June 5, 2000

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Securities Commission
The Manitoba Securities Commission
Ontario Securities Commission
Commission des valeurs mobilieres du Quebec
Office of the Administrator, New Brunswick
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Securities Division, Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Registrar of Securities, Nunavut

c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 800, Box 55
Toronto, Ontario M5H 3S8
e-mail: jstevenson@osc.gov.on.ca

Dear Sir:

Re: Notice and Request for Comment 44-401, 51-401 Concept Proposal for an Integrated Disclosure System

We are writing to provide our comments on the proposals put forward in the above document. We are pleased to see that the Canadian securities regulatory authorities are moving ahead with this project. Implementing the Integrated Disclosure System would constitute a major stride forward towards both bringing Canadian continuous disclosure standards into line with those of other major capital markets and creating uniform standards across our various provincial and territorial borders.

We have divided our comments into two sections. The first section addresses issues and concerns about our role as auditors in such a system. The second section provides our responses to the 34 questions posed in the above Notice.

Like the CSA, we are concerned that if the IDS is to achieve its goals, a higher level of "due diligence" will have to be applied by issuers to the preparation of their continuous disclosure documents than is currently the case. Currently, POP issuers generally involve their professional advisors, particularly their securities counsel, their auditors, and the underwriters and their legal counsel in the development of a Short Form Prospectus to be used to issue securities. In our experience, based on the input from these parties, the POP Short Form Prospectus is frequently used to "cooper-up" for any deficiencies in the documents incorporated by reference. However, as we understand the intent of the IDS, the IDS Prospectus would be briefer than the current POP Short Form Prospectus, largely focusing on disclosure concerning the offering and the offered securities. Thus, under IDS, much more importance would be attached to the accuracy and completeness of the continuous disclosure documents incorporated by reference than is currently the case with the POP system. Accordingly, we believe that adopting civil liability provision for continuous disclosure documents is a necessary, but not sufficient, requirement to help ensure that issuers are motivated to achieve a higher standard of disclosure in such documents. In addition, we believe that an significantly enhanced program of regulatory review of continuous disclosure documents is also required.

With respect to civil liability for continuous disclosure documents, we are also somewhat concerned about the possibility that the IDS proposals could be implemented independent of the proposals to reform the statutory civil remedies. We believe there have been material changes in both the capital market's craving for more timely information and in the composition of the capital market participants. As signs of these new times, we see the British Columbia Securities Commission publishing notices reminding people to "investigate before investing" and telling seniors how to avoid investment scams. We see the Ontario Securities Commission holding virtual "town hall" meetings on investor education and offers "Investing ABC's" on its website. We see the CSA providing relief from suitability obligations to dealers providing only trade execution for their clients. We believe these changes in turn have significant implications for setting the standards to which issuers and advisors should reasonably be held on a continuous basis and the nature of the liabilities and penalties to which they should reasonably be subject. In our view, it would be preferable to develop these standards and remedies in concert. However, we would not want to see the implementation of the IDS unduly delayed by the reform of civil liabilities. In that case, we would prefer implementation of the IDS with some form of safe harbour for the participants and their professional advisers during the pilot period.

We are excited about the Concept Proposal and are optimistic that the concerns raised in this letter can be addressed in the proposed National Instrument to follow.

Yours very truly,

Gordon C. Fowler, Partner

Alan G. Van Weelden, Senior Principal

SECTION ONE - GENERAL ISSUES AND CONCERNS

Interaction of IDS with Proposed Statutory Civil Remedies

Full, True and Plain Disclosure on a Continuous Basis?

We noted with some concern the statements in Part V that the implementation of the IDS is not contingent on the implementation of the statutory civil remedies. We can see the merit in proceeding independently with most of the continuous disclosure enhancements, but believe it is preferable to evaluate the nature of the civil remedies to be provided to secondary market investors in the context of the standards for disclosure to which issuers, underwriters and advisors are to be held on a continuous basis. In commenting on how high the bar should be set for corporate disclosures, it would be useful to more clearly understand the consequences of falling short.

