

Chapter 5

Rules and Policies

5.1.1. Amendments to NI 51-102 Continuous Disclosure Obligations and Related Amendments

AMENDMENTS TO NATIONAL INSTRUMENT 51-102 *CONTINUOUS DISCLOSURE OBLIGATIONS*

1. National Instrument 51-102 *Continuous Disclosure Obligations* is amended by this Instrument.
2. Subsection 1.1(1) is amended by,
 - a. in the definition of “approved rating organization”, striking out “Dominion Bond Rating Service Limited” and substituting “DBRS Limited”.
 - b. repealing the definition of “investment fund”,
 - c. repealing the definition of “non-redeemable investment fund”,
 - d. in the the definition of “venture issuer”, striking out “the market known as OFEX” and substituting “the PLUS markets operated by PLUS Markets Group plc”.
3. Subparagraph 4.10(2)(a)(ii) is repealed and the following substituted:
 - (ii) if the reporting issuer did not file a document referred to in subparagraph (i), or the document does not include the financial statements for the reverse takeover acquirer that would be required to be included in a prospectus, the financial statements prescribed under securities legislation and described in the form of prospectus that the reverse takeover acquirer was eligible to use prior to the reverse takeover for a distribution of securities in the jurisdiction;
4. This amendment comes into force December 31, 2007.

**AMENDMENTS TO
FORM 51-102F2 ANNUAL INFORMATION FORM**

1. **Form 51-102F2 Annual Information Form is amended by this Instrument.**

2. **Form 51-102F2 is amended by,**

a. **repealing subsection 10.2(1) and substituting the following:**

(1) If a director or executive officer of your company is, as at the date of the AIF, or was within 10 years before the date of the AIF, a director, chief executive officer or chief financial officer of any company (including your company), that:

(a) was subject to an order that was issued while the director or executive officer was acting in the capacity as director, chief executive officer or chief financial officer, or

(b) was subject to an order that was issued after the director or executive officer ceased to be a director, chief executive officer or chief financial officer and which resulted from an event that occurred while that person was acting in the capacity as director, chief executive officer or chief financial officer,

state the fact and describe the basis on which the order was made and whether the order is still in effect.

(1.1) For the purposes of subsection (1), "order" means

(a) a cease trade order;

(b) an order similar to a cease trade order; or

(c) an order that denied the relevant company access to any exemption under securities legislation,

that was in effect for a period of more than 30 consecutive days.

(1.2) If a director or executive officer of your company, or a shareholder holding a sufficient number of securities of your company to affect materially the control of your company

(a) is, as at the date of the AIF, or has been within the 10 years before the date of the AIF, a director or executive officer of any company (including your company) that, while that person was acting in that capacity, or within a year of that person ceasing to act in that capacity, became bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency or was subject to or instituted any proceedings, arrangement or compromise with creditors or had a receiver, receiver manager or trustee appointed to hold its assets, state the fact; or

(b) has, within the 10 years before the date of the AIF, become bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency, or become subject to or instituted any proceedings, arrangement or compromise with creditors, or had a receiver, receiver manager or trustee appointed to hold the assets of the director, executive officer or shareholder, state the fact.

b. **in Instruction (i) after subsection 10.2(3), adding “, (1.2)” after “subsections (1)”, wherever it appears,**

c. **repealing Instruction (ii) after subsection 10.2(3) and substituting the following:**

(ii) A management cease trade order which applies to directors or executive officers of a company is an “order” for the purposes of paragraph 10.2(1)(a) and must be disclosed, whether or not the director, chief executive officer or chief financial officer was named in the order.

d. **adding the following as Instruction (iv) after subsection 10.2(3):**

(iv) The disclosure in paragraph 10.2(1)(a) only applies if the director or executive officer was a director, chief executive officer or chief financial officer when the order was issued against the company. You do not have to provide disclosure if the director or executive officer became a director, chief executive officer or chief financial officer after the order was issued.

e. **repealing section 18.1 and substituting the following:**

18.1 Additional Disclosure

For companies that are not required to send a Form 51-102F5 to any of their securityholders, disclose the information required under Items 6 to 10, 12 and 13 of Form 51-102F5, as modified below, if applicable:

