been made. The amendments to the Rules, the consequential and other amendments, the local amendments and other required materials were delivered to the Minister of Government Services on October 12, 2007. If the Minister does not approve or reject the amendments to the Rules, the consequential and other amendments and the local amendments or return them for further consideration, they will come into force on December 31, 2007.

In Québec, the regulations described above are regulations made under section 331.1 of the Quebec Securities 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 regulations. They must also be published in the Bulletin.

In Alberta, the consequential amendments to *Regulation 52-109 respecting Certification of Disclosure in Issuers' Annual and Interim Filings* (Regulation 52-109), Regulation 52-110 and Regulation 58-101 require Ministerial approval. Subject to receipt of Ministerial approval, those consequential amendments will come into force on December 31, 2007. The Alberta Securities Commission will issue a separate notice advising of whether the Minister has approved or rejected the consequential amendments.

Provided all necessary ministerial approvals are obtained, the amendments will come into force on December 31, 2007. The amendments to Policy Statement 51-102 will come into effect at the same time as the amendments to Regulation 51-102.

Substance and Purpose

The amendments to the regulations that we are adopting will:

- reduce the requirement for issuers to disclose cease trade orders and similar orders issued against companies that the directors, executive officers and significant shareholders of the issuer were involved with.
- update some provisions in the regulations, including
 - revising the definition of *venture issuer* to reflect the change of name of OFEX to the PLUS markets.
 - revising the definition of *approved rating organization* to reflect the change of name of Dominion Bond Rating Service Limited to DBRS Limited.
 - repealing the definition of *investment fund* and *non-redeemable investment fund* since each jurisdiction has adopted or is expected to adopt harmonized definitions of investment fund and non-redeemable investment fund in their local securities legislation.
- clarify some provisions in the regulations, including:
 - clarifying the prospectus-level disclosure required in certain continuous disclosure documents for reverse take-overs, significant acquisitions and restructuring transactions.

- clarifying what information an issuer needs to include in an annual information form if that issuer is not required to send an information circular to any of its shareholders.
- making other drafting and “housekeeping” changes.

To the extent that these amendments were made to Regulation 51-102 and the Forms, consequential amendments were also made to other CSA instruments having similar provisions.

The amendments to Policy Statement 51-102 will give guidance on the interpretation of:

- the terms chief executive officer and chief financial officer.
- section 14.2 of Form 51-102F5 regarding the prospectus-level disclosure required in certain continuous disclosure documents for significant acquisitions and restructuring transactions.

Background

We published the amendments for comment on March 29, 2007 together with the proposed amendments relating to executive compensation. The comment period expired on June 30, 2007.

The CSA will be publishing a notice on the proposed executive compensation amendments at a later date.

Summary of Written Comments Received by the CSA

We received submissions from 15 commenters on the proposed amendments. We have considered the comments received and thank all the commenters. The names of the 15 commenters and a summary of the comments on the proposed amendments, together with our responses, are in Appendix B to this notice.

After considering the comments, we have decided not to proceed with certain proposed amendments.

We also made changes to other proposed amendments and decided to make additional amendments. However, as these changes are not material, we are not republishing the amendments for a further comment period.

Summary of Changes to the Proposed Amendments

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

Local amendments

In Québec, we have also made amendments to Schedule 1, *Information Required in a Prospectus*, of Regulation Q-28 respecting *General Prospectus Requirements*. Those amendments are published together with this notice.

Part B: Request for Comment

Introduction

The CSA is also publishing for comment proposed amendments to the proxy solicitation and information circular provisions of Regulation 51-102 and Policy Statement 51-102.

Background

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

However, even though this corporate legislation provides exemptions for these types of solicitations, dissident shareholders of reporting issuers governed by that legislation are unable to take advantage of the exemptions because there is no corresponding exemption from the proxy solicitation and information circular provisions of Regulation 51-102.

Substance and Purpose and Summary of the Proposed Amendments

The amendments we are publishing for comment would:

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

The policy rationale for these amendments is that if corporate law has evolved to increase shareholder rights, then securities legislation should not prevent shareholders from exercising these rights.

Solicitations by public broadcast, speech or publication

The proposed exemption from the information circular requirements for certain proxy solicitations conveyed by public broadcast, speech or publication generally corresponds to the exemption in subsection 150(1.2) of the CBCA, subsection 112(1.2) of the OBCA and the regulations under those statutes. In order to have the benefit of the exemption, a dissident shareholder must:

- include certain information in the solicitation, and
- file the information with securities regulators before soliciting proxies.

Since the proposed exemption will only apply if the solicitation is public, the proposed amendment to Policy Statement 51-102 gives guidance on how a solicitation will be considered to be public if it is disseminated in a manner calculated to effectively reach the marketplace.