In 1998 certain members of the CSA published proposed legislative amendments to provide limited statutory civil remedies to secondary market investors. Having reviewed the IDS prospectus concept and having had more opportunity in recent years to observe the impact on the capital markets of the enormous growth in retail investing, we believe that there may be merit to creating a distinction between those secondary investors who invest with the full assistance of the network of professional brokers, dealers and advisers established under the oversight Canadian securities regulators and those secondary investors who choose to make their own investment decisions and look to the broker/dealer only for the execution of a trade. The unprecedented volatility of stock prices suggests that many investors are applying very short term trading strategies. As noted in our cover letter, certain Canadian securities commission have felt it necessary to begin spreading the word on the do's and don'ts of investing. The limits of the old "know your client" maxim are being challenged and the CSA has recognized this in granting relief from suitability obligations in certain circumstances. It is clear that discount brokers do not want to be held accountable for the secondary investors who choose to make their own investing decisions. We believe such investors should face a higher burden of proof in claiming they relied on a misrepresentation to their detriment. Put another way, we think that access to the proposed limited statutory civil remedies should favour those secondary investors who use the full services of our Canadian registrants.

Reporting on Reviews of Interim Financial Statements

An auditors' review of interim financial statements included in a prospectus generally has been documented by means of a comfort letter to the relevant securities regulatory authorities rather than including a review engagement report in the prospectus. Historically, the vast majority of securities regulators have preferred the comfort letter approach fearing that purchasers may place undue reliance on the auditors' review engagement report. (Of, course, with the advent of SEDAR, the posting of the auditors' comfort letter is tantamount to incorporation by reference as opposed to simply making them publicly available.) If we look at the possibility of mandatory auditor reviews being imposed for interim financial statements filed under continuous reporting requirements, regulators will have to consider how such reviews will be documented under the IDS. Various

options are possible, including: requiring review engagement reports to be attached to the interim financial statements delivered to shareholders; requiring a comfort letter to be delivered only to the securities commissions concurrent with the delivery of the interim financial statements; requiring a comfort letter on all interim financial statements incorporated by reference at the time the final IDS prospectus is filed (our preference). A primary consideration is whether the broad investing public readily understands the significant difference between a review engagement and an audit. We believe the differences between generally accepted auditing standards and generally accepted standards for review engagements are substantial and are likely to be poorly understood by retail investors. Consequently, we strongly favour the comfort letter approach.

Interaction of IDS with US Reforms

A good number of POP issuers are also SEC registrants who often undertake cross border offerings. If the benefits currently enjoyed by Canadian SEC registrants under the MJDS are removed, as we fear they will be, there would be little or no benefit to the IDS prospectus system, let alone the POP system, because the more rigorous Form 20-F and 40-F requirements will prevail. The IDS would become a "Canadian" only distribution system, which in itself is not a bad thing, but its potential utility to Canadian reporting issuers will be diminished. We hope the CSA will continue its efforts to salvage the MJDS and to undertake reforms to improve harmonization with US reforms as much as possible. We welcome the continuous disclosure enhancements, which will put both IDS and POP issuers in a better position to make U.S. filings.

Time Periods Allowed for Filing

The Concept Proposal indicates the CSA is considering changes to the continuous reporting requirements for ALL reporting issuers, including proposed reductions in the time periods allowed to file quarterly and annual financial statements. We think there are many smaller issuers for which these requirements will prove burdensome to both the issuer and their auditors and have supported the granting of relief to junior issuers in our responses to the OSC and CSA prospectus proposals.

Reporting of Material Changes

The Concept Proposal attributes the same high level of importance of acquisitions and dispositions to continuous disclosures as is evident in the amendments currently proposed for long and short form prospectus disclosures. However, there are a number of other important events that could warrant SIF disclosures, but have not been identified by in the Concept Proposal. These could include "restructuring" of corporate activities, modifications of debt agreements, violations of debt covenants, issuance of securities or options to acquire securities via private placement or other prospectus exemptions. Having said this, it is possible that the introduction of interim MD&A requirements as proposed OSC Rule 51-501 may provide a better medium to disclose and discuss the effects of some of these events and transactions.

