

Chapter 5

Rules and Policies

5.1.1 Amendments to National Instrument 55-102, Related Forms and Companion Policy Statement 55-102CP

NOTICE OF AMENDMENTS TO NATIONAL INSTRUMENT 55-102 SYSTEM FOR ELECTRONIC DISCLOSURE BY INSIDERS (SEDI); FORMS 55-102F1, 55-102F2, 55-102F3 AND 55-102F6; AND COMPANION POLICY STATEMENT 55-102CP

Notice of Amendments

National Instrument entitled *System for Electronic Disclosure by Insiders (SEDI)* (the National Instrument) (2001), 24 OSCB 4414, related forms and Companion Policy 55-102CP (the Policy) are an initiative of the Canadian Securities Administrators (the CSA). Each member of the CSA is expected to amend the National Instrument; related Forms 55-102F1, F55-102F2, F55-102F3 and 55-102F6 (the Forms); and the Policy. In this Notice, the National Instrument, the Forms and the Policy are referred to collectively as the Instruments. The amendments to the National Instrument and the Forms will be implemented as a rule, commission regulation or policy in all jurisdictions with insider reporting requirements represented by the CSA.

The amendments to the Instruments are consequential housekeeping amendments resulting from a further review of the System for Electronic Disclosure by Insiders (SEDI) after SEDI was suspended in January 2002 due to technical difficulties. These amendments, however, do not materially change the Instruments. Therefore, in Ontario and in certain other jurisdictions, the Commission is not publishing these amendments for comment.

The amendments to the Instruments will become effective on different dates in the various jurisdictions, depending on local rule and policy-making procedures. In Ontario, the amendments and the material required by the Act to be delivered to the Minister of Finance were delivered on February 19, 2003. The Minister may approve or reject the amendments to the National Instrument and Forms or return them for further consideration. If the Minister approves the amendments to the National Instrument and Forms or does not take any further action by April 20, 2003, the amendments will come into force in Ontario on May 6, 2003.

Substance and Purpose of Amendments

SEDI is the insider trade reporting system to be available over the Internet at www.sedi.ca once the CSA announces that SEDI is again operational. It will replace paper-based reporting of insider trading data for insiders of SEDI issuers. SEDI will require insiders to file electronically their insider reports, and issuers to file electronically certain information, over the Internet, using the SEDI web site. The public will also be able to search for and look at public information filed on SEDI over the same web site.

SEDI was operational from October 29, 2001 to January 31, 2002 (Initial Period), but SEDI then had to be suspended due to technical difficulties. The Canadian Securities Administrators (CSA) in conjunction with CDS INC., the SEDI system developer and operator, plan to re-launch SEDI in stages once SEDI is ready for re-implementation. The CSA intends to publish a staff notice that will advise market participants about the SEDI re-launch and notify insiders and issuers of the steps needed to resume filing on SEDI.

Because of the technical difficulties during the Initial Period, data filed and collected during this period is not available for public inspection. SEDI issuers and their insiders (or their agents) who filed data on SEDI during the Initial Period will need to register again and file new and current issuer profile supplements or insider profiles on SEDI once SEDI is again operational. SEDI issuers and their insiders need to do this in order for insiders to meet their insider reporting obligations of filing their reports on SEDI.

The legal requirements for SEDI are contained in the National Instrument, six related Forms, 55-102F1 through F6, and the Policy. The purpose of the amendments to the Instruments is to implement changes made to SEDI as a result of the suspension of SEDI on January 31, 2002 and subsequent review of SEDI.

Summary of Amendments

In summary, the amendments:

- Add a new issuer profile supplement filing requirement for issuers that filed an issuer profile supplement on SEDI on or before January 31, 2002

- Expand the temporary hardship exemption
- Reduce the issuer profile supplement securities designation requirements by requiring issuers to designate only their outstanding securities that are held by insiders
- Make other minor changes to the Instruments.

National Instrument 55-102

1. Issuer Profile Supplement Filing Requirement

Part 9 is added and requires a SEDI issuer that filed an issuer profile supplement on or before January 31, 2002 to file a new and current issuer profile supplement not later than the date specified by the securities regulators. For this purpose, the regulators may specify a period which must begin no earlier than the date the notice is published and be at least 18 days. The securities regulators must publish a notice specifying the date the period ends and issue a press release summarizing this notice.

SEDI was operational from October 29, 2001 to January 31, 2002 (the Initial Period). However, data filed and collected on SEDI during this period is not available because of the technical difficulties SEDI experienced. Therefore, even if SEDI issuers registered and filed issuer profile information on SEDI during this period, they will have to register and file an issuer profile supplement once SEDI is again operational. These new provisions in the National Instrument are designed to implement this requirement within a set period after launch, using the more flexible approach of specifying the deadline for filing the issuer profile supplement in a public notice rather than in the National Instrument itself.

The CSA determined that it was not necessary to include in the National Instrument as a legal obligation a requirement to again register or file an insider profile for those who filed this data on SEDI during the Initial Period. These are only pre-conditions to meeting the legal obligations of filing an insider profile supplement or insider report. It will, however, be necessary to again register and file an insider profile after SEDI is re-launched.

