

**POLICY STATEMENT TO REGULATION 71-102 RESPECTING
CONTINUOUS DISCLOSURE AND OTHER EXEMPTIONS
RELATING TO FOREIGN ISSUERS**

PART 1 GENERAL

1.1 Introduction and Purpose

- (1) Regulation 71-102 *Respecting Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (the “Regulation”) provides broad relief from most of the requirements of Regulation 51-102 *Respecting Continuous Disclosure Obligations* (“Regulation 51-102”) for two sub-categories of foreign reporting issuers – SEC foreign issuers and designated foreign issuers – on the condition that they comply with the continuous disclosure (“CD”) requirements of the SEC or a designated foreign jurisdiction. SEC foreign issuers and designated foreign issuers are also exempted from certain other requirements of provincial and territorial securities legislation, including insider reporting and early warning, that are not contained in Regulation 51-102.
- (2) This Policy Statement provides information about how the provincial and territorial securities regulatory authorities interpret the Regulation, and should be read in conjunction with it.

1.2 Other Relevant Legislation

In addition to the Regulation, foreign issuers should consult the following non-exhaustive list of legislation to see how it may apply to them:

- (1) implementing legislation (the regulation, rule, ruling, order or other instrument that implements the Regulation in each applicable jurisdiction);
- (2) Regulation 51-102;
- (3) Regulation 52-107 *Respecting Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (“Regulation 52-107”); and
- (4) National Instrument 71-101 *The Multijurisdictional Disclosure System* (“Regulation 71-101”).

1.3 Multijurisdictional Disclosure System

- (1) Regulation 71-101 permits certain U.S. incorporated issuers to satisfy specified Canadian CD requirements by using disclosure prepared in accordance with U.S. requirements. The Regulation does not replace or alter Regulation 71-101. There are instances in which Regulation 71-101 and the Regulation offer similar relief to a reporting issuer, but other instances in which the relief available to a reporting issuer in one instrument differs from the relief available to the reporting issuer under the other instrument. Many issuers that are eligible for an exemption under the Regulation will be ineligible to rely on Regulation 71-101 and vice versa. For example, the Regulation defines a class of “SEC foreign issuers”. Not all U.S. issuers referred to in Regulation 71-101 are SEC foreign issuers and not all SEC foreign issuers are U.S. issuers.

- (2) An eligible U.S. issuer may choose to use an exemption in the Regulation or Regulation 71-101. For example, section 17.1 of Regulation 71-101 grants an exemption from the insider reporting requirement to an insider of a U.S. issuer that has securities registered under section 12 of the 1934 Act if the insider complies with the requirements of U.S. federal securities law regarding insider reporting and files with the SEC any insider report required to be filed with the SEC. This relief goes beyond the exemption provided by section 4.12 of the Regulation which is not available to insiders of a SEDI issuer as defined in National Instrument 55-102 *System for Electronic Disclosure by Insiders (SEDI)*.

1.4 Exemptions May Not Require Disclosure

Most of the exemptions in the Regulation are only available to a person or company that complies with a particular aspect of either U.S. federal securities laws or the laws of a designated foreign jurisdiction. If those laws do not require the issuer to disclose, file or send any information, for example, because the issuer may rely on an exemption under those laws, then the issuer is not required to disclose, file or send any information to rely on the exemption contained in the Regulation.

PART 2 DEFINITIONS

2.1 Foreign Reporting Issuers

To qualify for any of the exemptions contained in the Regulation, other than the relief for “foreign transition issuers” in Part 6, the issuer in question must be a “foreign reporting issuer”. The definition of foreign reporting issuer is based upon the definition of foreign private issuer in Rule 405 of the 1933 Act and Rule 3b-4 of the 1934 Act. For the purposes of the definition of “foreign reporting issuer”, it is the CSA’s view that

- (a) in calculating the percentage of assets located in Canada, the issuer should look to the value of the assets recorded in its most recent consolidated financial statements, either annual or interim; and
- (b) in determining the outstanding voting securities that are owned, directly or indirectly, by residents of Canada, an issuer should
 - (i) use reasonable efforts to identify securities held by a broker, dealer, bank, trust company or nominee or any of them for the accounts of customers resident in Canada;
 - (ii) count securities beneficially owned by residents of Canada as reported on reports of beneficial ownership, including insider reports and early warning reports; and
 - (iii) assume that a customer is a resident of the jurisdiction or foreign jurisdiction in which the nominee has its principal place of business if, after reasonable inquiry, information regarding the jurisdiction or foreign jurisdiction of residence of the customer is unavailable.

The determination of the percentage of securities of the foreign issuer owned by residents of Canada should be made in the same manner for the purposes of paragraph (c) of the definition of “designated foreign issuer” and paragraph (d) of the definition of “foreign transition issuer” in section 6.2 of the Regulation. This method of calculation differs from that of Regulation 71-101, which only requires a calculation based on the

address of record. Accordingly, some SEC foreign issuers may qualify for exemptive relief under Regulation 71-101 but not under the Regulation.

