DAVIES

155 Wellington Street West
Toronto, ON M5V 3J7 Canada

dwpv.com

September 17, 2021

BY EMAIL

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission, New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Office of the Superintendent of Securities, Service NL
Northwest Territories Office of the Superintendent of Securities
Office of the Yukon Superintendent of Securities
Superintendent of Securities, Nunavut

c/o

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor, Box 55
Toronto, Ontario
M5H 3S8
Fax: 416-593-2318
comments@osc.gov.on.ca

Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
Fax: 514-864-8381
consultation-en-cours@lautorite.qc.ca

" = "1" "Tor#: 10211380.5" "" Tor#: 10211380.5

Dear Sirs/Mesdames:

CSA Notice and Request for Comment – Proposed Amendments to National Instrument 51-102 *Continuous Disclosure Obligations* and Other Amendments and Changes Relating to Annual and Interim Filings of Non-Investment Fund Reporting Issuers and Seeking Feedback on a Proposed Framework for Semi-Annual Reporting – Venture Issuers on a Voluntary Basis

We are writing in response to CSA Notice and Request for Comment – Proposed Amendments to National Instrument 51-102 *Continuous Disclosure Obligations* and Other Amendments and Changes Relating to Annual and Interim Filings of Non-Investment Fund Reporting Issuers and Seeking Feedback on a Proposed Framework for Semi-Annual Reporting – Venture Issuers on a Voluntary Basis (the "**Proposed Amendments**").

We commend the CSA for its regulatory burden reduction initiatives and the thoughtful approach to continuous disclosure obligations under Canadian securities laws evidenced by the Proposed Amendments. We recognize that in preparing the Proposed Amendments, the CSA must balance the competing priorities of investor protection against the significant cost and burden of compliance imposed on reporting issuers in Canada under our public company disclosure regime. We commend the efforts of the CSA to streamline disclosure obligations and eliminate certain disclosure requirements which are not particularly useful for investors.

As often noted, the volume of continuous disclosure required to be produced by reporting issuers and provided to the market under Canadian securities laws can have a counter-productive effect. Voluminous disclosure is not necessarily good disclosure and has a tendency to obfuscate or overwhelm the key matters described in an issuer's disclosure. As noted in our comments, there may be further opportunities for the CSA to reduce or streamline continuous disclosure obligations for the benefit of Canadian reporting issuers and investors, to increase the utility of the Proposed Amendments for all interested parties.

Capitalized terms used and not otherwise defined herein have the meaning ascribed thereto in the Proposed Amendments.

RESPONSES TO QUESTIONS INCLUDED IN THE PROPOSED AMENDMENTS

Question relating to additional disclosure for venture issuers without significant revenue

1. Do you think this requirement should apply more broadly or more narrowly? For example, should we extend this disclosure requirement to non-venture issuers that have significant projects not yet generating revenue as well? Why or why not?

We agree that the broadening of disclosure requirements relating to significant projects of issuers that have generated significant revenue represents good disclosure which should be useful to the investing public. In line with the approach to these disclosure requirements in item 3.(6) of Form 51-102F1 in the Proposed Amendments which refers to mineral project on a property "material to your company", and notwithstanding General Instruction (12) of Form 51-102F1, it would be helpful for the CSA to explicitly

" = "1" "Tor#: 10211380.5" "" Tor#: 10211380.5

confirm in items 3.(4) and (5) of Form 51-102F1 that the disclosure relating to projects, business activities or groups of related business activities that have not yet generated revenue and products and services not fully developed or not yet at the commercial production stage, respectively, should in each be made only where material or reasonably expected to be material to the company.

Questions relating to risk factors

2. Would it be beneficial for reporting issuers if we provided further clarity on what "seriousness" means and how to determine the "seriousness" of a risk?