<u>Form 51-102F5 Reference</u>	<u>Modification</u>
Item 6 - Voting Securities and Principal Holders of Voting Securities	Include the disclosure specified in section 6.1 without regard to the phrase "entitled to be voted at the meeting". Do not include the disclosure specified in sections 6.2, 6.3 and 6.4. Include the disclosure specified in section 6.5.
Item 7 – Election of Directors	Disregard the preamble of section 7.1. Include the disclosure specified in section 7.1 without regard to the word "proposed" throughout. Do not include the disclosure specified in section 7.3.
Item 8 – Executive Compensation	Disregard the preamble and paragraphs (a), (b) and (c) of Item 8. A company that does not send a management information circular to its securityholders must provide the disclosure required by Form 51-102F6.
Item 9 – Securities Authorized for Issuance under Equity Compensation Plans	Disregard subsection 9.1(1).
Item 10 – Indebtedness of Directors and Executive Officers	Include the disclosure specified throughout; however, replace the phrase "date of the information circular" with "date of the AIF" throughout. Disregard paragraph 10.3(a).
Item 12 – Appointment of Auditor	Name the auditor. If the auditor was first appointed within the last five years, state the date when the auditor was first appointed."

3. This amendment comes into force December 31, 2007.

**AMENDMENTS TO
FORM 51-102F5 INFORMATION CIRCULAR**

1 Form 51-102F5 Information Circular is amended by this Instrument.

2. Form 51-102F5 is amended by,

a. repealing section 7.2 and substituting the following:

7.2 If a proposed director

(a) is, as at the date of the information circular, or has been, within 10 years before the date of the information circular, a director, chief executive officer or chief financial officer of any company (including the company in respect of which the information circular is being prepared) that,

(i) was subject to an order that was issued while the proposed director was acting in the capacity as director, chief executive officer or chief financial officer; or

(ii) was subject to an order that was issued after the proposed director ceased to be a director, chief executive officer or chief financial officer and which resulted from an event that occurred while that person was acting in the capacity as director, chief executive officer or chief financial officer,

state the fact and describe the basis on which the order was made and whether the order is still in effect; or

(b) is, as at the date of the information circular, or has been within 10 years before the date of the information circular, a director or executive officer of any company (including the company in respect of which the information circular is being prepared) that, while that person was acting in that capacity, or within a year of that person ceasing to act in that capacity, became bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency or was subject to or instituted any proceedings, arrangement or compromise with creditors or had a receiver, receiver manager or trustee appointed to hold its assets, state the fact; or

(c) has, within the 10 years before the date of the information circular, become bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency, or become subject to or instituted any proceedings, arrangement or compromise with creditors, or had a receiver, receiver manager or trustee appointed to hold the assets of the proposed director, state the fact.

b. repealing Instruction (ii) after section 7.2.2 and substituting the following:

(ii) A management cease trade order which applies to directors or executive officers of a company is an "order" for the purposes of paragraph 7.2(a)(i) and must be disclosed, whether or not the proposed director was named in the order.

c. adding the following as Instruction (iv) after section 7.2.2:

(iv) The disclosure in paragraph 7.2(a)(i) only applies if the proposed director was a director, chief executive officer or chief financial officer when the order was issued against the company. You do not have to provide disclosure if the proposed director became a director, chief executive officer or chief financial officer after the order was issued.

d. adding the following as section 7.2.3:

7.2.3 For the purposes of subsection 7.2(a), "order" means

(a) a cease trade order;

(b) an order similar to a cease trade order; or

(c) an order that denied the relevant company access to any exemption under securities legislation,

that was in effect for a period of more than 30 consecutive days.

e. repealing the last paragraph of section 14.2 and substituting the following:

The disclosure must be the disclosure (including financial statements) prescribed under securities legislation and described in the form of prospectus that the entity would be eligible to use immediately prior to the sending and filing of the information circular in respect of the significant acquisition or restructuring transaction, for a distribution of securities in the jurisdiction.

3. This amendment comes into force December 31, 2007.

**AMENDMENTS TO
COMPANION POLICY 51-102CP *CONTINUOUS DISCLOSURE OBLIGATIONS***

1. Companion Policy 51-102CP *Continuous Disclosure Obligations* is amended by,

a. adding the following after subsection 1.4(3):

Similarly, the terms chief executive officer and chief financial officer should be read to include the individuals who have the responsibilities normally associated with these positions or act in a similar capacity. This determination should be made irrespective of an individual's corporate title or whether that individual is employed directly or acts pursuant to an agreement or understanding.

b. adding the following after section 9.1:

9.2 Prospectus-level Disclosure in Certain Information Circulars

Section 14.2 of Form 51-102F5 *Information Circular* requires an issuer to provide prospectus-level disclosure about certain entities if securityholder approval is required in respect of a significant acquisition under which securities of the acquired business are being exchanged for the issuer's securities or in respect of a restructuring transaction under which securities are to be changed, exchanged, issued or distributed.