Furthermore, the proposed exemption will not apply to a person or company that is proposing a significant acquisition or restructuring transaction under which securities of the person or company are to be changed, exchanged, issued or distributed unless the person or company has filed certain information with securities regulators for posting on www.sedar.com.

Similarly, the proposed exemption will not apply to a person or company that is proposing a nominee for election as a director of the reporting issuer unless the person or

company has filed certain information about the proposed nominee with securities regulators for posting on www.sedar.com.

Compliance with substantially similar requirements

Section 9.5 of Regulation 51-102 currently exempts any reporting issuer from the proxy solicitation and information circular provisions of Regulation 51-102 where it is complying with substantially similar requirements under the laws of the jurisdiction under which it is incorporated, organized or continued. The proposed revised version of section 9.5 would extend the exemption to a person or company that solicits proxies and complies with substantially similar requirements of the laws under which the relevant reporting issuer is incorporated, organized or continued.

Alternatives considered

Instead of proposing the amendments, we considered issuing a notice indicating that we would be willing to grant relief to dissident shareholders of CBCA and OBCA corporations that wanted to solicit proxies by public broadcast, speech or publication. However, we believe that dissident shareholders should not have to incur the costs and time delays of filing an application for exemptive relief in order to have the benefit of an exemption that is available to them under corporate law.

Anticipated costs and benefits

The proposed amendments will permit securityholders to solicit proxies by public means, including a speech or broadcast, through a newspaper advertisement, or over the Internet. This will allow securityholders and their representatives a greater level of participation in decision-making at annual and special meetings of securityholders. The proposed amendments will allow securityholders to engage in these activities without incurring substantial financial costs by having to mail formal proxy requests and information circulars to all securityholders.

The proposed amendments will not impose any additional obligations or costs on reporting issuers.

Unpublished materials

In proposing these amendments to Regulation 51-102 and Policy Statement 51-102, we have not relied on any significant unpublished study, report or other written materials.

Local amendments

In Québec, we are proposing consequential amendments to:

- *Regulation 52-107 respecting Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (Regulation 52-107),
- Regulation 52-109,
- *Regulation 71-102 respecting Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (Regulation 71-102).

These amendments are required to be published for comment in Québec.

We request your comments on the proposed amendments outlined above. Please provide your comments by November 12, 2007.

We also propose to:

- amend subsection 4.11(8) of Regulation 51-102 so that it will apply in Alberta and Manitoba.
- amend *Regulation 52-108 respecting Auditor Oversight* (Regulation 52-108) so that section 2.1 and Part 3 of that regulation will apply in Alberta, British Columbia and Manitoba.

The text of these amendments is published together with this notice.

The amendments to subsection 4.11(8) of Regulation 51-102 are required to be published for comment in Alberta and Manitoba, but not in the other jurisdictions. Similarly, the amendments to Regulation 52-108 are required to be published for comment in Alberta, British Columbia and Manitoba, but not in the other jurisdictions. However, the other members of the CSA intend to make the same amendments so that the text of Regulation 51-102 and Regulation 52-108 will be the same in each jurisdiction.

Comments on Part B of the Notice

We request your comments on the proposed amendments outlined above. Please provide your comments by January 11, 2008. Please address your submissions to all of the CSA member commissions.

Please deliver your comments to the addresses below. Your comments will be distributed to the other participating CSA members.

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If you do not submit your comments by e-mail, a diskette or CD-ROM containing the submissions in Word should also be provided.

We cannot keep submissions confidential because securities legislation in certain provinces requires that a summary of the written comments received during the comment period be published.

Questions

Please refer your questions to any of:

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October 12, 2007

Appendix A

Summary of Changes to Published Amendments

Regulation 51-102

Part 1 Definitions

- We decided not to amend the definition of *venture issuer* to remove large debt-only issuers from the definition. However, we revised the definition of venture issuer to reflect the change of name of OFEX to the PLUS markets.
- We revised the definition of *approved rating organization* to reflect the change of name of Dominion Bond Rating Service Limited to DBRS Limited.
- We repealed the definition of *investment fund* and *non-redeemable investment fund* since each jurisdiction has adopted or is expected to adopt harmonized definitions of investment fund and non-redeemable investment fund in their local securities legislation.

Part 4 Financial Statements

- We amended subclause 4.10(2)(a)(ii) to clarify the reference to the financial statements required by the applicable form of prospectus that a reverse takeover acquirer was eligible to use prior to the reverse takeover for a distribution of securities in the jurisdiction.

