

Notice

Regulation to amend Regulation 51-102 respecting Continuous Disclosure Obligations, including Form 51-102F3 Material Change Report, Amendments to Policy Statement to Regulation 51-102 respecting Continuous Disclosure Obligations, Regulation to amend Regulation 52-108 respecting Auditor Oversight, Amendments to Policy Statement to Regulation 52-110 respecting Audit Committees and Regulation to amend Regulation 81-106 respecting Investment Fund Continuous Disclosure

Introduction

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

- *Regulation 51-102 respecting Continuous Disclosure Obligations* (Regulation 51-102), including *Form 51-102F3 Material Change Report* (Form 51-102F3),
- *Policy Statement to Regulation 51-102 respecting Continuous Disclosure Obligations* (Policy Statement 51-102),
- *Regulation 52-108 respecting Auditor Oversight* (Regulation 52-108),
- *Policy Statement to Regulation 52-110 respecting Audit Committees* (Policy Statement 52-110), and
- *Regulation 81-106 respecting Investment Fund Continuous Disclosure* (Regulation 81-106).

Those amendments are published together with this notice.

Substance and Purpose

The amendments that we are adopting will:

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

Those amendments are published together with this notice.

The exemption from the information circular requirements for certain proxy solicitations made to the public by broadcast, speech or publication generally corresponds to the exemption in subsection 150(1.2) of *Canada Business Corporations Act* (CBCA).

The amendments to section 9.5 of Regulation 51-102 extend the existing exemption to a person that solicits proxies and complies with substantially similar requirements of the laws under which the relevant reporting issuer is incorporated, organized or continued.

Implementation

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, Form 51-102F3, Regulation 52-108 and Regulation 81-106 (together, the Rules) have been made. Also, in Ontario, the amendments to Policy Statement 51-102 and Policy Statement 52-110 have been adopted. The amendments to the Rules and other required materials were delivered to the Minister of Finance on April 17, 2008. If the Minister does not approve or reject the amendments to the Rules or return them for further consideration, they will come into force on July 4, 2008.

In Québec, the regulations described above are made under section 331.1 of the *Securities Act* and must be approved, with or without amendment, by the Minister of Finance. They 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 52-108 require ministerial approval. Subject to receipt of ministerial approval, those consequential amendments will come into force on July 4, 2008. The Alberta Securities Commission will issue a separate notice advising of whether the Minister has approved or rejected the consequential amendments.

If all necessary ministerial approvals are obtained, the amendments will come into force on July 4, 2008. The amendments to Policy Statement 51-102 and Policy Statement 52-110 will come into effect at the same time as the amendments to Regulation 51-102.

Background

In 2001, amendments to the CBCA relaxed the rules relating to proxy solicitation. Similar amendments to the *Business Corporations Act* (Ontario)(OBCA) came into force in 2007. These amendments permit a dissident shareholder to 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.

Although this corporate legislation exempts these types of solicitations, dissident shareholders of reporting issuers governed by that legislation were unable to take advantage of the exemptions because there was no corresponding exemption from the proxy solicitation and information circular provisions of Regulation 51-102. The amendments will now provide a corresponding exemption.

We published the amendments for comment on October 12, 2007. The comment period expired on January 11, 2008.

Summary of Written Comments Received by the CSA

We received submissions from 2 commenters, both of whom supported the proposed amendments. We have considered the comments received and thank the commenters.

The names of the 2 commenters and a summary of the comments on the proposed amendments, together with our responses, are in Appendix B to this notice.