Section 14.2 provides that the disclosure must be the disclosure (including financial statements) prescribed by the form of prospectus that the entity would be eligible to use immediately prior to the sending and filing of the information circular in respect of the significant acquisition or restructuring transaction, for a distribution of securities in the jurisdiction.

For example, if disclosure was required in an information circular of Company A for both Company A (an issuer that was only eligible to file a long form prospectus) and Company B (an issuer that was eligible to file a short form prospectus), the disclosure for Company A would be that required by the long form prospectus rules and the disclosure for Company B would be that required by the short form prospectus rules. Any information incorporated by reference in the information circular of Company A would have to comply with paragraph (c) of Part 1 of Form 51-102F5 and be filed under Company A's profile on SEDAR.

2. This amendment comes into force December 31, 2007.

**CONSEQUENTIAL AMENDMENTS TO
NATIONAL INSTRUMENT 52-107 ACCEPTABLE ACCOUNTING PRINCIPLES,
AUDITING STANDARDS AND REPORTING CURRENCY**

1. National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* is amended by this Instrument.
2. National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* is amended in section 1.1 by repealing the definition of “investment fund”.
3. This amendment comes into force December 31, 2007.

**CONSEQUENTIAL AMENDMENTS TO
MULTILATERAL INSTRUMENT 52-109 *CERTIFICATION OF DISCLOSURE IN
ISSUERS' ANNUAL AND INTERIM FILINGS***

1. **Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* is amended by this Instrument.**
2. **Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* is amended in section 1.1 by repealing the definition of "investment fund".**
3. **This amendment comes into force December 31, 2007.**

**CONSEQUENTIAL AND OTHER AMENDMENTS TO
MULTILATERAL INSTRUMENT 52-110 *AUDIT COMMITTEES***

1. **Multilateral Instrument 52-110 *Audit Committees* is amended by this Instrument.**
2. **Multilateral Instrument 52-110 *Audit Committees* is amended:**
 - (a) **in section 1.1 by,**
 - (i) **repealing the definition of “AIF” and substituting the following:**

“AIF” has the meaning ascribed to it in NI 51-102;
 - (ii) **repealing the definition of “asset-backed security” and substituting the following:**

“asset-backed security” has the meaning ascribed to it in NI 51-102;
 - (iii) **repealing the definition of “credit support issuer” and substituting the following:**

“credit support issuer” has the meaning ascribed to it in section 13.4 of NI 51-102;
 - (iv) **repealing the definition of “exchangeable security issuer” and substituting the following:**

“exchangeable security issuer” has the meaning ascribed to it in section 13.3 of NI 51-102;
 - (v) **repealing the definition of “investment fund”,**
 - (vi) **repealing the definition of “National Instrument 51-102”,**
 - (vii) **adding the following definition of “NI 51-102”:**

“NI 51-102” means National Instrument 51-102 *Continuous Disclosure Obligations*;
 - (viii) **repealing the definition of “venture issuer” and substituting the following:**

“venture issuer” means an issuer that, at the end of its most recently completed financial year, did not have any of its securities listed or quoted on any of the Toronto Stock Exchange, a U.S. marketplace, or a marketplace outside of Canada and the United States of America other than the Alternative Investment Market of the London Stock Exchange or the PLUS markets operated by PLUS Markets Group plc.
 - (b) **in section 1.2 by striking out “National Instrument 51-102” and substituting “NI 51-102” wherever it appears.**
3. **This amendment comes into force December 31, 2007.**