*We do not believe there is any need to clarify the meaning of "seriousness" as it appears in the instructions to item 16 of Form 51-102F1 of the Proposed Amendments, item 18 of the Proposed Amendments to National Instrument 41-101 GENERAL PROSPECTUS REQUIREMENTS or item 16 of the Proposed Amendments to National Instrument 44-101 SHORT FORM PROSPECTUS DISTRIBUTIONS (together, the "**Risk Factor Amendments**"), particularly in light of the elaborating language already included in instruction (3)(c) in each such case.*

Notwithstanding the foregoing, we have serious concerns with several aspects of the approach to risk factor disclosure contemplated by the Risk Factor Amendments. The proposed requirement to disclose the issuer's risk mitigation strategy in relation to each risk factor is potentially harmful and we foresee that many issuers may take the opportunity as a result of this instruction to disclose risk mitigation strategies which are misleading or unlikely to be impactful. The inclusion of a discussion of such risk mitigation strategies in the risk factor disclosure may in many circumstances reduce the gravity of the risk factor in the evaluation of the investing public or contribute to a potentially misleading view that a particular risk is or can be appropriately managed by the issuer. Risk mitigation is more appropriate discussed in the context of the discussion of an issuer's ongoing business in the issuer's MD&A, where such discussion has traditionally been found. An affirmative requirement to disclose risk mitigation strategies as part of the risk factors themselves could weaken the risk factor disclosure and could significantly increase the risk that issuers may be alleged to have mislead their investors, creating new and unwarranted litigation risk for Canadian reporting issuers.

We recognize that the CSA is seeking to add additional context for investors weighting the seriousness of a potential risk factor against the risk mitigation strategies of the issuer by proposing the inclusion of the impact / probability assessment of the issuer in relation to each risk factor. Inclusion of the impact / probability assessment of the issuer in relation to a risk could partially ameliorate concerns described above relating to the potential for issuers to minimize or understate their risks by including overly optimistic or ineffective risk mitigation strategies in their risk factor disclosure. Our primary concern with the impact / probability assessment is that this disclosure itself will contribute further unwarranted litigation risk for reporting issuers in Canada, to the extent that the impact / probability assessment is under-represented by an issuer in relation to risks which will ultimately come to fruition. This enhanced litigation risk will create exposure for issuers even where the issuer accurately predicted the probability and impact of a particular risk factor without any wrongdoing or malfeasance. Even risks with a low probability will on occasion come to fruition, and following each such occurrence investors will with hindsight expect that it should have been obvious to the issuer that the risk was much more likely than disclosed in its risk factor impact / probability assessment.

" = "1" "Tor#: 10211380.5" "" Tor#: 10211380.5

An obvious example of this issue would have arisen for reporting issuers if reporting risk factor disclosure pursuant to the Risk Factor Amendments in 2020, prior to the start of the COVID-19 pandemic. Many issuers at that time would have appropriately given a low weighting to the impact / probability of a pandemic outbreak, as there had been no significantly impactful global pandemic in over 100 years. In fact, many Canadian issuers would not have included any explicit reference to potential pandemics in their risk factors at that time. As this example highlights, the evaluation of the impact / probability of a risk factor is very difficult in practice and the benefits of such disclosure to investors do not outweigh the enhanced risk for Canadian reporting issuers. Risk factors are inherently forward-looking. Requiring issuers to contextualize the impact / probability of a risk factor is in effect asking the issuer to include in its disclosure its best guess of the impact of an unknowable future, with potential liability attaching to the extent that the issuer is wrong in respect of any risk that results in a negative impact on the share price of the issuer.

While we understand the rationale for the proposed risk mitigation and impact / probability assessment disclosure proposed by the CSA in the Proposed Amendments and concede that it is potentially informative for the investing public, we would ask the CSA to reconsider such inclusions as contributing to significant enhanced liability risk for Canadian reporting issuers. Further, it is not clear in the Proposed Amendments whether the impact / probability assessment disclosure is meant to be quantitative or qualitative and we are not convinced that this disclosure requirement will be easy for reporting issuers to interpret or comply with. We believe that risk factor disclosure is already addressed appropriately and comprehensively under Canadian securities laws.

*We are also worried about the proposed divergence from the approach to risk factor disclosure under U.S. securities laws represented by the Risk Factor Amendments and the potential enhanced risk this poses for MJDS issuers, which constitute a material segment of reporting issuers in Canada and the overwhelming majority of Canadian reporting issuers with significant market capitalizations. The Securities and Exchange Commission ("**SEC**") has not even imposed an obligation to order risk factors by perceived seriousness out of concern for possible liability implications for U.S. public companies, though it recently considered making such a change to the risk factor disclosure obligations under U.S. securities laws. We would ask that the CSA consider and reflect upon the work done by the SEC in this area, which demonstrates a more balanced approach to the interests of investors and providing adequate protection from unwarranted liability risk for reporting issuers.*

3. If we adopted similar requirements to the SEC's amendments, what would be the benefits and costs for investors and reporting issuers?

