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Canadian Securities Administrators

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**Notice and Request for Comment**

**Changes to Proposed National Instrument 51-102 *Continuous Disclosure Obligations*,**
**Form 51-102F1, Form 51-102F2, Form 51-102F3,**
**Form 51-102F4, Form 51-102F5, Form 51-102F6, and**
**Companion Policy 51-102CP *Continuous Disclosure Obligations***
**(Second Publication)**

**Proposed Amendments to National Instrument 44-101 *Short Form Prospectus Distributions***

**Proposed Revocation of National Instrument 62-102 *Disclosure of Outstanding Share Data***

**Proposed Amendments to National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues***

**and**

**Proposed Rescission of**
**National Policy 31 *Change of Auditor of a Reporting Issuer* and**
**National Policy 51 *Changes in the Ending Date of a Financial Year and in Reporting Status***

**Introduction**

We, the Canadian Securities Administrators (CSA), are publishing for comment revised versions of proposed National Instrument 51-102 *Continuous Disclosure Obligations* (the Rule), Form 51-102F1 *Annual Information Form*, Form 51-102F2 *Management's Discussion & Analysis*, Form 51-102F3 *Material Change Report*, Form 51-102F4 *Business Acquisition Report*, Form 51-102F5 *Information Circular*, Form 51-102F6 *Statement of Executive Compensation* (collectively, the Forms), and Companion Policy 51-102CP *Continuous Disclosure Obligations* (the Policy). The Rule and the Forms are together referred to as the Instrument.

The Instrument is expected to be adopted as a rule in each of Alberta, Manitoba, Ontario and Nova Scotia, as a commission regulation in Saskatchewan and Québec, and as a policy in all other jurisdictions represented by the CSA. British Columbia is publishing the Instrument for comment under its rule-making process but has not yet determined whether it will adopt the Instrument, in whole or in part. Please refer to the BC Notice published concurrently in British Columbia on this point.

We are also publishing for comment a revised version of related National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (the Foreign Issuer Rule), together with an associated companion policy. See Notice and Request for Comment on Changes to Proposed National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* for information on the Foreign Issuer Rule.

**Substance and Purpose**
The Instrument will:

?? harmonize continuous disclosure (CD) requirements among Canadian jurisdictions;
?? replace most existing local CD requirements;
?? enhance the consistency of disclosure in the primary and secondary securities markets; and
?? facilitate capital-raising initiatives such as an integrated disclosure system (IDS).

The Rule sets out the obligations of reporting issuers, other than investment funds, with respect to financial statements, annual information forms (AIFs), management's discussion and analysis (MD&A), material change reporting, information circulars, proxies and proxy solicitation, restricted share disclosure, and certain other CD-related matters. It prescribes the Forms, most of which are derived from existing forms but with some enhancements.

The requirements in the Instrument will not apply before 2004. As such, the filing deadlines for financial statements, MD&A and AIFs in the Instrument will not be mandatory for financial years beginning before January 1, 2004.

The Rule does not address non-issuer filing obligations, such as insider reporting, except in the case of persons who solicit proxies from securityholders of reporting issuers. The Rule also does not address CD obligations for investment funds. We have previously published proposed National Instrument 81-106 *Investment Fund Continuous Disclosure* for comment. That instrument will prescribe the CD obligations of investment funds.

**Purpose and Summary of the Companion Policy**
The purpose of the Policy is to assist users in understanding and applying the Rule and to explain how certain provisions of the Rule will be interpreted or applied. It contains discussion, explanations and examples primarily relating to:

?? filing obligations under the Rule;
?? the use of plain language in documents filed under the Rule;
?? the Foreign Issuer Rule and National Instrument 81-106 *Investment Fund Continuous Disclosure* and their implications for reporting issuers;
?? the filing requirements for financial statements under the Rule;
?? disclosure of financial information in extracts and non-GAAP earnings measures;
?? filing of supporting documents with an AIF;
?? requirements for MD&A disclosure;

?? electronic delivery of documents;
?? requirements for business acquisition reports;
?? filing of material documents; and
?? reliance on a pre-existing exemption.

**Background**
On June 21, 2002 we published for comment the first version of the Instrument and Policy (the 2002 Proposal). For additional background information on the 2002 Proposal, as well as a detailed summary of its contents, please refer to the notice that was published with those versions.

We recently published for comment proposed National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (NI 52-107) and a related companion policy. The portions of the 2002 Proposal that dealt with generally accepted accounting principles (GAAP) and generally accepted auditing standards (GAAS) have been removed, and inserted into NI 52-107. See Notice and Request for Comment on Proposed National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* for information on NI 52-107.

**Summary of Written Comments Received by the CSA**
During the comment period, we received 34 submissions on the 2002 Proposal. A summary of those comments together with our responses, except for the comments and responses relating to matters now included in NI 52-107, is contained in Appendix B to this notice. The comments and our responses to the GAAP and GAAS requirements in the 2002 Proposal are set out as an appendix to Notice and Request for Comment on NI 52-107.

After reviewing the comments received and further considering the Instrument and Policy, we are proposing a number of amendments to the 2002 Proposal.

**Summary of Changes to the Proposed Instrument**
See Appendix A for a description of the material changes made to the 2002 Proposal.

**Anticipated Costs and Benefits**
We believe that the considerations set out in the notice accompanying the 2002 Proposal for comment that justify any incremental costs of the Instrument are still valid. We also believe that the revisions to the Instrument should reduce its potential incremental cost, given the streamlining of the venture issuer test, and the reduced requirements for business acquisition reports (BARs).

**Related Amendments**

***National Amendments***
Proposed amendments to National Instrument 44-101 *Short Form Prospectus Distributions* (NI 44-101) to replace Forms 44-101F1 *AIF* and 44-101F2 *MD&A* are set out in Appendix C to this Notice. Additional changes to NI 44-101 may be proposed later as part of the CSA's general review of the short form and long for prospectus systems.

We have made changes to the related amendments since we published the 2002 Proposal. In particular:

?? National Policy No. 3 *Unacceptable Auditors* will not be rescinded;
?? any amendment or rescission of National Policy No. 27 *Canadian Generally Accepted Accounting Principles* and National Policy 50 *Reservations in an Auditor's Report* will be done in connection with the implementation of NI 52-107
?? we propose to rescind National Policy 51 *Changes in the Ending Date of a Financial Year and in Reporting Status* as this subject is now covered in the Rule;
?? our original proposed amendments to Multilateral Instrument 45-102 *Resale of Securities* (MI 45-102) will not be required if the revised version of MI 45-102, published for comment in January 2003 by certain members of the CSA, is implemented; if it is not implemented we will proceed with our originally proposed amendments.

We still intend to rescind National Policy No. 31 *Change of Auditor of a Reporting Issuer* and revoke National Instrument 62-102 *Disclosure of Outstanding Share Data* (NI 62-102), as we previously indicated.

A proposed amendment to National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues* to replace a reference to NI 62-102 is set out in Appendix D to this Notice.

***Local Amendments***

We propose to amend or repeal elements of local securities legislation and securities directions, in conjunction with implementation of the Instrument. The provincial and territorial securities regulatory authorities may publish, or may have published, these local changes or proposed changes separately in their local jurisdictions.

**Authority for the Rule**

The following provisions of *The Securities Act*, 1988 (the "Act") provide the Saskatchewan Financial Services Commission (the "Commission") with authority to adopt the proposed Rule.

Subsection 154(1)(r) authorizes the Commission to prescribe requirements in respect of the preparation and dissemination and other use, by reporting issuers, of documents providing for continuous disclosure that are in addition to the requirements under the Act, including requirements in respect of an annual report, an annual information form and supplemental analysis of financial statements.

Subsection 154(1)(t) authorizes the Commission to require issuers or other persons and companies to comply, in whole or in part, with Part XIV (Continuous Disclosure).

Subsection 154(1)(s) authorizes the Commission to prescribe requirements in respect of financial accounting, reporting and auditing for the purposes of the Act, the regulations and the rules.

Subsection 154(1)(y) authorizes the Commission to prescribe requirements for the validity and solicitation of proxies.

Subsection 154(1)(aa) authorizes the Commission to prescribe requirements in respect of reverse take-overs including requirements for disclosure that are substantially equivalent to that provided by a prospectus.

Subsection 154(1)(ii) authorizes the Commission to make rules requiring or respecting the media, format, preparation, form, content, execution, certification, dissemination and other use, filing and review of all documents required under or governed by the Act, the regulations or the rules and all documents determined by the regulations or the rules to be ancillary to the documents, including financial statements, proxies and information circulars.

Subsection 154(1)(kk) authorizes the Commission to vary the Act to permit or require the use of an electronic or computer-based system for the filing, delivery or deposit of:

i. documents or information required under or governed by the Act, the regulations or rules, and

ii. documents determined by the regulations or rules to be ancillary to documents required under or governed by the Act, the regulations or rules.

Subsection 154(1)(oo) authorizes the Commission to exempt any person, company, trade or security from all or any provision of the Act or the regulations, including prescribing any terms or limitations on an exemption and requiring compliance with those terms or limitations.

**Unpublished Materials**

In proposing the Rule, we have not relied on any significant unpublished study, report, or other written materials.

**Possible Changes to Instrument**

The Rule does not require issuers to have their interim financial statements reviewed by their auditors, although the Rule does require disclosure where a review has not been done. We intend to keep this matter under review. Specifically, we will consider whether by January 1, 2006, we should require for some, or all, reporting issuers a level of auditor involvement with interim financial statements that is transparent to the public through a report from the auditor that is filed with the Commissions.

The definition of "venture issuer" in the Rule includes a list of exchanges that an issuer may not be listed on to be a venture issuer. We are considering expanding the list to

include all "national securities exchanges" registered as such under section 6 of the 1934 Act in the United States.

**Request for Comments**

We welcome your comments on the changes to, or this version of, the Instrument, the Policy, and related amendments. In addition to any general comments you may have, we also invite comments on the following specific questions.

1. *Filing documents* - Part 11 of the Rule requires reporting issuers to file copies of any materials they send to their securityholders. Part 12 of the Rule requires reporting issuers to file copies of contracts that create or materially affect the rights of their securityholders.

    a) We propose to limit these requirements to instances in which securities of the class are held by more than 50 securityholders. This is to prevent issuers from having to file documents that relate to isolated securityholders, such as a bank holding security in connection with a business loan, if the bank is the only holder of that class of security. Is this the correct approach, or should copies of all materials sent to securityholders and all agreements that affect the rights of securityholders, regardless of the number of securityholders, be required to be filed?

    b) Should we expand the requirement in Part 12 to require filing of all contracts that are material to the issuer? These contracts are required to be filed with an annual report on Form 10-K, in the US.

2. *Business acquisition disclosure* - The Rule would require the filing of a BAR, in addition to any material change report filed in respect of the acquisition, within 75 days after completion of the significant acquisition. This requirement is meant to achieve greater consistency with the prospectus rules implemented in 2000, and to provide investors in the secondary market, on a relatively timely basis, the type of information currently required for primary market prospectus investors. The requirement is based on meeting certain defined thresholds of significance. It is patterned after a requirement of US federal securities law.

    a) Is this approach appropriate? Would it be more appropriate, for some or all classes of reporting issuer, to recast the BAR requirement as a subset of the material change reporting requirement, governed by the same trigger - the occurrence of a material change?

    b) If the BAR requirement is recast as a subset of the material change reporting requirement, should the current thresholds of significance be retained? If so, should they demonstrate materiality in the absence of evidence to the contrary, or merely be guidelines to materiality?

3. *Disclosure of auditor review of interim financial statements* - Subsection 4.3(3) and section 6.5 of the Rule require that if an auditor has not performed a review of the interim financial statements, a reporting issuer must disclose that fact. These sections

also require that if the auditor performed a review and expressed a qualified or adverse communication or denied any assurance, then the reporting issuer must include a written review report from the auditor accompanying the interim financial statements. Section 3.3 of the Policy elaborates that no positive statement is required when an auditor performed a review and provided an unqualified communication.

This approach was designed to accommodate the requirement in Section 7050 of the Handbook that, if an auditor's interim review is referred to in any document containing the interim financial statements, the auditor should issue a written interim review report and request that it be included in the document. We understand that the CICA Assurance Standards Board currently has a project to amend Section 7050 and this requirement in Section 7050 may be changed. We also understand that the reporting provisions in Section 7050 relating to a scope limitation may be changed; if those provisions of Section 7050 were changed, items (i) and (ii) of subsection 4.3(3)(b) may have to be modified.

a) Do you agree with the approach in subsection 4.3(3) and section 6.5 of the Rule? Alternatively, if a review was performed and an unqualified report was provided, should a reporting issuer be required to disclose the fact that a review has been performed? If you recommend the latter, what are the benefits of that disclosure?

b) Where a review was performed and an unqualified report was provided, if a reporting issuer discloses that a review has been performed, should the review report from the auditor accompany the financial statements?

4. *Added MD&A disclosure* - In the MD&A, we propose to require all issuers to discuss off-balance sheet arrangements, and to analyze changes in their accounting policies.

a) Would it be helpful to include a definition of "off-balance sheet arrangements" to the MD&A? What would you expect the definition would capture?

b) The requirement to discuss and analyze changes in accounting policies applies to any accounting policies a reporting issuer expects to adopt subsequent to the date of its financial statement, and to any accounting policies that have been initially adopted during the financial period. We are considering whether this disclosure is appropriate for venture issuers. Should venture issuers be exempted from the requirement to discuss either changes in their accounting policies, or the adoption of an initial accounting policy, or both, and why?

Please submit your comments on the Instrument, the Policy and the related amendments described above, other than the proposed amendments to NI 44-101, in writing on or before August 22, 2003. Comments on the proposed amendments to NI 44-101 must be submitted in writing on or before September 18, 2003. If you are not sending your comments by email, a diskette containing the submissions (in Windows format, Word) should also be forwarded.

Address your submission to all of the CSA member commissions, as follows:

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission – Securities Division
Manitoba Securities Commission
Ontario Securities Commission
Office of the Administrator, New Brunswick
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Newfoundland and Labrador Securities Commission
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Registrar of Securities, Nunavut

Deliver your comments **only** to the addresses that follow. Your comments will be forwarded to the remaining CSA member jurisdictions.

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We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period.

**Questions**
Please refer your questions to any of:

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The text of the proposed instrument/policy follows or can be found elsewhere on a CSA member website.

June 23, 2003

## Appendix A

## Summary of Changes to the Proposed Instrument

**Title**

The Rule

Form 51-102F1 Annual Information Form

Form 51-102F2 Management's Discussion & Analysis

Form 51-102F3 Material Change Report

Form 51-102F4 Business Acquisition Report

Form 51-102F5 Information Circular

Form 51-102F6 Statement of Executive Compensation

The Policy

***The Rule***

*Part 1 Definitions*

? Subsection 1.1(1) of the Rule has been deleted. The Policy provides that, where terms from securities legislation are used in the Rule, the meanings given to the terms in securities legislation are substantially similar to the definitions in the Rule. Where that is not the case, terms in the Rule have been changed to be distinct from the terms used in securities legislation. For example, the definition of "insider" has been replaced with "informed person".

? Subsection 1.1(2) (now section 1.1) has been revised to eliminate certain defined terms that were not used, or are no longer used, in the Instrument. For example, "aggregate market value" and "development stage issuer" have been deleted.

? In response to comments received, we have expanded the definition of *AIF* to include a Form 10-KSB filed under the 1934 Act. Although the Form 10-KSB does not require identical disclosure to our AIF, we believe its requirements are adequate as an alternative form of AIF for those issuers entitled to use the Form 10-KSB in the United States.

