

March 6, 2006

To: British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission – Securities Division
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Newfoundland and Labrador Securities Commission
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Registrar of Securities, Nunavut

Rosann Youck, Chair of the Continuous Disclosure Harmonization Committee
British Columbia Securities Commission
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Vancouver, British Columbia
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Anne-Marie Beaudoin, Secretary
Autorité des marchés financiers
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Dear CSA:

**Re: Request for Comments – Proposed Amendments to NI 51-102
Continuous Disclosure Obligations**

ADP Investor Communications ("ADP") is pleased to respond to the request for comments by the Canadian Securities Administrators ("CSA") on the proposed amendments to National Instrument 51-102 Continuous Disclosure Obligations (the "Instrument").

ADP AND ITS BUSINESS

ADP has been an industry leader in providing investor communication services in the financial marketplace since 1987. Our investor communication services include securityholder communications, delivery of documents in compliance with regulatory requirements, and transaction reporting. We service over 230 banks, brokers, and dealers and the majority of the mutual fund industry in Canada. Unique to ADP is our industry, regulatory and data processing expertise. Clients rely on ADP for products and services that comply with securities laws and regulations, and as a result, depend on ADP to ensure they are in compliance. Clients leverage ADP's industry and regulatory knowledge to fulfil their obligations to deliver information to investors. ADP is responsible for distributing the majority of proxy-related materials and continuous disclosure documents to investors in Canada.

GENERAL COMMENTS

We support the decision of the CSA to address any perceived problems with the Instrument by way of amendments to the Instrument itself, rather than by granting discretionary relief on a case-by-case basis. In addition to the reasons set out in the Notice, amending the Instrument itself is preferable because:

- The proposal to amend the general rules is completely transparent to all participants in the marketplace;
- It gives all interested parties an opportunity to comment on the proposed changes, so that the regulators can get a full view of the effects from all perspectives; and
- It results in a regime that applies to all similarly situated parties in the same way and at the same time.

COMMENTS ON PROPOSED CHANGES TO THE INSTRUMENT

Our concerns with the proposed changes to the Instrument relate to the proposals regarding the delivery of financial statements and related management discussion and analysis (referred to in this letter as "financial information").

Annual Request. ADP does not support the elimination of the requirement that an issuer ask its securityholders whether or not they want to receive the issuer's financial information. We would suggest either the annual request process be retained or it be replaced with a standing instruction process analogous to that contemplated by s. 5.3 of NI 81-106 *Investment Fund Continuous Disclosure* ("NI 81-106"). In either case, greater direction from the regulators regarding the form to be used by issuers would enhance the efficiency of the communication process. We also recommend that the CSA consider enhancing the requirements that the issuer inform its securityholders regarding the availability of the financial information.

In reviewing the proposed changes to the Instrument, ADP started from the traditional policy position that access to timely financial information is a fundamental right of all securityholders. All securityholders should have full access to the financial statements of the companies in which they have invested. Public issuers should be required to make this information available on the same basis to all such securityholders, regardless of how those securities are held. At the same time, the issuers should not have to send information to securityholders who have clearly indicated they do not want the information. Also, the regime should be structured to permit efficient use of technology to reduce costs to all participants.

ADP has conducted investor research in the U.S. on proposals that require investors to initiate requests for disclosure documents. The results indicate that investors are not likely to take additional steps to access or obtain additional information about the companies they have invested in. The current NI 51-102 "investor choice" model implicitly recognizes this fact and provides a better balance of investor protection and issuer costs than the proposed changes would, by streamlining the request process, while still making it easy for investors to request information.

The financial information delivery obligations for investment funds set out in NI 81-106 come closer to fulfilling these objectives than those set out in the current Instrument. The issuer has a choice on whether to send the information to all securityholders or to put in place a process to send materials only to those who really want them. The issuer also has a choice of whether to ask its investors each year or institute a standing instruction process so that continuing investors only have to respond once. At the same time, the investor retains the right to ask for any of the financial information at any time, and gets periodic reminders of how to get the material.¹

It is not clear to ADP why the rights of an investor to financial information should differ based on whether the investor owns a unit of an investment fund or a security of another type of public issuer. However, this is the case at present. The differences will be even more dramatic if the amendments to the Instrument are finalized as drafted. Under the present NI 51-102 regime, the investor must repeat his/her request for financial information each year. If the issuer

¹ See Part 5 of NI 81-106.

wishes, it may avoid the annual request process by sending the annual financial information to registered holders and those beneficial owners who have indicated under NI 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* ("NI 54-101") that they want all materials. If this is done securityholders who did not get the material in the general mailing lose the right to require the issuer to send it to them. Under the proposed regime, the only notice that an issuer will be required to give securityholders of the availability of the financial information in a document that is routinely sent to securityholders² will be in the information circular. Given the latest round of amendments to NI 54-101, this document only goes to all securityholders when the issuer chooses to send it to the whole group.