We do not see any added benefit to adopting the SEC's Modernization of Regulation S-K amendments referenced in the Proposed Amendments, we believe that Canadian capital markets are more familiar with the traditional Canadian approach of ordering risk factors by seriousness and that the grouping of risk factors could create confusion in this context. We do not feel that the added burden of preparing a summary of risk factors is of material benefit to investors, as such investors will invariably focus on such summary without reading the full risk factor disclosure, thereby missing potentially important aspects of such risks. The fact that risk factor disclosure is already voluminous is not ameliorated by including additional summary disclosure. In Canada, our forward-looking information disclosure

requirements pursuant to Part 4A of National Instrument 51-102 already requires a summary of risk factors impacting forward looking information in the relevant disclosure document.

Questions relating to the requirement to name authors of technical reports

4. What challenges, if any, do reporting issuers face in obtaining technical report author consents for short form prospectus offerings?

Given the high proportion of Canadian reporting issuers that are mineral resource companies, requirements in Canadian securities laws which necessitate the filing of QP consents with prospectuses are extremely burdensome on a significant number of Canadian reporting issuers. The requirement to track down and obtain QP consents result in issuers being forced to trace and track-down QPs around the world and can be particularly tricky where such QPs have left employment with a company that was responsible for preparing the relevant technical report or where an employee of the issuer was a QP in respect of a technical report and left employment with the issuer on less than amicable terms. Unfortunately and inevitably, certain QPs also pass away giving rise to issues for Canadian reporting issuers seeking to access capital markets. Significant effort can be expended in obtaining the required QP consents in connection with certain offerings and at times such consents are unavailable notwithstanding the herculean efforts of the issuer.

The inability to obtain required QP consents contributes to filing delays and uncertainty in Canadian public offerings and has resulted in numerous issuers being forced to make hasty requests for exemptive relief. The burden borne by Canadian reporting issuers due to the need to file QP consents in connection with prospectus offerings is exacerbated for issuers with multiple mineral projects and issuers that relying on older but still valid technical reports. The foregoing burden significantly disadvantages this important segment of the Canadian capital markets.

5. If the requirement to name the technical report authors in the AIF (and as a result, provide consents for short form prospectus offerings) were removed, would reporting issuers continue to obtain approval of prospectus disclosure from technical report authors or would they rely more on internal or external non-author QPs?

Reporting issuers with producing mineral properties generally have internal QPs who are named in their AIF as being responsible for the technical disclosure therein pursuant to instruction (i) of item 5.4 of Form 51-102F2 as currently in force. For issuers with producing properties, internal QPs are already permitted to author technical reports in the circumstances contemplated by sections 5.3(2), (3) and (4) of National Instrument 43-101. These internal QPs are generally responsible for any and all updates of technical disclosure incorporated in the issuer's continuous disclosure and prospectuses and rarely consult with the original authors of the relevant technical report in connection with (i) ordinary course depletion of a mineral project, which section 4.2(10) of the Companion Policy to National Instrument 43-101 confirms does not represent new material scientific or technical information, or (ii) other immaterial changes to the information contained in a technical report which do not require the preparation of an updated technical report pursuant to National Instrument 43-101. Author QPs (who are not internal QPs or otherwise responsible for the issuer's continuous disclosure) providing their consents in connection with a prospectus filing under Canadian securities laws are not verifying or in any way certifying

updated disclosure relating to a mineral project by virtue of providing their consent to the filing of a prospectus, but are instead confirming that based on their historical knowledge of the relevant mineral property, they are not aware of a misrepresentation in the prospectus.

If provided with a path to avoiding the need to obtain external QP author consents in connection with future prospectus offerings pursuant to Canadian securities laws, most Canadian reporting issuers with mineral properties would seek to do so. If the requirement to name technical report authors in the AIF was eliminated, most issuers would cease to obtain consents from technical report authors in connection with technical disclosure in prospectuses, and would rely solely on their internal QPs to take responsibility for preparing the disclosure in their AIF and/or MD&A and prospectuses, whenever possible. Where the issuer does not have an internal QP, it would most likely rely upon an external QP, who may or may not be an author of one or more of the issuer's technical reports, to take responsibility for the issuer's technical disclosure.

6. If reporting issuers were to rely on internal or external non-author QPs for purposes of providing consents for short form prospectus offerings, in your view, would investor protection be impacted? Would relying on an internal QP for consent purposes (where an external QP authored the original report) raise potential conflict of interest concerns?