? We have added definitions of "reverse takeover", "reverse takeover acquiree" and "reverse takeover acquirer" that are based on the definitions in the CICA Handbook. These terms are used in various places in the Rule and in the Forms.

? We have expanded the definition of "interim period" and added definitions of "new financial year", "old financial year" and "transition year". These changes were required as a result of the addition of change in year-end provisions to Part 4 of the Rule.

? The 2002 Proposal distinguished issuers in different ways for different purposes, including filing deadlines, the requirement to file an AIF, calculating significance of business acquisitions, and certain exemptions from executive compensation disclosure. The Rule has been amended to define venture issuers for most purposes based on the listing of their securities. We believe that industry would benefit from having one threshold for continuous disclosure purposes that is transparent, certain, and easy to apply.

Venture issuers are defined as issuers whose securities are not listed or quoted on certain senior exchanges in Canada or the United States, and are not listed or quoted anywhere outside Canada or the United States. We defined venture issuers by where they are not listed or quoted to ensure that issuers whose securities are involuntarily quoted, such as on the pink sheets in the United States, would not be disqualified from the exemptions available to venture issuers through no action of their own. Also, the CSA are aware of two markets being formed whose issuers would be appropriately treated as venture issuers – specifically, the Bulletin Board Exchange (BBX) and the Canadian Trading and Quotation System (CNQ). The proposed definition will be flexible enough to apply to issuers traded on those markets, without the need to amend the Rule. In addition

to the four purposes why issuers were distinguished in the 2002 Proposal listed above, we have added to the Rule exemptions for venture issuers from certain MD&A requirements (including critical accounting estimates) and an exemption from the new requirement to file a report disclosing the results of a vote by securityholders (as discussed below).

*Part 4 Financial Statements*

? Part 4 has been amended to include provisions relating to changes in year-end and changes in corporate structure. Given the effect a change of year-end or a change in corporate structure has on an issuer's CD obligations, we agreed with commenters that said it would be preferable to deal with these matters in this instrument. These provisions will replace National Policy 51 *Changes in the Ending Date of a Financial Year and in Reporting Status*.

? The Rule has been amended to require issuers to disclose in their interim financial statements or their interim MD&A if their auditors have not reviewed the interim financial statements. Also, if a review was done but the auditor has expressed a qualified or adverse communication, or denied any assurance, the report must accompany the financial statements. The Rule does not mandate auditor review of interim financial statements, however, we believe that, if an issuer does not have its interim financial statements reviewed by its auditors, this should be disclosed so readers can take it into account.

? The Rule has been amended to provide that SEC issuers must restate and re-file any interim financial statements they filed during their current financial year that have been prepared in accordance with Canadian GAAP, if they change to US GAAP during the financial year. SEC issuers will be permitted under NI 52-107 to prepare their financial statements using US GAAP. However, if they switch to US GAAP in the middle of a financial year, we believe they should have to restate and re-file their previous interim financial statements so that all financial statements filed for a financial year will be based on the same GAAP.

? The Rule now requires board approval of both interim and annual financial statements. Some securities regulatory authorities that did not previously have rule-making authority to require approval have recently obtained that authority. We agreed with commenters that suggested that the distinction between review and approval was unclear, so we have replaced the concept of board review with board approval.

? We have added a requirement for the audit committee, if any, to review interim financial statements. Previously, the audit committee was only required to review the annual financial statements. We added this requirement because of the importance of the involvement of the audit committee throughout a reporting issuer's financial year, not just when the annual financial statements are filed.

? The sections of Parts 4 and 8 relating to GAAP and GAAS requirements for both reporting issuers and acquired businesses have been moved to NI 52-107. The Policy now refers issuers to the requirements in NI 52-107. We decided that, instead of duplicating acceptable accounting principles and auditing standards in the Rule, the Foreign Rule and

the proposed national long form prospectus instrument, National Instrument 41-102 *General Prospectus Requirements*, which has not yet been published for comment, it would be beneficial to issuers and their advisors to set out all of the requirements for accounting principles, auditing standards and reporting currency in one national instrument.

? Section 4.9 of the 2002 Proposal which required disclosure of balance sheet line items, has been deleted, as it was determined that GAAP adequately addressed disclosure of balance sheet line items.

? The requirement for issuers to disclose outstanding share data at each reporting date has been moved to MD&A. Issuers will no longer have the option of disclosing this information only in their financial statements. We believe disclosure in the MD&A will make the information more current than if it was in the financial statements.

? The requirement for a development stage issuer to provide a breakdown of material components of certain of its expenses in its financial statements has been revised. Venture issuers that have not had significant revenue from operations for the past two years will have to provide this disclosure in either their financial statements or in their MD&A. We believe the detailed disclosure is relevant to investors in the venture issuer market. Without the detailed breakdown, investors may have only aggregated information in the financial statements, which tends to be less meaningful and descriptive.

? The requirement to deliver financial statements only on request has been maintained. However, the way that requirement is implemented has been revised. Reporting issuers are now required to ask their registered and beneficial securityholders each year if they wish to receive a copy of the financial statements and MD&A. Issuers must use the procedures set out in National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* (NI 54-101) to communicate with their beneficial securityholders. Issuers do not have to send a request form to securityholders who have already indicated under NI 54-101 that they do not wish to receive copies of the materials. This change is in response to comments received that the onus should be on the reporting issuer to determine if its securityholders want copies of the financial statements and MD&A. It was suggested that securityholders should not have to determine when and how they can request copies of the documents.

We further modified the delivery requirement to provide that, if a securityholder requests either financial statements or MD&A, both must be delivered. This responds in part to comments we received that the two sets of documents be combined. We agreed that, given their close relationship, they should be filed and delivered at the same time. We do not think it is necessary to require that they be combined into a single document.

? Section 4.13 in the 2002 Proposal relating to the filing of financial statements after first becoming a reporting issuer, has been revised and is now section 4.7. The 2002 Proposal required issuers to begin filing financial statements starting with the first filing deadline that ended after the issuer became a reporting issuer. In addition, issuers were

exempted from this requirement if they had already filed the required financial statements with a regulator or securities regulatory authority. Commenters pointed out this requirement could create a "gap" in a reporting issuer's continuous disclosure, if a filing deadline occurred before the issuer became reporting, but after the document was filed that made the issuer reporting. The new section 4.7 requires a reporting issuer to file financial statements for any period subsequent to the period for which financial statements were included in a document the issuer filed in connection with becoming a reporting issuer. For example, if an issuer first becomes reporting as a result of an arrangement, it must file financial statements starting with the next interim or annual period after the period covered by the most recent financial statements in the information circular that was filed in connection with the arrangement.

? Requirements in the Rule relating to a change of auditor have been modified in a few areas. The term "disagreement" was expanded to include a difference of opinion that arises during an auditor's review of a reporting issuer's interim financial statements. Also, the Rule now includes a definition of "resignation" which includes notification from an auditor of their decision to not stand for reappointment as auditor of the reporting issuer.

*Part 5 Annual Information Form*

? Venture issuers are now exempt from having to file an AIF. The test for the exemption is no longer based on market value. As previously discussed, we have decided to apply the same venture issuer test for several purposes in the Rule for transparency and certainty, rather than using different tests for various purposes.

*Part 6 MD&A*

? The requirement to file MD&A has been revised to clarify that it is a separate requirement, not dependent on the requirement to file financial statements.

? As previously discussed, the requirement for certain issuers to provide a breakdown of material components of certain of their expenses has been added to this Part. This requirement now applies to venture issuers that have not had any significant revenues from operations in either of their last two financial years, and requires the additional disclosure in either their financial statements or in their MD&A. We believe this detailed disclosure is relevant to investors in the venture issuer market. For such issuers, aggregated information in the financial statements may not provide meaningful information to investors.

? The requirement for issuers to disclose outstanding share data has changed from being required in the financial statements, to being required disclosure in the MD&A, whether or not such information is included in their financial statements. We believe this information is more suited to the MD&A, rather than being incorporated into the financial statements, as it will make the information more current than if it was in the financial statements only.

Also, the requirement has been clarified to provide that, if the reporting issuer cannot determine the exact number of securities issuable on the conversion of outstanding

securities, the reporting issuer must provide alternative disclosure to give investors sufficient information for them to calculate an approximate diluted number.

? The Rule now requires board approval of interim and annual MD&A. Some securities regulatory authorities that did not previously have rule-making authority to require approval have recently obtained that authority. We agreed with commenters that suggested that the distinction between review and approval was unclear, so we have replaced the concept of board review with board approval.

? We have added a requirement for the audit committee, if any, to review MD&A. Previously, the board of directors was permitted to delegate its obligation to review the annual and interim MD&A to the audit committee. Now, the MD&A must be reviewed by the audit committee, if any, and approved by the board of directors. We added this requirement because of the importance of the involvement of the audit committee throughout a reporting issuer's financial year.

? The requirement to deliver MD&A has been revised to be consistent with the requirement to deliver financial statements, as described above.

? The Rule has been amended to require issuers to disclose in their MD&A if their auditors have not reviewed the interim financial statements, if that disclosure is not included in the interim financial statements. The Rule does not mandate auditor review of interim financial statements, however, we believe that, if an issuer does not have its interim financial statements reviewed by its auditors, this fact should be disclosed so readers can take it into account.

*Part 7 Material Change Reports*

? In the 2002 Proposal, an issuer was permitted to file a confidential material change report based on its opinion that disclosure would be unduly detrimental to the issuer's interest. The Rule has been amended to clarify that this opinion must be arrived at in a reasonable manner.

? A new requirement has been added for an issuer to promptly disclose a material change after a confidential material change report is filed if the issuer becomes aware of trading with knowledge of the material change.

*Part 8 Business Acquisition Report*

? Part 8 has been revised to remove the requirement to disclose significant dispositions. The disclosure requirements now apply only to significant acquisitions, as GAAP ensures adequate disclosure of dispositions will be included in the financial statements.

? An exemption from the BAR requirement has been added if:
    - ? an information circular concerning the acquisition has been filed;
    - ? the information circular contains the information required under section 14.2 of Form 51-102F5;

- ? the date of the acquisition is within 9 months of the date of the information circular; and
- ? there has been no material change in the terms of the significant acquisition as disclosed in the circular.

We agreed with commenters that, where the BAR information has already been provided in an information circular, the BAR is redundant.

? Part 8 has been revised to permit issuers to recalculate the significance tests based on more recent financial statements than their annual financial statements. This change acknowledges that issuers may outgrow the initial significance of an acquisition.

? Part 8 has been revised to require issuers to test "step-by-step" acquisitions on an aggregated basis for increments acquired since an issuer's most recent annual financial statements. This will prevent the unintended effect of issuers not being required to file a BAR where their acquisition takes place in a number of separate stages. An exemption has been added from this requirement, if the acquired business has been consolidated in the issuer's most recent annual financial statements that have been filed.

? The requirement to include audited financial statements of an acquired business or businesses in the BAR has been streamlined. Venture issuers must test the significance of an acquisition at the 40% significance level only, and must file one year of audited annual financial statements. Issuers that are not venture issuers must test significance at the 20% and the 40% levels. If the 40% threshold is exceeded, two years of audited annual financial statements must be filed. If the 40% threshold is not met, but the 20% threshold is, the issuer must provide one year of audited annual financial statements. These changes were made in response to comments received that the proposed 20%, 40% and 50% thresholds were too complicated, and the financial statement filing requirement too onerous. The new 20% and 40% thresholds are more streamlined, and the removal of the third year of audited financial statements makes the requirement less onerous for issuers.

? As previously discussed under Part 4 Financial Statements, the portions of Part 8 relating to GAAP and GAAS requirements and reporting currency for acquired businesses have been deleted. NI 52-107 applies to all financial statements under the Rule, including financial statements of an acquired business.

*Part 9 Proxy Solicitation and Information Circulars*

? We clarified that the proxy solicitation requirements apply to solicitations of registered holders of voting securities. National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* applies to the requirements to send forms of proxy and information circulars to beneficial owners.

*Part 11 Additional Filing Requirements*

? The requirement in section 11.1 for an issuer to file a copy of any document that it sends to its securityholders has been restricted so that it only applies to documents sent to more than 50% of the holders of a class of securities held by more than 50 securityholders.

? Part 11 has been amended to require issuers to file a notice if the issuer becomes a venture issuer, or ceases to be a venture issuer. This will give notice of which filing obligations the reporting issuer must comply with.

? A requirement has been added to Part 11 that issuers that are not venture issuers file a report that discloses the results of a vote held at a meeting of securityholders. This addition was made in response to a comment that issuers should be required to promptly disclose voting results following a meeting. We agreed that this is important disclosure.

? Reporting issuers are now required under Part 11 to file copies of any news releases regarding their results of operations or financial condition. We believe that, if an issuer releases financial information in a news release, that information should form part of the issuer's CD record on SEDAR.

*Part 12 Filing of Material Documents*

? This requirement has been revised so it only applies to securities where the class of security is held by more than 50 securityholders. This is to prevent issuers from having to file documents that relate to isolated securityholders, such as when a bank holds a security in connection with a business loan, where the bank is the only holder of that class of security. See *Request for Comments.*

? The documents that are required to be filed have been more clearly specified and include: articles of incorporation, by-laws, shareholder agreements, shareholder rights plans and contracts that materially affect the rights of securityholders.

*Part 13 Exemptions*

? Part 13 has been amended to add exemptions from the CD requirements for exchangeable share issuers. This exemption extends to relief from insider reporting requirements for insiders of the exchangeable share issuers, who are not also insiders of the parent company. We agreed with commenters who suggested it is usually the CD record of the parent company, not the exchangeable share issuer, that is relevant for the holders of exchangeable securities. Exchangeable share issuers will be exempted from the CD requirements provided they instead file and deliver copies of their parent's disclosure documents.

*Part 14 Effective Date and Transition*

? The transition provisions and effective date reflect that the Rule will not be in force until 2004.

***Form 51-102F1 Annual Information Form***

? The AIF was revised to add certain disclosure obligations that are currently in the prospectus form. In particular, the AIF now requires disclosure of the follow matters:

- ? the addresses of the issuer's head and registered office
- ? the stage of development of principal products or services

- a description of production and services; leases or mortgages; specialized skill and knowledge; and economic dependence
- financial data from the financial statements in total and on a per-share and diluted per-share basis
- the capital structure and material attributes of each class of authorized security, including any constraints on the ownership of securities
- ratings from any ratings organizations
- trading price and volume of securities
- prior sales of securities during the most recently completed financial year
- escrowed securities
- promoters and the nature and amount of value received by the promoter from the issuer
- legal proceedings
- interest of management and others in material transactions
- transfer agents and registrars
- material contracts not made in the ordinary course of business
- experts responsible for opinions in the AIF and their interests in the issuer

We believe these additions are important disclosure that should be available to investors on a regular annual basis, not just to new investors when an issuer is doing a public offering. This change also reflects the possibility that a future integrated disclosure system may require that the AIF be a comprehensive disclosure document.

? The date of the AIF has been clarified, and a requirement added for the AIF to be filed within 10 days of the date. This will ensure that, when filed, the AIF is an accurate and up-to-date reflection of the issuer's business. Without this requirement, there was a risk that the AIF may not reflect changes that occur in the issuer's business between the date of the AIF and its filing. This could have led to the AIF being misleading by the time it was filed.

? References to disclosure of significant dispositions has been deleted, to be consistent with the changes to the Rule discussed previously under Part 8 of the Rule.

