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## Financial statements: to send or not to send

Every Canadian publicly traded issuer is required to file both interim (quarterly) and annual financial statements with regulatory authorities and to make these documents available to its investors.

Until 2001, it was common practice to mail all financial statements to a company's investors to satisfy disclosure requirements. In recent years, regulators have modified the rules so that companies now are required to send financial statements only to investors who specifically request these documents. This change was made because:

- Financial statements can be published electronically on issuer websites or the System for Electronic Document Analysis and Retrieval (SEDAR) much faster than they can be printed and delivered by mail
- Sending financial statements by paper involves financial and environmental costs that are arguably unnecessary, especially given that many investors do not keep these materials

Nonetheless, investors do have the right to receive paper materials if they want. Therefore, issuers must always be aware of their obligations under National Instruments 51-102 or 81-106, which govern the distribution of financial statements to shareholders and trust unit holders, respectively. Both regulations essentially require issuers to ask their investors **annually** whether they wish to receive interim or, for non-registered investors, annual financial statements for the next year.

For registered investors, the Canada Business Corporations Act and the provincial counterparts (except Ontario, which modified the OBCA in July 2007 to match the provisions of NI 51-102) specify that annual financial statements must be sent out unless an investor explicitly declines. Requests to not receive annual financial statements remain effective until the shareholders change their minds.

Usually when issuers send out annual meeting materials, the package includes a financial statement solicitation form. The form requires that investors complete and return the paper form or submit an electronic version of the request form on CIBC Mellon's website. If an issuer does



not solicit financial statement requests, it must send interim and annual financial statements to all registered and non-registered investors.

Over the years, CIBC Mellon has developed a thorough understanding of best practices when it comes to issuers' financial statement obligations. With this knowledge and experience, we have developed various tools to reduce the cost of compliance in areas such as:

- Solicitation of investor responses
- Receipt of investor responses
- Subsequent distribution of interim or annual financial statements

If you are either unfamiliar with the requirements for distribution of financial statements to investors or unclear as to how to go about dealing with your responsibilities under National Instrument 51-102 or 81-106, consult with your CIBC Mellon client service manager. We can ensure that you are in compliance with the instruments, and even explore opportunities to reduce your costs.

By James Hinnecke, director, product management

### **Amendment to DTC FAST rule does little to calm storm**

Early in 2007, the U.S. Securities and Exchange Commission (SEC) invited comments on the Depository Trust Company's (DTC's) proposed rule change for participation in the Fast Automated Securities Transfer (FAST) program. The proposed rule change had stated that U.S.-listed companies (and, effective Jan. 1, 2008, interlisted Canadian companies) and their transfer agents need to participate in FAST to be eligible for the Direct Registration System (DRS). In our August 2007 issue of Inform, [[http://www.cibcmellon.com/Contents/en\\_CA/English/NewsRoom/Publications/Inform/2007/IN200708\\_01.html](http://www.cibcmellon.com/Contents/en_CA/English/NewsRoom/Publications/Inform/2007/IN200708_01.html)] we indicated that the SEC had received a number of comments.

In late February 2008, the SEC released DTC's **amended proposed rule change** ("the amendment") for comment with a March 20, 2008 submission deadline.

Both the Securities Transfer Association of Canada (STAC) and the Securities Transfer Association (STA) believe that the amendment is one-sided – protecting DTC's business interests at the expense of transfer agents, and imposing additional costs and processes while prohibiting the transfer agents from charging the DTC for related fees. Instead, it is anticipated that such fees will be passed through transfer agents to their issuer clients. These costs and processes include the following:

- **Insurance requirements** - The amendment retains the substantial minimum coverage amounts of the previous version, levels that are not justified by DTC with any actual loss history or potential risk. For some agents, the minimum coverage amounts may exceed the value of DTC's securities on their books. While the amendment allows DTC to waive these levels, any such waiver would be at DTC's sole discretion.
- **Physical balance certificate requirements** - The amendment requires transfer agents to maintain and update a physical balance certificate for each FAST position, but it does not allow the transfer agent to charge DTC for its safekeeping. This adds unnecessary and costly work while increasing the chances that the balance certificate could be lost or destroyed. A



book-entry position would provide DTC the same ownership rights without the costs and risks of safekeeping the paper.