As noted in our response to Question 5, above, internal QPs are already permitted to prepare technical reports pursuant to National Instrument 43-101 for producing issuers, indicating that the CSA is comfortable with the potential conflicts arising in such scenario. In reality, even external QPs are subject to a version of the same conflict of interest faced by internal QPs when preparing technical reports on behalf of issuers, in that their compensation and future business from the issuer can create pressures which could influence the work of an unscrupulous QP.

It is our expectation that given the gravity and potential criminal, civil and professional consequences of perpetrating a fraud on the market by falsifying or misreporting technical information, instances where the inherent conflict of interest arising as a result of being compensated to prepare or report on an issuer's technical results actually gives rise to a falsification or misreporting of results will be exceedingly rare. CSA members have authority, standing and adequate enforcement powers to sufficiently address any such fraud which is uncovered. In our view, the risk of any such fraud occurring will not be materially greater where author QP consents are no longer required to be filed with prospectuses.

Question relating to impact of refiling on auditor's report

7. Considering that the annual disclosure statement will include annual financial statements, MD&A and, where applicable, AIF, do you think there will be an impact, including on auditing requirements, if a reporting issuer amends or re-files only one of these documents, or re-files the annual disclosure statement in its entirety?

This question is best answered by firms providing audit services in Canada.

Question relating to proposed amendments to Form 41-101F1 Information Required in a Prospectus and Form 44-101F1 Short Form Prospectus

8. To align the continuous disclosure and prospectus regimes, we are proposing to remove certain prospectus disclosure requirements. Are there any concerns with the removal of this information from a prospectus? Please explain.

Subject to our comment below, we are generally supportive of the suggested deletions from the long form and short form prospectus requirements included in Form 41-101F1 and Form 44-101F1 in the Proposed Amendments. Ideally, the CSA would be willing to make even more far reaching changes to the requirements of Form 41-101F1 and Form 44-101F1 to further reduce the regulatory burden of issuers filing prospectuses pursuant to the respective prospectus regimes. Please see our comments below under "Other Substantive Comments - Other Proposed Deletions from Form 41-101F1" and "Other Substantive Comments - Other Proposed Deletions from Form 44-101F1" for our suggestions in respect of these forms.

The deletion of the disclosure obligations contained in item 8.4 Disclosure of outstanding security data of Form 41-101F1 relating to outstanding securities data is problematic and particularly puzzling in light of the continued inclusion of provisions such at item 12.1 Options to purchase securities, item 13.1 Prior sales and item 14 Escrowed Securities and Securities Subject to Contractual Restriction on Transfer. Continued requirements relating to disclosure of securities issuable have less relevance and will be difficult to contextualize if the prospectus does not contain complete information relating to the issued and outstanding voting and equity securities of the issuer.

Questions relating to semi-annual reporting for certain venture issuers on a voluntary basis

9. Should we pursue the Proposed Semi-Annual Reporting Framework for voluntary semi-annual reporting for venture issuers that are not SEC issuers? Please explain.

We understand the CSA's interest in transitioning from a quarterly reporting cycle to a longer half-year cycle, as other jurisdictions have done, but question the necessity of implementing the Proposed Semi-Annual Reporting Framework in the context of the CSA's burden reduction initiatives. We believe that this proposal is less of a burden reduction initiative, and more of an attempt by the CSA to address, like other regulators have attempted to, the short-term mindedness of capital market participants and refocus on the longer-term. This is a different conversation and set of issues.

Reducing the number of financial reporting periods may be alluring, initially, from a burden reduction perspective; however, the Proposed Semi-Annual Reporting Framework nevertheless calls for alternative disclosure in the interim periods, so issuers will provide an update on various facts and developments, which is already what many issuers that do not yet generate significant revenues use their interim reporting for. We do not believe this effectively reduces the burden on issuers, but rather creates a new format for reporting distinct from the current financials and MD&A which issuers and their advisors are familiar with.

We are also concerned that this will put issuers that choose to report on a semi-annual cycle at a disadvantage to the rest of their North American peers, as the SEC has no current plans to shift to a semi-annual reporting platform. The deep integration between the Canadian and US markets means that any issuer that chooses to go to semi-annual reporting will be at a disadvantage with Canadian and US peers who report on a more frequent basis.