? The AIF form now includes a requirement to describe any contract that the reporting issuer's business is substantially dependent on. These agreements may not be "out of the ordinary course of business", and so may not be contracts disclosed under the "Material Contracts" section. However, these contracts are often vital to the issuer's operations, and are relevant information for investors to have.

? Reporting issuers will now be required to disclose their social and environmental policies when they describe their business.

? The disclosure of risk factors has been clarified to give examples of the types of risks that should be disclosed. This responds to comments we received that suggested further guidance in this regard should be provided.

? Disclosure of directors' and executive officers' bankruptcies, penalties and sanctions has been expanded to require disclosure if the person was a director or executive officer of a issuer:

- ? within a year of the issuer becoming bankrupt, and
- ? when the event occurred that led to a penalty or sanction being imposed against the issuer.

The CSA have found that directors and executive officers often resign prior to a bankruptcy, or a penalty or sanction being imposed, to avoid this disclosure. If that person was involved in managing the company while the company was heading toward bankruptcy, or when the event occurred that led to a penalty or sanction being imposed, this is relevant information for an investor. The director or executive officer should not be able to avoid having his or her involvement disclosed by a timely resignation.

? The requirement for issuers to disclose how securityholders may request copies of the financial statements and MD&A has been removed. This requirement is no longer necessary, as issuers will be required to send the request form discussed above to their securityholders.

***Form 51-102F2 Management's Discussion & Analysis***

? The MD&A Form has been amended to reflect changes to Part 6 of the Rule, including disclosure for venture issuers that have not had significant revenue from operations.

? The MD&A has been revised to incorporate certain aspects of the CICA's Canadian Performance Reporting Board report entitled "Management's Discussion and Analysis: Guidance on Preparation and Disclosure", as recommended by some of the commenters. For example, the general instruction to the MD&A now explains that the MD&A should describe the issuer "through the eyes of management", and that part of the purpose of the MD&A is to give investors an opportunity to assess trends in the issuer's business operations.

? An instruction has been added directing issuers to prepare the MD&A using plain language principles. To be useful to investors, MD&A must be understandable. One of the best ways to make the MD&A understandable is for it to be in plain language.

? The MD&A is now required to be dated, so that readers will know when the disclosure in the MD&A was prepared. The MD&A must also be current such that it will not be misleading when filed.

? The MD&A has been revised to provide additional guidance for resource issuers when they are discussing the results of their operations.

? The discussion of off-balance sheet transactions has been revised to clarify what information is required, by separating it out of the discussion of capital resources, and placing it in its own section in the MD&A.

? The requirements relating to transactions with related parties have been simplified. Disclosure that would only duplicate GAAP, without supplementing or enhancing the disclosure in the financial statements, has been removed.

? The MD&A has been expanded to require more detailed disclosure of critical accounting estimates. The topic of accounting estimates was previously referred to in the MD&A under the heading "Critical Accounting Policies". The requirement is not applicable to venture issuers. These changes are consistent with requirements in the United States.

? Venture issuers have been exempted in the MD&A from the requirement to provide information on contractual obligations. This recognizes the disproportionate burden of providing this information for venture issuers, and is consistent with the disclosure requirement in the United States, where small businesses are also exempted.

? The requirement to discuss changes in accounting policies has been revised to require issuers to also discuss the initial adoption of accounting policies during the year.

***Form 51-102F3 Material Change Report***

No significant changes were made to the Material Change Report.

***Form 51-102F4 Business Acquisition Report***

? Section 2.2 has been amended to clarify what the date of acquisition is for accounting purposes. This will make the Form more understandable for non-accountant readers.

? Section 2.4, which required disclosure of "material obligations" has been deleted. We agreed with commenters that felt it was unclear when this section could apply, and that it did not add any meaningful disclosure to the BAR.

? Item 3 has been clarified to require information other than financial statements, as required in Part 8 of the Rule, to be included in the BAR. Oil and gas issuers are required in Part 8 to provide operating statements rather than financial statements.

***Form 51-102F5 Information Circular***

? The Form has been amended to permit incorporation by reference of previously filed documents. This will prevent the circular from becoming unnecessarily cumbersome due to the volume, and reduce duplicative reporting for issuers.

? Issuers must disclose the bankruptcies of proposed directors, and any penalties, sanctions, or bankruptcies of companies that the proposed directors were directors or executive officers of. We believe this is relevant information for securityholders to have when they are deciding how to vote on the election of directors.

? Disclosure is now required in table format of aggregate indebtedness to the issuer of directors and executive officers. This supplements the disclosure of indebtedness under securities purchase programs and other programs. Item 10 *Indebtedness of Directors and Executive Officers* in the Form has been revised to clarify what is required to be disclosed. The content of Item 10 has not been substantively revised. The amendments are intended to make the Form more understandable for reporting issuers, and the required information more reader-friendly for securityholders.

? In the section relating to disclosure of restructuring transactions that involve issuing or exchanging securities, the requirement to include prospectus form disclosure has been amended to:

- ? delete the qualifier that disclosure be provided "in sufficient detail to enable reasonable securityholders to form a reasoned judgment" - the standard is simply prospectus-form disclosure;
- ? expand the requirement to include prospectus level disclosure to significant acquisitions where securities are being issued and an information circular delivered;
- ? to exempt Capital Pool Companies (CPCs) from the requirement to include prospectus level disclosure where they comply with the policies and forms of the TSX Venture Exchange (TSXV).

These changes were largely made in response to comments received. In particular, we agreed with commenters that said that the qualifier in the prospectus-level disclosure made the required level of disclosure unclear. We also agreed that CPCs that comply with the policies and forms of the TSXV should not also have to comply with item 14.2 of the Form. This reflects the active role of the TSXV in establishing disclosure standards for Qualifying Transactions.

? The requirement for issuers to disclose how securityholders may request copies of the financial statements and MD&A has been removed. This requirement is no longer necessary, as issuers will be required to send the request form discussed above to their securityholders.

***Form 51-102F6 Executive Compensation Form***

? References in the Executive Compensation Form to "restricted shares" have been changed to "restricted stock". This avoids confusion with the term defined in the Rule, and parallels the terminology used for similar purposes by the SEC. "Restricted stock" is defined in section 3870 of the Handbook as shares that are subject to restrictions on resale. This would apply to shares that are subject to escrow or other similar resale restrictions.

? We now use plain language in the Executive Compensation Form.

***The Policy***

? The Policy has been amended to reflect the changes to the Rule described above. In particular:

- ? the portions of the Policy that dealt with GAAP and GAAS requirements have been deleted, as they are now contained in the companion policy to NI 52-107 - instead, the Policy now directs reporting issuers to NI 52-107;
- ? guidance has been added relating to the definitions of "reverse takeover" and "disagreement" in the Rule;
- ? the discussion of auditor review of interim financial statements now includes a discussion of the requirement to disclose if a review has not been done;
- ? guidance has been added, including an appendix, to assist issuers in applying the change in year-end provisions in the Rule;
- ? guidance has been added for venture issuers without significant revenue on how to comply with the requirement to provide a breakdown of expenses; and
- ? issuers are instructed where to send a notice of a restructuring transaction.

? The Policy clarifies that the Rule does not apply to investment funds.

? The Policy now contains a discussion that the outstanding share data required in the MD&A must be disclosed as of the latest practicable date. The Policy states that the latest practicable date should be current, as close as possible to the date of filing of the MD&A. This ensures that the information in the MD&A is as current as possible, but gives the issuer sufficient time to finalize the MD&A, have it approved by the board of directors, and print it, without having to continuously update the outstanding share data.

? The Policy has been revised to provide further guidance on how to apply the significance tests, including the optional significance tests, for business acquisitions in the Rule. The Policy also now includes information on how to apply the significance test in the case of step-by-step acquisitions.

? Reporting issuers that intend to publish earnings measures other than those prescribed by GAAP are now referred to CSA Staff Notice 52-303.

## Appendix B

## Summary of Comments and CSA Responses

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## Summary of Comments and CSA Responses

### Part I Background

On June 21, 2002 the CSA published for comment National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102 or the Rule) and National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (NI 71-102). The comment period expired on September 19, 2002. The CSA received submissions from the 34 commenters identified in Schedule 1.

The CSA have considered the comments received and thank all commenters for providing their comments.

The questions contained in the CSA Notice to NI 51-102 (the original Notice) and the comments received in response to them are summarized below. The item numbers below correspond to the question numbers in the original Notice. Below the comments that respond to specific questions in the original Notice, we have summarized numerous other comments on proposed NI 51-102.

The section references in this summary are to the sections in NI 51-102 as originally published. The section numbers in square parentheses are the corresponding section references in the current draft of NI 51-102.

The comments and responses relating to NI 71-102 are set out as an appendix to the Notice and Request for Comment on NI 71-102. The comments and responses relating to matters now included in proposed National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (NI 52-107) are set out as an appendix to the Notice and Request for Comment on NI 52-107.

### Part II National Instrument 51-102 *Continuous Disclosure Obligations*

**Comments in response to questions in original Notice**

**1. Criteria for determining financial statement filing deadlines**

***Question:*** *The Rule uses TSE non-exempt company criteria to identify issuers subject to shortened filing deadlines for annual and interim financial statements and MD&A. Those criteria include having net tangible assets of at least $7.5 million, or in the case of oil and gas companies, proved developed reserves of at least $7.5 million. These criteria mean that the more stringent 90 and 45 day filing deadlines will apply to Canada's most senior issuers, many of which are currently subject to the same filing deadlines in the United States. They are different from the market value threshold that is proposed to trigger the AIF filing requirement in the Rule, in recognition of the fact that an issuer's market value is not always an appropriate way to assess its ability to prepare financial disclosure within shorter times.*

*(a) Is it appropriate to use TSE non-exempt company criteria to determine deadlines for filing financial statements? If not, why not, and what other criteria should we consider?*

One commenter agreed that the CSA should use criteria that are already in common use and that are administered closely by a regulatory body, such as the TSX non-exempt company criteria, TSX initial listing criteria or other widely recognized criteria. However, the commenter considered that only issuers that are actually classified by TSX as non-exempt, not those that merely satisfy the criteria, should be subject to the shortened deadlines.

Seven commenters felt that the criteria are not appropriate for the following reasons:

- The TSX assigns "exempt"/"non-exempt" status at the time of listing and does not review the status annually so an issuer retains that status unless it is suspended and delisted.
- Over 320 exempt issuers have market capitalizations below $75 million, which could suggest they don't have the necessary resources to meet the compressed deadlines.
- It is not clear how non-TSX listed issuers would apply the test.
- It would be impossible for non-TSX listed issuers to determine whether they are "non-exempt", since the TSX exercises some discretion in deciding whether or not to award the designation.
- The Rule would be simpler and easier to use if there were no cross-references to other legislation, rules or policies.
- Many issuers that are TSE-exempt would not generally be regarded as senior issuers and may encounter difficulties in meeting the earlier deadlines.
- It is more appropriate to use a market value test. Six of the commenters suggested using the $75 million market value test from National Instrument 44-101 *Short Form Prospectus Distributions* (NI 44-101).

*Response: The CSA agree with using criteria that are already in common use and that the "non-exempt" company criteria is not the most appropriate. The Rule has been amended to determine deadlines for filing financial statements, and for other purposes discussed in the Notice and Request for Comment this appendix is appended to (the current Notice), based on whether or not the issuer is a "venture issuer". The Rule defines a venture issuer as an issuer that is not listed on the Toronto Stock Exchange (TSX), the New York Stock Exchange, the American Stock Exchange, the Pacific Exchange, the NASDAQ National Market, the NASDAQ SmallCap Market, or a stock exchange outside of Canada and the United States. This test will provide transparency to the market, as well as certainty to issuers and investors.*

***Question:*** *(b) Is your view affected by the fact that some issuers that are eligible to use the short form prospectus regime in NI 44-101 would have 120 days to file annual financial statements?*

Two commenters stated that an issuer eligible to use NI 44-101 should not have 120 days to file annual financial statements.

*Response: Given the proposed definition of "venture issuer", we would generally not expect that an issuer would meet the definition and also be eligible to use NI 44-101. As*

*the instances of this occurring would be rare, we do not believe it overrides the benefit of using the same threshold for all continuous disclosure purposes.*

***Question:*** *(c) Is your view affected by the fact that the SEC has proposed imposing even shorter filing deadlines than the ones we have proposed, for issuers that have a public float of US$75 million and are therefore eligible to use the US short form prospectus regime? Why?*

Several commenters supported moving to a market value or public float test for financial statement filing deadlines. See the response to question 1(d) below. Several commenters also expressed concern about the SEC's shortened filing deadlines. See the responses to question 3 below.

***Question:*** *(d) Is the $75 million criteria that is used in the Rule as one of the triggers of the AIF requirement, and in NI 44-101 for short form prospectus eligibility, appropriate?*

Seven commenters expressed support for using this threshold, assuming a tiered system is put in place. One commenter would supplement the $75 million market value test with the "small business" limits of $10 million in assets and revenue.

*Response: The CSA believe that industry would benefit from having a threshold for continuous disclosure purposes that is transparent, certain and easy to apply. Accordingly, the venture issuer test has been applied in most instances in which the Rule has differing requirements depending on the category of issuer.*

Refer to "Criteria for Identifying Small Issuers" and "Approach to Regulation of Small Issuers" below for more comments on the thresholds for determining financial statement and other disclosure filing deadlines.

**2. Elimination of requirement to deliver financial statements**

***Question:*** *As noted [in the original Notice] under "Summary of Significant Changes to Existing CD Requirements", the Rule will eliminate mandatory delivery of financial statements and MD&A to all securityholders. Issuers will only be obligated to deliver copies of these documents to securityholders that request them. Issuers will have to disclose annually in their AIFs and information circulars that the financial statements and MD&A are available without charge and how to obtain them. Do you agree with this approach? Why or why not? What approach would you suggest?*

Thirteen commenters supported this approach.

One commenter said that the CSA should not eliminate mandatory delivery of financial statements and MD&A for the following reasons:

- ?? it would result in significant job losses in the financial printing sector;
- ?? it will not protect the environment since securityholders will print the documents on home or office printers; and
- ?? it would replace a proven communications vehicle with a "passive" electronic source.

Three commenters said that reporting issuers should be required to ask securityholders if and how they want to receive disclosure documents and what types of documents they want to receive. One of those commenters said that, at a minimum, securityholders should be asked if and how they want to receive financial statements and MD&A, and, in the absence of a response, delivery should continue until the investor requests a change in the delivery process. Another one of those commenters suggested that the request should be made as part of the annual proxy process, and the requirements should contemplate modern investor communication technology.

*Response: The CSA agree that mandatory delivery of financial statements to all securityholders, whether or not they wish to receive them, is inappropriate. At the same time, we agree with the suggestion that reporting issuers should consult their securityholders as to their wishes. For that reason, we are maintaining our proposal to require delivery only on request, but requiring that reporting issuers provide their securityholders with a request form each year. This approach reflects advancements in technology and communication (including SEDAR) since the introduction of the requirement to deliver. It will also eliminate the unnecessary paper delivery of information, by requiring delivery only to securityholders that indicate they want paper copies.*

One commenter said that if the CSA eliminate mandatory delivery of financial statements, there may no longer be any obligation to deliver financial statements to beneficial owners of securities. This is contrary to the policy objective of National Instrument 54-101 *Communication with Beneficial Owners of Securities* (NI 54-101).

*Response: We have amended the Rule to specify that financial statements and MD&A must be delivered to both registered and beneficial owners of securities, upon request.*

One commenter said that the CSA should adopt the "access equals delivery" approach suggested by the Ontario Securities Commission's Five-Year Review Committee.