Auditor Involvement

The professional standards in Section 7100 of the CICA Handbook presently provide very little guidance on auditors' association with other information in a prospectus and very little guidance on auditors' association with a short form prospectus, although there is some analogous guidance in Section 7500.

The IDS AIF, in essence, will be a prospectus. If this change is to come into effect in an orderly fashion, we believe the CSA needs to work with the CICA to ensure that the guidance for auditor involvement in Sections 7500 and 7100 is updated to address the new prospectus regime. Consideration will have to be given to questions such as:

- should the annual MD&A in an IDS AIF be reviewed in accordance with standards similar to those in place, though largely unused, in the U.S.?;
- should subsequent events audit procedures be performed to within a couple of business days of the filing date of the IDS AIF, including obtaining updated legal confirmations?;
- should standards be set for the presentation of five-year financial statements summaries, similar to those in the U.S., and should the auditors be required to perform procedures to ensure the information is presented in accordance with those standards?

SECTION TWO - RESPONSES TO SPECIFIC CSA QUESTIONS

Rather than reproducing the entire question, we have included a brief caption or summary of the question at the beginning of each item to provide some context for our response.

1. *Reporting issuer in all jurisdiction?* FOR: It recognizes the reality that physical boundaries cannot contain market activities, especially for secondary market trading. Under SEDAR it is just as easy to file in all jurisdictions as it is to file in one. AGAINST: French translation is a costly process. Investors accessing information through SEDAR are not particularly concerned about the jurisdictions in which the issuer reports. On balance, we think the issuers should be able to choose the jurisdictions in which they report without being denied access to the IDS.
2. *French translation*. As just stated, this is a costly process. We think reporting issuers should be able to choose to avoid this whenever possible.
3. *Different reporting requirements for non-participating issuers a problem?* No. The non-participating issuers are likely to represent the smaller-sized public companies and we think they should be given more time to prepare their quarterly and annual financial disclosure documents.
4. *Seasoning*. Not necessary. If an issuer chooses to participate, then we would assume they have both the desire and ability to comply with the more stringent disclosure requirements.
5. *Advantages/disadvantages of seasoning not discussed*. Possible disadvantage would be in area of "due diligence". The POP System places fairly intense time pressures on underwriters and professional advisers. A seasoning period in which the issuer "proves" its ability to release timely, accurate information may give the underwriters and professional advisers more comfort

that "no surprises" will be found. This concern can be mitigated by timely involvement of this group with the IDS filings.

6. *Quantitative criteria.* Not necessary, for the same reason given in our response to Question 4.
7. *Do larger issuers provide higher quality of disclosure than smaller ones?* Generally, yes. Larger issuers tend to have more experienced and qualified accounting departments and are more likely to be followed by financial analysts, who expect far more than the minimum disclosures.
8. *Relevance of analyst following*. Analyst following is vitally important and will become even more critical in the future as securities regulations move away from the old requirements to physically deliver copies of financial statements to investors/shareholders.
9. *Disclosure items to be added/deleted?* No comment.
10. *Other continuous disclosure enhancement?* Where a restructuring is in progress, each QIF to and including the period of completion of the restructuring activities, should contain current period, year-to-date and cumulative (from date of initiation of the restructuring) analyses of exit costs, impairment provisions, other costs related to the restructuring, remaining accruals.
11. *Other specified events that should trigger SIF?* Consider any of the following: restructuring; substantial modifications of debt agreements; violations of debt covenants; issuance of securities or options to acquire securities via private placement or other prospectus exemptions; events that raise questions as to the ability of the issuer to continue as a going concern. However, the introduction of interim MD&A requirements, as in proposed OSC Rule 51-501 may provide an appropriate medium in which to make some of these disclosures.
12. *Change in issuer's name and auditor*. We believe an SIF with an amended SEDAR profile is adequate for a change in name. We do not believe this approach is appropriate for a change in auditor; we anticipate that NI 52-103 will carry forward the existing disclosure requirements of NP No. 31.
13. *Is 75 day deadline appropriate for business combinations?* Based largely on our experience with similar Form 8-K filing requirements in the U.S., we believe this time period is sufficient.
14. *Delivery to investors*. Our general impression is that a good portion of the financial statements and reports mailed to shareholders goes directly to the waste basket. We support the continued advancement of delivery through electronic means, although hardcopies should be available upon request, even to those who have consented to receive or access documents through electronic means.
15. *Review and approval of interim financial statements*. We support the proposed requirements for audit committee review and board of director approval of interim financial statements prior to the release of any interim financial information. There can be no question that the capital markets are extremely sensitive to interim financial results. It is no longer adequate to apply this review and approval process only to annual financial statements. We support a requirement for auditor review of the interim financial results. We believe it will be of valuable assistance to the audit committee and board of directors in carrying out their responsibilities. Although the scope of a review is far less than the scope of an audit, it should ensure that timely attention is given to the accounting and disclosure issues related to high profile events and transactions occurring during the year and help reduce the need for significant "fourth quarter" adjustments arising from the annual audit. However, as discussed above we would not encourage public reporting on the

