July 25, 2001

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

c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1903, Box 55
Toronto ON M5H 3S8

Denise Bosseau, Secretary
Commission des valeurs mobilières du Québec
Stock Exchange Tower
800 Victoria Square
P.O. Box 246, 22nd Floor
Montreal QC H4Z 1G3

Dear Sirs/Mesdames:

Re: Canadian Securities Administrators Request for Comment on Proposed National Policy 51-201 Disclosure Standards

This letter is submitted in response to the request for comment dated May 25, 2001 by the Canadian Securities Administrators ("CSA") in respect of proposed National Policy 51-201 Disclosure Standards (the "Policy").

This submission is provided to you by the Securities Subcommittee (the "Subcommittee") of the Business Law Section of the Ontario Bar Association (the "OBA") (formerly called the Canadian Bar Association – Ontario). The members of the Subcommittee are listed in the Appendix attached. Please note that not all of the members of the Subcommittee participated in or reviewed the submission, and that the views expressed are not necessarily those of the firms and organizations represented by members of the Subcommittee. Please note as well that the formal approval of the OBA for this submission has not yet been obtained. We will be pleased to notify you once formal OBA approval has been granted.

We are pleased to offer you our comments below.

1. Necessary Course of Business

You asked in particular for comment on your approach to the "necessary course of business" exception. We generally support the approach taken in the Policy to this issue. However, we had some concern whether it was advisable to include disclosure to private placees in the same category as disclosure in the context of an acquisition or a bank loan, especially where previously undisclosed material facts are disclosed to a number of potential investors during the solicitation process. We recognize that such disclosure would normally be contained in an offering memorandum with cautionary language relating to confidentiality, and that a commitment would be obtained against further disclosure or trading. Therefore, we agree on balance that there may be circumstances where it would be appropriate to rely on the "necessary course of business" exception to make such disclosure in the private placement context, although we believe that in the normal case any previously undisclosed material facts that are disclosed to private placees should be brought into the public domain at the earliest opportunity.

2. Duty to Update

We are concerned that some of the statements in the Policy relating to an issuer's "duty to update" where there has been a material variation from previously disclosed forward-looking information may go beyond what would be required by statute under timely disclosure requirements. In common with other securities law initiatives (including requirements relating to Management Discussion and Analysis), the Policy states that issuers are encouraged to disclose forward-looking information in order to provide investors with the benefit of management's views as to the issuers future direction. An unwarranted extension of an issuer's "duty to update" would be inconsistent with this aim since issuers may have a concern that the "correcting" disclosure would open it up to allegations of misrepresentation in the original disclosure, which would provide a disincentive to management to be forthcoming about future prospects. In our view, any discussion about "duty to update" in the Policy should take an approach closer to that taken in the Canadian Investor Relations Institute "Model Disclosure Policy" issued February 12, 2001. The explanatory note to that policy links the "duty to update" under timely disclosure obligations to whether the investing public has reason to believe that the previous disclosure is still a current statement, and suggests that it is prudent for an issuer to make it clear at the time of disclosure of forward-looking information that the information is a snapshot only and to disclaim any duty to update.

3. Best Practices

The Policy contains very helpful interpretative guidance and practical suggestions

relating to selective disclosure issues, and is therefore a useful initiative. However, we have some concern with the use of the "best practice" concept in this context. Although the Policy specifically states that its recommendations are not "intended to be prescriptive", our concern is that "best practice" guidelines in the end turn out in effect to be mandatory requirements, since they over time become the liability standard for judging the actions of directors and officers of public companies. For many smaller issuers, some aspects of the guidelines may be a substantial administrative burden that is not appropriate in the circumstances. However, liability concerns may result in their being adopted nonetheless, since their absence may discourage qualified outside directors from serving on the board. This concern is exacerbated by the proliferation of "best practice" guidelines in the public company context (the most recent example being those suggested in the Interim Report of the Joint TSE/CDNX/CICA Committee on Corporate Governance) as well as the continuing absence of an effective "due diligence" defence for directors in Canadian corporate statutes. In our view, while it is useful for securities regulators to provide interpretive guidance and views on compliance issues, the CSA should be cautious about use of "best practice" guidelines as a policy-making tool.

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Thank you for the opportunity to comment on the Policy. If you have any questions or comments, please do not hesitate to contact Richard Lococo at 416-926-6620.

Yours truly,

Securities Subcommittee
Business Law Section
Ontario Bar Association

Appendix

OBA SECURITIES SUBCOMMITTEE

Members:

Richard A. Lococo (Chair), *Manulife Financial*
Thomas W. Arndt, *407 ETR*
Mary Condon, *Osgoode Hall Law School*
Anoop Dogra, *Blake, Cassels & Graydon LLP*
Janne M. Duncan/Richard J. Steinberg, *Fasken Martineau DuMoulin LLP*
Eleanor K. Farrell (Secretary), *Osler, Hoskin & Harcourt LLP*
Allan Goodman, *Goodmans LLP*
Carol Hansell, *Davies Ward Phillips & Vineberg LLP*
Henry A. Harris, *Gowling Lafleur Henderson LLP*
Barbara J. Hendrickson, *Baker & McKenzie*
Mary Ross Hendriks, *Canadian Securities Institute*
Krista F. Hill, *Torys*
David R. Kerr, *Manulife Financial*
Todd M. May, *Smith Lyons LLP*
Timothy J. McCunn, *Borden Ladner Gervais LLP, Ottawa*
Jennifer J. Northcote, *Stikeman, Elliott*
Andrew Parker, *McCarthy Tétrault LLP*
Victor R. Peter, *Ogilvy Renault*
Robert J. Richardson, *CIBC World Markets*
Nancy J. Ross, *Association for Investment Management and Research*
Warren M. Ruddick, *BMO Investments Inc.*
Robert N. Spiegel, *Stikeman, Graham, Keeley & Spiegel LLP*
Philippe Tardif, *Lang Michener*
Arlene D. Wolfe, *Miller Thomson LLP*

Liaison:

Timothy S. Baikie, *The Toronto Stock Exchange*
Patrick Ballantyne, *The Toronto Stock Exchange*
E. Hemmingway Reinbergs, *Ontario Securities Commission*
Iva Vranic, *Ontario Securities Commission*