**CONSEQUENTIAL AND OTHER AMENDMENTS TO
NATIONAL INSTRUMENT 58-101 *DISCLOSURE OF CORPORATE GOVERNANCE PRACTICES***

1. National Instrument 58-101 *Disclosure of Corporate Governance Practices* is amended by this Instrument.
2. National Instrument 58-101 *Disclosure of Corporate Governance Practices* is amended:
 - (a) in section 1.1 by,
 - (i) **repealing the definition of “AIF” and substituting the following:**
“AIF” has the same meaning as in NI 51-102;
 - (ii) **adding the following definition of “asset-backed security”:**
“asset-backed security” has the same meaning as in NI 51-102;
 - (iii) **repealing the definition of “executive officer” and substituting the following:**
“executive officer” has the same meaning as in NI 51-102;
 - (iv) **repealing the definition of “MD&A” and substituting the following:**
“MD&A” has the same meaning as in NI 51-102;
 - (v) **adding the following definition of “NI 51-102”:**
“NI 51-102” means National Instrument 51-102 *Continuous Disclosure Obligations*;
 - (vi) **repealing the definition of “venture issuer” and substituting the following:**
“venture issuer” means a reporting issuer that, at the end of its most recently completed financial year, did not have any of its securities listed or quoted on any of the Toronto Stock Exchange, a U.S. marketplace, or a marketplace outside of Canada and the United States of America other than the Alternative Investment Market of the London Stock Exchange or the PLUS markets operated by PLUS Markets Group plc.
 - (b) in section 1.3 by striking out “National Instrument 51-102” and substituting “NI 51-102” wherever it appears.
3. This amendment comes into force December 31, 2007.

**CONSEQUENTIAL AMENDMENTS TO
NATIONAL INSTRUMENT 71-102 *CONTINUOUS DISCLOSURE*
AND OTHER EXEMPTIONS RELATING TO FOREIGN ISSUERS**

1. National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* is amended by this Instrument.
2. National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* is amended in section 1.1 by repealing the definition of “investment fund”.
3. This amendment comes into force December 31, 2007.

**AMENDMENTS TO
ONTARIO SECURITIES COMMISSION RULE 51-801
IMPLEMENTING NATIONAL INSTRUMENT 51-102 CONTINUOUS DISCLOSURE OBLIGATIONS**

1. **Ontario Securities Commission Rule 51-801 *Implementing National Instrument 51-102 Continuous Disclosure Obligations* is amended by this Instrument.**
2. **Section 3.13 is amended by striking “subsection 9.1(3)” and substituting “subsection 9.1(2)”.**
3. **This amendment comes into force December 31, 2007.**

**AMENDMENTS TO
FORM 41-501F1 INFORMATION REQUIRED IN A PROSPECTUS UNDER
ONTARIO SECURITIES COMMISSION RULE 41-501 GENERAL PROSPECTUS REQUIREMENTS**

1. Form 41-501F1 *Information Required in a Prospectus* of Ontario Securities Commission Rule 41-501 *General Prospectus Requirements* is amended by this Instrument.

2. Form 41-501F1 is amended by repealing Item 16.2 and substituting the following:

16.2 Corporate Cease Trade Orders or Bankruptcies

(1) If a director or officer of the issuer

(a) is, or within 10 years before the date of the prospectus or *pro forma* prospectus, as applicable, has been, a director, chief executive officer or chief financial officer of any other issuer that,

(i) was subject to an order that was issued while the director or officer was acting in the capacity as director, chief executive officer or chief financial officer; or

(ii) was subject to an order that was issued after the director or officer ceased to be a director, chief executive officer or chief financial officer and which resulted from an event that occurred while that person was acting in the capacity as director, chief executive officer or chief financial officer,

state the fact and describe the basis on which the order was made and whether the order is still in effect; or

(b) is, or has been within 10 years before the date of the prospectus or *pro forma* prospectus, as applicable, a director or executive officer of any issuer that, while that person was acting in that capacity, or within a year of that person ceasing to act in that capacity, became bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency or was subject to or instituted any proceedings, arrangement or compromise with creditors or had a receiver, receiver manager or trustee appointed to hold its assets, state the fact.

(2) For the purposes of paragraph 16.2(1)(a), "order" means

(a) a cease trade order;

(b) an order similar to a cease trade order; or

(c) an order that denied the relevant company access to any exemption under securities legislation,

that was in effect for a period of more than 30 consecutive days.

INSTRUCTION

(1) *The disclosure in subparagraph 16.2(1)(a)(i) only applies if the director or officer was a director, chief executive officer or chief financial officer when the order was issued against the issuer. You do not have to provide disclosure if the director or officer became a director, chief executive officer or chief financial officer after the order was issued.*

(2) *A management cease trade order which applies to directors or officers of an issuer is an "order" for the purposes of subparagraph 16.2(1)(a)(i) and must be disclosed, whether or not the director, chief executive officer or chief financial officer was named in the order.*

3. This amendment comes into force December 31, 2007.