results of the auditor's review, as we do not believe that most retail investors will understand the significantly lower level of assurance provided by a review, compared with an audit.

16. *Proposed certification requirements*. We do not support the proposed requirements. We agree that someone has to accept responsibility for the information released, but that does mean that the individual accepting such responsibility on behalf of a company should be expected to have participated extensively every aspect of the document, especially a document as comprehensive as the proposed IDS AIF. For example, assuming the proposed requirements for audit committee review and board of director approval of interim financial statements are adopted, we believe the following "certification" of a QIF would be sufficient: "The contents of this QIF have be reviewed by the Company's audit committee and have been approved for release by the Company's board of directors. Signed: John Doe, Senior Officer."
17. *Is the "full, true and plain disclosure" standard attainable on a timely basis?* No. We equate the procedures necessary to attain this standard with those historically carried out in a connection with a long form prospectus. These procedures include those performed by management and its professional advisors and the underwriters and their professional advisors. We feel the existing short form prospectus system already falls short of this standard (in part because of the intense time pressures and in part due to the lack of rigorous continuous disclosure requirements). Even with the proposed enhancements to continuous disclosure requirements we have difficulty seeing under the IDS how the sum of the various documents placed on the public record will <u>at all times</u> measure up to this standard. The increasingly critical importance of timely disclosures will necessitate compromises in the both the comprehensiveness and degree of accuracy of continuous disclosures. At the time of an IDS offering management, underwriters and professional advisors have an opportunity to look back on the record of incorporated documents and make updates/enhancements in disclosures to meet the full, true and plain standard.
18. *Involvement of Advisors*. We will leave it to the underwriting community to speak for itself on this matter. From our perspective, the mandating of auditor involvement with QIFs (review of interim financial statements) and certain SIFs (review, as to compilation only, of pro forma financial statements), would enhance our ability to contribute to the due diligence conducted in connection with a subsequent expedited offering process. Furthermore, as discussed in our covering letter, we believe that civil liability provisions for continuous disclosure documents and a strong continuous disclosure regulatory review regime will be necessary to motivate issuers to improve the quality of their continuous disclosure documents.
19. *Value of preliminary and final prospectuses*. Our sense is that most recipients of these documents, at best, give them a cursory reading. We believe the investment professionals, including financial analysts, are the prime users. As alluded to in our response to Question 17, the benefit of the prospectus process is that it provides the opportunity for management, underwriters and professional advisors to scrutinize the record of public documents and bring the disclosures up to prospectus standards. We hope this process gives the professional investment community more confidence in making their buy/sell/hold recommendations. Having observed the huge increase in retail investor trading and a significant increase in the volatility of stock prices, we surmise that many investors are trading on a short-term horizon, rather than on a long-

term expectation founded on a thorough and thoughtful analysis and evaluation of the issuer's disclosure documents.