This being said, in the event the CSA decides to pursue the Proposed Semi-Annual Reporting Framework, we support the proposal to make it optional, allowing issuers to report on the cycle that best suits their needs and those of their investors.

10. Are there specific types of venture issuers for which semi-annual reporting would not be appropriate? For instance, should semi-annual reporting be limited to venture issuers below a certain market capitalization or those not generating significant revenue? Please explain.

We would caution against further distinguishing between classes of issuers eligible to use the Proposed Semi-Annual Reporting Framework. We have expressed our concerns previously with respect to the adoption thereof and would urge caution not to further isolate and disadvantage certain classes of venture issuers that already, at times, struggle to raise capital in an integrated North American capital market.

11. Would the proposed alternative disclosure requirements under the Proposed Semi-Annual Reporting Framework provide adequate disclosure to investors? Would any additional disclosure be required? Is any of the proposed disclosure unnecessary given the existing requirements for material change reporting and the timely disclosure requirements of the venture exchanges? Please explain.

In our view, quarterly reporting serves as a useful milestone to "flush out" any disclosure that does not constitute a material change and for which an issuer may not have issued a press release pursuant to the timely disclosure requirements of the venture exchanges. The proposed alternative disclosure requirements, as they are, seem sufficiently broad to cover the necessary elements – in fact, we are concerned that such alternative disclosure requirements are so broad and prescriptive that the burden reduction benefits that the Proposed Semi-Annual Reporting Framework seeks to achieve will be altogether compromised, as we have alluded to earlier, turning a "burden reduction" initiative in something that will only increase regulatory burden for issuers that make the switch.

12. Do you have any other feedback relating to the Proposed Semi-Annual Reporting Framework?

No.

Questions relating to transition provisions

" = "1" "Tor#: 10211380.5" "" Tor#: 10211380.5

13. Do you think the proposed transition provisions are sufficiently clear? If not, how can we make them clearer?

The differentiation between the implementation timelines provided for in sections 24.(1)(a) and (b) of National Instrument 51-102 in the Proposed Amendments could be more clear. We suggest making the following change to section 24.(1)(b) to help readers differentiate between the intended application of these clauses:

24.(1)(b) the date, on or after [December 15, 2023], the issuer voluntarily files an annual disclosure statement or an interim disclosure statement.

14. Do you think the transition provisions in the amending instrument for NI 51-102 would provide reporting issuers with sufficient time to review the Proposed Amendments and prepare and file an annual disclosure statement for a financial year ending on, for example, December 31, 2023 if the final amendments are published in September 2023? Do you think more time should be afforded to smaller reporting issuers (such as venture issuers)?

*We are concerned that the two-and-a-half to three month period proposed between the publication of the final amending instrument (the "**Final Instrument**") to the proposed effective date of December 15, 2023 will not give reporting issuers sufficient time to fully absorb and reformulate their continuous disclosure documentation to appropriately reflect the requirements of the Final Instrument in light of the new disclosure obligations contained in Part 2 of Form 51-102F1 in the Proposed Amendments. We feel that a longer period of at least six months between publication and effectiveness would be much more appropriate given the extent of the changes reflected in the Proposed Amendments.*

The impact on the continuous disclosure reporting obligations reflected in the Proposed Amendments will be most acute for venture issuers who do not currently prepare an AIF. For those issuers, and in particular, for those issuers who have mineral projects, the new disclosure obligations contained in Part 2 of Form 51-102F1 in the Proposed Amendments, and most particularly in item 3.(6) therein and the new accompanying guidance in Instruction (6) to item 3., may have significant impacts and may necessitate updated technical reports for certain issuers, which can be very time consuming and expensive to prepare. Instruction (6) to item 3. significantly alters the impact and interpretation of item 3.(6), which is otherwise unchanged, and given its potentially significant impact the CSA should consider actually incorporating these disclosure requirements into the instrument itself in item 3.(2) description of the business.

As the CSA is aware, mineral resource companies comprise a significant portion of venture issuers in Canada and the changes to Part 2 of Form 51-102F1 will be very burdensome for many of these issuers and could contribute to financial and liquidity issues for a segment of these issuers. As a result of these potentially significant implications, the CSA should consider granting an even longer implementation period of at least one year for venture issuers to reflect the fact that these issuers will be disproportionately burdened as a result of the Proposed Amendments.

