



Staff Notice 51-703

New Requirements for Issuers Reporting by Order

Introduction

This notice sets out how the new rules that will come into force on March 30, 2004 will affect Issuers Reporting by Order.

There are a number of issuers in Saskatchewan who are not reporting issuers, but who are required to comply with the continuous disclosure requirements in Parts XIV and XV of the Act under undertakings to or orders of the Commission or Director exempting them the prospectus and registration requirements of the Act. We refer to them as “Issuers Reporting by Order”.

Venture Capital Corporations and Type B Labour-sponsored Venture Capital Corporations are subject to slightly different requirements, and are not covered by this notice.

Currently the continuous disclosure requirements in Part XIV and XV of the Act requires Issuers Reporting by Order to:

- prepare and file interim financial statements with the Commission and send them to their security holders;
- prepare and file annual audited financial statements with the Commission and send them to their security holders;
- send proxies and information circulars with notice of any meeting of security holders; and
- issue a press release and file a notice when there is a material change in the affairs of the company.

National Instrument 51-102 *Continuous Disclosure Requirements* (“NI 51-102”) comes into force on March 30, 2004. NI 51-102 contains national comprehensive rules prescribing continuous disclosure requirements for public companies in Canada. It replaces the current continuous rules found in the rules in Parts XIV and XV of *The Securities Act, 1988*. Most of the new rules in NI 51-102 are the same as the current rules under the Act.

On March 30, 2004 Multilateral Instrument 52-109 *Certification of an Issuer’s Annual and Interim Filings* also comes into force. How MI 52-109 applies to Issuers Reporting by Order is discussed later in this notice.

How NI 51-102 applies to issuers reporting by order

General Ruling Order 51-905 *Varying the Terms of Previously Granted Orders* amends exemption orders granted to Issuers Reporting by Order. The rulings are amended so that they refer to provisions of NI 51-102 that are equivalent to the provisions in Parts XIV and XV of the Act. Therefore, many of the provisions of NI 51-102 apply to Issuers Reporting by Order.

The following summarizes the continuous disclosure requirements in NI 51-102 that Issuers Reporting by Order must comply with:

- They must prepare and file semi-annual unaudited interim financial statements within 60 days of the end of the quarter as set out in section 4.3 of NI 51-102. Section 4.3 requires the filing of quarterly interim financial statements, but General Ruling/Order 51-905 *Exemption from Certain Continuous Disclosure Requirements Under NI 51-102* exempts Issuers Reporting by Order from filing first and third if their securities do not trade in a market.
- They must prepare and file annual audited financial statements within 120 days of their financial year end as set out in sections 4.1 and 4.2 of NI 51-102. The filing period is 20 days shorter than the current filing period. Some Issuers Reporting by Order are permitted to file a review engagement report instead of an auditor's report with their annual financial statements.
- They must comply with the news release and material change reporting requirements in section 7.1 of NI 51-102. This represents no change.
- They must comply with the proxy solicitation and information circular requirements in section 9.1 of NI 51-102 if they were subject to those requirements in the initial exemption order or undertaking. This represents no change.
- Under General Ruling Order 51-905 *Varying the Terms of Previously Granted Orders*, they are still required to send financial statements financial statements to their security holders, despite the provisions of section 4.6 of NI 51-102. Section 4.6 provides that issuers must annually send their security holders a notice that they may receive financial statements upon request. Section 153 of *The Saskatchewan Business Corporations Act* provides that companies must deliver their annual financial statements to their security holders.
- They are no longer required to file confirmation of delivery of financial statements to shareholders.
- They are not required to comply with the following requirements in NI 51-102 because they are not reporting issuers and because these requirements are not covered in Parts XIV and XV of the Act:
 - file Managements' Discussion and Analysis (MD&A) with their financial statements as required in section 5.1 of NI 51-102;
 - file Annual Information Forms as required in section 6.1; or
 - file Business Acquisition Reports as required in section 8.2.

MI 51-109 Certification of Disclosure in Companies' Annual and Interim Filings

MI 51-109 requires an issuer's chief executive officer and chief financial officer to personally certify that the issuer's interim and annual financial statements, and Management's Discussion and Analysis and Annual Information Forms do not contain any misrepresentations and fairly present the issuer's financial condition. They must also certify that they have implemented and evaluated systems to ensure that material information about the issuer is made known to them and to provide reasonable assurances of the reliability of financial reporting.

General Ruling/Order 52-903 *Exemption from Multilateral Instrument 52-109* permits the CEO and CFO of a Junior Issuer Reporting by Order to file alternate annual and interim certificates in which they certify that:

- (a) their annual or interim filings do not contain any untrue statement of a material fact or omit to state a material fact; and
- (b) the annual financial statements or interim financial statements and the financial information in the issuer's other annual or interim financial filings fairly present the financial condition of the issuer.

Examples of these certificate forms are attachments to General Ruling/Order 52-903. Form 52-903F1 is to be followed for annual filings and Form 52-903F2 is to be followed for interim filings.

Note that these certificates must be filed concurrently with the annual or interim filings.

A Junior Issuer Reporting by Order is an issuer that:

- (a) has its head office located in Saskatchewan;
- (b) is subject to continuous disclosure requirements under a decision of the Commission or Director, or an undertaking given to the Commission or the Director;
- (c) is not a reporting issuer; and
- (d) has raised less than \$5 million in total from all distributions.

There is a limited exemption from the requirements of MI 52-109 for Senior Issuers Reporting by Order under GRO 52-903. Senior Issuers Reporting by Order are companies that have raised in excess of \$5 million through the sale of securities.

Please note that the requirements of these new rules apply to issuers' fiscal years beginning on or after January 1, 2004.

March 23, 2004

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