

Nova Scotia Securities Commission

Rule 51-102 (Amendment)

Amendments to National Instrument 51-102 *Continuous Disclosure Obligations*

- and-

Amendments to Form 51-102F3 *Material Change Report*

- and-

Amendments to Companion Policy 51-102CP *Continuous Disclosure Obligations*

- and -

Related Consequential Amendments to National Instrument 52-108 *Auditor Oversight*, Amendments to Companion Policy 52-110CP to National Instrument 52-110 *Audit Committees* and Amendments to National Instrument 81-106 *Investment Fund Continuous Disclosure*

WHEREAS:

1. Pursuant to section 150 of the *Securities Act*, R.S.N.S. 1989, chapter 418, as amended (the "Act"), the Nova Scotia Securities Commission (the "Commission") has power to make rules subject to compliance with the requirements of the Act;
2. Pursuant to section 19 of the Act, the Commission has power to issue and publish policy statements;
3. Amendments to National Instrument 51-102 *Continuous Disclosure Obligations*, Amendments to Form 51-102F3 *Material Change Report*, Amendments to National Instrument 52-108 *Auditor Oversight* and Amendments to National Instrument 81-106 *Investment Fund Continuous Disclosure* (hereinafter collectively called the "Rules") and Amendments to Companion Policy 51-102CP *Continuous Disclosure Obligations* and Amendments to Companion Policy 52-110CP to National Instrument 52-110 *Audit Committees* (hereinafter collectively called the "Policies"), copies of which are attached hereto, have been made a rule by one or more of the Canadian securities regulatory authorities; and

4. The Commission is of the opinion that the attainment of the purpose of the Act is advanced by this Instrument.

NOW THEREFORE the Commission hereby:

(a) pursuant to the authority contained in section 150 of the Act and subject to compliance with the requirements of section 150A of the Act, approves the Rules and makes the same rules of the Commission;

(b) pursuant to the statutory authority contained in section 19 of the Act and subject to publication in the *Royal Gazette* or the Commission's website, issues the Policies as policies of the Commission; and

(c) declares that the Rules approved and made pursuant to clause (a) and the issuance of the Policies pursuant to clause (b) shall all take effect on **July 4, 2008**, unless the Minister disapproves the Rules or returns them to the Commission in accordance with subsection 150A(3) of the Act in which event the Rules and the Policies shall not become effective until the Rules are approved by the Minister.

IN WITNESS WHEREOF this Instrument has been signed by the Chair and Vice-Chair of the Commission, being the members of the Commission prescribed by the Chair pursuant to subsection 15(3) of the Act to attend the hearing of this matter and the quorum with respect to this matter, on the **18th** day of **April, 2008**.



H. Leslie O'Brien, Q.C.



R. Darren Baxter

Attachments

Appendix C

Amendments to National Instrument 51-102 *Continuous Disclosure Obligations*

1. **National Instrument 51-102 *Continuous Disclosure Obligations* is amended by this Instrument.**
2. **Subsection 4.11(8) is amended by striking out “Except in Alberta and Manitoba, if” and substituting “If”.**
3. **Subsections 7.1(3) and (4) are repealed.**
4. **Subsection 7.1(5) is amended by striking out “or (3)”.**
5. **Subsection 7.1(7) is amended by striking out “or (3)”.**
6. **Subsection 9.1(3) is repealed.**
7. **Section 9.2 is amended by adding the following after subsection (3):**
 - (4) **Despite paragraph 9.1(2)(b), a person or company, other than management of a reporting issuer or a person or company acting on behalf of management, may solicit proxies from registered securityholders of a reporting issuer without sending an information circular, if**
 - (a) **the solicitation is made to the public by broadcast, speech or publication;**
 - (b) **soliciting proxies by broadcast, speech or publication is permitted by the laws under which the reporting issuer is incorporated, organized or continued and the person or company making the solicitation complies with the requirements, if any, of those laws relating to the broadcast, speech or publication;**
 - (c) **the person or company has filed the following information:**
 - (i) **the name and address of the reporting issuer to which the solicitation relates,**

- (ii) the information required under item 2, sections 3.2, 3.3 and 3.4 and paragraphs (b) and (d) of item 5 of Form 51-102F5 *Information Circular*,
 - (iii) any information required to be disclosed in respect of the broadcast, speech or publication by the laws under which the reporting issuer is incorporated, organized or continued, and
 - (iv) a copy of any communication intended to be published; and
 - (d) the broadcast, speech or publication contains the information referred to in paragraphs (c)(i) to (iii).
- (5) Subsection (4) does not apply to a person or company that is proposing, at the time of the solicitation, a significant acquisition or restructuring transaction involving the reporting issuer and the person or company, under which securities of the person or company, or securities of an affiliate of the person or company, are to be changed, exchanged, issued or distributed, unless
- (a) the person or company has filed an information circular or other document containing the information required by section 14.4 of Form 51-102F5 *Information Circular*; and
 - (b) the solicitation refers to that information circular or other document and discloses that the circular or other document is on SEDAR.
- (6) Subsection (4) does not apply to a person or company that is nominating or proposing to nominate, at the time of the solicitation, an individual, including himself or herself, for election as a director of the reporting issuer, unless
- (a) the person or company has filed an information circular or other document containing the information required by Form 51-102F5 *Information Circular* in respect of the proposed nominee; and
 - (b) the solicitation refers to that information circular or other document and discloses that the circular or other document is on SEDAR.