2. Expansion of the Temporary Hardship Exemption

Subsection (6) is added to section 4.1 to create a new temporary hardship exemption if unanticipated technical difficulties prevent the timely filing of an amended insider profile, issuer profile supplement, amended issuer profile supplement or issuer event report, provided such documents are filed as soon as practicable after the unanticipated technical difficulties have been resolved.

The CSA are of the view that SEDI issuers and not just insiders should be able to rely on a temporary hardship exemption if issuers have unanticipated technical difficulties, such as SEDI being unavailable due to a system failure, that prevents them from making timely filings of an issuer profile supplement, amended issuer profile supplement or issuer event report. In these cases as well as for an amended insider profile, an interim paper filing of the report is not required.

In addition, subsection 4.1(3) is amended to remove the requirement for a power of attorney to be filed with any insider report filed in paper format by the agent of an individual insider using the temporary hardship exemption. The agent of an individual insider who files in paper format and is not required to use SEDI for filings still must file a power of attorney with the insider report, as required in the instructions to Form 55-102F6. However, the Commission is of the view that this requirement is not appropriate for use in connection with the temporary hardship exemption when all such insiders (or their agents) must then later re-file their insider report on SEDI.

3. Designation of Issuer's Securities Held by Insiders

The Commission has proposed this amendment and the amendment to Item 7 of Form 55-102F3, Issuer Profile Supplement (discussed below) because it feels that it is unnecessary and too onerous for SEDI issuers to designate all their outstanding securities in the issuer profile supplement when many of those securities would not be held by insiders. This change also assists insiders by reducing the number of types of securities on the issuer's list from which they would select the appropriate security for reporting on the insider report form.

Therefore, paragraph (a) of subsection 2.3(3) is amended to require a SEDI issuer to file an amended issuer profile supplement in SEDI format immediately only if the SEDI issuer issues any security to any insider of the SEDI issuer that is not disclosed in its issuer profile. As a result, the SEDI issuer does not have to amend its issuer profile supplement every time it issues a new security. It need only amend its issuer profile supplement to add a security designation if that security is held by an insider. However, for SEDI issuers to avoid continually amending their security designation list, the CSA has recommended that SEDI issuers should designate their publicly traded securities.

Form 55-102F3 is also amended to reflect this change when a SEDI issuer designates its securities in its issuer profile supplement. See the section below on changes to Form 55-102F3.

4. Effective Date

In Ontario, the amendments to the National Instrument and Forms will come into effect the date that is fifteen days after the date the amendments are approved by the Minister of Finance.

Form 55-102F1 Insider Profile

Item 11 - Date the insider became an insider or date of previous paper filing

Item 11 of Form 55-102F1 is amended to change the requirement that an insider provide either the date the insider became an insider or the date of the insider's last paper filing in respect of the reporting issuer, and instead provide either the date the insider became an insider or the opening balance date. This opening balance date will be used as the date for all opening balances of securities of this reporting issuer. The opening balance date should be a date prior to the date of any transactions that will be reported for this reporting issuer on SEDI. The change is proposed to address the situation where a transaction is filed on SEDI with an earlier date than the transaction date reflected in the opening balance and SEDI's balance calculation formula provides an incorrect balance.

Notice – Collection and Use of Personal Information

The name and street address of the Saskatchewan Securities Commission are amended to reflect a change of name and address. These changes have also been made to the same name and address listed in the Notice – Collection and Use of Personal Information on Forms 55-102F2 and 55-102F3, and at the bottom of the Instructions to Form 55-102F6.

Form 55-102F2 Insider Report

Item 8 – Opening balance of securities (initial SEDI report only)

The second sentence of the second paragraph is deleted and a new sentence added that changes the "date of transaction" to be reported to the date the insider became an insider or the date the insider entered for all opening balances for securities of this issuer. This change corresponds to the change made to item 11 of Form 55-102F1 Insider Profile.

Form 55-102F3 Issuer Profile Supplement

Item 7 – Security Designations

Item 7 is amended to require a SEDI issuer to designate only those securities held by an insider, not all outstanding securities. Not all securities of an issuer are held by insiders. Designating all outstanding securities, not just the ones held by insiders, is onerous and of limited additional value. Therefore, the Commission feels it is appropriate to limit the requirement to require the issuer to designate only those outstanding securities held by insiders.

Form 55-102F6 Insider Report (Paper)

List of Codes

The list of codes is amended to add the following nature of transaction codes:

- Exercise for cash – 59 is added after "Expiration of rights – 58"
- Correction of information – 99 is added after "Other – 97".

Code 59 is added to clarify that these options were not exercised for securities but for cash. Code 99 is added to clarify on the published summaries of reports that the insider report is a corrected one. Without the code 99, insiders either use code 97 (Other) or repeat the same transaction code and indicate the correction elsewhere on the form. This is misleading.

Companion Policy Statement 55-102CP

Schedule A

Schedule A is amended to indicate that the street address, postal code, facsimile and telephone number, and choice of correspondence in English or French of an insider, as reported on Form 55-102F6 (Insider Report – Paper), will not be made available to the public.

This amendment is consistent with the determination by the securities regulatory authority or regulator, as applicable, to keep confidential personal and certain other information reported on SEDI.

This amendment will be effective on the date it is adopted by the relevant securities regulatory authority.

Text of Amendments

The text of the amendments follows.

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