September 27, 2002

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

c/o Peter Brady, Esq., Chair of the Continuous Disclosure Harmonization Committee
British Columbia Securities Commission
P.O. Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, British Columbia
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Denise Brosseau, Secrètaire
Commission des valeurs mobilières du Québec
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Dear Sirs/Mesdames:

Re:Proposed National Instrument 51-102*, Continuous Disclosure Obligations*, Proposed National Instrument 71-102*, Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*, and related Companion Policies.

We are writing to provide our comments on the proposals put forward in the above documents. We strongly support the enhancements to the Canadian continuous and timely disclosure regime, particularly, the requirements for timely disclosure of more comprehensive information about an issuer's significant acquisitions. We support the combination of various existing securities requirements into a single national instrument and agree that it will facilitate future capital-raising initiatives such as the CSA's concept for an integrated disclosure system. However, we would also support carving out the financial statements requirements into a separate national instrument.

We also strongly support the proposals in National Instrument 51-102 to accept financial statements prepared on the basis of U.S. generally accepted accounting principles ("US GAAP") by Canadian SEC issuers, although we believe the transitional financial statement presentation and disclosure requirements are unnecessary because of the solid foundation of US GAAP reporting that is part of the existing continuous disclosure records of these issuers. However, we would support such transitional requirements if and when Canadian securities legislation is amended to permit the use of US GAAP by a larger contingent of Canadian reporting issuers. Our detailed comments on this national instrument, companion policy and forms are attached. We also have enclosed a second attachment providing our response to specific requests for comment.

We believe the proposals in National Instrument 71-102 constitute a major advancement towards recognizing the internationalization of the world's capital markets and the significance of the US capital markets relative to those in Canada. We hope that access to Canadian capital markets will be enhanced by our acceptance in Canada of audited financial statements and other continuous disclosure documents prepared pursuant to the rules and regulations of certain foreign jurisdictions. For the present time, we also support in concept the limitations placed on this access to provide a measure of protection for Canadian investors. We have no view as to whether the 10% Canadian ownership threshold is the appropriate dividing line. Ultimately, we hope this barrier can be eliminated as accounting standard setters move towards harmonizing world accounting standards. We have no detailed comments on this national instrument.

Yours very truly,

Gordon C. Fowler, Partner

Alan G. Van Weelden, Senior Principal

Proposed National Instrument 51-102

Section 1.1 – Definitions and Interpretation

We believe the words "who performed a policy-making function in respect of the issuer" need to be added in the definition of "executive officer" in paragraph (e).

Section 4.6 – Review of Interim Financial Statements

We believe the CSA should 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.

Section 4.7 – Generally Accepted Accounting Principles

Statement of Stockholders' Equity

With the acceptance of US GAAP we will see statements of stockholders' equity. The typical format of presentation of this statement does not at all lend itself to the "face of the statement" comparison required under proposed subsection 4.7(5). These statements track the continuity of six or seven captions (e.g., number and amount of common stock; additional paid-in capital; preferred stock; retained earnings; and accumulated other comprehensive income, which may itself include columns for items such as unearned compensation, minimum pension liability and cumulative translation adjustment. We believe the reporting issuer's should be given the option to present comparative information on Canadian GAAP changes in retained earnings in a note to the financial statements.

Transitional Requirements

We believe the transitional requirements for SEC issuers are unnecessary because for the part the continuous disclosure records of these issuers already contain a solid foundation of US GAAP reporting, complete with qualitative discussions of the differences between US and CDN GAAP results. In addition, requiring these issuers to reconcile to CDN GAAP for a further two years will force them to evaluate all new or amended accounting pronouncements on both a qualitative and quantitative basis. We do not agree that this is time well spent.

We would support the type of transitional presentation and disclosure contained in this Instrument if the US GAAP reporting option were being extended to issuers that had no history of US GAAP reporting.

If the transitional requirements are retained in the final Instrument, we believe additional clarification is necessary in a couple of areas.

Subsection 4.7(3)

In subsection 4.7(3) it is not clear to us how the interaction of the words "...the first two sets of annual comparative financial statements required by section 4.1 after the change from Canadian GAAP to US GAAP…" and "…the interim periods during those two years…" are to be interpreted. The Notice and Request for Comment paraphrased this requirement as being "…for a two year period after starting to use US GAAP…". However, we are not sure the wording of the subsection conveys that intent. For example, if a calendar year issuer makes a decision near the end of 2002 to change from