8. Section 9.5 is repealed and the following substituted:

9.5 Exemption

Sections 9.1 to 9.4 do not apply to a reporting issuer, or a person or company that solicits proxies from registered holders of voting securities of a reporting issuer, if

- (a) the reporting issuer or other person or company complies with the requirements of the laws relating to the solicitation of proxies under which the reporting issuer is incorporated, organized or continued;
- (b) the requirements referred to in subsection (a) are substantially similar to the requirements of this Part; and
- (c) the reporting issuer or other person or company files a copy of any information circular and form of proxy, or other documents that contain substantially similar information, promptly after the reporting issuer or other person or company sends the circular, form or other document in connection with the meeting.

9. This amendment comes into force July 4, 2008.

Appendix D

Amendments to Form 51-102F3 *Material Change Report*

- 1. Form 51-102F3 *Material Change Report* is amended by this Instrument.**
- 2. Form 51-102F3 is amended by,**
 - (a) in Item 6, striking out “or (3)” wherever it appears,**
 - (b) in the Instruction after Item 6, striking out “(4),” and**
 - (c) in the Instructions after Item 7, striking out “, (3)”.**
- 3. This amendment comes into force July 4, 2008.**

Appendix E
Amendments to
Companion Policy 51-102CP *Continuous Disclosure Obligations*

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

(a) by striking out the word “Multilateral” and substituting the word “National”, and by striking out “or, in British Columbia, BC Instrument 52-509 *Audit Committees*” in section 1.7.

(b) by adding the following after section 9.2:

9.3 Proxy Solicitations Made to the Public by Broadcast, Speech or Publication

Subsection 9.2(4) of the Instrument provides an exemption from the proxy solicitation and information circular requirements for certain proxy solicitations made to the public by broadcast, speech or publication. The exemption permits securityholders to solicit proxies by public means, including a speech or broadcast, through a newspaper advertisement or over the Internet (provided that the solicitation contains certain information and that information is filed on SEDAR).

The exemption will only apply if the proxy solicitation is made to the public. Securities regulatory authorities generally consider a solicitation to be made to the public if it is disseminated in a manner calculated to effectively reach the marketplace. A solicitation to the public would generally include a solicitation that is made by:

- (a) a speech in a public forum; or
- (b) a press release, a statement or an advertisement provided through a broadcast medium or by a telephone conference call or electronic or other communication facility generally available to the public, or appearing in a newspaper, a magazine, a website or other publication generally available to the public.

A proxy solicitation to the public would generally not include a solicitation made by phone, mail or email to only a select group of securityholders of a reporting issuer.

(c) by striking out the address of the Manitoba Securities Commission in section 13.1 and substituting the following:

Manitoba Securities Commission

500 - 400 St. Mary Avenue
Winnipeg, Manitoba
R3C 4K5

Attention: Corporate Finance

- 2. This amendment comes into force July 4, 2008.**

Appendix F

Amendments to National Instrument 52-108 *Auditor Oversight*

- 1. National Instrument 52-108 *Auditor Oversight* is amended by this Instrument.**
- 2. Subsection 1.2(2) is repealed.**
- 3. This amendment comes into force July 4, 2008.**

Appendix G

Amendments to Companion Policy 52-110CP to National Instrument 52-110 *Audit Committees*

- 1. Companion Policy 52-110CP to National Instrument 52-110 *Audit Committees* is amended in section 1.1 by,**
 - (a) inserting “New Brunswick,” after “Ontario,” and**
 - (b) striking out “New Brunswick,” after “a policy in”.**
- 2. This amendment comes into force July 4, 2008.**

Appendix H

Amendments to National Instrument 81-106 *Investment Fund Continuous Disclosure*

- 1. National Instrument 81-106 *Investment Fund Continuous Disclosure* is amended by this Instrument.**
- 2. Subparagraph 11.2(1)(c)(iii) is amended by striking out “or (3)” wherever it appears.**
- 3. Subsection 11.2(3) is repealed.**
- 4. Subsection 12.2(3) is repealed.**
- 5. This amendment comes into force July 4, 2008.**