The policy rationale behind the proposed elimination of the annual request process is not stated in the Notice accompanying the proposed amendments. ADP assumes that the change is proposed out of a desire to reduce costs for issuers. The regime proposed under the changes to NI 51-102 is likely to reduce the demand from securityholders for financial information from issuers further, but we do not believe that is a policy objective that should be pursued. In addition, it is not clear to ADP that the proposed amendments will actually reduce the overall costs of the system to all interested parties. The options available to the issuer are reduced to two: (a) send the materials to registered holders and those beneficial owners who want all materials; or (b) put in place a system to respond to a series of one-off requests for information spaced out randomly over the year, which imposes significant administration, compliance and printing costs³.

Neither of these necessarily makes sure that the issuer's securityholders who really want the information in fact get it. From the investor's perspective, having to make individual requests to each issuer that the securityholder owns, costs that investor time and money. Also, there's no process in place to allow the investor to minimize his/her costs by making a one-time request to be sent materials on a continuing basis, as there is no obligation on the issuer to comply with this request. In fact, in the proposed regime it isn't clear how often the securityholder must repeat the request; just once a year or every quarter?

Technology can provide a cost effective way to carry out the annual request process. In response to the existing requirements under NI 51-102, ADP developed a system to integrate the annual request into existing processes in order to allow issuers to comply with their legal obligations in an efficient manner. Under this system, questions regarding the securityholder's desire for annual and interim statements for the coming year may be added to the voting instruction form ("VIF") sent out to beneficial owners as part of the annual meeting material. The responses come back with the voting instructions in a machine-readable format that can easily be incorporated into a securityholder preference database and the materials sent out to those securityholders in a timely and efficient basis. The information in the preference database can also be compared to the list of securityholders on an on-going basis to ensure that only current securityholders are sent materials. ADP has put a similar process in place for registered securityholders. The system developed by ADP can support either an opt-in or opt-out model thus supporting both beneficial and registered securityholders requirements.

Integrating the request into the annual proxy process has a number of advantages. No separate mailing of an annual request form is involved. The request is incorporated into the proxy packages of those securityholders who have requested to receive materials from their broker thus affording the securityholder two opportunities to request the financial information: one, when reading the information circular and the second when filling out the VIF.

At the same time, relying on the CSA guidance on the interpretation of current s. 4.6(5), as set out in CSA Staff Notice 51-311 *Frequently Asked Questions Regarding NI 51-102*, the annual financial statements for the prior year can be inserted in the annual proxy material for all securityholders. This timing has the advantage of keeping all annual proxy related materials together and reduces confusion for the securityholders. One of the fundamental purposes of the annual meeting is to present the annual financial results to the securityholders and allow for questions. De-linking the financials from the annual proxy material undermines this purpose. The securityholder preference database can, of course, be used for a separate, earlier mailing of materials.

ADP feels that the current system originally contemplated by the Regulators and currently detailed in NI 51-102 answers the requirement for custom delivery of proxy material to those securityholders who specifically want it. At the same time, the original Instrument supported the responsibility of the Issuer to provide the material through the request process thereby ensuring that securityholders had an opportunity through a simple method, to request and receive the material. In response to the management of securityholder preference and maintaining concepts of NI 51-102, ADP developed the applications, products and services required to fulfill the mandates of the instrument, both practically and philosophically. If the annual request process as currently defined was eliminated, ADP would suggest at minimum, that it be replaced by provisions allowing issuers to institute a standing instruction process analogous to that contained in s. 5.3 of NI 81-106. The standing instruction process is likely to be more cost effective for all participants than the annual report fulfillment process contemplated by the proposed amendments, as the issuer only has to ask a securityholder once and the investor only has to indicate his/her preferences once. The preference database would only have to be modified periodically as new instructions come in, rather than completely repopulated each year. In addition, the investor would get an annual generic reminder in the annual proxy materials of the availability of the financial information and how to change his/her delivery option. A standing instruction process would also make it easier for beneficial securityholders who do not receive the annual proxy materials on a routine basis to ask for the financial information from issuers.

Most Canadian corporate statutes require companies to deliver their annual financial statements to all registered securityholders, other than those securityholders who have indicated in writing that they do not want this information. If appropriately worded, issuers could use the standing instruction process to get the necessary form of waiver of delivery.

The technological solution described above can easily be adapted to obtain standing instructions from securityholders. It is already in use for investment funds under NI 81-106.