Canadian GAAP to US GAAP and the change is first applied in the annual financial statements for the year ended December 31, 2002, are those financial statements the first set of annual comparative financial statements after the change? If 2002 is to count as the first fiscal year, it appears that the issuer would have to file restated interim financial statements for that year because under subsection 4.7(3) it "…must…in the notes to the interim financial statements for interim periods during those two years" (being December 31, 2002 and December 31, 2003) provide a GAAP reconciliation. Although it would seem the preceding interpretation cannot be valid because it leads to an illogical result, if the year ended December 31, 2002 is not considered to be the first set after the change, then the GAAP reconciliation requirements would apply to the years ended December 31, 2003 and 2004 and to each of the interim financial statements during those two years and the issuer would receive no "credit" for preparing the 2002 set of annual US GAAP financial statements, including the restated comparative figures for the year ended December 31, 2001 and a GAAP reconciliation note. This seems unfair and may discourage an issuer from adopting the change as at its year end, whereas we believe it is preferable for an issuer to do so because it ensures that the auditors will be involved with the change on a timely basis. If consistent with the CSA's intention, we suggest that the wording in subsection 4.7(3) be amended as follows:

> "…the reporting issuer must, in the notes to the annual and interim financial statements required by section 4.1 for next seven financial periods after the period in which it changed from Canadian GAAP to US GAAP: (a) explain the material differences…."

Thus, if an issuer adopted US GAAP reporting in the year ended December 31, 2002, the note disclosure would be required in the annual financial statements for 2002 and 2003 and in the interim financial statements up to and including the third quarter of 2004. The intended effect of this wording can be illustrated for this and other periods of adoption by the following continuum, where "X" is the period in which the accounting change occurs; "Y" is a period for which the note disclosures of subsection 4.7(3) are required; and "*" indicates a period for which comparative information is required to be presented on the face of the financial statements, or in the case of interim financial statements, in the notes at the issuer's option:

Y/E				Y/E				Y/E			
2002	***Q1***	***Q2***	***Q3***	***2003***	***Q1***	***Q2***	***Q3***	***2004***	***Q1***	***Q2***	***Q3***
X*	Y*	Y*	Y*	Y	Y	Y	Y				
	X*	Y*	Y*	Y*	Y	Y	Y	Y			
		X*	Y*	Y*	Y*	Y	Y	Y	Y		
			X*	Y*	Y*	Y*	Y*	Y	Y	Y	

Presumably the related prospectus rules will be amended to contain similar transition requirements for a GAAP reconciliation note and the presentation of the previously reported CDN GAAP financial statements. Assuming the above issuer files a long form prospectus after filing the US GAAP 2002 annual financial statements, it appears there would be a need to present both US and CDN GAAP statements of earnings, retained earnings and cash flows for the year ended December 31, 2000, along with a GAAP reconciliation. Because this presentation could be rather "unwieldy", we would support an option in the prospectus rules to put the comparative CDN GAAP financial statements in a note to the financial statements, similar to the option in subsection 4.7(5) for interim financial statements.

Subsection 4.7(4)

The wording of this subsection could be interpreted to override HB 1506 and require all changes in accounting principles to be accounted for on a retroactive basis with restatement of prior periods. This could be rectified by modifying the first sentence to read "…must use either Canadian GAAP or US GAAP for all periods presented…". The same comment applies to subsection 8.6(3), except that the reference to US GAAP would have to be replaced with something like "…the same basis of accounting for each period presented".

We are surprised that a rule is needed to require an issuer to apply the same comprehensive set of accounting principles to all periods presented in a single set of financial statements. In our view it is not possible under Canadian GAAS to report without reservation on a set of financial statements prepared using US GAAP for the most recent periods and CDN GAAP for the prior periods presented. Upon adopting US GAAP, we believe that principles for comparability in HB 1000 and HB 1506 would require retroactive application of the change in basis of accounting, including restatement of all prior periods presented in the set of financial statements. If an issuer cannot retroactively adopt any material US GAAP requirement, for example where the necessary financial data is not reasonably determinable, then we believe that neither the issuer nor the auditor could assert that the financial statements for that period have been prepared in accordance with US GAAP, in which case we believe the issuer simply is unable to choose the US GAAP reporting option in subsection 4.7(3) until such time as it can prepare all of the required financial statements in accordance with US GAAP.

Section 4.11 – Disclosure of Outstanding Share Data

The medium for conveying this information pursuant to NI 62-102 can be a sheet of paper with the relevant information, financial statements or MD&A. The proposed Instrument eliminates the "sheet of paper" option, however, it will continue to force those interested in the information to go on a fishing expedition to find it. In the US everyone knows where to find this information – it's right on the cover page of the Form 10-Q and Form 10-K filings.

We don't advocate creating a comparable cover page for Canadian filings, so we suggest that the MD&A forms be amended to require this information so everyone will know where to find it. The CSA also may want to consider requiring this information to be within 30 days of the filing date. (See our comments on the Companion Policy under "Disclosure of Outstanding Share Data".)

Section 4.13 – Filing of Financial Statements After Becoming a Reporting Issuer

We support the proposed requirement in subsection 4.13(1) because there should not be any reporting gaps between the financial statements in the documents filed to become a reporting issuer (e.g., prospectus or certain information circulars) and subsequently filed financial statements. However, section 12.1 of National Policy 51 currently requires the filings of financial statements to commence with the first reporting period (annual or interim) ending after the entity becomes a reporting issuer. This section of National Policy 51 should be amended to be consistent with the new requirement or deleted.