*Response: The CSA believe that the requirement in the Rule to only deliver financial statements and MD&A on request is an adequate substitute for the access equals delivery proposal. Shareholders will likely only request copies of the financial statements and MD&A if they do not have convenient Internet access or are unable or unwilling to download or print disclosure from the Internet. It would not be appropriate to apply an "access equals delivery" approach to those shareholders.*

Two commenters suggested that information about availability of documents should be communicated more frequently than annually, and in more materials than just AIFs and information circulars. Quarterly materials, issuer websites and new releases about financial results should include this information too. One commenter suggested that issuers should be required to disclose that disclosure documents are available electronically on SEDAR or at corporate websites.

*Response: The Rule has been revised to require issuers to ask their securityholders annually if they wish to receive copies of the financial statements and MD&A. Since*

*issuers will be contacting their securityholders regarding the availability of documents, it is not necessary to require further disclosure in any of the issuer's disclosure documents.*

One commenter said that the Companion Policy to NI 54-101 should clarify the requirements for the annual shareholders' meetings, to reconcile with the new filing deadlines, the requirements for board review, and the elimination of mandatory delivery.

*Response: We have amended the Rule to clarify that delivery of financial statements or MD&A must be by the later of the filing deadline for the financial statements or MD&A requested, and 10 days after the receipt of the request. The CSA do not believe clarification is necessary in NI 54-101. We will monitor the system, once implemented, to determine if clarification would be helpful.*

See the additional comments set out under the heading "4.12 Delivery of Financial Statements" below.

**3. SEC developments**

***Question:*** *Under the heading "Recent SEC Developments" [in the original Notice], we identify SEC Releases that propose changes to corporate disclosure requirements for SEC registrants. Should we change the Rule to reflect the proposed SEC requirements?*

**General comments**

Four commenters responded in the negative, stating that the CSA places too much importance on SEC rules. The commenters felt the CSA should decide what is appropriate for our unique Canadian markets, and especially for small issuers.

One commenter suggested that the Rule should be changed to reflect recent SEC developments in the area of disclosure of social and environmental policies and risks.

*Response: The CSA agree that not all of the disclosure requirement changes made by the SEC are appropriate in Canada, particularly for venture issuers. The CSA have considered the changes and have adopted certain ones that they feel will enhance Canada's disclosure regime (see "Summary of Changes to the Proposed Instrument" in the current Notice). Other changes may be considered separately as part of the CSA's continuing review of the US Sarbanes-Oxley Act.*

**Filing deadlines for financial statements**

One commenter felt the CSA should adopt the SEC deadlines. Three commenters suggested that, if the CSA makes this change, there should a transition period like the SEC transition period.

One commenter noted that the final SEC rule for acceleration of periodic report filing dates applies only to US domestic reporting companies, and Canadian SEC registrants are excluded. Because the Rule will result in consistency between the reporting time frames of Canadian SEC and non-SEC issuers, no further reduction of reporting time frames is necessary.

One commenter said that the CSA should not reduce filing deadlines to 60 and 35 days without doing a cost benefit analysis. Nine commenters said that the CSA should not adopt the shorter filing deadlines for some or all of the following reasons:

- ?? Shorter deadlines would create undue pressures on auditors and issuers.
- ?? Small issuers would be affected more than large issuers.
- ?? The shorter filing deadlines may compromise the reliability and accuracy of the information released into the marketplace.
- ?? Shorter deadlines would make it very difficult for many senior issuers and their auditors to cope with changes to Canadian and US accounting standards.

*Response: The CSA have decided not to adopt the SEC's new 60 and 35 day deadlines for annual and interim financial statements. See the specific comments on sections 4.2 and 4.5 below.*

**Current report requirements**

With respect to the SEC proposal to require enhanced disclosure of loans to directors and officers, one commenter felt the CSA should coordinate its approach with other ongoing initiatives to harmonize Canadian and US requirements. There should be exemptions from the disclosure requirement for directors and officers of lending institutions.

*Response: The proposals in SEC Release No. 33-8090 regarding enhanced disclosure of arrangements with directors and officers and trading by those persons have been overtaken by the Sarbanes-Oxley Act, which contains a ban on loans and loan guarantees for officers and directors. The CSA have not adopted a similar ban. Instead, the information circular form (Form 51-102F5) continues to require disclosure of indebtedness of directors and executive officers, other than routine indebtedness. The definition of "routine indebtedness" will result in disclosure not being required for loans made by lending institutions, where the terms are consistent with loans made on substantially the same terms as made to persons other than full-time employees.*

**Critical accounting policies disclosure**

One commenter suggested that there is room to improve critical accounting estimates disclosure. Typical disclosure in financial statements under Handbook 1508 has become rather "boilerplate". MD&A provides a better medium for a description of the complexities entailed in making critical estimates and a discussion of their effect on the financial results.

One commenter said that SEC Release 33-8098, which requires detailed disclosure of critical accounting estimates, duplicates many existing GAAP disclosure requirements. The CSA should not duplicate GAAP requirements.

One commenter supported a requirement in the Rule to discuss critical accounting policies in the MD&A, as it allows the investors to assess the degree of judgement made in management's choice or use of accounting policies. The commenter also supported changing the Rule to reflect the proposed SEC changes, as the commenter believes the SEC changes will enhance risk assessment by requiring disclosure about critical

accounting estimates and the initial adoption of accounting policies that have material effect.

*Response: The CSA agree that the MD&A should disclose information about critical accounting estimates and the adoption of accounting policies. We disagree that GAAP requirements would be "overlapped" by providing this disclosure, as the information will provide a narrative supplement to the disclosure in the financial statements. We have revised the critical accounting policies disclosure in the MD&A from the 2002 Proposal to require disclosure of information about critical accounting estimates.*

See the comments on MD&A below as well.

**4. Combination of financial statement and MD&A filings**

***Question**: We are considering amending the Rule so that financial statements and MD&A would have to be filed at the same time, as one filing. MD&A contains important discussion of financial statement disclosure, and is already subject to the same filing deadlines as financial statements. Should we combine financial statement and MD&A filing requirements?*

Four commenters indicated we should combine financial statement and MD&A filing requirements. It was unclear whether these commenters would prefer to combine financial statements and MD&A into one document or simply have them filed at the same time. Six commenters said that financial statements and MD&A should be filed at the same time.

Two commenters said that, since MD&A can take longer to prepare than financial statements, combining the filings may delay the release or filing of financial information. All that should matter is that both documents are filed within the deadlines. One of the commenters noted that, if combined filings delay the filing of audited and approved annual financial statements, it exacerbates the problem of companies releasing fourth quarter financial information long before the annual statements are approved by the board and filed. It would also create the perception that the financial statements are incomplete without MD&A.

One commenter suggested that, if a securityholder requests either financial statements or MD&A, the issuer should have to deliver both.

*Response: The CSA agree with the majority of the commenters who support filing the financial statements and MD&A at the same time. The benefit of having the discussion of the financial statements filed concurrently with the filing of the statements outweighs the concern that completing the MD&A may delay the filing of the financial statements. However the CSA have decided not to combine them into one document, as having them filed at the same time provides the same benefit. Because of the relationship between the financial statements and MD&A, the CSA have also revised the Rule to require the delivery of both the financial statements and MD&A when a shareholder requests delivery of one of them.*

**5. Disclosure of restructuring transactions in information circulars**

***Question****: Item 13.2 [14.2] of Form 51-102F5 Information Circular requires an issuer to provide disclosure regarding restructuring transactions.*

One commenter suggested that the information required under item 13.2 [14.2] of 51-102F5 is important information, but that the form should be more specific regarding the nature of the disclosure required. For example, it should specify if the financial statements need to be audited, and clarify which prospectus items need to be included in the disclosure.

*Response: We have removed the qualifier in item 13.2 [14.2] that information from the prospectus form must be included "to the extent necessary to enable a reasonable securityholder to form a reasoned judgment". The form now makes clear that prospectus disclosure is the standard, so it is unnecessary to repeat the specific prospectus requirements in Form 51-102F5.*

***Question:*** *(a) Does the definition of "restructuring transaction" in item 13.2 [14.2] require disclosure about the appropriate classes of transactions? If not, what kinds of transactions should be added or excluded, and why?*

Three commenters said that the definition is acceptable, although one commenter said that arrangements and reorganizations done for tax reasons that do not affect the equity held by current shareholders should be carved out.

*Response: We have not provided such an exemption. When a public company is reorganized for tax purposes, securityholders may need complete disclosure to decide if the tax advantages outweigh any disadvantages of the reorganization.*

***Question:*** *(b) Should item 13.2 [14.2] be expanded so that it applies to significant acquisitions of assets in exchange for securities?*

One commenter responded in the affirmative and one in the negative.

*Response: The CSA believe that, when securities are being issued in connection with a significant acquisition and an information circular is provided in connection with the transaction, disclosure of significant acquisitions is appropriate, and we have expanded item 13.2 [14.2] to address this.*

***Question:*** *(c) Does item 13.2 [14.2] require disclosure about the appropriate entities for any transaction that is subject to this item? If not, which entities should be added or excluded, and why?*

Two commenters answered in the affirmative.

***Question:*** *(d) The requirement in item 13.2 [14.2] to include disclosure prescribed by the prospectus form is qualified by the words "to the extent necessary to allow a reasonable securityholder to form a reasoned investment decision". Is this clear enough? If not, how could we make the requirement clearer?*

One commenter said that "full, true and plain" disclosure should remain the standard.

Four commenters said that the prospectus form financial statement disclosure requirement should not be qualified by the words "to the extent necessary to allow a reasonable securityholder to form a reasoned investment decision" - the qualification as to financial disclosure will soon lead to an unwarranted disparity in the level of financial statement disclosure in these circulars, which would represent a step backwards from the existing requirements in OSC Rule 54-501.

Three commenters suggested that it is not clear how a preparer of an information circular would identify the disclosure that is not required. Given this lack of clarity, the qualifier should be removed from the final Rule.

*Response: The form has been amended to delete the qualifier "to the extent necessary to allow a reasonable securityholder to form a reasoned investment decision". As a result, the prospectus standard of full, true and plain disclosure applies in item 13.2 [14.2].*

***Question**: (e) Would it be preferable to prescribe a separate form of information circular for certain restructuring transactions (such as reverse takeovers) similar to new CDNX Form 3B Information Required in an Information Circular for a Qualifying Transaction?*

Two commenters said that the CSA should use a prescribed form for disclosure of these transactions. One suggested that the treatment would be similar to SEC Form F-4 or S-4.

One commenter said that no separate forms are required.

*Response: The CSA have decided not to prescribe separate forms for different transactions. The form of information circular is designed to encompass disclosure that would be relevant for a wide variety of restructuring transactions, with the disclosure tailored to the circumstances of the issuer and the transaction. By retaining a form with broad application, we avoid creating a number of parallel forms that issuers must consult and compare before determining which to use.*

***Question:** (f) Should item 13.2 [14.2] specify which disclosure items in the relevant prospectus forms must be given for certain transactions (such as reverse takeovers or issuances of exchangeable shares)?*

Two commenters commented that item 13.2 [14.2] of Form 51-102F5 eliminates the current flexibility that exists for small issuers listed on the TSX Venture Exchange (TSXV), by removing exchange discretion in respect of the disclosure to be included in information circulars, particularly in the context of capital pool companies (CPCs) effecting Qualifying Transactions as well as exchange issuers effecting changes of business or reverse takeovers (RTOs). The commenters suggested that CPCs subject to the CPC Policy and issuers subject to Policy 5.2 of the TSXV Policy Manual should be exempted from the requirements of item 13.2 [14.2] of Form 51-102F5 provided they comply with applicable Exchange Policies and the requisite forms in accordance with TSXV requirements.

*Response: We have revised the Rule to exempt CPCs effecting Qualifying Transactions from item 13.2 [14.2] of Form 51-102F5, provided that they comply with applicable TSXV policies and requirements relating to the Qualifying Transaction. We made this change in recognition of the active role of the TSXV in establishing disclosure standards for Qualifying Transactions. The CSA disagree that exchange issuers completing RTOs and changes of business should be exempt from item 13.2 [14.2], as the TSXV does not necessarily impose the same prospectus-form disclosure requirement or review procedures.*

**6. Significant acquisitions disclosure**

***Question:*** *The proposed significance tests for business acquisitions in the Rule were the subject of extensive comments when the prospectus rules were being reformulated. The CSA analyzed the comments and finalized the tests in the prospectus rules. Several commenters said that significant acquisition disclosure should be required in CD, not just in prospectuses. Many commenters expressed the view that Canadian acquisition disclosure rules should parallel the SEC Rules. The significance tests proposed in the Rule are very similar to the SEC Rules and are consistent with the significance tests in the prospectus rules.*

*The proposed Rule requires one, two or three years of financial statements depending on whether an acquisition is significant at a 20%, 40% or 50% threshold. Would it be better or worse to have only one threshold for determining significance with a requirement for two years of financial statements when the threshold is met? If you support this approach, what would you suggest as an appropriate threshold and why?*

Three commenters agreed with the tests proposed in the Rule, as they are consistent with current prospectus requirements.

One commenter suggested that, unless and until the SEC rules and the prospectus rules are changed, it would support leaving the thresholds unchanged.

Another commenter said that it makes intuitive sense for the extent of financial statement disclosure, in terms of financial years presented, to vary directly with the significance of the acquisition. The commenter pointed out that SEC issuers, including MJDS issuers, may benefit the most from having the disclosure requirements as consistent as possible with SEC requirements. The commenter suggested that if a 30% threshold and a requirement for audited comparative annual financial statements of the acquiree would make it simpler for the small issuers, the commenter would have no objection.

One commenter suggested that there should only be one threshold and that there should be an exemption available for small issuers to allow them to have audited numbers for one year only.

One commenter commented that the 20% threshold is too low in a continuous disclosure environment.

One commenter recommended that financial and non-financial information about business acquisitions that have a material effect on the acquirer's financial condition and future performance, including earnings or cash flows, should be disclosed and made available in a timely manner. However, that commenter was generally opposed to quantitative thresholds and suggested that both quantitative and qualitative factors should be considered in determining whether an acquisition is significant or not.

Four commenters suggested that the BAR requirement is too complex and should not apply to small business acquisitions below the 50% significance level. Three of those commenters also suggested that only one year of financial statements should be required for small business acquisitions.

*Response: The CSA agree with the commenters who suggested that the proposed thresholds may be too low for venture issuers. The Rule has been amended to permit venture issuers to test significance at the 40% threshold only and to provide one year of audited annual financial statements for acquisitions that exceed that significance level. All other issuers must test significance at the 20% and 40% thresholds, and provide one year and two years of audited annual financial statements, respectively, for acquisitions that exceed those significance levels. The CSA will consider whether similar changes would be appropriate for the prospectus rules. SEC issuers may still satisfy the BAR requirements in the Rule by filing a copy of their US business acquisition reports, as the US requirements are more onerous. The CSA have retained only the quantitative thresholds, and not added qualitative factors, because of the certainty and transparency they provide.*

See the additional comments on Part 8 of the Rule below.

**7. Requirement to file material documents**

***Question:*** *The Rule requires issuers to file constating documents and other instruments that materially affect the rights of securityholders or create a security. Would an acceptable alternative to filing be to require issuers to describe these documents in their AIFs or information circulars, rather than file them?*

Two commenters said that the documents themselves should be filed.

