

Alberta Securities Commission
Notice and Request for Comment
Proposed ASC Rule 54-504 *Form of Information Circular for a*
Company that is Not a Reporting Issuer

October 11, 2012

Introduction

The Alberta Securities Commission (the ASC or we) is publishing for a 30 day comment period proposed ASC Rule 54-504 *Form of Information Circular for a Company that is Not a Reporting Issuer* (Proposed Rule).

The text of the Proposed Rule is contained in the Annex to this notice and will also be available on the ASC website, www.albertasecurities.com.

Substance and Purpose

The Proposed Rule is intended to clarify the relationship between the *Business Corporations Regulation*, AR 118/2000 (ABCR) and the *Securities Act*, R.S.A. 2000, C. S-4 (*Securities Act*), in respect of the required content of information circulars (referred to as proxy circulars in the ABCR) for companies that are not reporting issuers and have more than fifteen shareholders. The Proposed Rule aims to harmonize corporate and securities laws in this area.

Background

Paragraphs 150(1)(a) and (b) of the *Business Corporations Act* (Alberta), R.S.A. 2000, c. B-9 (ABCA) require the sending of a management proxy circular or a dissident's proxy circular when soliciting proxies. Subsection 150(2) provides an exemption from subsection 150(1) for a corporation that has fifteen or fewer shareholders entitled to vote at meetings of shareholders.

Section 19 of the ABCR states that the prescribed form for a management proxy circular and a dissident's proxy circular for the purposes of paragraphs 150(1)(a) and (b) of the ABCA are the forms for information circulars prescribed for the purposes of the *Securities Act* pursuant to rules or regulations under that Act whether or not the corporation is a reporting issuer under that Act.

National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) came into effect on March 30, 2004. NI 51-102 sets out the obligations of reporting issuers (other than investment funds, which are covered by National Instrument 81-106 *Investment Fund Continuous Disclosure*) with respect to financial statements, annual information forms, management's discussion and analysis, material change reporting, information circulars, proxies and proxy solicitation, restricted share disclosure, and other continuous disclosure related matters. The prescribed form of information circular is set out in Form 51-102F5 *Information Circular* (Form 51-102F5), which incorporates, within Item 8, Form 51-102F6 *Statement of Executive Compensation*.

The cross-reference in the ABCR to the forms prescribed for the purposes of the *Securities Act* pursuant to rules and regulations under the *Securities Act* has the result that a company that is not a reporting issuer (and has greater than fifteen shareholders entitled to vote at meetings of shareholders) is required to complete Form 51-102F5, which was created specifically for reporting issuers. The disclosure obligations within Form 51-102F5 were not designed to be applied to a company that is not a reporting issuer and, therefore, many sections of the form are inapplicable and unnecessary.

We note that the *Canada Business Corporations Regulation, 2001*, Can. Reg. 2001-512 (CBCR), requires an abridged information circular for corporations that are not distributing corporations with more than fifty shareholders. A “distributing corporation” is defined, in section 2 of the CBCR, and includes a corporation that is a reporting issuer. It is not mandatory for a non-distributing corporation with fifty or fewer shareholders entitled to vote at a meeting to solicit proxies and, therefore, send an information circular.

Summary of the Proposed Instrument

The Proposed Rule prescribes the form of information circular for a company that is not a reporting issuer within the meaning of the *Securities Act* and which has more than fifteen shareholders entitled to vote at meetings of shareholders (two or more joint holders counted as one shareholder).

Impact on Investors

ASC staff is of the opinion that the Proposed Rule will not impact investors. Many sections of the form of information circular currently required under securities laws, created for reporting issuers, are inapplicable to companies that are not reporting issuers. The Proposed Rule is intended to clarify the content of information circular for companies that are not reporting issuers and aims to expressly eliminate requirements within the form which are superfluous and inapplicable.

Request for Comments

We welcome your comments on proposed ASC Rule 54-504 *Form of Information Circular for a Company that is Not a Reporting Issuer*.

Please submit your comments in writing on or before November 10, 2012. If you are not sending your comments by e-mail, please send a CD containing the submissions (in Microsoft Word format).

Deliver your comments to the address below.

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The ASC does not provide assurance that the submissions will be kept confidential because the ASC may publish a summary of the written comments received during the comment period and submissions may be requested by members of the public pursuant to privacy legislation.

Contents of Annexes

Annex – Proposed ASC Rule 54-504 *Form of Information Circular for a Company that is Not a Reporting Issuer*

Questions

Please refer your questions to:

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Annex

PROPOSED ASC RULE 54-504
***FORM OF INFORMATION CIRCULAR FOR A COMPANY THAT IS NOT A
REPORTING ISSUER***

1. Terms defined in the *Securities Act*, R.S.A. 2000, c. S-4, as amended, and used in this Rule have the respective meanings ascribed to those terms in the *Securities Act*, R.S.A. 2000, c. S-4, as amended.
2. This Rule does not apply to an investment fund.
3. A management proxy circular and a dissident's proxy circular for a company that is not a reporting issuer and which has more than fifteen shareholders entitled to vote at meetings of shareholders, two or more joint holders being counted as one shareholder, must be in the form provided for in Form 51-102F5 *Information Circular* of National Instrument 51-102 *Continuous Disclosure Obligations*, but is not required to provide the information prescribed in Part 1(c), or Items 8, 9, 10 or 16 of Part 2 of the Form.
4. This Rule comes into force on ●, 2012.