We want to point out that the interaction of subsection 4.13(1) with the different financial reporting deadlines for senior and non-senior issuers can yield anomalous results in certain situations. For example, consider a calendar-year company that becomes a reporting issuer on November 20, 20X2. If not a senior issuer, the company will have to file interim financial statements for the third quarter ended September 30, 20X2 because the 60-day filing deadline occurs after November 20, 20X2. However, if the company is a senior issuer it will not have to file third quarter financial statements because it did not become a reporting issuer until after the November 14, 20X2 filing deadline. We doubt this is the intended result of subsection 4.13(1) but leave it up to your discretion as to whether it may be sufficient to clarify the intended application of this subsection in the Companion Policy.

By comparison, we understand that Rules 13a-13 and 15d-13 of the Securities Exchange Act of 1934 specify that a new registrant is required to file its first report on Form 10-Q for the quarter immediately following the period included in the registration statement either (1) within 45 days after the effective date of the registration statement or (2) by the date the Form 10-Q would otherwise be due, whichever is later. For example, if a calendar-year company has a registration statement declared effective on July 20 that includes March 31 interim information, its initial Form 10-Q for the three months ended June 30 would be due on or before September 3 (in other words, 45 days after July 20). Also, Rule 15d-2 provides for a special annual report on Form 10-K to be filed within 90 days after the effective date if such registration statement did not include audited financial statements for the fiscal year preceding the effective date.

Subsection 4.13(2)

We support the condition "unless otherwise required by the accounting principles used" in this subsection and later in section 8.14. We recommend that the CSA members go

one step further and make comparable changes to the prospectus rules in order to eliminate "sanctioned" departures from HB 1751 such as those described in paragraph 10 of AuG-30.

Section 4.14 – Change of Auditor

The section does not clearly address the circumstance where an auditor declines to stand for reappointment. We do not regard this event as a "resignation" and notwithstanding the decision to decline to stand for reappointment, it appears from subsection 149(2) of the OBCA and subsection 162(3) of the CBCA that the auditor would continue in office until a successor is appointed. One way to address this circumstance is to broaden the definition of "termination" to include notification of the auditor's decision to decline to stand for reappointment. With this amendment, the "clock" under subsection 4.14(4) would start when the issuer is notified of the auditor's decision not to stand for reappointment. This is consistent with the corresponding requirement under Item 4 of SEC Form 8-K.

The proposed Instrument rightly contemplates situations where the timing of the termination or resignation of the existing auditor and the appointment of a successor auditor does not permit the filing of a single reporting package. This can happen, for example, when the auditor decides not to stand for reappointment and the issuer needs additional time to solicit and consider proposals from other auditors. In this circumstance, we believe that the change of auditor notice under subsection 4.14(5) will not necessarily be identical the change of auditor notice under subsection 4.14(4) and the former auditor may have knowledge relevant to matters that are or should be disclosed in the subsection 4.14(5) notice. To illustrate our point, consider the circumstance when at the time of filing the notice under subsection 4.14(4) the issuer has received written or oral advice from one or more professional accountants, none of whom meet the definition of a "successor auditor" at that time. However, if a month or two later one of these professional accountants becomes the successor auditor, then the notice under subsection 4.14(5) may be required to disclose a consultation. Further, if the advice was given in connection with an engagement under HB 7600, the former auditor would have some relevant knowledge of the matter by virtue of his or her contact with the reporting accounting under CICA Handbook paragraphs 7600.12(a) and 7600.12(c). For these reasons, we recommend that subsection 4.14(5) be amended to require the issuer to send a copy of the reporting package to the former auditor and to receive an update of the letter referred to in paragraph 4.14(8)(b).

Subparagraph 4.14(9)(b)(i)

Insert the words "applicable regulator or" to be consistent with corresponding requirement under paragraph 4.14(8)(b).

Paragraph 4.14(8)(b) and subparagraph 4.14(9)(b)(ii)

We object to the proposed requirement for the auditor to provide assurance that the notice "states correctly all information required under subsection (6)…" because it is contrary to the professional standards in Section 5025 of the CICA Handbook. The existing requirements in National Policy 31 for the content of these letters may not be perfect, but they are consistent with the requirements in the US for the comparable Form 8-K response letters and decades of practice. Further, it is our understanding that there is no requirement for the issuer to state in Item 4 of Form 8-K that a reportable event did not occur, so the existing requirements under section 4.6 of National Policy 31 and the proposed requirement under paragraph 4.14(6)(f) for an explicit statement of the issuer to that effect go beyond the comparable US requirements.

There are a number of areas where the former and successor auditors may have no basis to agree or disagree with the statements in the issuer's notice, such as: reasons for changing auditors; references to subsequent events; actions of the audit committee or board of directors in recommending or approving the change; consultations with other accountants. The above paragraphs, in our view, should be amended to acknowledge that the auditor's response to statements in the notice would be to (i) agree; (ii) disagree (for stated reasons); or (iii) to state that he or she has no basis to agree or disagree.