Form 51-102F2 Annual Information Form

- We decided not to reduce the disclosure period for cease trade and similar orders from 10 years to 5 years. However, we proceeded with the change published for comment to eliminate the disclosure requirements for significant shareholders. Similarly, we also revised the requirements to require the disclosure only for directors and executive officers who were directors, chief executive officers or chief financial officers of any company when a cease trade order or similar order was actually issued, or when the event occurred that led to the order being issued, in respect of any company. We also clarified some of the wording from that published for comment.
- We revised item 18.1 to clarify what information from Form 51-102F5 *Information Circular* an issuer needs to include in an annual information form if that issuer is not required to send an information circular to any of its securityholders.

Form 51-102F5 Information Circular

- We revised the requirements to disclose cease trade and similar orders in a manner that corresponds to the changes made to Form 51-102F2.
- We revised section 14.2 to clarify the reference to the disclosure required by the applicable form of prospectus that an entity would be eligible to use immediately prior to the sending and filing of an information circular in respect of a significant acquisition or a restructuring transaction, for a distribution of securities in the jurisdiction.

Policy Statement 51-102

- We revised the policy statement to give guidance on the interpretation of the terms chief executive officer and chief financial officer, as well as section 14.2 of Form 51-102F5.

Consequential and Other Amendments

Regulation 52-107, Regulation 52-109, Regulation 52-110 and Regulation 71-102

- We repealed the definition of investment fund.

Regulation 52-110 and Regulation 58-101

- We revised the definition of venture issuer in a manner that corresponds to the changes made to the definition of venture issuer in Regulation 51-102.
- We have made certain drafting changes to various definitions.

Local Amendments

Regulation Q-28

- In Québec, we revised the requirements to disclose cease trade and similar orders in a manner that corresponds to the changes made to Form 51-102F2.

Appendix B

**Summary of Comments
List of Commenters**

407 International

Blake, Cassels & Graydon LLP

British Columbia Investment Management Corporation

Canada Pension Plan Investment Board

Canadian Coalition for Good Governance

Credit Union Central of British Columbia

Desjardins Group

Enbridge Inc.

Enersource Corporation

Institutional Shareholder Services Canada Corp.

Ontario Teachers' Pension Plan

Pension Investment Association of Canada

Shareholders Association for Research and Education (SHARE)

Stikeman Elliott LLP

TransCanada Pipelines Limited

Summary of Comments

Issue	Summary of Comments	CSA Response
Report of voting results	<p>We received responses from 10 commenters on this issue.</p> <p>Eight commenters support disclosure of the results of proxies received for each matter voted upon, even if the vote is not conducted by ballot. These commenters indicated that disclosing the results of proxies will provide investors with a significant amount of information about the items voted on and will improve the transparency of voting results.</p> <p>Two commenters stated that the results of proxies voted on non-ballot initiatives have no legal force, and this disclosure would be inappropriate. The commenters also stated that it would be misleading as it would not cover shares voted in person, for example.</p> <p>One commenter believes that a ballot should be held on all matters where 5% or more of the shares voted are “withheld” or voted “against” on the matter.</p>	<p>We acknowledge that the majority of commenters support enhanced disclosure for the report of voting results. We will be studying the issue further.</p>
Definition of Venture Issuer	<p>We received responses from 6 commenters on this proposal. None of the commenters supported the proposed change.</p> <p>Five commenters stated that investors in debt securities have different information needs and primarily rely on the issuers credit ratings, capacity to repay and compliance with the deed of trust or similar agreement.</p> <p>One commenter recommended that debt-only venture issuers be required to file bond rating reports prepared by independent third-party bond rating agencies on SEDAR. Another recommended that we continue to treat debt-only issuers as at present.</p> <p>One commenter indicated that the proposed change to exclude all debt-only issuers with assets over \$25 million from the definition of venture issuer would result in unfairly categorizing some small financial institutions and co-operatives as non-venture issuers.</p>	<p>As a result of the comments, we decided not to proceed with the proposed amendment to exclude all debt-only issuers with assets over \$25 million from the definition of venture issuer.</p>

Disclosure of Cease Trade Orders	<p>We received responses from two commenters on this proposal. Both of these commenters were opposed to the amendment that would reduce from 10 years to 5 years the look-back period under which directors and executive officers of a company must disclose whether they were subject to a cease trade order. Both commenters stated that this information never becomes unimportant to shareholders.</p> <p>One commenter stated that they support a lifetime requirement for this disclosure.</p>	<p>We agree that the disclosure of cease trade orders provides important information to investors and decided to maintain the look-back period at 10 years.</p> <p>We think that a 10 year look-back provides a sufficient period and do not agree that a lifetime disclosure obligation is necessary.</p>