

ALBERTA SECURITIES COMMISSION NOTICE
Notice and Publication for Comment

Proposed ASC Rule 81-501 and Consequential Amendments
Relating to Proposed
National Instrument 81-106 *Investment Fund Continuous Disclosure*

November 10, 2004

This Notice relates to the Canadian Securities Administrators (“CSA”) Notice published on May 28, 2004 concerning proposed National Instrument 81-106 *Investment Fund Continuous Disclosure* and its related forms and companion policies (“NI 81-106”). In conjunction with proposed NI 81-106, the Alberta Securities Commission (“ASC”) proposes to make, or to recommend, certain changes to current Alberta securities laws, as described below. These local changes would be in addition to changes proposed to other national instruments, discussed in the CSA Notice.

Proposed Interim ASC Rule 81-501

In general, the purpose of proposed ASC Rule 81-501 (“Interim ASC Rule”) is to preserve the continuous disclosure and proxy solicitation requirements in the *Securities Act* for investment funds until NI 81-106 is implemented. The CSA plan to implement NI 81-106 in the fall of 2004.

Bill 14, the *Securities Act Amendment Act, 2003*, received royal assent on May 16, 2003, and certain of its provisions were proclaimed in effect in June, 2003. Proclamation of the remaining provisions of Bill 14 relating to proxies and proxy solicitations and continuous disclosure reporting (being sections 16 to 26 and 33 of the *Securities Amendment Act, 2003*) were deferred to permit full implementation of NI 51-102 *Continuous Disclosure Obligations* (“NI 51-102”) and NI 81-106. Due to delays in finalizing NI 81-106 because of its republication and significant number of comments the ASC has requested that the Alberta government proclaim sections 16 to 26 and 33 of the *Securities Amendment Act, 2003* effective March 30, 2005. The ASC will implement the Interim ASC Rule effective March 29, 2005 in order to “preserve” the current continuous disclosure and proxy related requirements for investment funds that are reporting issuers in Alberta.

The effect of the Interim ASC Rule will be that continuous disclosure and proxy solicitation requirements applicable to investment funds will remain unchanged in Alberta until NI 81-106 comes into force.

The text of the Interim ASC Rule is set out in the Appendix A to this Notice.

References to sections of the *Securities Act* in Part 12 and 13 of the ASC Rules will be amended to refer to the relevant section in the Interim ASC Rule. In addition, references to Parts 12 of the *Securities Act* in Form 27 will also be amended to refer to the relevant provisions in the Interim ASC Rule. See Appendix B for a list of proposed reference changes.

Implementation of NI 81-106

Upon the implementation of NI 81-106 the following ASC Rules and Forms will be repealed:

ASC Rules

- section 143;
- section 144;
- section 145;
- section 146;
- section 147;
- section 148;
- section 150;
- section 151;
- section 152;
- section 153;
- section 154;
- section 155;
- section 156;
- section 157;
- section 158;
- section 159;
- section 160;
- section 162;
- section 163;
- section 164;
- section 165;
- section 166;
- section 167;
- section 168; and
- section 169.

ASC Forms

- Form 27 *Material Change Report Under Section 146(1) of the Securities Act*;
- Form 28 *Annual Filing of Reporting Issuer*; and
- Form 30 *Information Circular*.

Request for Comment

We request your comments on the Interim ASC Rule by December 13, 2004.

How to Provide Your Comments

Please provide your written comments prior to December 13, 2004. If you are not sending your comments by e-mail, please send a diskette containing your comments (in DOS or Windows format, preferably Word). We will be publishing comment letters on our website and therefore cannot maintain confidentiality of submissions.

Please address your submission and any questions to:

Melinda Ando

Legal Counsel

Alberta Securities Commission

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APPENDIX A
TO ALBERTA SECURITIES COMMISSION NOTICE

PROPOSED ASC RULE 81-501
Interim Continuous Disclosure and Proxy Solicitation
Requirements for Investment Funds

PART 1 DEFINITIONS

1.1 Definitions - In this Rule:

- (1) “investment fund” means a mutual fund or a non-redeemable fund;
- (2) “mutual fund” means
 - (a) any issuer
 - (i) where contributions of security holders are pooled for investment,
 - (ii) where security holders do not have day-to-day control over the management and investment decisions of the issuer, whether or not they have the right to be consulted or to give directions, and
 - (iii) whose securities entitle the security holder to receive on demand, or within a specified period after demand, an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets of the issuer;
- (3) “non-redeemable investment fund” means
 - (a) any issuer
 - (i) where contributions of security holders are pooled for investment,
 - (ii) where security holders do not have day-to-day control over the management and investment decisions of the issuer, whether or not they have the right to be consulted or to give directions; and
 - (iii) whose securities do not entitle the security holder to receive on demand, or within a specified period after demand, an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets of the issuer;
- (4) “interim requirements” means the continuous disclosure and proxy solicitation requirements set out in the Schedule to this Rule; and
- (5) “NI 81-106” means proposed National Instrument 81-106 *Investment Fund Continuous Disclosure*.