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

We have also:

- amended section 4.11(8) of Regulation 51-102 so that it will apply in Alberta and Manitoba,
- repealed sections 7.1(3), 7.1(4) and 9.1(3) of Regulation 51-102 and the corresponding provisions in Form 51-102F3 so that they will no longer apply in Québec,
- amended section 1.7 of Policy Statement 51-102 to indicate that British Columbia has repealed its local audit committee regulation and has adopted *Regulation 52-110 respecting Audit Committees* (Regulation 52-110).
- amended section 13.1 of Policy Statement 51-102 to update contact information for the Manitoba Securities Commission,
- amended Regulation 52-108 so that section 2.1 and Part 3 of that regulation will apply in Alberta, British Columbia and Manitoba,
- amended section 1.1 of Policy Statement 52-110 to indicate that New Brunswick has adopted Regulation 52-110 as a regulation,
- repealed sections 11.2(3) and 12.2(3) of Regulation 81-106 so that they will no longer apply in Québec.

These amendments are published together with this notice.

The amendments to section 4.11(8) of Regulation 51-102 were required to be published for comment in Alberta and Manitoba, but not in the other jurisdictions. Similarly, the amendments to Regulation 52-108 were required to be published for comment in Alberta, British Columbia and Manitoba, but not in the other jurisdictions. No comments were received.

The amendments to sections 7.1(3), 7.1(4) and 9.1(3) of Regulation 51-102, the corresponding provisions in Form 51-102F3, and sections 11.2(3) and 12.2(3) of Regulation 81-106 were required to be published for comment in Québec, but not in the other jurisdictions. These amendments were published for comment in Québec on February 15, 2008 for a 30 day comment period. No comments were received.

The amendments to sections 1.7 and 13.1 of Policy Statement 51-102 and section 1.1 of Policy Statement 52-110 were not required to be published for comment.

New Document Types on SEDAR

As a result of the amendments, we will be adding three new document types to the filing type on SEDAR for "Proxy Solicitation Materials" by third party filers:

- In order to have the benefit of the exemption from the information circular requirements in section 9.2(4) of Regulation 51-102, a dissident shareholder must include certain information in the solicitation, and section 9.2(4)(c) requires the dissident to file the information with securities regulators. This information should be filed under the new document type for "Proxy solicitation - information".
- Section 9.2(5) of Regulation 51-102 provides that the exemption does not apply to a person that is proposing a significant acquisition or restructuring transaction under which securities of the person are to be changed, exchanged, issued or distributed, unless the person has filed certain information with securities regulators. This information

should be filed under the new document type for "Proxy solicitation - proposed transaction".

- Section 9.2(6) of Regulation 51-102 provides that the exemption does not apply to a person that is nominating an individual for election as a director of the reporting issuer, unless the person has filed certain information about the proposed nominee with securities regulators. This information should be filed under the document type for "Proxy solicitation - nominee for election".

We expect that the new document types will be added to SEDAR in July 2008. Until then, third party filers that rely on the new exemption should use the "other" document type under the filing type for "Proxy Solicitation Materials" by third party filers.

When a third party filer uses these document types to make a filing on SEDAR, it will have to select the name of the relevant reporting issuer. As a result, the filings will appear under the reporting issuer's filer profile on www.sedar.com. When the expected change to SEDAR is implemented, members of the public will also be able to search for proxy solicitation materials filed by third parties by using the "Search for Public Company Documents" function on sedar.com and selecting new search criteria for "Proxy Solicitation by Third Parties".

Questions

Please refer your questions to any of:

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Appendix A

Summary of Changes to Published Amendments

Regulation 51-102

- We have made certain drafting changes.

Policy Statement 51-102

- We have made certain drafting changes.

Additional Local Amendments

Regulation 51-102 and Form 51-102F3

- We repealed sections 7.1(3), 7.1(4) and 9.1(3) of Regulation 51-102 and the corresponding provisions in Form 51-102F3 so that they will no longer apply in Québec.

Policy Statement 51-102

- We amended section 1.7 of Policy Statement 51-102 to indicate that British Columbia has repealed its local audit committee regulation and has adopted *Regulation 52-110 respecting Audit Committees* (Regulation 52-110).

- We amended section 13.1 of Policy Statement 51-102 to update contact information for the Manitoba Securities Commission.

