

COMPANION POLICY 71-102CP TO NATIONAL INSTRUMENT 71-102

Continuous Disclosure and Other Exemptions Relating to Foreign Issuers

PART 1 – GENERAL

1.1 Introduction and Purpose

- (1) National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (the “Instrument”) provides broad relief from requirements of National Instrument 51-102 *Continuous Disclosure Obligations* (“NI 51-102”) for two sub-categories of eligible 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 NI 51-102.
- (2) This Companion Policy provides information about how the provincial and territorial securities regulatory authorities interpret the Instrument, and should be read in conjunction with it.

1.2 Other Relevant Legislation

In addition to the Instrument, 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 Instrument in each applicable jurisdiction);
- (2) NI 51-102;
- (3) National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (“NI 52-107”); and
- (4) National Instrument 71-101 *The Multijurisdictional Disclosure System* (“NI 71-101”).

1.3 Multijurisdictional Disclosure System

- (1) NI 71-101 permits certain US incorporated issuers to satisfy specified Canadian CD requirements by using disclosure prepared in accordance with US requirements. The Instrument does not replace or alter NI 71-101. There are instances in which NI 71-101 and the Instrument 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 Instrument will be ineligible to rely on NI 71-101 and vice versa. For example, the Instrument defines a class of “SEC foreign issuers”. Not all US issuers referred to in NI 71-101 are SEC foreign issuers and not all SEC foreign issuers are US issuers.

- (2) An eligible US issuer may choose to use an exemption in the Instrument or NI 71-101. For example, section 17.1 of NI 71-101 grants an exemption from the insider reporting requirement to an insider of a US issuer that has securities registered under section 12 of the 1934 Act if the insider complies with the requirements of US 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 4.9 of the Instrument which is not available to insiders of a SEDI issuer as defined in National Instrument 55-102 *System for Electronic Disclosure by Insiders (SEDI)* and requires that the insider of the SEC foreign issuer file with the applicable regulator or securities regulatory authority each insider report that is filed with the SEC.

1.4 Exemptions May Not Require Disclosure

Most of the exemptions in the Instrument are only available to a person or company that complies with a particular aspect of either US 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 in order to rely on the exemption contained in the Instrument.

PART 2 – DEFINITIONS

2.1 Calculation of Voting Securities Owned by Residents of Canada

In order to qualify for any of the exemptions contained in the Instrument, other than the relief for “foreign transition issuers” in Part 6, the issuer in question must be an “eligible foreign reporting issuer”. The definition of eligible 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 “eligible foreign reporting issuer”, it is the CSA’s view that, in determining the outstanding voting securities that are owned, directly or indirectly, by residents of Canada, an issuer should:

- (a) use reasonable efforts to determine securities held by a broker, dealer, bank, trust company or nominee or any of them for the accounts of customers resident in Canada;
- (b) count securities beneficially owned by residents of Canada as reported on reports of beneficial ownership, including insider reports and early warning reports; and
- (c) 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 (d) of the definition of “designated foreign issuer” and paragraph (d) of the definition of “foreign transition issuer” in section 6.2 of the Instrument. This method of calculation differs from that of NI 71-101, which only requires a calculation based on the address of record. Accordingly, some SEC foreign issuers may qualify for exemptive relief under NI 71-101 but not under the Instrument.

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 Instrument 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 NI 71-101 an insider of an eligible U.S. issuer, as defined NI 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 NI 71-101 eligible issuers are also exempt from the requirement to file insider reports on SEDI.

Insiders of a foreign issuer that does not file under SEDAR, and who are therefore eligible to file insider reports under section 4.9 or 5.10 of the Instrument, must file the foreign form of insider report in paper form.

PART 4 – ELECTRONIC DELIVERY OF DOCUMENTS

4.1 Electronic Delivery of Documents

Any documents required to be sent under the Instrument 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 5 – EXEMPTIONS NOT INCLUDED

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

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

5.2 Designated Foreign Issuers

The Instrument does not provide an exemption for designated foreign issuers from the requirement in section 4.9 of NI 51-102. A designated foreign 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 NI 51-102.

PART 6 – EXEMPTIONS

6.1 Exemptions

- (1) The exemptions contained in the Instrument 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 Instrument and NI 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 NI 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 NI 51-102 or other requirements of provincial and territorial securities legislation on grounds similar but not identical to those permitted under the Instrument, the issuer should apply for this relief under the exemptive provisions of NI 51-102, or other provincial and territorial securities legislation, as the case may be.

6.2 Exemptions for SEC Foreign Issuers

NI 51-102 contains exemptions for SEC issuers from certain requirements in NI 51-102, such as change in year-end and change of auditor. SEC foreign issuers under the Instrument will also meet the definition of SEC issuers under NI 51-102, and so will be able to rely on the exemptions in NI 51-102.