Content of Request. The efficiency of the annual request or standing instruction processes would be improved if the regulators provided greater guidance on the form of the questions the issuer must ask. At the present time, there is a wide range of different formulations across the issuer community. Giving issuers flexibility to formulate their own questions is attractive to the CSA, but this flexibility is not efficient and will introduce additional costs. At the very least it comes at the cost of efficiency; one set of clear requirements are far easier and less costly to integrate into existing systems. It would also reduce the need for professional advice regarding what is required to comply with the Instrument.

Disclosure of Availability of Information. The elimination of the annual request process would mean that the only notice of the availability of the financial information and instructions on how to obtain it is contained in the information circular that goes out with the other proxy-related materials for the issuer. This information is given no particular prominence in the information circular, and may be easy to overlook. Further, the information circular does not go to all securityholders with any regularity. We suggest that the CSA should consider mandating additional disclosure in this area. At the very least, no matter what else is done, the equivalent of s. 5.5 of NI 81-106 should be added to the Instrument. Requiring greater prominence to be given to this disclosure in the information circular would also be helpful.

Timing of Sending Annual Financial Information. ADP agrees that the timely disclosure of accurate financial information about public issuers is very important. We take no particular position regarding the proposal to require an issuer wishing to take advantage of the exemption from responding to one-off requests for its annual financial information to send the material by the 100th day after the end of the previous fiscal year to registered securityholders and to those beneficial owners who, under NI 54-101, have indicated that they want all materials. ADP will stand ready to forward the information to securityholders on a timely basis in compliance with the Instrument. We do, however, have a few observations to make.

The 100th day after the fiscal year end is well in advance of the date that materials must go to securityholders for the issuer's annual meeting. The issuer will have to make a choice: incur the costs of moving the annual meeting up by more than a month or pay for two mailings of materials. Neither option is inexpensive and the extra costs will ultimately be borne by securityholders.

It is self-evident that two mailings are more expensive than one. In addition, because the two mailings would be a significant period apart, the list of securityholders getting the annual financial information is going to differ from those receiving the annual proxy material. The securityholders only receiving the latter material may want the financial statements in order to make informed decisions about how to vote at the annual meeting, but they will have no right to request these be sent⁴. Further, even if the issuer is willing to agree to send the information, from a practical point of view, there may be no time to request the information and receive it prior to the voting cut-off date specified by the issuer for the meeting. Both the issuer and the intermediaries will have to incur costs to address the confusion that will result. There may also be a negative effect on vote returns.

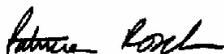
The other option is moving the date of the annual meeting forward by more than a month so that all materials may go out in one mailing. The inclusion of the annual financial information with the rest of the proxy package for the meeting at which the statements will be presented would reduce securityholder confusion. Also, it would lessen the problems associated with separate requests from securityholders who did not receive the annual financial information. However, for larger issuers, where meeting venues are reserved several years in advance, moving the meeting date forward will require significant lead time. If many issuers adopted this option, it will put a great deal of extra pressure on the other participants in the shareholder communication and meeting processes (such as professional advisors, transfer agents, intermediaries and service providers such as ADP), as the proxy season is further compressed. This will inevitably introduce additional costs into the process.

It should be noted that if the issuer chooses not to send the annual financial information automatically to registered securityholders and to those beneficial owners who, under NI 54-101, have indicated that they want all materials, the only securityholders who will be sure of being sent the information by the 100th day after the year-end would be those who have given the issuer a clear request for that information before the 90th day after the year-end. We would expect that relatively few retail securityholders are (a) likely to know when the year-end of the company is, and (b) will know, without prompting, that they have to make a specific request for the financials from the issuer. The only disclosure of how to get the information is set out in the information circular, and that document may not arrive for several weeks. This means the only securityholders likely to file a timely request are the institutional securityholders with processes in place to ensure they get all necessary information on a timely basis to ensure their fiduciary obligations are met.

The proposed extension of the mailing deadline to 10 days after the filing deadline will make it somewhat easier for issuers to comply with their obligations to securityholders under the Instrument, but it still will impose significantly greater costs on the issuer than being permitted to send the annual financial information with the annual proxy material. Given the process in place, the mailing of financial information is not likely to be large enough to take advantage of economies of scale for any but the largest issuers. We would request that consideration regarding the "effective" date provide sufficient lead-time to facilitate any required changes.

ADP would be happy to provide the CSA with any further information about the technology solutions and the investor research that are available to facilitate the delivery of continuous disclosure information to securityholders. We have a great deal of experience, information and technological knowledge which we believe could be of assistance to the CSA. ADP appreciates the opportunity to comment on the proposed changes to the Instrument. For further information, please feel free to contact me at 905-507-5259.

Yours very truly,



Patricia Rosch
President