

**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 (chapter V-1.1, r. 37) (the "Regulation") provides broad relief from most of the requirements of Regulation 51-102 respecting Continuous Disclosure Obligations (chapter V-1.1, r. 24) for 2 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 respecting Continuous Disclosure Obligations.

(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 respecting Continuous Disclosure Obligations (chapter V-1.1, r. 24);

(3) Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards (chapter V-1.1, r. 25); and

(4) National Instrument 71-101, The Multijurisdictional Disclosure System (chapter V-1.1, r. 36).

### **1.3. Multijurisdictional Disclosure System**

(1) National Instrument 71-101, The Multijurisdictional Disclosure System (chapter V-1.1, r. 36) 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 National Instrument 71-101, The Multijurisdictional Disclosure System. There are instances in which National Instrument 71-101, The Multijurisdictional Disclosure System 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 National Instrument 71-101, The Multijurisdictional Disclosure System and vice versa. For example, the Regulation defines a class of "SEC foreign issuers". Not all U.S. issuers referred to in National Instrument 71-101, The Multijurisdictional Disclosure System are SEC foreign issuers and not all SEC foreign issuers are U.S. issuers.

(2) (paragraph deleted).

### **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 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 use the book 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

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(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”. This method of calculation differs from that of National Instrument 71-101, The Multijurisdictional Disclosure System, which only requires a calculation based on the address of record. Accordingly, some SEC foreign issuers may qualify for exemptive relief under National Instrument 71-101, The Multijurisdictional Disclosure System 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. (Repealed)**

## **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.

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*Form 20F to satisfy the conditions relating to both the AIF exemption and the MD&A exemption. The foreign issuer could file the Form 20F 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 Policy Statement 11-201 respecting Electronic Delivery of Documents (Decision 2011-PDG-0183, 2011-11-17).*

### **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 Regulation 43-101 respecting Standards of Disclosure for Mineral Projects (chapter V-1.1, r. 15) or Regulation 51-101 respecting Standards of Disclosure for Oil and Gas Activities (chapter V-1.1, r. 23). Issuers are reminded that those Regulations apply to SEC foreign issuers and designated foreign issuers.*

#### **6.2. SEC Foreign Issuers**

*Regulation 51-102 respecting Continuous Disclosure Obligations (chapter V-1.1, r. 24) contains exemptions for SEC issuers from the change in year-end requirements in Regulation 51-102 respecting Continuous Disclosure Obligations. SEC foreign issuers under the Regulation will also meet the definition of SEC issuers under Regulation 51-102 respecting Continuous Disclosure Obligations, and so will be able to rely on the change in year-end exemption in Regulation 51-102 respecting Continuous Disclosure Obligations.*

#### **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 respecting Continuous Disclosure Obligations (chapter V-1.1, r. 24). 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 respecting Continuous*

*Disclosure Obligations.* 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 respecting Continuous Disclosure Obligations or to file a notice of change of status under section 11.2 of Regulation 51-102 respecting Continuous Disclosure Obligations.

#### **6.4. Auditor Oversight - Canadian Public Accountability Board, Certification and Audit Committees**

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 2.2 of Regulation 52-108 respecting Auditor Oversight (chapter V-1.1, r. 26) 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

(a) the requirements in sections 2.1, and Part 3 of Regulation 52-108 respecting Auditor Oversight (chapter V-1.1, r. 26) imposed directly on a public accounting firm that issues an auditor's report with respect to the financial statements of a reporting issuer;

(b) the certification requirements in Regulation 52-109 respecting Certification of Disclosure in Issuers' Annual and Interim Filings (chapter V-1.1, r. 27); or

(c) the audit committee requirements in Regulation 52-110 respecting Audit Committees (chapter V-1.1, r. 28).

SEC foreign issuers and designated foreign issuers must look to those instruments for any exemptions that may be available to them.

### **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 respecting Continuous Disclosure Obligations (chapter V-1.1, r. 24) 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 respecting Continuous Disclosure Obligations to

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*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 respecting Continuous Disclosure Obligations 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 respecting Continuous Disclosure Obligations, or other provincial and territorial securities legislation, as the case may be.*

### **PART 8 TRANSITION**

#### **8.1. Transition**

*The amendments to the Regulation and this Policy Statement which came into effect on January 1, 2011 only apply to documents required to be prepared, filed, delivered or sent under the Regulation for periods relating to financial years beginning on or after January 1, 2011.*

Decision 2005-PDG-0160, 2005-06-01  
Bulletin de l'Autorité: 2005-06-03, Vol. 2 n° 22

Decision 2006-PDG-0224, 2006-12-12  
Bulletin de l'Autorité: 2007-01-05, Vol. 4, n° 1

#### **Amendments**

Decision 2010-PDG-0218, 2010-11-22  
Bulletin de l'Autorité: 2010-12-17, Vol. 7, n° 50