- **Audit requirements** - The amendment requires that transfer agents provide an annual report from an external certified public accountant, attesting to the soundness of the transfer agent's controls (in the form of an SSAE-10 or SAS-70 report) relating to FAST. These reports are in addition to the independent accountant's audit of internal controls already required under Rule 17Ad-13 of the Securities Exchange Act of 1934. In the view of STAC, these additional reports are unnecessary and add substantial incremental expenses.
- **Standard of care** - The amendment absolves DTC from liability "for the acts or omissions of FAST Agents or other third parties, unless caused directly by DTC's gross negligence, wilful misconduct, or violation of Federal securities laws for which there is a private right of action." This means that if a broker-dealer or registered shareholder were to suffer a loss caused by an error at DTC in its interactions with a transfer agent, DTC would not be responsible.

As well as adding costs and obligations for transfer agents that solely benefit and protect DTC, the amendment also limits DTC's fee compensation exposure. STA, in its comment letter, strongly argued that it is more appropriate for DTC to pay for its own requirements than to pass them on to transfer agents and, ultimately, to issuers: "Based on the language of the Proposal, the DTC apparently expects transfer agents to provide such services (as well as other enhanced services that the DTC may mandate from time to time in its sole discretion) without compensation. This is clearly not acceptable to transfer agents and would not be allowed in any other commercial relationship. If one commercial party requests another to provide services to it, the service provider may decline to do so unless it receives acceptable compensation. If the DTC refuses to pay transfer agents for services rendered, transfer agents should be entitled to refuse to provide such services without the threat that the DTC could throw them out of FAST (thereby threatening their very existence)." STA continued, "The DTC may argue that transfer agents should simply pass these costs along to issuers, and indirectly their shareholders, but the STA maintains that neither of these parties should have to bear the cost of services provided to DTC. The DTC should not be permitted to require more and more from transfer agents without the discipline of bearing the cost for its demands."

SEC is now considering all comments received. Through its involvement in STAC and STA, CIBC Mellon will continue to monitor ongoing developments on this matter and will provide you with updates as more information becomes available.

By William Speirs, assistant vice president, product management stock transfer

### **Message from the CEO - Understanding our clients' needs**

Dear clients,

In September, you will be receiving a request to complete Group 5's Annual Shareholder Services Benchmarking Study.

The results of this survey will provide us with an assessment of the products we offer, and an evaluation of your overall satisfaction with the quality of service provided to both you and your shareholders.

With the 2007 annual meeting season coming to a close, we are particularly interested to learn your opinions about our services and your overall level of satisfaction. Understanding your needs



and your perception of our products and services is essential to our ability to identify offerings that can support your requirements in the future.

On a related note, CIBC Mellon will participate in the annual CIRI conference in Mont Tremblant, Quebec, from June 15-17. This year's conference is about embracing a changing environment. With the many challenges facing the markets and changes to the regulatory environment [see article "Amendment to DTC FAST rule does little to calm storm" above], ongoing access to meaningful information and dialogue is key.

At CIBC Mellon we know that when the times are challenging, you rely on us to provide you with the tools and resources to facilitate your decision-making process. Please join us at the CIRI conference to learn how we can provide you with appropriate support during times of change.

Thank you in advance for your feedback and we look forward to seeing you at the CIRI conference.

Thomas C. MacMillan, president & chief executive officer at CIBC Mellon

### Take advantage of CIBC Mellon's direct links

To help you and your investors easily access the most frequently used pages on our website, CIBC Mellon provides **direct links** (a hyperlink that is clean of tracking scripts or redirects, or electronic shortcuts) to take you to specific information. Direct links are intuitive and easy to remember; all users can bypass normal website navigation. For example, to access the online services for issuers from CIBC Mellon, you can begin at [www.cibcmellon.com/issuer](http://www.cibcmellon.com/issuer) - this direct link takes you to the homepage of our issuer website.