PART 2 CONTINUOUS DISCLOSURE REQUIREMENTS FOR INVESTMENT FUNDS

2.1 Investment funds must comply with the interim requirements.

PART 3 EFFECTIVE DATE

3.1 This Rule comes into force on March 29, 2005.

3.2 This Rule, insofar as it applies to particular types of continuous disclosure or proxy requirements, will cease to apply to an investment fund when that investment fund becomes subject to the requirements of NI 81-106 governing that type of continuous disclosure or proxy requirement.

**SCHEDULE
TO PROPOSED ASC RULE 81-501**

Part 1: Continuous Disclosure

Disclosure of material changes

- 1.1(1)** Subject to subsection (2), where a material change occurs in the affairs of a reporting issuer, the reporting issuer shall, subject to Alberta securities laws,
- (a) promptly issue and file with the Executive Director a news release authorized by a senior officer disclosing the nature and substance of the material change, and
 - (b) prepare and file with the Executive Director a report of the material change within 10 days from the day on which the change occurs.
- (2)** A reporting issuer may, instead of complying with subsection (1), promptly file on a confidential basis with the Executive Director the report of the material change required under subsection (1) together with written reasons for the non-disclosure if
- (a) in the opinion of the reporting issuer, the disclosure required under subsection (1) would be unduly detrimental to the reporting issuer's affairs, or
 - (b) the material change consists of a decision to implement a change made by the senior management of the reporting issuer and the senior management
 - (i) believes that confirmation of that decision by the board of directors of the reporting issuer is probable, and
 - (ii) has no reason to believe that any person with knowledge of the material change has made use of that knowledge in purchasing or selling securities of the reporting issuer.
- (3)** Where a report has been filed with the Executive Director under subsection (2), the reporting issuer shall advise the Executive Director in writing, within 10 days from the day of filing the initial report and within every 10-day period afterwards, that the reporting issuer believes that the report should continue to remain confidential until
- (a) the material change is generally disclosed in the manner referred to in subsection (1), or
 - (b) if the material change consists of a decision of the type referred to in subsection (2)(b), the decision has been rejected by the board of directors of the reporting issuer.

- (4) Notwithstanding subsections (2) and (3), the reporting issuer shall, not later than 180 days from the day that the material change became known to the reporting issuer or within any shorter period of time that may be determined by the Executive Director,
- (a) issue and file with the Executive Director a news release authorized by a senior officer disclosing the nature and substance of the material change, and
 - (b) prepare and file with the Executive Director a report of the material change.

Interim financial statement

- 1.2 (1)** Every reporting issuer that is a mutual fund shall file with the Executive Director an interim financial statement within 60 days from the day to which it is made up,
- (a) if the mutual fund has not completed its first financial year, for the period commencing with the beginning of that year and ending 6 months before the day on which that year ends but, if the first financial year is less than 6 months in length, no interim financial statement is required to be filed, or
 - (b) if the mutual fund has completed a financial year, for the 6-month period of the current financial year that commenced immediately following the last financial year, including a comparative statement for the corresponding period in the last financial year.
- (2) A financial statement filed under this section shall be made up as required by Alberta securities laws.

Comparative financial statements

- 1.3(1)** Every reporting issuer shall within 140 days from the end of its last financial year file annually with the Executive Director comparative financial statements relating separately to
- (a) the period that commenced on the date of incorporation or organization and ended as of the close of the first financial year or, if the reporting issuer has completed a financial year, the last financial year, as the case may be, and
 - (b) the period covered by the financial year next preceding the last financial year, if any,
- made up and certified as required by Alberta securities laws.
- (2) Every financial statement referred to in subsection (1) shall be accompanied with a report of the auditor of the reporting issuer prepared in accordance with Alberta securities laws.
- (3) In this section “auditor”, when used in relation to a company, includes the auditor of the company or an independent accountant acceptable to the Executive Director.

Delivery of financial statements

1.4 Every financial statement required to be filed pursuant to section 1.2 or 1.3 shall be concurrently sent by the reporting issuer to each holder of its securities, other than debt instruments, whose latest address as shown on the books of the reporting issuer is in Alberta.

Filing of information circular

1.5(1) If the management of a reporting issuer sends an information circular under section 2.3(1)(a), the reporting issuer shall promptly file a copy of the information circular certified in accordance with Alberta securities laws.

(2) If subsection (1) is not applicable, the reporting issuer shall file annually within 140 days from the end of its last financial year a report prepared and certified in accordance with Alberta securities laws.

Part 2: Proxies and Proxy Solicitations**Definitions**

2.1 In this Part,

- (a) “information circular” means an information circular prepared in accordance with Alberta securities laws;
- (b) “solicit” and “solicitation” include
 - (i) any request for a proxy whether or not accompanied with or included in a form of proxy,
 - (ii) any request to execute or not to execute a form of proxy or to revoke a proxy,
 - (iii) the sending or delivery of a form of proxy or other communication to a security holder under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy, or
 - (iv) the sending or delivery of a form of proxy to a security holder under section 2.2,

but do not include

- (v) the sending or delivery of a form of proxy to a security holder in response to an unsolicited request made by the security holder or on the security holder’s behalf, or
- (vi) the performance by any person or company of administrative or professional services on behalf of a person or company soliciting a proxy.