20. *Timing of delivery*. We would be interested in knowing whether the Canadian securities regulatory authorities have been inundated with phone calls from irate investors complaining about a lack of time to review a prospectus. We suspect not. We suggest the timing be geared to the needs of the professional investment community.
21. *Should filing and delivery of a preliminary IDS prospectus be required?*. Consistent with our response to question 14, we support the continued advancement of delivery of documents, including preliminary prospectuses, through electronic means, although hardcopies should be available upon request, even to those who have consented to receive or access (through SEDAR or otherwise) documents through electronic means.
22. *Are the preliminary IDS prospectus disclosure items appropriate?* Yes, except we believe an item for "Current Developments". The instructions to this item would require the issuer to provide any information necessary to update information previously provided in documents incorporated by reference to reflect more recent information and developments. It should also provide a requirement to disclosure other new developments, even normal course developments such as the commencement of wage negotiations with a union, that may not have been captured by the SIF requirements.
23. *Streamlined vs. Traditional Final Prospectus*. We have a couple of concerns about the streamlined approach. We are troubled by the statement that "…**most** of the text of the preliminary IDS prospectus would not be required to be repeated in a final IDS prospectus…" (emphasis added). Our concern is that it may cumbersome to clearly distinguish what portions of the preliminary prospectus have been carried forward and what portions have been deleted or superceded. A second concern is that the final document may be construed as a formal notice of the deficiencies in the preliminary disclosures, since it highlights the changes/updates necessary to provide complete disclosure.
24. *Marketing communications*. It is not clear to us whether "green sheets" will be swept into this category of marketing documents. If so, the "green sheets" typically prepared today often contain financial information of other companies in the issuer's industry, along with numerous financial ratios and calculations. We believe that such information is quite properly excluded from the prospectus and thus would oppose a proposal to incorporating these or similar documents into a prospectus.
25. *Marketing restrictions*. No comments.
26. *Distribution period*. We would welcome efforts to more clearly define this period, but defer to underwriting community as to what limits should be imposed.
27. *Should IDS disclosure enhancements be broadly applied to all issuers?* No. The main benefit of IDS participation is quicker access to capital markets. Those issuers who do not benefit from the system should not have to pay the price inherent in the complying with the higher standards of disclosure. Since the existing POP System issuers already have the benefit of quick access to capital markets, the disclosure enhancements should apply to them even if they choose not to participate in the IDS. We continue to believe that smaller-sized issuers should be given some concessions, such as: more time to prepare and file the required disclosures; exemption from

audit committee requirements; exemption from auditor review of interim financial statements; exemption from interim MD&A requirements.

28. *Certain exemptions from certification?* If the certification requirements are adopted, we see no reason to exempt non-IDS issuers from this requirement. If smaller issuers are allowed more time to prepare and file the required disclosures, there is all the more reason for them to make the same assertions as the IDS issuers.
29. *Marketing restrictions.* No comments.
30. *Broad application of other elements of IDS?* No comments.
31. *Pilot test introduction?* We think it is a good idea, but based on MRRS pilot test experience, we don't think issuers will be lining up to participate. Obviously, if the continuous disclosure enhancements apply to all issuers, the non-POP issuers with an imminent need to raise capital will have the most to gain by opting into the IDS pilot program.
32. *POP Issuer participation in IDS pilot test?* A good number of POP issuers are also SEC registrants who often undertake cross border offerings. If the benefits currently enjoyed by Canadian SEC registrants under the MJDS are removed, as we fear they will be, there would be little or no benefit to the IDS prospectus system, let alone the POP system, because the more rigorous Form 20-F and 40-F requirements will prevail. The IDS would become a "Canadian" only distribution system. The continuous disclosure enhancements, however, will put both IDS and POP issuers in a better position to make U.S. filings.
33. *Main benefits of IDS?* Since this is a CSA initiative, we ultimately expect a National Instrument that will be adopted as a rule in all Canadian jurisdictions. This should eliminate what we view as unnecessary local inconsistencies in prospectus and continuous disclosure requirements. We think it will be a major step towards creating a true virtual national securities commission. Further, with the enhanced continuous disclosures, the gap between the information on the public record at any point in time and the "full, true and plain" prospectus disclosure is significantly narrowed. The extent of additional disclosure in the prospectus document, short form included, is significantly reduced. Finally, the IDS will enable mid-sized issuers to obtain benefits similar to those presently enjoyed by POP issuers.
34. *Should IDS replace short form and shelf distribution procedures?* Let's wait and see how the pilot test goes.