Given the increasing significance attached to an auditor's review of interim financial statements consideration should be given to expanding the definition of "disagreements" to include differences of opinion that may have arisen in connection with an engagement to review interim financial statements for periods subsequent to the last completed audit engagement. Alternatively, interpretative guidance to this effect could be added to the Companion Policy indicating what might constitute a disagreement in the portion of the "relevant period" between the date of the auditor's report on the financial statements for the issuer's most recently completed financial year and the date of termination. For example, if the auditor completed a review of the interim financial statements for the second quarter ended June 30, 2002 and the date of termination is September 15, 2002, a disagreement would be considered to have occurred if a difference of opinion resulted in or would have resulted in a reservation of the auditor's interim review report if the difference of opinion had not been resolved to the former auditor's satisfaction.

Section 8.2 – Determination of Significance

In comparing the significance tests to those in section 1.2 of NI 44-101 we noted that the words "as at the date of the acquisition" have been inserted in the Asset and Income Tests immediately after the words "proportionate share". We believe that these new words confuse rather than clarify the meaning of "proportionate share". For example, consider Issuer A that increases its proportionate share in Subsidiary B from 60% to 80% by acquiring additional shares of Subsidiary B. It is clear from SEC practice that the asset and income tests are applied to this "step acquisition" using the proportionate share being acquired, namely 20%, and the investment test is applied using the cost of the 20% step

acquisition. A literal reading of the proposed tests would appear to require the use of the cumulative proportionate share of 80%, which we cannot believe is the intended result. We recommend that the newly inserted words be removed.

The above example of a step acquisition raises a financial statement disclosure issue that we believe should be addressed preferably in the Companion Policy. Since Issuer A is already consolidating Subsidiary B, we believe historical financial statements of Subsidiary B do not need to be included in the disclosure document, whether that document is a Business Acquisition Report or a prospectus. Further, when the purchase price approximates the carrying value of the acquired non-controlling interest, we believe the financial effects of the transaction can be addressed without the need for preparing a set of pro forma financial statements. The SEC Training Manual covers this circumstance and indicates that an additional investment in a subsidiary will not require separate audited financial statements regardless of the significance level of the additional acquisition; however, pro forma financial statements may be required.

Subsection 8.2(6)

Is there a paragraph (d) to be added or should the "; and" at the end of paragraph (c) be replace with a period?

Subsection 8.2(8)

Subsection 8.2(6) of the Instrument requires the significance tests to be determined using the accounting principles of the reporting issuer, which will be either Canadian GAAP or US GAAP. Subsection 8.2(8) seems to go one step further by requiring adjustments for differences arising from the selection of acceptable alternative policies within the relevant GAAP. We are concerned about the implications of this further requirement as applied to the following two examples:

> Issuer A uses Canadian GAAP and the full cost method of accounting for oil and gas exploration and development costs. If it acquires Target B that uses US GAAP and the successful efforts method, subsection 8.2(6) requires the significance calculations to be done on a Canadian GAAP basis. We believe adjustments for differences between how the successful efforts method is applied under Canadian and US GAAP would satisfy this subsection. However, subsection 8.2(8) appears to require the significance calculations to reflect adjustments to the Canadian GAAP full cost method.
>
> Issuer A and Target B both use Canadian GAAP but Issuer A uses the full cost method of accounting for oil and gas exploration and development costs and Target B uses the successful efforts method, it appears subsection 8.2(8) of the Instrument requires the significance calculations to be done after adjusting the relevant amounts in Target B's financial statements to the full cost method.

There are many, many other potential differences between how one company applies Canadian GAAP (or US GAAP) and another company applies Canadian GAAP (or US GAAP). These differences may arise, for example, from choices in the alternative

methods of adopting a new or amended standard or from choices within an existing standard, such as those in HB 3461. While an acquirer has to deal with these differences prospectively from the date of acquisition, we believe that it is a waste of time and money to attempt to evaluate and quantity these differences retroactively for purposes of significance tests.

We are not aware of any comparable SEC requirements and believe the application of this subsection carries the significance calculations to an unreasonable extreme. We recommend the deletion of this proposed subsection.

Section 8.4 – Financial Statement Disclosure for Significant Acquisitions

Subparagraph 8.4(3)(b)(v)

We agree that the notes to the pro forma financial statements should disclose the manner in which the results were constructed, but we disagree with adding a requirement to state that this information does not conform with the financial statements for the business included elsewhere in the document. Rather than single out this particular item for a "warning" to readers, we believe it is preferable to require a broader caution as to the nature and limitations of pro forma financial statements. Rather than prescribing specific wording in the Instrument, the Companion Policy could provide guidance. An example of such broader cautionary disclosure is: "These pro forma financial statements should be read in conjunction with the related historical financial statements of [name of issuer] and [name of acquired business] and are not necessarily indicative of the [financial position and/or results of operations] that would have been attained had the transaction [or event] actually taken place earlier." (See paragraph AT 401.06 of AICPA Professional Standards.)