Mandatory solicitations

- 2.2** If the management of a reporting issuer gives or intends to give to holders of its voting securities notice of a meeting, the management shall, concurrently with or prior to giving that notice to those security holders, send to those security holders
- (a) whose latest addresses as shown on the books of the reporting issuer are in Alberta, and
 - (b) who are entitled to notice of the meeting,
- a form of proxy that complies with Alberta securities laws for use at the meeting.

Restrictions on solicitation

- 2.3(1)** Subject to subsection (2), no person or company shall solicit proxies from a holder of voting securities of a reporting issuer where the holder's latest address as shown on the books of the reporting issuer is in Alberta unless,
- (a) in the case of a solicitation by or on behalf of the management of a reporting issuer, an information circular either as an appendix to or as a separate document accompanying the notice of the meeting, is sent to each security holder of the reporting issuer whose proxy is solicited at the security holder's latest address as shown on the books of the reporting issuer, or
 - (b) in the case of a solicitation other than one referred to in clause (a), the person or company making the solicitation, concurrently with or prior to the solicitation sends an information circular to each security holder whose proxy is solicited.
- (2)** Subsection (1) does not apply to
- (a) any solicitation, otherwise than by or on behalf of the management of a reporting issuer, if the total number of security holders whose proxies are solicited is not more than 15 persons or companies,
 - (b) any solicitation by a person or company made under section 104 of the *Securities Act*, or
 - (c) any solicitation by a person or company in respect of securities of which the person or company is the beneficial owner.
- (3)** For the purposes of this section, 2 or more persons or companies who are joint registered owners of one or more securities shall be counted as being one security holder.

Voting - proxies

- 2.4(1)** Notwithstanding that the form of proxy of those proxies present at a meeting specifies how a person or company whose proxy is solicited may vote the securities registered in the name of that person or company, the chair of the meeting may, subject to subsection (2), refuse to conduct a vote by way of ballot on a matter or group of matters.

- (2) At a meeting the vote shall be conducted by ballot if
- (a) a poll is demanded by any security holder present in person or represented by proxy at the meeting, or
 - (b) the proxies
 - (i) require that the securities represented by them be voted against what would otherwise be the decision of the meeting in relation to those matters or group of matters being decided, and
 - (ii) represent more than 5% of all the voting rights attached to all the securities entitled to be voted and represented at the meeting.

**APPENDIX B
TO ALBERTA SECURITIES COMMISSION NOTICE**

ASC Rules;

1. References in Section 143 would be amended as follows:
 - (a). Section 143(1) striking out “section 146(1)(b) of the Act” and substituting “section 1.1(1)(b) of ASC Rule 81-501”;
 - (b). Section 143(2)(a) striking out “section 146(1)(b) of the Act” and substituting “section 1.1(1)(b) of ASC Rule 81-501”;
 - (c). Section 143(2) (a)(i) striking out “section 146(2) of the Act” and substituting “section 1.1(2) of ASC Rule 81-501”;
 - (d). Section 143(2)(b) striking out “section 146(3) of the Act” and substituting “section 1.1(3) of ASC Rule 81-501”; and
 - (e). Section 143(2) striking out “Confidential - Section 146” and substituting “Confidential - Section 1.1 of ASC Rule 81-501.
2. Section 146(1) would be amended by striking out “section 148(1) of the Act” and substituting “section 1.2(1) of ASC Rule 81-501.
3. Section 147 would be amended by striking out “section 148(1) of the Act” and substituting “section 1.2(1) of ASC Rule 81-501.
4. Section 148 would be amended by striking out “section 148 of the Act” and substituting “section 1.2 of ASC Rule 81-501.
5. Section 149 would be amended as follows:
 - (a) Section striking out “Section 148(2) of the Act” and substituting “section 1.2(2) of ASC Rule 81-501”;
 - (b) Section 149(2) striking out “section 148(2) of the Act” and substituting “section 1.2(2) of ASC Rule 81-501.
6. Section 150 would be amended by striking out “section 148(2) of the Act” and substituting “section 1.2(2) of ASC Rule 81-501”.
7. Section 149 would be amended by striking out “section 149 of the Act” and substituting “section 1.3 of ASC Rule 81-501”.

8. Section 160(1) would be amended by striking out “section 149 of the Act” and substituting “section 1.3 of ASC Rule 81-501”.
9. Section 162(1) would be amended by striking out “section 152(2) of the Act” and substituting “section 1.5(2) of ASC Rule 81-501”.
10. Section 163(1) would be amended by striking out “section 156(1) of the Act” and substituting “section 2.3(1) of ASC Rule 81-501”.
11. Section 169 would be amended by striking out “section 152 of the Act” and substituting “section 1.5 of ASC Rule 81-501”.

Forms

Form 27: the references to section 146 of the Act would be amended to section 1.1 of ASC Rule 81-501.