One commenter suggested that issuers should make their constating documents public, but that requiring issuers to file the other suggested documents may not be efficient. If the document does not constitute a "material change", it would be more appropriate to require a description of the general nature of the document in the AIF. Further, the commenter felt that the nature of documents that must be disclosed is unclear. The Rule should be more specific in this regard. At a minimum, the Rule or Companion Policy (the Policy) should clarify that ordinary commercial agreements are not generally required to be filed.

Three commenters said that a description of these documents in an AIF or information circular is sufficient.

One commenter suggested that there is no benefit to requiring the documents to be filed. They are available from other sources, and other continuous disclosure documents contain relevant information about them in a more easily accessible format. The commenter stated that, if copies of documents must be filed, there should be an exemption for banks because the Bank Act is the charter of a bank.

*Response: The CSA agree with the commenters who support the filing of constating documents and other instruments that materially affect the rights of securityholders or create a security. Investors will then have access to the specific terms of the documents. Describing the documents could involve more work for the issuer than simply filing copies of the documents. The Rule has been revised to clarify that only documents creating or materially affecting the rights of securityholders of widely held classes of securities must be filed (see "Request for Comment" in the current Notice), and that agreements entered into the ordinary course of business do not have to be filed.*

**8. Criteria for identifying small issuers**

***Question:*** *The proposed Rule distinguishes small issuers in different ways, for different purposes, as follows:*

- ?? *Issuers that are not "senior issuers" (that are TSX non-exempt) have more time to file their financial statements, MD&A and AIFs than senior issuers (see Criteria for Determining Financial Statement Filing Deadlines for more details);*
- ?? *Issuers that are "small businesses", based on a similar definition to that in the prospectus rules (less than $10 million for each of assets and revenue) are exempt from certain significant acquisition disclosure requirements;*
- ?? *Issuers that are small businesses (less than $10 million for each of assets and revenue) and have a market value not exceeding $75 million are not required to file an AIF;*
- ?? *For the purpose of Form 51-102F6 Statement of Executive Compensation, an "exempt issuer" must have revenue and a market value of less than $25 million.*

*Are these ways of identifying small issuers appropriate? Is there one definition that would be appropriate for all purposes? Why or why not?*

Seven commenters said that there should be only one dividing line between large and small issuers. Two of the commenters said that a test based on the small business concept (based on assets and revenue) that includes some minimum market capitalization test would be appropriate for all purposes under the Rule.

Three commenters said that the dividing line should be based on a market capitalization test and that the $75 million market value threshold would be appropriate.

One commenter suggested that the small business definition should be based on either the "senior issuer" definition or the dividing line between the TSX and the TSXV.

Two commenters commented that the dividing line should be more than just an arbitrary number and should be based on a demographic of existing reporting issuers.

One commenter suggested that the CSA consider implementing a system similar to the US where there are separate rules for smaller issuers in Regulation S-B.

One commenter requested that the rationale for using different tests for different purposes be clarified.

Two commenters said that a tiered system of financial disclosure, or different treatment for issuers of different sizes, is not appropriate. Investors need to have relevant and timely information about all public companies.

*Response: The CSA agree with the commenters who felt there should be only one dividing line. We also believe it important that the dividing line be transparent and easy to understand and apply. The Rule has been amended to define a "venture issuer" as an issuer that is not listed on certain specified senior exchanges or on a foreign exchange. The venture issuer test applies for the purposes of financial statement filing deadlines, calculation of significant acquisitions, an exemption from having to file an AIF, and certain exemptions from executive compensation disclosure.*

**9. Approach to regulation of small issuers**

***Question**: The Rule includes some exemptions or alternative means of satisfying certain continuous disclosure requirements for small businesses, as summarized immediately above. The anticipated costs and benefits of the Rule were discussed above [in the original Notice]. We invite comment on whether the cost-benefit analysis might differ for issuers of different sizes. We invite commenters to identify any provisions for which this might be the case, and to provide suggestions for disclosure alternatives that might be more appropriate for specific categories of issuer.*

Nine commenters supported having concessions, exemptions or less detailed requirements for small issuers. Six commenters noted that the costs of complying with securities regulation are disproportionate for small issuers.

Four commenters stated that the proposals do not sufficiently address the differences between small issuers and more senior issuers, including the fact that small issuers are higher risk, are generally under intense cost pressure and lack the resources to satisfy continuous disclosure obligations internally.

Three commenters suggested that a small issuer listed on the TSXV should be exempt from:

- the BAR requirements including Form 51-102F4; and
- item 13.2 [14.2] of Form 51-102F5, which calls for prospectus type disclosure of restructuring transactions in information circulars;

provided that it complies with TSXV policies and requirements.

Two commenters said that a tiered system of financial disclosure, or different treatment for issuers of different sizes, is not appropriate. Investors need to have relevant and timely information about all public companies.

*Response: The CSA agree with the majority of the commenters, who consider it appropriate to make distinctions between categories of reporting issuers. The CSA recognize the financial and other resource constraints that venture issuers may be particularly subject to. We believe that the provisions of the Rule applicable specifically to venture issuers, coupled with the new definition of that class, will go far to address their particular needs and constraints without jeopardizing the interests of investors. The Rule provides different treatment for venture issuers, including longer financial statement filing deadlines, an exemption from the requirement to file an AIF, no requirement to prepare a BAR below the 40% significance threshold, and exemptions from executive compensation disclosure requirements in some circumstances. The CSA believe that, even with these exemptions, investors will still have access to timely information about all public companies. The CSA are satisfied that the exemptions for venture issuers balance the needs of investors with the challenges facing those issuers.*

**10. Cost benefit analysis**

***Question**: We believe that the costs and other restrictions on the activities of reporting issuers that will result from the Rule are proportionate to the goal of timely, accurate and efficient disclosure of information about reporting issuers. For more discussion of this, see the section above entitled Summary of Rule and Anticipated Costs and Benefits [in the original Notice]. We are interested in hearing the views of various market participants on any aspect of the costs and benefits of the Rule and we invite your comments specifically on this matter.*

One commenter noted the market demands complete and accurate financial information to be filed as soon as it can possibly be prepared. The proposed rules will help to close the gap between Canadian and US continuous disclosure requirements, but will still fall short of market expectations. The commenter felt the improvements are absolutely necessary and more stringent requirements are inevitable in the foreseeable future.

One commenter said that current and potential shareholders and their financial advisers should best be able to advise as to the proper balance of costs and benefits associated with proposals. Benefits of a new requirement are not easily identified or quantified. Benefits are not always immediate and are therefore often discounted or not considered in the analysis. There are hidden costs of not providing certain corporate and/or financial information.

Seven commenters indicated the CSA should do more research to establish that the benefits of the Rule justify the additional compliance costs. They suggested that the Rule does not adequately recognize the disproportionate cost of compliance to small issuers.

One commenter said that the costs of enhanced disclosure are not justified if issuers do not get immediate access to the markets as contemplated by the British Columbia Securities Commission's Continuous Market Access proposal.

*Response: The CSA share the objective of balancing compliance burdens with investor needs, and recognize the particular concerns of venture issuers. For that reason, we are including in the Rule a number of exemptions from, or variations of, requirements for*

*venture issuers, all of which we believe will temper costs of compliance for those issuers while still ensuring that their investors receive timely information important to them.*

*The CSA are also considering ways to facilitate the cost-effective raising of new capital. We anticipate that the enhanced continuous disclosure provided under the Rule can, in the future, serve as the basis for an "integrated disclosure system" that streamlines securities offering procedures.*

**11. Credit supporters and exchangeable shares**

***Question:*** *Under the heading "Possible Changes to the Instrument" above [in the original Notice], we discuss certain changes to the Rule relating to credit supporters and exchangeable share issuers that we are considering incorporating into the Rule.*

*(a) We describe three options for addressing CD obligations in credit supporter situations. What are your comments on the merits of these three options? If none of them are appropriate, please suggest other options and justify them.*

(The three options set out in the original Notice were:
option 1: issuer must provide continuous disclosure about itself and the credit supporter;
option 2: issuer exempt provided it files continuous disclosure about credit supporter;
option 3: credit supporter deemed reporting issuer itself)

One commenter said that option 1 is best. There may be developments that have a significant effect on the issuer that would not be disclosed if only the credit supporter gives disclosure, and there may be developments that are significant to the credit supporter that are irrelevant to the issuer.

One commenter said that credit supporters should have to comply with continuous disclosure obligations.

One commenter said that option 3 is best as it is the most consistent with the US approach.

One commenter said that continuous disclosure requirements should apply to the guarantor in situations where financial statements of the guarantor would be included or incorporated by reference in a prospectus. Any one of the three options presented might be appropriate depending on the circumstances. For example, if the issuer is a substantive operating company and the guarantee serves as little more than a backstop to be relied upon only in the unlikely event that the issuer gets into financial difficulty, the commenter thought the issuer's continuous disclosure should be filed, with periodic supplemental continuous disclosure of the guarantor. If the issuer is a shell company or a conduit, then the issuer's continuous disclosure likely is meaningless and full continuous disclosure of the guarantor should be filed.

*Response: The CSA have not made changes to the Rule on this issue. We will give the issue of credit support and disclosure further consideration and determine whether to propose subsequent changes to the Rule or to the rules relating to prospectuses in the future.*

***Question:*** *(b) We describe two options for addressing CD obligations in exchangeable share situations. What are your comments on the merits of these options? If neither of them are appropriate, please suggest other options and justify them.*

(The two options set out in the original Notice were:
option 1: exchangeable share issuer is exempt provided it files parent's continuous disclosure documents;
option 2: issuer is exempt but parent must be reporting issuer or SEC issuer and file all of its continuous disclosure documents)

Two commenters said that only the parent should be deemed a reporting issuer and have continuous disclosure obligations. One of those commenters further felt that there should be an exemption for a parent issuer that is a reporting issuer or SEC issuer.

One commenter said that the continuous disclosure (CD) requirements should apply only to the foreign acquirer, based on the requirements for eligible foreign issuers under proposed NI 71-102.

One commenter felt that the parent should be filing CD documents rather than the exchangeable share issuer because information about the parent is more relevant to the shareholder.

*Response: The CSA have revised the Rule to exempt an exchangeable share issuer from the continuous disclosure requirements, on the condition that it files its parent's continuous disclosure documents. We do not have the authority to impose continuous disclosure obligations directly on the parent when the parent is not a reporting issuer. This would require legislative amendment. The CSA believe most exchangeable share issuers will choose to use the exemption, rather than preparing separate continuous disclosure materials. As a result, in most circumstances, the parent's record will be available.*

***Question:*** *(c) In each of the credit supporter and exchangeable share situations, should we require the credit supporter or parent to comply with all continuous disclosure obligations under the Rule, or should the credit supporter or parent only be required to file certain types of documents concerning the credit supporter, such as financial statements and MD&A?*

Two commenters said that reduced continuous disclosure requirements (e.g., financial statements without GAAP reconciliation, MD&A and certain material change reports involving an acquisition, disposition, or restructurings) for a credit guarantor of securities issued by a substantive operating Canadian company would be appropriate.

One commenter said that full continuous disclosure should be required from parents of exchangeable shares issuers.

One commenter supported the basic concept of requiring the credit supporter or parent company to comply with continuous disclosure obligations, if a security effectively

represents an investment in a credit supporter or parent. In that circumstance, the credit supporter or parent should comply with all continuous disclosure obligations.

One commenter suggested that the CSA should get more information as to investors' views about ease of access to the information before exempting the SEC reporting issuers from filing their continuous disclosure documents with the CSA.

*Response: As noted under questions (a) and (b) above, the CSA have revised the Rule to exempt an exchangeable share issuer from the continuous disclosure requirements, on the condition that it files copies of all of its parent's continuous disclosure documents. The parent's documents must be filed on SEDAR by the exchangeable share issuer where they will be accessible to the exchangeable share issuer's investors.*

***Question:*** *(d) Are there any other situations for which we should consider providing exemptions from the Rule? If so, give details of the situation, how often it occurs and explain why specific exemptions should be given.*

No comments.

**Part III Other comments on NI 51-102**

The following are additional comments on the Rule. They do not respond to questions posed in the original Notice. The comments generally appear in the same order as the provisions of the Rule they relate to.

**General comments**

Fourteen commenters expressed general support for the rules, especially the effort to nationally harmonize continuous disclosure requirements.

One commenter expressed support for an enhanced financial reporting system that requires evergreen or continuously updated disclosure of all material and pertinent financial and non-financial information about issuers. This commenter suggested that there should be a single evergreen document rather than a series of independent updates.

*Response: The CSA believe that one evergreen document would be too cumbersome for all issuers to maintain. The current system of annual disclosure in an AIF, except for venture issuers, with separate supplementary filings during the year is an adequate substitute. For venture issuers, whose business generally tends to be less developed and therefore less complicated, the current system of discrete filings, which together create a complete picture, is satisfactory.*

One commenter suggested that the use in the Rule of different terms, such as material change, materiality and significance, to determine whether public disclosure is warranted is complex and difficult to follow. The proposal should use one principle for determining what should be disclosed based on materiality or significance relative to the reporting issuer's current situation.

*Response: A reconsideration of the materiality standard is beyond the scope of this project. Our use of different terms is deliberate, and we have endeavoured to make the meaning clear - for example, by reference to the Handbook concept of materiality, or by specifying the test of "significance" in relation to business acquisitions.*

One commenter said that the Rule should require prompt disclosure of voting results following shareholder meetings.

*Response: The CSA agree that this is important disclosure for issuers other than venture issuers. A new requirement has been added to the Rule for reporting issuers other than venture issuers to file a report, promptly after a meeting, disclosing voting results.*

**Part 1 - Definitions**

Two commenters said that the Rule should contain definitions that are paramount over the definitions in local securities legislation.

*Response: The specific overrides in the Rule have been removed. The Policy provides that, where terms from securities legislation are used in the Rule, the meanings given to the terms in securities legislation are substantially similar to the definitions in the Rule. Where that is not the case, terms in the Rule have been changed to be distinct from the terms used in securities legislation.*

One commenter noted that the definition of US GAAP refers to principles that the SEC has identified as having substantial authoritative support. However, it is not clear from this definition what those principles are. United States literature establishes a hierarchy of sources of acceptable accounting policies in the US. The commenter suggested that it would be appropriate for the definition of US GAAP to refer to this literature.

*Response: The CSA believe that US and SEC literature identifies the sources of US GAAP. Issuers who file financial statements prepared in accordance with US GAAP are SEC registrants and are presumed to have sufficient knowledge of what constitutes US GAAP.*

**Part 4 - Financial statements**

**4.2 [4.2] Filing deadline for annual financial statements**

One commenter supported the accelerated filing deadlines in the Rule. A survey of TSX and TSXV-listed companies showed that a majority did not expect significant problems complying with the new deadlines. The commenter suggested that the shorter deadlines also reduce market risk for investors and reduce the notable difference from US standards, while the elimination of the delivery requirement alleviates pressure on issuers.

Three commenters said that annual financial statement filing deadline for senior issuers should not be reduced to 90 days for the following reasons:

- ?? Large companies with international operations need at least 110 to 120 days from year end to prepare and mail their annual reports, and 50-55 days to prepare and mail their quarterly reports.
- ?? Shareholders are not demanding more timely release of financial statements.
- ?? Accuracy will be sacrificed for speed.