" = "1" "Tor#: 10211380.5" "" Tor#: 10211380.5

OTHER SUBSTANTIVE COMMENTS

General Comments on *Form 51-102F1 and Form 51-102F2*

- *The versions of Form 51-102F1 and Form 51-102F2 included in the Proposed Amendments omit the helpful subheadings that appear in the current versions of Form 51-102F1 and Form 51-102F2. We request that equivalent subheadings be reinserted in the Final Instrument.*

- *The General Instructions to Form 51-102F1 and Form 51-102F2 in the Proposed Amendments should include a version of the plain language instruction Part 1(n) in the current version of Form 51-102F1 and Part 1(h) in the current version of Form 51-102F2, given that Plain Language Principles in item 1.5 of the Companion Policy to National Instrument 51-102 have not been deleted or substantively revised by the Proposed Amendments.*

- *General Instruction (9) in each of Form 51-102F1 and Form 51-102F2 in the Proposed Amendments and item 5 in the Proposed Changes to Companion Policy 51-102CP to National Instrument 51-102 Continuous Disclosure Obligations provides for hyperlinking within the relevant form, but not to other documents filed by the issuer on SEDAR. In our view, issuers should be entitled to hyperlink within their annual disclosure statements and interim disclosure statements to any other document filed by the issuer on its SEDAR profile to the extent that the issuer is permitted to incorporate such disclosure by reference pursuant to the applicable Form requirements.*

- *In various instances in Form 51-102F1 in the Proposed Amendments, the instrument includes lists without incorporating "and" / "or" references in respect of such lists which may be necessary to correctly interpret whether the list in such provision is inclusive or exclusive. See for instance, instruction (6) following item 6, item 14(2)(b), instruction (2)(b)(ii) of item 15, item 17(f), item 18(o), item 24(1)(a), item 24(2)(b), item 24(3)(a) and item 28(1)(b). For the sake of clarity and consistency with the drafting elsewhere in Form 51-102F1, clarifying "and" / "or" references should be included in each list throughout the Form and anywhere else in the Proposed Amendments where such references have been omitted.*

Burdensome Impact of Form 51-102F1 for Venture Issuers

As referenced above in our response to Question 14, the impact on the continuous disclosure reporting obligations reflected in the Proposed Amendments give rise to burdensome new annual disclosure obligations for venture issuers who do not currently prepare an AIF. For those issuers, and in particular, for those issuers who have mineral projects, the new disclosure obligations contained in Part 2 of Form 51-102F1 in the Proposed Amendments, and most particularly in Instruction (6) to item 3., will have significant impacts and will necessitate more frequent preparation of technical reports, which will impose a significant financial burden on these issuers and make it more difficult to navigate the delicate balance of mineral project exploration, disclosure and financing which is the crux of the business of this important segment of the Canadian capital markets.

" = "1" "Tor#: 10211380.5" "" Tor#: 10211380.5

As the CSA is aware, mineral resource companies comprise a significant portion of venture issuers in Canada and the changes to Part 2 of Form 51-102F1 will be very burdensome for many of these issuers. Certain issuers may need to prepare a new technical report in order to comply with the requirements of Form 51-102F1 given the new Instruction (6) to item 3., as contemplated in the Proposed Amendments, and certain issuers may not have sufficient liquidity or time to do so based on the timeline for implementation contemplated in the Proposed Amendments.

While we understand the CSA's rationale for proposing to impose certain AIF form requirements on venture issuers who do not currently prepare an AIF, there is a principled and well accepted rationale for exempting venture issuers from the obligation to prepare an AIF or comply with AIF disclosure obligations. The more circumscribed disclosure obligations of venture issuers is well understood and accepted in Canadian markets and is both proportionate and supportive of fostering business growth and development for junior issuers. Allowing venture issuers to voluntarily prepare such AIF disclosure has been a valuable tool for venture issuers whose business has matured and have progressed in stage and development, and supports successful venture issuers as they prepare to graduate to a more senior exchange or raise capital on a more frequent basis.

The current continuous disclosure regime applicable to venture issuers in National Instrument 51-102 has made Canada a very attractive jurisdiction for capital formation, particularly for companies with mineral projects. The added cost and burden on junior mining companies of the incorporation of AIF disclosure requirements in the MD&A contemplated in the Proposed Amendments could result in reduced attractiveness of Canadian capital markets as a preferred organizational jurisdiction for the for the financing of mineral projects, which could have far reaching implications and result in broader negative impacts on the Canadian economy. We would ask that the CSA be thoughtful in its approach to any such added disclosure required of venture issuers and to make sure that the cost and burden of such additional disclosure requirements is appropriately weighted against the CSA's investor protection rationale.