Section 8.5 – Reporting Periods

The interaction of the 75-day filing period with the 45-day period in paragraph 8.5(a)(ii) may result in a difference between the annual financial statements required to be included in the Business Acquisition Report and those that would be included in a prospectus dated concurrently with the BAR.

> For example, if Issuer acquires Target (assume 45% significance level) on February 14, 20X3 and both companies have calendar fiscal years, a BAR filed on April 30, 20X3 would contain annual financial statements of Target for the years ended December 31, 20X1 and 20X0 and interim financial statements for the three-month and nine-month periods ended September 30, 20X2 and 20X1. (Subsection 8.11(3) would permit Issuer to substitute unaudited December 31, 20X2 annual financial statements for the September 30, 20X2 interim financial statements.)

By comparison, a long or short form prospectus filed on April 30, 20X3 must contain the audited annual financial statements of Target for the years ended December 31, 20X2 and 20X1.

By further comparison, the financial disclosure in the BAR is the same as the corresponding disclosure under SEC rules, since the age of the financial statements is based on the initial Form 8-K filing date (e.g., on February 28, 20X3 for this example, within 15 days after the acquisition) and is not impacted by whether or not the 60-day extension is used.

Given that one of the stated objectives of the Instrument is to facilitate future capital-raising initiatives such as the CSA's concept of an Integrated Disclosure System, it would seem to be more important to harmonize the Canadian CD requirements with the comparable Canadian prospectus requirements rather than the comparable US CD requirements.

Section 8.7 – Reporting Currency

We believe this proposed requirement should be deleted for the following reasons:

(a) we believe the reporting currency should be a matter of the reporting entity's choice;

(b) it will have the effect of imposing a change in reporting currency on virtually every non-Canadian business enterprise acquired by a reporting issuer. In our view, this adds unnecessary and cost and inconvenience to the reporting process. Canadian reporting issuers have been acquiring US businesses for decades and we are unaware of any pressing need to have US dollar financial statements (or financial statements in any other foreign currency for that matter) recast into Canadian dollars.

(c) the reason for this proposed change would appear to be for the "convenience" of readers of the continuous disclosure document, although convenience translations of financial statements are not acceptable under EIC-130 and SEC rules. Further, it a number of instances the acquired business will remain intact and continue to prepare financial statements for a purpose other than reporting to the parent company. Of course the acquired business could change its reporting currency again after the continuous disclosure document is filed, but we don't think they should be put in the position of having to make a "one-time" temporary change in reporting currency simply for our convenience.

(d) the imposed change in reporting currency may yield a result that is inconsistent with the translation method that has been or will be applied by the reporting issuer. For example, the application of EIC-130 to the financial statements of a foreign business acquired by a Canadian reporting issuer results in the use of the current rate method, whereas the application of HB 1650 by the reporting issuer may require use the temporal method in translating the post-acquisition results of the business for purposes of preparing the consolidated financial statements.

(e) for acquired business financial statements prepared in accordance with foreign GAAP under subsection 8.6(1)(b), the foreign GAAP requirements for changes in reporting currency, if any, may not accord with the Canadian GAAP requirements

so that the methodology for translations into Canadian dollars will vary depending upon the local standards

(f) a combination of information on historical currency exchange rates, supplementary financial information in Canadian dollars, and the pro forma financial statements is sufficient.

Section 8.8 – Auditor's Report

Subparagraph 8.8(3)(c)(ii)

As far as we can tell the practice of an auditor asserting that the GAAS used is "substantially equivalent" to local GAAS arose from an SEC requirement that no longer exists. A 1995 publication of our US Firm stated the following:

> "The audit report should state that the audit was performed in accordance with U.S. GAAS or should state that the auditing standards used were substantially consistent with U.S. GAAS. Alternatively, the company (or its accountant) should supplementally represent to the SEC that the audit was performed substantially in compliance with U.S. GAAS."

Although Canadian issuers were excused from this requirement under administrative practice (I am told because the SEC at that time was satisfied that a Canadian GAAS audit acceptable for their purposes), over the years we have developed comprehensive materials on differences between US GAAS and Canadian GAAS. However, the same is not true for other jurisdictions.

As professional "assurance givers" we always are concerned when asked for assurances on matters for which no professional standards exist. Subsection 6.2(3) of NI 44-101CP indicates that the foreign GAAS "…must require underlying audit work that is comparable in scope, nature and timing to the work required in connection with an audit in accordance with Canadian GAAS". What evidence is needed to substantiate this claim? Is it enough to find a quote in a published textbook? Is it enough to have some broad audit requirements that are common to all of the audits conducted by an international firm, or should the auditor do enough work that he or she could opine that the audit was conducted in accordance with the local GAAS and Canadian GAAS?