2.2 Investment Funds

Generally, the definition of “investment fund” would not include a trust or other entity that issues securities which entitle the holder to substantially all of the net cash flows generated by: (i) an underlying business owned by the trust or other entity, or (ii) the income-producing properties owned by the trust or other entity. Examples of trusts or other entities that are not included in the definition are business income trusts, real estate investment trusts and royalty trusts.

PART 3 INSIDER REPORTS

3.1 Requirement to File Insider Reports on SEDI

Insiders of foreign issuers who voluntarily file under National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)* are required to file insider reports electronically under SEDI. The Regulation does not provide an exemption from filing insider reports in the form required by provincial and territorial securities legislation if the foreign issuer is a SEDI filer. However, under Regulation 71-101 an insider of an eligible U.S. issuer, as defined in Regulation 71-101, is exempt from the insider reporting requirement if the insider complies with U.S. federal securities law regarding insider reporting and files with the SEC any insider report required to be filed with the SEC. Consequently, insiders of Regulation 71-101 eligible issuers are also exempt from the requirement to file insider reports on SEDI.

PART 4 FILING OF DISCLOSURE DOCUMENTS

4.1 Filing of Disclosure Documents on SEDAR

A foreign issuer does not have to file multiple copies of a foreign disclosure document that it is filing to satisfy the conditions of more than one exemption under the Regulation. The issuer need only file the document in one SEDAR category, and under any other applicable SEDAR category may provide an appropriate reference to the location of the filed document. For example, a foreign issuer may wish to file its U.S. Form 20F to satisfy the conditions relating to both the AIF exemption and the MD&A exemption. The foreign issuer could file the Form 20 on SEDAR under either of the AIF category or the MD&A category, and under the other category would file a letter giving the SEDAR project number that the Form 20F is filed under.

PART 5 ELECTRONIC DELIVERY OF DOCUMENTS

5.1 Electronic Delivery of Documents

Any documents required to be sent under the Regulation may be sent by electronic delivery, as long as such delivery is made in compliance with Québec Staff Notice, *The Delivery of Documents by Electronic Means*, in Québec, and National Policy 11-201 *Delivery of Documents by Electronic Means*, in the rest of Canada.

PART 6 EXEMPTIONS NOT INCLUDED

6.1 Resource Issuers - Standards of Disclosure for Mineral Projects and Oil and Gas Activities

The Regulation does not provide an exemption from National Instrument 43-101 *Standards of Disclosure for Mineral Projects* or Regulation 51-101 *Respecting Standards of Disclosure for Oil and Gas Activities*. Issuers are reminded that those National Instruments apply to SEC foreign issuers and designated foreign issuers.

6.2 SEC Foreign Issuers

Regulation 51-102 contains exemptions for SEC issuers from the change in year-end requirements in Regulation 51-102. SEC foreign issuers under the Regulation will also meet the definition of SEC issuers under Regulation 51-102, and so will be able to rely on the change in year-end exemption in Regulation 51-102.

6.3 Foreign Reporting Issuers

The Regulation does not provide an exemption for any foreign reporting issuers from the requirement in section 4.9 of Regulation 51-102. A foreign reporting issuer must deliver a notice if it has been a party to an amalgamation, arrangement, merger, winding-up, reverse takeover, reorganization or other transaction that will have the effect of changing its continuous disclosure obligations under Regulation 51-102. The Regulation also does not provide an exemption for any foreign reporting issuers from the requirement to file disclosure materials under section 11.1 of Regulation 51-102 or to file a notice of change of status under section 11.2 of Regulation 51-102.

6.4 Auditor Oversight - Canadian Public Accountability Board

Section 4.3 of the Regulation provides relief for an SEC foreign issuer relating to annual financial statements and auditors' reports on annual financial statements. Section 5.4 provides similar relief for a designated foreign issuer. Reporting issuers are subject to section 2.3 of Regulation 52-108 *Respecting Auditor Oversight* ("Regulation 52-108") but may rely on the exemptions in sections 4.3 and 5.4 of the Regulation for relief from these obligations. Sections 4.3 and 5.4, however, do not provide relief from the requirements applicable in jurisdictions other than Alberta, British Columbia and Manitoba in sections 2.1, 2.2 and Part 3 of Regulation 52-108 imposed directly on a public accounting firm that issues an auditor's report with respect to the financial statements of a reporting issuer.

PART 7 EXEMPTIONS

7.1 Exemptions

- (1) The exemptions contained in the Regulation are in addition to any exemptions that may be available to an issuer under any other applicable legislation.
- (2) Issuers that have been given an exemption, waiver or approval by a regulator or securities regulatory authority before the Regulation and Regulation 51-102 came into effect, may be entitled to continue to rely on that exemption, waiver or approval. Issuers should refer to section 13.2 of Regulation 51-102 to determine in what circumstances the prior exemption, waiver or approval is available and what the reporting issuer must do to continue to rely on it.

- (3) If an issuer wishes to seek exemptive relief from Regulation 51-102 or other requirements of provincial and territorial securities legislation on grounds similar but not identical to those permitted under the Regulation, the issuer should apply for this relief under the exemptive provisions of Regulation 51-102, or other provincial and territorial securities legislation, as the case may be.