Other Proposed Deletions from Form 41-101F1

Given the proposed deletion by the CSA of the requirement to disclose social and environmental policies adopted by an issuer by repealing item 5.1(4) of Form 41-101F1, the CSA should also consider whether there are aspects of the continuous disclosure obligations contained in Form 58-101F1 and Form 58-101F2 which could be excluded from inclusion in Form 44-101F1 on the same basis: that such disclosure will be included in the annual filings of the issuer and is not of the same level of relevance to the investing public to warrant inclusion in the already voluminous long-form prospectus disclosure. The exclusion of certain disclosures from Form 58-101F1 and Form 58-101F2 would further reduce regulatory burden in respect of long form prospectuses, without detracting in any significant way from the protection of investors. We would suggest that the CSA consider only requiring in Form 41-101F1 item 19.2(1), the disclosure obligations contained in item 1 of Form 58-101F1, and in Form 41-101F1 item 19.2(2), the disclosure obligations contained in items 1 and 2 of Form 58-101F2.

Other Proposed Deletions from Form 44-101F1

In addition to the deletions to Form 44-101 included in the Proposed Amendments, we would propose that the CSA also consider deleting the requirements contained in:

- *item 1.5 Name and Address of Issuer, relating to the head and registered address of the issuer, as this requirement has been deleted from the AIF form requirements (section 13(1) of Part 3 of Form 51-102F1 in the Proposed Amendments), presumably on the basis that sufficient contact information relating to the issuer is available on its SEDAR profile; and*

- *item 2.1 Summary Description of the Business, as this disclosure is already appropriately and comprehensively addressed in the documents incorporated by reference in any such short form prospectus.*

DRAFTING COMMENTS

Annex A Proposed Amendments to National Instrument 51-102 CONTINUOUS DISCLOSURE OBLIGATIONS

11. Sections 5.1(1) and 5.1(2)

Comment:

The respective references to "paragraph 3A.1(b)" and "paragraph 3A.3(b)" in sections 5.1(1) and 5.1(2) of National Instrument 51-102 should be changed to "section3A.1(b)" and "section 3A.3(b)".

12. Sections 5.2 to 5.7 are repealed.

Comment:

In light of the proposed relocation of certain of the disclosure obligations formerly contained in sections 5.2 to 5.7 of National Instrument 51-102 to Form 51-102F1, the CSA should consider adding a cross-referencing item in Form 51-102F1 Part 2 reminding issuers to comply with their reporting obligations under section 5.8 of National Instrument 51-102, to the extent applicable, or consider relocating these disclosure requirements to Part 2 of Form 51-102F1 as well.

Annex B Proposed Annotated Form 51-102F1 Annual Disclosure Statement

General Instruction (3)

Comment:

The second sentence of General Instruction (3) in Form 51-102F1 should be moved to Part 2 of the Form and included as a disclosure obligation, consistent with the approach in item 17.1(1) of the current version of Form 51-102F2.

" = "1" "Tor#: 10211380.5" "" Tor#: 10211380.5

29.(2)

Comment:

Item 29.(2) of Part 3 of Form 51-102F1 is duplicative of Item 29.(1) and need not be included in light of the new instruction language which makes it clear that the material contract disclosure can be incorporated by reference. If the CSA is concerned that the incorporation by reference may not be detailed enough, a version of item 29.(2) should be added in the instructions clarifying that the disclosure responsive to item 29.1 should include a list of all relevant contracts where incorporation by reference is used.

30.(2)(a), (b) and (c)

Comment:

The words "registered or beneficial interests" at the beginning of each subsection (a), (b) and (c) of item 30.(2) should be deleted, as these words are duplicative of the same words included in the first sentence of item 30.(2).