We do not believe the required statement can be substantiated solely on the basis of a high level comparison of CICA Assurance Standards to the corresponding standards in the local jurisdiction. While that is a good starting point, we believe the individual facts and circumstances of the local audit engagement must be considered. For example, while subsection 6.2(3) of NI-44-101CP states that the "auditing standards of foreign jurisdictions such as the United States are known to Canadian securities regulatory authorities to be substantially equivalent to the standards of the CICA", we have compiled approximately 30 pages of potentially material differences between Canadian and US GAAS audit requirements. While we are pleased to see an exclusion in subparagraph 8.8(3)(c)(ii) for US GAAS audits, without such an exclusion we believe a US auditor would have to consider the potential differences in the knowledge of the

actual procedures applied before he or she could conclude that a particular US GAAS audit was substantially equivalent to a Canadian GAAS audit. Others may disagree, in which case we would welcome further discussion among Canadian accounting firms and CSA members to ensure that there is a clear understanding of what is required to comply.

You may quickly and rightly point out that a comparable requirement has been in place since the new prospectus rules came into effect on January 1, 2001. However, it was not until a few months ago that we saw the first evidence of compliance with the rule when one of our counterparts in another international firm encountered for the first time a request to comply that originated from the issuer's securities counsel. To this point, our involvement with our international member firms in this area has been limited to helping them obtain relevant source materials and discussing possible procedures that may be applied.

The CSA members could decide that this is the auditor's problem and we, in turn, could pass the buck and tell our international member firms that it is their problem to decide what work needs to be done to make the required statement. However, if the CSA members don't really care how much work is done to substantiate the statement, then please get rid of the requirement.

If we cannot persuade you to eliminate this proposed requirement completely, please consider moving this assertion out of the public documents and leaving it in the realm of the auditor's "expertise" letter to the staff of the various commissions, where it can be supplemented by an explanation of the various procedures undertaken by the auditor and possibly by subsequent discussion between the auditor and the staff.

Section 8.10 – Exemption form Disclosure Requirements for Significant Acquisitions Accounted for Using the Equity Method

Our interpretation of this proposed section is that the required summarized financial information of the equity method investee is limited to the annual financial statement periods under subsection 8.4(1). It is our understanding that the comparable prospectus requirements in section 4.10 of NI 44-101 and section 6.10 of OSC Rule 41-501 also require summarized financial information for the periods for which interim financial statements would otherwise included in the prospectus. Is the intention to make the continuous disclosure requirements more lenient or is this an oversight?

Section 8.16 – Significant Dispositions

We believe that "…the commitment date for an exit plan" referred to subsection 8.16(1) is not addressed in the CICA Handbook. It is addressed in EIC-60, however we do not believe that the definition of "Handbook" in section 1.1 of NI 14-101 includes EIC Abstracts. Consider replacing the reference to the Handbook with a reference to Canadian GAAP.

We do not understand why the words “after giving effect to the disposition” appear in the third line of the asset test in paragraph (2)(a). These words make this test inconsistent with the comparable asset tests in subsection 1.6(2) of NI 44-101 and subsection 2.6(2) of OSC Rule 41-501, as well as the comparable SEC test. We speculated that perhaps was an attempt to base the significance percentage on the relative size of the operations being sold to the remaining operations of the issuer, however we noted that the income test in paragraph 8.16(2)(b) does not adjust the denominator for the effect of the disposition (and rightly so, in our view).

While we prefer to keep the asset test in proposed NI 51-102 consistent with the existing requirements, if the intention of the proposed wording is to “widen the net” for capturing significant dispositions, we recommend the use of a lower significance percentage and keeping the computations consistent with the ones used for prospectuses. The corresponding SEC test in S-X Rule 11-01(b)(2) uses the significant subsidiary test, which employ a 10% significance level to computations that are comparable to the tests presently in NI 44-101 and OSC Rule 41-501.

Section 8.17 – Pro Forma Financial Statement Disclosure for Significant Dispositions

We strongly disagree with both the format and timing of the proposed pro forma financial statement disclosure.

We are strenuously opposed to incorporating the pro forma financial statements, assumptions and notes into either a set of annual audited financial statements or a set of interim financial statements. While CICA Handbook references to the desirability of including pro forma financial information in financial statements have existed for decades, the reality is that such disclosures are seldom made. This is not surprising when one considers that there is no authoritative Canadian guidance for the preparation and presentation of pro forma financial information. We also understand that there is no consensus among the CSA members as to the purpose and objectives of pro forma financial information. Until appropriate authoritative guidance is in place, we strongly believe that pro forma financial statements should not be required to be incorporated into a set of historical financial statements, annual or interim.

As to timing, if a calendar year issuer makes a significant disposition on July 20, the pro forma financial statement disclosure will not be required until 118 days later on November 15. Worse yet, if a calendar issuer makes a significant disposition on October 20, the disclosure would not be required until March 31 of the following year, a period of 162 days. We believe these potential delays in placing the pro forma financial disclosures on the public disclosure record are intolerable.