Five commenters said that the annual financial statement filing deadline for small issuers should not be reduced to 120 days. Among the reasons cited were the following:

- ?? The shortened deadline affects small issuers more because they rely more heavily on their auditors for assistance with their financial statements; the audits cannot commence until close to the deadline.
- ?? Many small issuers have December 31 year ends and their auditors have tax practices that are particularly busy in April, so the deadline is effectively less than 120 days.
- ?? Audits will cost more because small issuers will have to compete with large issuers for audit services; the old deadline left a window for juniors.
- ?? Shareholders are not demanding more timely release of financial statements.
- ?? Analysts are not calling for more timely financial information about small issuers and, in fact, there is little analyst coverage of small issuers.
- ?? Accuracy will be sacrificed for speed.
- ?? For small issuers, timely material change reporting is most important.

*Response: The desire of investors for more timely information is not always easily balanced with their desire for heightened reliability. However, we believe that in an environment that increasingly demands, and is capable of furnishing, more timely information, the current filing deadlines are inadequate. We believe that the new filing deadlines, including the different deadlines applicable to venture issuers, reasonably balance the needs for timeliness and reliability.*

One commenter expressed concern about the shorter filing deadlines adopted by the SEC, and that sections 4.2 [4.2] and 4.5 [4.4] would effectively impose those same shorter filing deadlines in Canada.

*Response: The CSA do not propose to mandate the shorter SEC deadlines for all reporting issuers, but are not persuaded that an issuer that does meet those deadlines in the US should be permitted to delay filing of the same information in Canada. To do so would place Canadian investors at a disadvantage without addressing the commenter's concern about the SEC requirements.*

One commenter said that the deadline for small issuers would probably effectively be less than 120 days, but expected that small issuers would be able to comply with it.

*Response: No response required.*

Two commenters said that there should be a transition period or sufficient advance notice to allow issuers to adjust to the new deadlines.

Two commenters suggested that, if the 120 deadline is retained, small issuers should be given a phase in period to allow an orderly change of year end to some date other than December 31.

*Response: The new filing deadlines will not be mandatory for financial years starting before January 1, 2004.*

Three commenters suggested that the proposed filing deadlines in the Rule, when read together with National Policy 51 *Change of Year End* (NP 51), lead to certain disclosure gaps, avoidable costs and absurd results in some RTO situations. The Policy and NP 51 should be revised to address these problems.

*Response: The CSA have expanded the Rule by adding, as section 4.8, requirements that would replace NP 51. See "Summary of Changes to the Proposed Instrument" in the current Notice for a description of these changes.*

**4.3 [4.5] Approval of audited financial statements**
Two commenters suggested that the Rule should clarify the difference between board review and approval of financial statements, if there is one.

*Response: The Rule now requires board approval of both annual and interim financial statements.*

**4.5 [4.4] Filing deadline for interim financial statements**
See the discussion under section 4.2 above for the comments on the shorter filing deadlines in general, and the CSA's responses.

One commenter said that 45 days is not enough time for an issuer in the oil industry to prepare interim financial statements if the issuer reports actual oil revenue rather than accruing for it. Oil sales data is not available until 25 days after month end. The accelerated deadline would compel more use of accrued rather than actual revenue. Shareholders would be better served by waiting an additional two weeks and getting actual data.

*Response: See our response under section 4.2 above. The CSA recognize that the use of estimates is an integral element of financial statement preparation and do not believe that the possible example cited by the commenter outweighs the benefits of more timely preparation and filing of the financial statements.*

**4.6 [4.5] Review of interim financial statements**
See the discussion under section 4.3 above for comments on the requirement for board approval in general, and the CSA's responses.

Two commenters said that the board of directors should be required to review and approve interim financial statements.

*Response: The CSA agree. The Rule has been revised to require board approval of interim financial statements.*

Two commenters recommended that the CSA adopt the recommendation in Chapter 14 of the Five-Year Review Committee Draft Report to require interim financial statements to be reviewed by the issuer's external auditors.

*Response: The CSA see merit in the recommendation, and we will consider in the future whether mandating auditor review of interim financial statements is appropriate. In the meantime, reporting issuers are encouraged to have their interim financial statements reviewed and the Rule now requires that, if this review is not done, that fact must be disclosed.*

**4.7 and 4.8 [NI 52-107] Generally accepted accounting principles and auditor's report**

*See the Notice announcing the publication for comment of NI 52-107 for a summary of the comments received on the Rule in relation to the GAAP and GAAS requirements and the CSA's responses. Those requirements have been removed from the Rule and now all appear in NI 52-107.*

**4.9 [deleted] Balance sheet line items**

One commenter said that the prescribed balance sheet line item disclosure may not be appropriate for all issuers, may conflict with GAAP as it evolves, and may require disclosure of non-material items. The requirement should be revisited.

*Response: The CSA agree with this comment and have deleted this requirement.*

**4.10 [6.3] Additional information for development-stage issuers**

One commenter supported the additional disclosure for development-stage issuers required by section 4.10 of the Rule, but was uneasy about the CSA establishing arbitrary quantitative materiality rules. The absolute $25,000 minimum could result in unnecessarily detailed disclosure.

*Response: The CSA will continue to require additional disclosure, although the Rule has been revised to permit the disclosure in either the financial statements or the MD&A, and the requirement now applies only to venture issuers that have not had any significant revenues from operations in either of the last two financial years (section 6.3 of the Rule). The CSA have retained the reference to the $25,000 threshold, but it is presented in the Policy as guidance to assist issuers, not an absolute measure of materiality.*

**4.11 [6.4] Disclosure of outstanding share data**

One commenter suggested that the CSA should consider requiring this information to be in MD&A so it is easy to locate.

*Response: The CSA have revised the MD&A form to require this disclosure, as it will then be more current than the information that would be provided in the financial statements.*

**4.12 [4.6] Delivery of financial statements**

One commenter suggested that the Rule or Policy should give guidance on what "as soon as practicable" means. For example, the Rule could state that interim or annual statements must be delivered within 60 or 140 days of period end, respectively.

One commenter suggested that the CSA should make it clear that:

- ?? mailing is not required to be concurrent with or in a specified proximity to the filing of financial statements and MD&A, so it is not necessary to delay filing financial statements on SEDAR until such time as they are printed and ready to be mailed;
- ?? no mailing is required until both the financial statements and the MD&A for the period have been filed (so that multiple mailings are not required); and
- ?? in the case of the annual financial statements and MD&A, the "as soon as practicable" standard will be met if the annual financial statements and MD&A are sent to those shareholders who have requested them at the time of and together with the sending of the annual meeting materials.

*Response: The Rule, as proposed, will require the financial statements and MD&A to be filed at the same time. The Rule has also been amended to clarify that issuers must deliver financial statements and MD&A by the later of the filing deadline for the financial statements or MD&A requested, and 10 days after the request is received.*

**4.13 [4.7] Filing of financial statements after becoming a reporting issuer**

Two commenters said that financial statements should only be required for periods ending when the issuer is a reporting issuer, not periods with a filing deadline occurring when the issuer is a reporting issuer. Section 4.13 should be revised accordingly.

One commenter suggested that this requirement should be harmonized with the requirements of the Handbook.

One commenter said that this requirement is appropriate with some fine tuning so it functions properly together with NP 51, the different financial statement filing deadlines for senior and smaller issuers, and the Handbook.

One commenter said that the prospectus rules should be amended or there will be a gap in financial disclosure for senior issuers filing IPO prospectuses.

*Response: The CSA believe that it is important to the capital markets to have a complete financial record for reporting issuers. Accordingly, the requirement to file financial statements should not commence only for financial periods that end after an issuer becomes a reporting issuer. The Rule has been revised to ensure no such gap will occur. Issuers that are in the process of becoming reporting issuers will be able to organize their operations to ensure they will be able to file the required statements.*

**4.14 [4.11] Change of auditor**

Two commenters said that the Rule should provide more guidance on the meaning of the term "disagreement".

*Response: The definition of "disagreement" in the Rule has been expanded to include a difference of opinion that arises during an auditor's review of a reporting issuer's interim financial statements. Also, guidance has been added to the Policy to indicate that the term disagreement should be interpreted broadly; a disagreement may not involve an argument but a mere difference of opinion, and the subsequent rendering of an unqualified report does not, by itself, remove the necessity for reporting a disagreement.*

Three commenters said that the change of auditor rules should be clarified to deal with cases where the auditor declines to stand for reappointment.

*Response: We have added a definition of "resignation" to the Rule which includes notification from an auditor of their decision to not stand for reappointment as auditor of the reporting issuer.*

One commenter suggested that the proposed requirement for an auditor to state whether or not, to their knowledge, the notice states correctly all information required, is contrary to professions standards in Section 5025 of the Handbook and goes beyond existing National Policy 31 and comparable US requirements. The commenter suggested that the Rule should require the auditor to state in relation to each statement in the notice whether the auditor i) agrees, ii) disagrees and the reasons why, or iii) has no basis to agree or disagree.

*Response: We adopted the change recommended by the commenter.*

One commenter said that the Rule should be clarified for cases where the timing of the resignation of the former auditor and the appointment of the successor auditor does not permit the filing of a single reporting package.

*Response: The Policy explains that, where a termination or resignation of a former auditor and appointment of a successor auditor occur within a short period of time, the issuer may prepare and file one comprehensive notice and reporting package. If timing does not permit, the notice and reporting package requirements must be done in two stages as set out in the Rule. The Rule has been modified so that, if the reporting package requirements must be done in two stages, the former auditor is given an opportunity to update the letter provided at the first stage.*

One commenter suggested that the CSA should consider requiring two reporting packages in every case since certain matters are not within the knowledge or the former or successor auditor.

*Response: If a termination or resignation of a former auditor and appointment of a successor auditor occur within a short time period, the issuer may prepare and file one comprehensive notice and reporting package. The letters requested from both the former and successor auditors require the auditor to state whether he or she agrees, disagrees, or has no basis to agree or disagree.*

**Part 5 – AIFs and Form 51-102F1**

One commenter said that the AIF should be filed at the same time as the annual financial statements and MD&A.

*Response: The CSA have decided not to require the AIF to be filed at the same time as the financial statements and MD&A. When documents are required to be filed at the same time, there is a risk that the filing of some of the documents may be delayed to accommodate the preparation of the other documents. This risk must be weighed against the value of having the documents available at the same time. In the case of financial statements and MD&A, the CSA are satisfied that any delay in the filing of the financial statements while the MD&A is prepared will normally be minimal. As such, the desirability of having the narrative discussion available at the same time as the financial statements outweighs the risk of the delay. However, we believe that the risk of delay if the AIF must also be filed concurrently would be greatly increased, outweighing the advantages of a concurrent filing requirement.*

Two commenters recommend if a market capitalization test is used to distinguish between large and small issuers, small issuers should not be exempt from filing an AIF, but the CSA should consider requiring certain simpler disclosure. Two other commenters said that there should be no market capitalization threshold in the AIF exemption for small issuers as AIF disclosure is not useful for those issuers.

*Response: The Rule has been changed to no longer use a market capitalization test to define venture issuers. All venture issuers are exempted from the requirement to file an AIF.*

One commenter said that the AIF exemption for issuers with a market value of less than $75 million is appropriate. Smaller issuers should only be required to file AIFs where there is an incentive for them to do so, such as the ability to obtain a shorter hold period on privately placed securities under Multilateral Instrument 45-102 *Resale of Securities*.

*Response: The CSA agree that AIFs should not be mandatory continuous disclosure for venture issuers.*

One commenter said that the requirement for a senior issuer to file its AIF within 90 days of financial year-end will pose serious practical problems for an issuer that normally incorporates a portion of its proxy circular by reference in its AIF.

*Response: The CSA believe that 90 days is sufficient time to prepare an AIF. If an issuer feels that incorporating its proxy materials by reference would be advantageous, it can accelerate the preparation of its proxy materials. Otherwise, it may be necessary to repeat some of the information in both the AIF and proxy materials. We are not persuaded that this would justify delaying the filing of the AIF.*

One commenter suggested that elements 1, 2, 3 and 5 of the Disclosure Framework in Section 300 of the Canadian Institute of Chartered Accountant's (CICA) Canadian Performance Reporting Board report entitled "Management's Discussion and Analysis: Guidance on Preparation and Disclosure" (the CPRB Report) are worthy of incorporation

into the AIF requirements for "foundational" disclosure about the nature and development of the issuer's business. They should replace substantial portions of Items 3 and 4 of Form 44-101F1 and proposed Form 51-102F1.

*Response: As discussed below under Part 6 – MD&A and Form 51-102F2, the MD&A form has been amended to add many aspects of the CPRB Report. The CSA are satisfied that duplication between the MD&A and AIF is not warranted.*

One commenter suggested that, in Form 51-102F1, the general description of an issuer's business and risk factors disclosure should be broadened to include:

- ?? disclosure of the issuer's social and environmental policies and the steps the issuer is taking to implement them; and
- ?? a description of social and environmental risk factors.

*Response: The CSA have revised the AIF form to provide, by way of example, guidance on the types of risk factors to be disclosed. The examples include environmental risk. The CSA expect social and environmental policies will, where appropriate, be reflected in the issuer's discussion of its business in general.*

One commenter suggested that it would be helpful to add an instruction for section 4.2 of Form 51-102F1 with some example items such as those in Item 20 of OSC Form 41-501F1, including environmental and health risks, reliance on key personnel, regulatory constraints, economic and/or political conditions.

*Response: We have amended the Form 51-102F1 to include the guidance given in the prospectus context.*

One commenter recommended accepting an annual report on Form 10-KSB as a form of AIF.
*Response: We have made this change for SEC issuers.*

One commenter welcomed the narrowing of the scope of disclosure on corporate officers to "executive officers" in the Table of Indebtedness of Senior Officers. The commenter also requested that the references to "officer" in the AIF be changed to "executive officer".

*Response: We have made this change.*

**Part 6 - MD&A and Form 51-102F2**

**General comments**
One commenter suggested that the Rule or Policy should state whether it is permissible for issuers to include GAAP information in MD&A, instead of the financial statements, provided the financial statements include a clear and specific reference to where the audited information can be found in the MD&A.

*Response: The CSA are not prepared to permit incorporation by reference in financial statements. The financial statements are core documents that must present, in full, all information required by GAAP. MD&A serves an important, but different purpose, supplementing and complementing the financial statements. We do not agree that MD&A can substitute for portions of the financial statements.*

One commenter expressed support for requiring all issuers to file annual and interim MD&A.

Two commenters expressed support for the requirement that boards must review annual and interim MD&A.

Two commenters suggested that the distinction between "review" and "approval" of MD&A should be clarified.

*Response: The Rule now requires board approval of both annual and interim MD&A.*

Two commenters said that that MD&A does not provide meaningful disclosure for small issuers, since financial results are often meaningless for these issuers. MD&A will increase costs for small issuers because they will need consultants to prepare it.

*Response: The CSA disagree that MD&A is often meaningless for venture issuers. In many jurisdictions, MD&A has been a part of the continuous disclosure record for reporting issuers, including issuers that we propose to classify as venture issuers. The MD&A gives all issuers the opportunity to discuss their financial statements in the context of their business and operations.*

Three commenters recommended that the CSA give serious consideration to endorsing the disclosure principles and framework proposed in the CPRB Report. One commenter noted that Canadian SEC issuers that prepare their financial statements in accordance with US GAAP use the CPRB Report in preparing their MD&A.

*Response: The CSA have considered the CPRB Report and made some changes to the MD&A form to reflect its recommendations. The CSA considered that certain portions of the CPRB Report were already adequately addressed by the disclosure requirements in the form, and others were not necessary or appropriate for the Rule.*

One commenter suggested that issuers should be required to file fourth quarter MD&A concurrent with or as soon as possible after the public release of audited fourth quarter financial statements. Fourth quarter MD&A should not be part of the annual MD&A, so as to give prominence to fourth quarter.