Policy Statement 52-110

- We amended section 1.1 of Policy Statement 52-110 to indicate that New Brunswick has adopted Regulation 52-110 as a regulation.

Regulation 81-106

- We repealed sections 11.2(3) and 12.2(3) of Regulation 81-106 so that they will no longer apply in Québec.

Appendix B

Summary of Comments

List of Commenters

Canadian Coalition for Good Governance
Ontario Teachers' Pension Plan

Summary of Comments

We received responses from 2 commenters. Both commenters supported the amendments.

Both commenters stated that further amendments are required to various Canadian business corporation and special incorporation statutes in order to modernize their respective proxy solicitation provisions and harmonize them with the model that will be in place in Regulation 51-102. The commenters encouraged the CSA to liaise with the responsible parties in the various Canadian jurisdictions which have incorporation statutes with proxy solicitation provisions that are inconsistent with those in Regulation 51-102 and encourage them to consider updating their legislation, in an effort to create consistent and updated proxy solicitation provisions across the country.

CSA Response

We thank the commenters for their input.

The CBCA Amendments

We understand that amendments to the *Canada Business Corporations Act* (CBCA) that came into force in 2001 relaxed the rules relating to proxy solicitation. These amendments can be summarized as follows:

- A person must not “solicit” proxies unless that person first prepares, files and delivers a proxy circular in the prescribed form (sections 150(1) and (2) of the CBCA).
- The definition of “solicit” and “solicitation” in section 147 of the CBCA was amended so that a “solicitation” does not include (among other things):
 - a public announcement (such as a speech in a public forum or press release) by a shareholder of how the shareholder intends to vote and the reasons for that decision, or
 - a communication, other than a solicitation by management, that is made to shareholders in any circumstances that may be prescribed.
- A dissident shareholder may solicit proxies without preparing and sending a proxy circular to shareholders if the solicitation is, in the prescribed circumstances, conveyed by public broadcast, speech or publication (section 150(1.2) of the CBCA). Solicitations conveyed by these means must contain information about the identity of the shareholder, its percentage shareholdings and its interests in the matter being solicited. Before the advertisement or other form of communication is released, it must be delivered to the Director under the CBCA and the corporation.

Whether the CBCA Amendments are reflected in Regulation 51-102

Like the CBCA, the basic rule in Regulation 51-102 is that a person who “solicits” proxies must first prepare, send and file an information circular in the prescribed form (sections 9.1(2) and 9.3 of Regulation 51-102).

The definition of “solicit” in section 1.1 of Regulation 51-102 was largely harmonized with the definition of “solicit” and “solicitation” in the CBCA.

The amendments to Regulation 51-102 would provide an equivalent to section 150(1.2) of the CBCA.

Whether the CBCA Amendments are reflected in provincial and territorial business corporation acts

We understand that the proxy solicitation provisions in the Ontario Business Corporations Act and its regulations were amended to reflect the earlier changes to the CBCA. Those amendments came into force on August 1, 2007.

In Québec and BC, the *Companies Act* (Québec) and the *Business Corporations Act* (BC) do not include proxy solicitation requirements for companies that are reporting issuers. Those statutes do not define the term “solicit” for reporting issuers. Reporting issuers incorporated under those statutes can avail themselves of the proposed exemption in section 9.2(4) of Regulation 51-102.

We understand that the proxy rules in business corporations statutes and regulations in other provinces and territories have not been amended to reflect the earlier changes to the CBCA. Each member of the CSA in those jurisdictions has informed or expects to inform the corporate law regulator in their jurisdiction of these comments.

Whether the CBCA Amendments are reflected in federal financial sector legislation

We understand that the proxy solicitation provisions in the federal *Bank Act*, *Trust and Loans Companies Act* and *Insurance Companies Act* were amended to reflect the earlier changes to the CBCA, but that those amendments have not yet been proclaimed into force. The CSA has informed officials in the federal Department of Finance of these comments.