We recommend that the pro forma financial statement disclosures be made in a Business Disposition Report within 75 days of the date of the disposition. We point out that the

comparable information is filed within 15 days of the disposition under SEC rules (the 60-day extension granted for acquisitions is not available for dispositions), so this requirement would still be far less onerous than the reporting deadline under SEC requirements.

Retroactive Changes in Accounting Policies and Certain Changes in Basis of Presentation

When a change in accounting principle is required to be applied retroactively with restatement of prior periods, we are not aware of any existing requirement under Canadian securities legislation for the issuer to file restate annual and interim financial statements for prior periods. Similarly, when an issuer disposes of a business segment as defined in HB 3475 or changes the composition of its reportable segments under HB 1701, these events entail restatements of prior period financial statements in the former case and restatements of previously disclosed segment information in the latter case. If the ultimate aim of the improvements in continuous disclosure is to have "prospectus level" financial statements disclosure on the public record, then consideration must be given to requiring issuer's to file restated financial statements on a more timely basis.

Historical Summaries of Financial Information

Under existing and proposed securities and accounting rules there is no requirement for the three years of selected financial information included in an AIF to be presented on a basis consistent with the principles of HB 1506 when there is a change in accounting policy. US GAAP requires prior period financial information (which is required to cover the last five fiscal years, as per Item 301 to Regulation S-K) to be restated when an accounting change is applied retroactively with restatement of prior periods (APB 20, paragraph 39). Cumulative catch-up adjustments in included in net income for other accounting changes also are required to be explicitly disclosed in the tabular summaries.

We are not aware of any compelling reason to eliminate these differences between Canadian and US continuous disclosure requirements, but want to ensure that the absence of any changes in this area is not attributable to an oversight.

Individually Insignificant Acquisitions

We note that the prospectus requirements for significance tests and financial statement disclosure applicable to individually insignificant acquisitions are not contained in the Instrument. This omission is consistent with SEC requirements, but is inconsistent with the premise that the CD disclosure record supporting secondary market trading should be substantially the same as the prospectus disclosures supporting a primary market offering. For the time being we are content with the steps being taken in the Instrument to raise the CD requirements in a number of areas up to comparable SEC requirements. However, if

we are genuinely concerned with making financial disclosures about a single acquisition significant at the 20% or more threshold, at some later date we may have to wrestle with whether it is appropriate to ignore (for business acquisition financial disclosure purposes) three or more unrelated acquisitions that collectively exceed the 50% significance threshold.

Proposed Companion Policy to NI 51-102

Disclosure of Outstanding Share Data

Subsection 4.11(2) of the proposed Instrument states that this disclosure "…must be prepared as of the latest practicable date". Some issuers have maintained that disclosure of the outstanding share data as at the end of the most recent reporting period is sufficient to comply with the existing requirements of NI 62-102. While we do not agree with this view, the arguments for it will become more compelling with the reduction in the financial statement filing deadlines – particularly for interim financial statements filed within 45 days of a quarter-end. Reporting of quarter-end numbers happens to some degree under a comparable SEC requirement, as we found in a recent survey of SEC filings.

The cover page to SEC Form 10-Q requires disclosure of the number of shares outstanding as of the latest practicable date. We looked through 50 10-Q filings on August 9, 2002 (in alphabetical order) and found that 32 issuers updated the share information to within 10 days of the filing date; 5 issuers updated the share information to within 14-21 days of the filing date; the remaining 13 issuers reported the quarter end numbers.

Section 7.1 of OSC Staff Notice 52-713 that "…disclosing the number of shares outstanding at quarter-end is generally not sufficient…" and that "…our interpretation of 'latest practicable date' is that the information should be current as close as possible to the date of filing of the interim financial statements".

If the CSA members agree that quarter-end information is not the supplemental information sought under the proposed Instrument, then guidance to this effect should be added to the Companion Policy.

Section 6.1 – Obligations to File a Business Acquisition Report

Please refer to the second paragraph of our comments on Section 8.2 of the Instrument, where we recommend the addition of guidance on the financial statements disclosure for a step acquisition of an interest in a subsidiary. We support a requirement to file the Business Acquisition Report if the additional interest is "significant", however, we believe that concessions need to be made in the financial statements otherwise required by Part 8 of the Instrument.

Section 6.4 – Preparation of Divisional and Carve-out Financial Statements

We suggest that the words “preparation of” be deleted from the title of this section (subsection 6.4(4) has the identical title).

The SEC’s guidance in Staff Accounting Bulletin No. 55 “Allocation of Expenses and Related Disclosure in Financial Statements of Subsidiaries, Divisions or Lesser Business Components of Another Entity”, as the title suggests, applies across the board to subsidiaries, divisions and lesser components of an entity. The comparable guidelines in paragraph 6.4(b) seem to apply only to carve-out financial statements.