32. If either of the following applies to your company, disclose in the AIF the information required under Items 6, 7, 9, 10, 12 and 13 of Form 51-102F5 Information Circular, as modified below:

Comment:

To avoid confusion relating to the continued relevance of the disclosure required by item 8 of Form 51-102F5, which incorporates the onerous requirements of Form 51-102F6, the following change should be made to section 32 of Appendix B of the Proposed Amendments:

32. If either of the following applies to your company, disclose in the AIF the information required under Items 6, 7, 8, 9, 10, 12 and 13 of Form 51-102F5 Information Circular, as modified below, to the extent applicable:

Annex C Proposed Annotated Form 51-102F2 Interim Disclosure Statement

General Instruction (3)

Comment:

The second sentence of General Instruction (3) in Form 51-102F2 should be moved to Part 2 of the Form and reframed as a disclosure obligation, consistent with the approach in item 17.1(1) of the current version of Form 51-102F2.

Proposed Amendments to National Instrument 41-101 *GENERAL PROSPECTUS REQUIREMENTS*

9.(d) by replacing subparagraph (2)(b)(i) with the following:

(ii) the Instruction to section 7 of Form 51-102F1, and,

9.(e) by repealing subparagraph (2)(b)(ii),

Comment:

The foregoing sections of the Proposed Amendment should be replaced with the following:

9.(d) by replacing subparagraph (2)(b) with the following:

must disregard the Instruction to section 4 of Form 51-102F1, and,

24.2.(b) the date, on or after [December 15, 2023], the issuer includes in a prospectus an MD&A that is voluntarily prepared under National Instrument 51-102 Continuous Disclosure Obligations.

Comment:

Further to our response to Question 13, above, the word "voluntarily" should be inserted in section 24.2(b) as indicated above.

Proposed Amendments to National Instrument 52-109 *CERTIFICATION OF DISCLOSURE IN ISSUERS' ANNUAL AND INTERIM FILINGS*

10. Form 52-109F1R CERTIFICATION OF REFILED ANNUAL FILINGS is amended by replacing section 1 with the following:

1. **Review:** I have reviewed the AIF, if any, and the annual disclosure statement, including, for greater certainty, the AIF, if any, and all documents and information that are incorporated by reference into the MD&A and the AIF (the "annual filings") of the issuer for the financial year ended **<state the relevant date>**.

Comment:

The foregoing text appearing in the Proposed Amendments should be replaced with the following:

*1. **Review:** I have reviewed the annual disclosure statement, as amended or amended and restated, including, for greater certainty, the AIF, if any, and all documents and information that are incorporated by reference into the MD&A and the AIF (together, the "annual filings") of the issuer for the financial year ended **<state the relevant date>**.*

" = "1" "Tor#: 10211380.5" "" Tor#: 10211380.5

15. Form 52-109F2R CERTIFICATION OF REFILED INTERIM FILINGS is amended by replacing section 1 with the following:

1. **Review:** I have reviewed the interim disclosure statement, as amended or amended and restated, including, for greater certainty, all documents and information that are incorporated by reference into the MD&A *(together, the "interim filings")* of the issuer for the interim period ended **<state the relevant date>**.

Comment:

The underlined text included above has been omitted and should be inserted in the Final Amendments.

Proposed Changes to National Policy 41-201 *INCOME TRUSTS AND OTHER INDIRECT OFFERINGS*

5. Section 6.5.2 is changed by replacing "Although the instructions in Form 51102F1 do not specifically state it, to meet the disclosure requirements for liquidity in Form 51102F1" with…

Comment:

Hyphens have been omitted and should be inserted in the first two references to Form 51-102F1 in this section.

Proposed Amendments to Companion Policy National Instrument 52-110 *AUDIT COMMITTEES*

2. Footnote 1 is deleted.

Comment:

Consider deleting all footnotes in this instrument, as all relate to historical matters which are no longer relevant, other than footnote 4, which should be updated to reference Part 3 of Form 51-102F1 if such footnote is not also deleted. Please note that the footnotes in National Instrument 52-110 AUDIT COMMITTEES do not appear in the current version of the Consolidated Ontario Securities Act, Regulations and Rules by Borden Ladner Gervais LLP, supporting our contention that these footnotes are not necessary for a proper understanding of this instrument.

****

" = "1" "Tor#: 10211380.5" "" Tor#: 10211380.5

The following partners at our firm participated in the preparation of this comment letter and may be contacted directly should you have any questions regarding our submissions.

Robin Upshall	Sebastien Roy
416.367.6981	514.841.6493
rupshall@dwpv.com	sroy@dwpv.com

Yours very truly,

DAVIES WARD PHILLIPS & VINEBERG LLP

" = "1" "Tor#: 10211380.5" "" Tor#: 10211380.5