*Response: The CSA decided not to require fourth quarter MD&A. The information is useful, and so is a prescribed component of the annual MD&A, but we do not agree that it requires a separate filing, particularly as it would not be accompanied by stand-alone fourth quarter financial statements.*

Two commenters said that the CSA should require that, if a security holder requests either financial statements or MD&A, the issuer must deliver both.

*Response: The CSA agree and the Rule has been amended to make this a requirement.*

**Part 1 of Form 51-102F2**

Two commenters supported the proposal in item (g) of Part 1 that MD&A should include a discussion of any forward-looking information disclosed in prior MD&A if, in light of intervening events and without that discussion, the earlier disclosure could mislead. However, one of the commenters said that, in view of the importance of this proposal, consideration should be given to embedding it also in Part 2, detailing the content of the MD&A.

*Response: The CSA decided it is not necessary to put item (g) of Part 1 into Part 2, as Part 1 applies to the entire form.*

One commenter said that the CSA should not require issuers to analyze operations, liquidity and capital resources with respect to known trends, demands, expected fluctuations, commitments, events, risks and uncertainties that issuers reasonably believe affect future performance. This will require too much disclosure, and forecasts are inherently inaccurate.

*Response: The CSA disagree. We believe this is fundamental disclosure in MD&A. The purpose of MD&A is for reporting issuers to discuss their financial situations in the context of past performance, and anticipated future events. This necessarily involves forward looking information.*

One commenter recommended the CSA clarify the definition of forward-looking information, how it differs from future oriented financial information, and the duty to update.

*Response: This issue is beyond the scope of the Rule and will be addressed by the CSA Committee reformulating National Policy 48 Forward Looking Financial Information.*

Three commenters noted that the instructions to the MD&A form call for increased forward-looking disclosure, paralleling US requirements, and suggested that there should be "safe-harbours" as in the US.

*Response: The CSA proposal for a statutory civil remedy includes a "safe harbour" for forward looking information.*

**Item 1.4 [1.5] of Form 51-102F2**

One commenter suggested that the CSA should provide more guidance on how to comply with the requirements relating to liquidity.

*Response: The CSA believe item 1.4 [1.5] gives adequate guidance. This section should be principles based, rather than prescriptive, so management can exercise its judgement.*

**Item 1.5 [1.7] of Form 51-102F2**
One commenter indicated that the additional disclosure requirements in item 1.5 [1.7] of the form pertaining to off-balance sheet arrangements and contractual commitments are necessary.

*Response: The CSA agree.*

One commenter suggested that the CSA should provide more guidance on how to comply with the requirements relating to capital resources.

*Response: The CSA believe that this item gives adequate guidance. This section should be principles based, rather than prescriptive, so management can exercise its judgement.*

**Item 1.6 [1.8] of Form 51-102F2**
One commenter commented regarding the disclosure of transactions with related parties required by item 1.6 [1.8] of the form, and noted that disclosure of economic dependency is required by Handbook Section 3841. The commenter suggested that the CSA should consider the relationship and consistency of the CSA proposal with that standard. If a requirement extending the concept of related party relationships to include broader economic dependency is put in place, the commenter recommended that it be clearly distinguished from the concept of "related parties" defined in the Handbook so as to reduce the likelihood of confusion with financial statement disclosure.

One commenter suggested that item 1.6 [1.8] should require disclosure of the same types of related party transactions as are disclosed in the annual financial statements. The materiality threshold for disclosure of related party transactions in financial statements generally is quite low, and is not dependent upon whether the transactions are recorded at carrying amount or exchange amount.

One commenter suggested that the CSA should provide more guidance on how to comply with the requirements relating to transactions with non-independent parties.

*Response: The CSA agree and have revised the MD&A form requirements to require disclosure of transactions with related parties, as defined by the Handbook. We have removed references to disclosure that would only duplicate GAAP without supplementing or enhancing the disclosure in the financial statements.*

One commenter recommended the CSA evaluate the disclosure in the Rule regarding special purpose entities against disclosure proposed to be required in a CICA Handbook Accounting Guideline on special purpose entities, and decide if the Rule needs to mandate any disclosure.

*Response: We believe the requirement in MD&A to discuss off-balance sheet arrangements will adequately address disclosure relating to special purpose entities.*

**Item 1.9 [1.11] of Form 51-102F2**
One commenter suggested that the proposed requirements in item 1.9 [1.11] regarding critical accounting policies are far too general and brief to be effective. In particular, the

requirement to disclose "the likelihood that materially different amounts would be reported under different policies or using different assumptions" is not reasonable or operational.

*Response: The CSA agree and have revised the requirement to require disclosure of critical accounting estimates.*

One commenter said that the MD&A form should not require critical accounting policies disclosure beyond what financial statement notes are already required to disclose, because management and auditors are in the best position to decide which accounting policies are appropriate for an issuer.

*Response: The CSA have revised the requirements to address disclosure of critical accounting estimates, and changes in accounting policies including initial adoption. The CSA believe this is relevant disclosure for investors to understand why management made the decisions it did.*

One commenter said that issuers should not be required to review existing critical accounting policies in the MD&A, except where it is important to do so in order to explain material variances or risks, so as to not duplicate disclosure provided in the notes to the financial statements. The CSA should provide guidance regarding what levels of uncertainty and materiality in relation to accounting estimates would trigger a disclosure obligation.

One commenter said that the value of the proposed disclosure on critical accounting estimates is questionable, in that MD&A disclosure of methodology, underlying assumptions and effects on financial disclosure would duplicate existing requirements of GAAP.

*Response: The CSA believe that critical accounting estimates is important disclosure for the MD&A, and, by its nature, is material. The CSA expect the MD&A disclosure to supplement the disclosure in the financial statements, not simply duplicate that disclosure. The requirement, including the exemption for venture issuers, is based on a similar SEC requirement. We have also added additional guidance on what must be disclosed under this topic.*

**Part 2 of Form 51-102F2**

One commenter suggested that Part 2 of the MD&A form should require disclosure of non-financial aspects of a business, such as personnel, environmental, social or cultural matters, that are expected to have a material effect on the economic condition and development of the business. This would include disclosure of risk factors, or matters that will adversely affect an issuer's ability to achieve its stated business objectives, including social and environmental risks. This is in keeping with the recommendations of the CPRB Report.

*Response: The CSA have proposed changes to Part 1(a) of the MD&A form to provide for disclosure of social, cultural and environmental matters. As noted above, the CSA*

*have considered the CPRB Report and, where appropriate, have also added disclosure from the Report to the form.*

**Part 7 - Material change reporting**

One commenter said that reporting issuers should be required to disclose all material information, rather than material changes, on an ongoing basis.

One commenter said that the "reasonable investor" definition of materiality should replace the market impact test.

*Response: Any such fundamental changes would require the various Securities Acts to be amended, which goes beyond the scope of this Rule. The Draft Report of the Ontario Five-Year Review Committee also recommended not changing the requirement from "material change" to "material information".*

Two commenters suggested that material change reports should no longer be required because they rarely provide information that was not included in the accompanying press release. However, confidential material change reports should be retained.

*Response: The CSA believe that the current requirements to issue a news release disclosing the nature and substance of the change promptly upon its occurrence, followed by a subsequent material change report with more details of the material change, are appropriate. This process gives the issuer additional time to assemble significant facts to put into a material change report that may not have been in the press release.*

One commenter noted existing securities law and the Rule allow issuers to file confidential material change reports, and keep certain material information confidential. GAAP requires material changes to be reflected in financial statements, which could negate the issuer's ability to keep information confidential. The commenter felt the Rule should reconcile this conflict.

*Response: The provisions in the Rule have not substantively changed local securities laws that currently exist. The CSA are not aware of any circumstances where the concern expressed by the commenter arose. As, typically, confidentiality of material changes is intended to last for only a short period of time, we do not believe this is a widespread issue warranting a change in securities regulation.*

**Part 8 - Business acquisition report**

**Concerns with the BAR proposal/Alternative approaches**

Three commenters suggested that the costs of the BAR outweigh the benefits.

*Response: The Rule has been amended to streamline the BAR requirements by applying two threshold significance tests for issuers other than venture issuers – 20% and 40% - and requiring only two years of audited annual historical financial statements of the acquired business at the 40% significance level or higher. Venture issuers will only be required to assess whether an acquisition is significant at the 40% level, and, if it is, they need only provide one year of audited annual historical financial statements with*

*unaudited comparative statements. The CSA believe that these changes address the concerns that the costs outweigh the benefits.*

Three commenters suggested that the current requirement for historical financial statement disclosure is not appropriate as the financial statements may not be available, may not be reliable, or may not have been relevant to management's decision to make the acquisition. Some commenters felt that the relevant disclosure is only due diligence information or the information that the acquirer actually relied on in deciding to make the acquisition – so the disclosure would replicate the thought process of management and the directors. This information may include certain historical financial statements, or may include the information used to determine consideration, raise required funds and verify the integrity of financial information available at the time.

*Response: The CSA believe historical financial statement information about the target company required in a BAR is relevant for ongoing secondary market investors, as well as current investors in the issuer. However, to avoid duplication, the Rule has been revised to exempt issuers from the requirement to prepare a BAR where the issuer was subject to and complied with the requirement in item 13.2 [14.2] of Form 51-102F5.*

**Modify aspects of disclosure requirements**

One commenter had concerns about the requirement that financial statements of the acquired business be accompanied by an audit report that does not contain a reservation (except in limited circumstances). If an issuer acquires a business in reliance on unaudited statements, or on statements without a clean audit report, its obligation should be to report that fact in its business acquisition report, not to have the statements audited or the reservation removed.

*Response: The purpose of the BAR is to give investors information about a business that a reporting issuer acquires comparable to the information available about the reporting issuer itself. Given that we would not accept a reservation in respect of the reporting issuer's own financial statements, we do not believe it would be appropriate to permit a reservation in respect of the financial statements of an acquired business.*

One commenter said that the significance tests should only be based on balance sheet measures rather than income statement measures.

*Response: The CSA believe that income statement is often a major indicator of significance for issuers, other than venture issuers. The ability to recalculate significance on more recent financial statements makes the income statement measures even more valid, as the test does not have to be based on out of date information. We recognize that the income test may often not be relevant for venture issuers, and so venture issuers are not required to apply the significance test based on income.*

Two commenters agreed the secondary market needs detailed information about significant transactions involving issuers. However, the historical nature of the BAR information (75 days after closing) reduces its value.

*Response: The CSA recognize that earlier disclosure can be valuable and so have provided an exemption from the BAR requirements where the information has already been provided in an information circular relating to the transaction. We do not believe it would be appropriate to always require earlier disclosure, given the burden that would place on issuers.*

One commenter said that the interaction of the 75 day filing period with the 45 day period in section 8.5(a)(ii) [8.4(1)(a)] of the Rule may result in a difference between the annual financial statements required to be included in a BAR and those that would be included in a prospectus dated concurrently with the BAR (the prospectus rules contain a 90 day deadline). The 120 (75+45) day timeframe is consistent with the SEC's Form 8-K requirements, but if the enhancements in the continuous disclosure rules are designed to lay the groundwork for an integrated disclosure system, it may be more important to harmonize with Canadian prospectus requirements.

*Response: The CSA note the comment and will consider it in the context of potential amendments to the prospectus requirements.*

Two commenters felt pro forma financial statements can provide meaningful information, but should be limited to balance sheets. Pro forma earnings and cash flow figures have very little predictive value and are inherently unreliable.

*Response: The CSA disagree and believe that pro forma earnings figures provide useful information. The pro forma earnings figures illustrate the effect of a transaction on the issuer's financial results of operations by adjusting the issuer's historical financial statements to give effect to the transaction.*

Two commenters said that it is largely futile to prepare "carve-out" financial statements for assets purchased from a vendor where there were no separate financial records for the assets. Arbitrary assumptions are required to create various values, and vendors are reluctant to provide meaningful assistance. There is a lack of accepted practice in this area.

*Response: The purpose of the BAR is to give investors information on the acquired business comparable to the information available about the reporting issuer itself. The BAR requirements apply to significant business acquisitions, and do not apply to an asset acquisition that is not a business. Although carve-outs necessarily involve assumptions, they are still meaningful and assist in achieving the BAR's purpose. Given that carve-out financial statements have been required under existing securities legislation, we expect that practice in the area will continue to develop.*

Three commenters said that the Policy should give more guidance on how to comply with the BAR requirements. In particular the Policy should contain guidance on past practice concerning:

- ?? how related business financial statements were prepared or asked for; and
- ?? how divisional or carve out financial statements were agreed to in difficult circumstances.

*Response: The CSA do not believe providing guidance on past practice would be useful, as each acquisition is unique, and past practice is necessarily related to specific fact situations.*

One commenter said that the Policy should give more guidance on the financial statement disclosure for "step acquisitions".

*Response: The CSA agree and have added guidance on the application of the significance tests for step-by-step acquisitions.*

**Application to venture issuers**

One commenter said that there should be no exemption from the income test for small issuers.

*Response: The income test is often not meaningful for venture issuers that are in the development stage or in the first few years of operations. However, for non-venture issuers, income is recognized as a primary measurement of size. For this reason, the CSA believe the exemption from the income test is appropriate for venture issuers.*

Five commenters recommended that the BAR requirement not apply to any transaction where the issuer has filed a TSXV-prescribed disclosure document that is acceptable to the TSXV. TSXV documents contain adequate disclosure of acquisitions by TSXV listed companies; the TSXV reviews and approves the transactions, and negotiates "tailor-made" disclosure documents that must be published in advance of the transaction. The BAR is redundant in these cases.

*Response: To avoid duplication, the Rule has been amended to exempt issuers from the requirement to prepare a BAR where the BAR disclosure is included in an information circular filed by the issuer relating to the transaction.*

One commenter noted the majority of TSXV acquisitions are asset acquisitions. The rule is not tailored to asset acquisitions, and it should be clear that it (or at least the audited historical financial statement requirement) does not apply to them. Four commenters suggested that the Rule or Policy should give more guidance on what constitutes a business. Three of the commenters requested, in particular, guidance for non-producing mining properties or development stage endeavors.

*Response: In some circumstances, an acquisition that has been characterized by the parties as an asset acquisition will constitute an acquisition of a business for the purposes of the BAR. Subsection 8.1(2) of the Policy provides guidance of when this may occur. The guidance must be general, as it will be applied to a wide variety of facts.*

Two commenters suggested that when a small issuer acquires a business, only the most recent balance sheet of the acquired business should have to be audited, to confirm the net assets being acquired.

*Response: The Rule has been revised to require venture issuers to provide only one year of audited financial statements. However, the CSA believe the financial statements as a whole, not just the balance sheet, should be audited. The purpose of the BAR generally is to give investors information on the acquired business comparable to the information available about the reporting issuer itself.*

Four commenters said that the BAR requirements do not provide meaningful disclosure for acquisitions of exploration and development stage issuers. For these companies, the relevant information is in press releases and technical reports.

*Response: The CSA disagree that the BAR requirements never provide meaningful disclosure for acquisitions of exploration and development stage issuers. Many such issuers will likely be venture issuers, and will only have to assess the significance of the acquisition at the 40% level. At that level, financial statement disclosure of the acquisition is important information for investors to have.*

Three commenters suggested that the CSA should provide exemptions from the BAR requirements where the financial statements do not provide useful information, such as an exemption from pro forma income statements where the reporting issuer has no operations.