By including direct links to relevant sections of our site in communications to your investors, you give them a quick and easy way to find information they need to know. You can include them in print communications such as annual reports or embed the links in the investor relations section of your own website. Table 1 provides a list of the most commonly used links, in both English and French.

**Table 1. CIBC Mellon's most commonly used links (English/French)**

Website direct link	Function
<a href="http://www.cibcmellon.com/investor">www.cibcmellon.com/investor</a> <a href="http://www.cibcmellon.com/investisseur">www.cibcmellon.com/investisseur</a>	Directs investors to the homepage of CIBC Mellon's investor services centre
<a href="http://www.cibcmellon.com/investorinquiry">www.cibcmellon.com/investorinquiry</a> <a href="http://www.cibcmellon.com/demandedesinvestisseurs">www.cibcmellon.com/demandedesinvestisseurs</a>	Directs investors to CIBC Mellon's secure investor inquiry form
<a href="http://www.cibcmellon.com/electronicdelivery">www.cibcmellon.com/electronicdelivery</a> <a href="http://www.cibcmellon.com/transmissionelectronique">www.cibcmellon.com/transmissionelectronique</a>	Directs investors to consent forms for electronic delivery of investor materials
<a href="http://www.cibcmellon.com/financialstatements">www.cibcmellon.com/financialstatements</a> <a href="http://www.cibcmellon.com/etatsfinanciers">www.cibcmellon.com/etatsfinanciers</a>	Directs investors to the sign-up page for interim and financial statements (Note: Investors must also provide a "corporation number" to prove they are entitled to receive these materials.)
<a href="http://www.cibcmellon.com/answerlineregistration">www.cibcmellon.com/answerlineregistration</a> <a href="http://www.cibcmellon.com/inscriptionlignereponse">www.cibcmellon.com/inscriptionlignereponse</a>	Directs users to the registration page for CIBC Mellon's web-based AnswerLine service



When presenting these links to your investors, please keep the following in mind:

- Provide links in lowercase characters.
- Review the links you plan to use with your CIBC Mellon client service manager in advance of publication. Confirming this information ensures that links are up-to-date and accurate, which can help to avoid reprinting costs and investor confusion.
- When creating electronic links on your website, you can substitute user-friendly terminology to link directly to our site (e.g., [Sign up for electronic communication](http://www.cibcmellon.com/electronicdelivery) [http://www.cibcmellon.com/electronicdelivery] or [Contact our transfer agent](http://www.cibcmellon.com/investorinquiry) [http://www.cibcmellon.com/investorinquiry]).

#### **Use of electronic mail**

In addition to presenting direct links on your website, please advise your investors that all communications from investors to CIBC Mellon should be sent through our secure [Investor inquiry link](http://www.cibcmellon.com/investorinquiry) [www.cibcmellon.com/investorinquiry], rather than to an e-mail address such as [inquiries@cibcmellon.com](mailto:inquiries@cibcmellon.com) or [generalinquiries@cibcmellon.com](mailto:generalinquiries@cibcmellon.com). In addition to ensuring investor confidentiality and security, the forms provided at this secure link prompt investors to supply all necessary information so that we can answer their questions quickly and effectively.

Should you as an issuer wish to correspond securely with CIBC Mellon, please use our secure [Issuer inquiry link](https://www.cibcmellon.com/Contents/en_CA/English/IssuerCentre/IssuerOnlineInquiry.html) [https://www.cibcmellon.com/Contents/en\_CA/English/IssuerCentre/IssuerOnlineInquiry.html].

Our direct links are yet another way that CIBC Mellon strives to make life easier for you and your investors.

By James Hinnecke, director, product management

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