*Response: The CSA do not believe it would be appropriate to provide blanket exemptions from the BAR requirements in the Rule. The circumstances in which an exemption may be appropriate would be limited, and fact-specific. Issuers may apply for an exemption from certain requirements under section 13.1 of the Rule.*

**Other comments on significant acquisitions requirements**

Two commenters felt it was unclear how the BAR requirements apply to acquisitions of joint ventures, which are a common form of business association in the resource sector.

*Response: The Rule provides that the term "acquisition" includes an acquisition of an interest in a joint venture. The CSA believe the same principles apply regardless of the structure of the acquired business.*

One commenter noted it is unclear what the consequences are if an issuer fails to comply with the BAR requirements because a vendor does not provide the financial information necessary to do so.

*Response: The CSA would expect a reporting issuer faced with this problem to consult with the applicable securities regulatory authority or regulator as soon as possible, and, in any event, before the filing deadline for the BAR. In unusual circumstances, an issuer may consider applying for an exemption under section 13.1 of the Rule from certain aspects of the requirements.*

One commenter noted item 2.4 [deleted] of the business acquisition report form requires the issuer to "describe any material obligations that must be met to keep any agreement relating to the significant acquisition in good standing". Given that the acquisition transaction will have closed by the time the report is required to be filed, it is unlikely

that the acquisition agreement would be required to be kept in good standing. Item 2.4 [deleted] should be clarified to more clearly describe the nature of the information the item is intended to elicit.

*Response: The CSA believe that this disclosure item is more relevant to probable acquisitions for which business acquisition disclosure is required in prospectuses. Accordingly, we have amended the form to delete this item.*

One commenter noted item 2.6 [2.5] of the business acquisition report obligates the reporting issuer to describe any valuation opinion obtained by the acquired business or by the reporting issuer within the last 12 months required under securities legislation or a requirement of a Canadian exchange or market. In the commenter's view, the requirement is both unnecessary and potentially confusing.

*Response: This disclosure is already required in prospectuses (Form 44-101F3, item 11.1(2)). The CSA believe that it can be useful to the marketplace in assessing the potential of the acquired business.*

Two commenters suggested that the CSA should eliminate the requirement for the financial statements of the reporting issuer and the acquired business to use the same reporting currency.

*Response: The CSA have removed the requirement that historical annual and interim financial statements of a business or related business be presented in the same currency as the issuer's financial statements. NI 52-107 now sets out reporting currency requirements.*

One commenter recommended that section 8.7 should include a discussion on acceptable reporting currencies or that the Rule should cross-reference the separate rule on acceptable currency.

*Response: The requirement that financial statements of the acquired business be presented in the same currency as the currency used in the reporting issuer's financial statements has been removed. We have added a new section 8.2(13) that deals with currency for the purposes of the significance tests. NI 52-107 now sets out reporting currency requirements.*

**Comments on significant dispositions requirements**

One commenter suggested that the requirement to provide pro forma disclosure of significant dispositions after they have taken place should be dropped. The CICA Accounting Standards Board has exposed for comment a proposed Handbook Section dealing with disclosure of and accounting for significant dispositions within the historical financial statements. The cost allocations and assumptions required to construct pro forma financial statements are likely to make the pro forma presentation more misleading than enlightening.

Pro forma financial statement disclosure of significant dispositions should not be incorporated into an issuer's annual or interim financial statements; they should be incorporated into a BAR within 75 days of the disposition.

*Response: The Rule has been revised to remove the requirement to provide disclosure on significant dispositions. Disclosure is now only required on significant acquisitions, as GAAP ensures adequate disclosure of dispositions will be included in the financial statements.*

**Part 9 - Proxy solicitation and information circulars**

One commenter expressed support for the enhanced equity compensation plan disclosure requirements in Form 51-102F5.

One commenter said that the definition of "solicit" in the Rule should be harmonized with the definition of "solicit" in the *Canada Business Corporations Act*, so it is clear that certain communications are not solicitations.

*Response: This change would require amendment of the various Securities Acts.*

Two commenters said that the Form 51-102F5 should not require disclosure of addresses for personal security reasons.

*Response: Form 51-102F5 has been amended to remove the requirement to disclose addresses of directors. Only their province of residence is now required.*

One commenter suggested that investor relations officers and consultants should be added to the list of persons deemed not to be proxy solicitors in the instructions to Item 4 [Item 5] of Form 51-102F5.

*Response: This has been done.*

One commenter welcomed the narrowing of the scope of disclosure on corporate officers to "executive officers" in the Table of Indebtedness of Senior Officers. The commenter also requested that the references to "officer" in the AIF be changed to "executive officer".

*Response: This has been done.*

**Part 10 - Restricted share disclosure requirements**

Two commenters said that the Rule should not require restricted share disclosure in each of the information circular, documents required to be sent to securityholders (whether on request or otherwise), and AIFs. The disclosure should only be required in one of these documents.

*Response: This change has not been made to the Rule because these documents are provided to differing groups of securityholders at different times, and the CSA believe the readers of those documents need this information at the time each document is required.*

*Also, it should not be difficult for an issuer to reproduce this information in these disclosure documents.*

## Part IV Companion Policy 51-102CP *Continuous Disclosure Obligations*

### Part 3 – Financial statements

One commenter said that section 3.11 [4.1] of the Policy, which states that releasing information from unreviewed/unapproved financial statements is inconsistent with the prior review requirement, should be addressed in the Rule. There is too much pressure for auditors to match the numbers in the press release when the issuer releases them before the financial statements have been appropriately reviewed.

One commenter suggested that the CSA should prohibit the publication of the financial position or results of operations before the board, or where appropriate, the audit committee, has approved the financial statements.

One commenter said that the publication of extracted information by press release should not be permitted before the reporting issuer and its audit committee, board and auditor have substantially completed their work related to the corresponding continuous disclosure report for the period. This concept could be expressed in the form of a requirement calling for the filing of the continuous disclosure report within 48 hours of the press release.

One commenter suggested that the concern about the release of financial information before interim and annual financial statements are approved by the board of directors or audit committee can be addressed through more stringent rules. For example, the Rule could state that annual and/or interim financial information cannot be released until and unless:

- ?? the underlying annual and/or interim financial statements from which the financial information is derived have been reviewed by the board of directors (or audit committee);
- ?? in the case of annual financial statements, the statements have been approved by the board of directors and the auditor's report has been issued; and
- ?? the contents of the press release have been reviewed by the board of directors (or audit committee).

Further, the issuer could be required to file the underlying financial statements and MD&A within a short period of time after the financial information is released.

*Response: The CSA believe the guidance provided in section 4.1 of the Policy is sufficient. As the Policy indicates, the CSA place considerable importance on the role of the directors and management to ensure that information is released only after they are satisfied as to its accuracy. A requirement has also been added to the Rule that any press release disclosing information regarding the reporting issuer's results of operations be filed. Securities legislation in certain jurisdictions provides that it is an offence to file any document that contains a misrepresentation.*

**Schedule 1**
**List of commenters**

Accounting Standards Board - September 18, 2002

ADP Investor Communications - October 15, 2002

Assurance Standards Board Task Force
Canadian Institute of Chartered Accountants - September 19, 2002

ATCO Group - September 19, 2002

BDO Dunwoody LLP - September 19, 2002

Bennett Jones LLP - November 21, 2002

Boughton Peterson Yang Anderson Law Corporation - October 3, 2002

Canadian Advocacy Committee
AIMR (Association for Investment Management and Research) - September 19, 2002

Canadian Bankers' Association - October 11, 2002

Canadian Investor Relations Institute - September 27, 2002

Canadian Listed Company Association - September 19, 2002

Canadian Performance Reporting Board
Canadian Institute of Chartered Accountants - September 19, 2002

Canadian Printing Industries Association - December 17, 2002

Stuart Chalmers
Catalyst LLP - September 16, 2002

Collins Barrow Calgary LLP - September 18, 2002

Davies Ward Phillips & Vineberg LLP - September 19, 2002

Deloitte & Touche LLP - September 18, 2002

Ernst & Young LLP, Chartered Accountants - September 19, 2002

Douglas H. Hopkins - October 4, 2002

Imperial Oil Limited - September 19, 2002

Korea Stock Exchange - August 20, 2002

KPMG LLP - October 1, 2002

McLeod & Company - September 17, 2002

Ontario Teachers' Pension Plan Board - September 17, 2002

Parlee McLaws LLP - September 18, 2002

Bernard Pinsky - July 15, 2002

Power Corporation of Canada - July 23, 2002

PricewaterhouseCoopers - May 23, 2002

The Printing Equipment and Supply Dealers Association of Canada
National Marketing Manager, Graphic Systems
Cascades Resources, a Division of Cascades Fine Papers Group Inc. - November 1, 2002

Research Capital Corporation - September 19, 2002

Social Investment Organization - September 19, 2002

Toronto Stock Exchange – October 2, 2002

TSX Venture Exchange - August 29, 2002

Zargon Oil & Gas Ltd. - October 8, 2002

## Appendix C

## Amendments to
## National Instrument 44-101
## *Short Form Prospectus Distributions*
## Form 44-101F3 and Companion Policy 44-101CP
## And Revocation of
## Form 44-101F1 and Form 44-101F2

### Part 1 Amendments to National Instrument 44-101

**1.1 Amendments to Part 1 of NI 44-101 -** Part 1 of National Instrument 44-101 is amended by

(a) in section 1.1, deleting the definition of "AIF" and substituting the following:

" "AIF" means an annual information form

(a) in the form of Form 51-102F1,

(b) in the form of Form 44-101F1 *AIF* if the annual information form was filed before NI 51-102 came into force, or

(c) in the form referred to in section 3.4;"

(b) in the definition of "current AIF" in section 1.1, adding ", Form 10-KSB," after the words "Form 10-K", wherever they appear;

(c) in section 1.1, adding immediately after the definition of "foreign GAAS" and immediately before the definition of "44-101 regulator" the following:

" "Form 51-102F1" means Form 51-102F1 *Annual Information Form*;"

(d) in section 1.1, deleting the definition of "MD&A" and substituting the following:

" "MD&A" means the management's discussion and analysis of financial condition and results of operations of an issuer required to be filed under NI 51-102;"

(e) in section 1.1, adding immediately after the definition of "NP47" and immediately before the definition of "participant" the following:

" "NI 51-102" means National Instrument 51-102 *Continuous Disclosure Obligations*;"

**1.2 Amendments to Part 3 of NI 44-101 -** Part 3 of National Instrument 44-101 is amended by

(a) in subsections 3.1(1) and 3.2(1), deleting the words "Form 44-101F1" and substituting "Form 51-102F1";

(b) deleting subsection 3.2(5) and substituting the following

"(5) Upon receipt of a notice from the 44-101 regulator that its renewal AIF is being reviewed, an issuer shall promptly file the renewal AIF again, in all jurisdictions in which the renewal AIF was filed, with the following statement added in bold type to the cover page of the renewal AIF until the issuer is notified that the review has been completed:

**This annual information form is currently under review by the provincial and territorial securities regulatory authorities of one or more jurisdictions. Information contained in this form is subject to change**."

(c) deleting subsection 3.3(2) and substituting the following

"(2) An issuer that files an AIF shall file an undertaking with the regulator to the effect that, when the securities of the issuer are in the course of a distribution under a preliminary short form prospectus or a short form prospectus, the issuer will provide to any person or company, upon request to the secretary of the issuer,

(a) one copy of the AIF of the issuer, together with one copy of any document, or the pertinent pages of any document, incorporated by reference in the AIF,

(b) one copy of the comparative financial statements of the issuer for its most recently completed financial year for which financial statements have been filed together with the accompanying report of the auditor and one copy of the most recent interim financial statements of the issuer that have been filed, if any, for any period after the end of its most recently completed financial year,

(c) one copy of the information circular of the issuer in respect of its most recent annual meeting of shareholders that involved the election of directors, and

(d) one copy of any other documents that are incorporated by reference into the preliminary short form prospectus or the short form prospectus and are not required to be provided under paragraphs (a), (b) or (c)."

(d) deleting section 3.4 and substituting the following

"**3.4 Alternative Forms of AIF** - An issuer that:

(a) has a class of securities registered under section 12 of the 1934 Act or is required to file reports under section 15(d) of the 1934 Act, and

(b) is not registered or required to be registered as an investment company under the *Investment Company Act of 1940* of the United States of America,

may file an AIF in the form of an annual report or transition report under the 1934 Act on Form 10-K, Form 10-KSB or on Form 20-F."

**Part 2 Amendments to National Instrument 44-101 Companion Policy**

**2.1** Part 8 National Instrument 44-101 Companion Policy is amended by

(a) in subsection 8.1(1), deleting the words "Item 4.2" and substituting "Section 5.3";

(b) in subsections 8.1(1) and 8.1(2), deleting the words "Form 44-101F1 AIF" and substituting "Form 51-102F1";

(c) in subsection 8.1(2), deleting the words "Item 4.2(b)(i)" and substituting "Subsection 5.3(2)";

(d) in subsection 8.1(2), deleting the words ", the cash flows from which service the asset-backed securities"; and

(e) in section 8.2, deleting the words "Item 8 of Form 44-101F1" wherever they appear and substituting "Item 10 of Form 51-102F1".

**Part 3 Revocation of Forms 44-101F1 *AIF* and 44-101F2 *MD&A***

**3.1 Revocation of Form 44-101F1 *AIF*** – Form 44-101F1 *AIF* is revoked.

**3.2 Revocation of Form 44-101F2 *MD&A*** – Form 44-101F2 *MD&A* is revoked.

**Part 4 Amendments to Form 44-101F3 *Short Form Prospectus***

**4.1** Item 10 of Form 44-101F3 *Short Form Prospectus* is amended by

(a) deleting the words "under Item 4.3 or 4.4, " in two places, and substituting "under sections 5.4 or 5.5,"; and

(b) deleting "Form 44-101F1" and substituting "NI 51-102F1".

**4.2** Item 12 of Form 44-101F3 *Short Form Prospectus* is amended by

(a) deleting subparagraph 12.1(1)7 and substituting the following:

"7. MD&A for the issuer's interim financial statements."

(b) deleting subparagraph 12.1(1)8 and substituting the following:

"8. Except as provided in Item 12.5, information circulars that have been filed after the commencement of the issuer's current financial year."

(c) deleting subparagraph 12.1(3)(a) and substituting the following

"(a) has filed an AIF in a form of current annual report on Form 10-K, Form 10-KSB or Form 20-F under the 1934 Act, as permitted under section 3.4 of National Instrument 44-101 and under NI 51-102."

(d) deleting subparagraph 12.2 4. and substituting the following:

"4. Except as provided in Item 12.5, information circulars."

(e) in clause 13.1(2)(b)(ii), deleting the words "Form 10-K or Form 20-F" and substituting "Form 10-K, Form 10-KSB or Form 20-F".

**Part 5 Effective Date**

**5.1 Effective Date** – This Amendment comes into force on ?, 2004.

## Appendix D

**Amendment to**
**National Instrument 62-103**
***The Early Warning System and Related Take-Over Bid***
***and Insider Reporting Issues***

**Part 1 Amendment to National Instrument 62-103**

**1.1 Amendment to Part 2 of National Instrument 62-103** – Subsection 2.1(1) in Part 2 of National Instrument 62-103 is amended by deleting the words "section 2.1 of National Instrument 62-102 *Disclosure of Outstanding Share Data*" and substituting "section 6.4 of National Instrument 51-102 *Continuous Disclosure Obligations*".

**Part 2 Effective Date**

**2.1 Effective Date** – This Amendment comes into force on ?, 2004.