Although this section purports to address the preparation of divisional financial statements, with all due respect, we are struggling to find the guidance. Subsections (1) through (3) are introductory/definitional, and subsection (3) states that the guidance in the section applies to both divisional and carve-out financial statements unless otherwise stated. Since paragraph 4(b) specifically addresses carve-out financial statements and subsection (5) addresses something less than carve-out financial statements, we are left with only paragraph 4(a). Having established in subsection (3) that divisional financial statements are those prepared from the separate financial records maintained by the parent (vendor), what further guidance is paragraph 4(a) providing? Is the use of the adjective “complete” to describe the financial records intended to mean that the records already include all of the items referred to in subparagraphs 6.4(4)(b)(i)-(iii)? If so, we think the guidance is a little too subtle and should be expanded to avoid misinterpretation.

Section 6.8 – Auditor’s Report Accompanying Financial Statements of an Acquired Business or Related Businesses

We believe the reference in the last line to section 3.4 should be to section 3.7.

Appendix A

If the interim balance sheets in 2(a)(i) are for the first quarter filed after the adoption of US GAAP reporting in the annual financial statements, then the comparative balance sheet to the current period balance sheet, in accordance with HB 1751, would be the US GAAP balance sheet at the end of the preceding financial year described in 1(a) as “Current Year”. There is no need for a comparative “as previously reported” because such a statement would not exist. If the issuer chose to present a prior year comparative balance sheet in addition to the comparative balance sheet required by GAAP, then we agree that both US GAAP and CDN GAAP versions would be required either on the face of the interim financial statements or the notes thereto.

You may wish to include a table such as the one in our comments on section 4.7 of the Instrument to illustrate the periods for which the note disclosures and presentation requirements for comparative figures apply for a range of possible dates of adopting US GAAP.

Form 51-102F1 AIF

We note that this Form is largely a "cut and paste" of Form 44-101F1. The CSA members no doubt are familiar with the draft report of the CICA's Canadian Performance Reporting Initiative Board ("CPRI Board) entitled "Management's Discussion and Analysis: Guidance on Preparation and Disclosure" (the "Report"). We believe most of the elements of the Disclosure Framework in Section 300 of the Report warrant consideration. More specifically, we think elements 1, 2, 3 and 5 are worthy of incorporation into the AIF requirements for "foundational" disclosures about the nature and development of the issuer's business, perhaps replacing substantial portions of Items 3 and 4 of Form 44-101F1 and proposed Form 51-102F1.

Section 4.2 – Risk Factors

We believe it would be helpful to add an instruction 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.

Section 4.5 – Companies with Oil and Gas Activities

We believe the reference in subsection (3) to the report of management should be to "F3", not "F2".

Section 5.1 – Annual Information

Section 5.1 of Form 44-101F1 presently requires disclosure of per share amounts (basic and fully diluted) of income from continuing operations and net income or loss. Presumably this omission is an oversight. (Proposed Form 51-102F2 in Instruction (ii) to Section 1.2 requires the per share amounts for the comparable quarterly earnings information.)

Form 51-102F2 – Management Discussion & Analysis

Section 1.5 – Capital resources

We the additional disclosure requirements in section 1.5 pertaining to off-balance sheet arrangements and contractual commitments are necessary in light of the response of the financial community and public in general to the business failure of Enron.

Section 1.6 – Transactions with related parties

From the two explanatory paragraphs in this section there seems to be an implication that related party transactions are not worthy of discussion under this section if they are considered to take place on the same terms as comparable transactions with third parties. The first paragraph highlights related party transactions with terms that "differ" and the second paragraph highlights transactions on terms that "might not be available" from third parties. We do not agree with this distinction and recommend the discussion cover at a minimum the types of transactions 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.

Section 2.1 – Interim MD&A

We believe that consistent with the general instruction (e) to Part 1, the update of the annual MD&A would focus on material changes. The example in Instruction (i) to this section appears to be inconsistent with the above general instruction in that it suggests explicit statements be made for specific areas of the annual MD&A that are substantially unchanged. We are opposed to requirements to make statements about the absence of changes.

Form 51-102F5 – Information Circular

Item 13 – Particulars of Matters to be Acted Upon

Section 13.2 appears to provide a form of subjective override to the financial statement disclosure prescribed by the relevant prospectus in that the "must" at the beginning of the second paragraph is qualified by "to the extent necessary to enable a reasonable securityholder to form a reasoned judgement". This subjective override may be appropriate for the non-financial disclosures in the circular, however we do not believe it should extend to the financial statement disclosure.

We believe some modification of the wording of this section 13.2 may be needed, or at least some clarification added for certain restructuring transactions, either in the instructions or in the Companion Policy. Firstly, in recent years we have seen a number of arrangements in which, say, Issuer A is sending a circular seeking the approval of its shareholders for an exchange of shares in which the issuer in effect would be acquired by Issuer B. The proposed requirements in section 13.2 would require prospectus level financial statement disclosure for Issuer B, however, they also would seem to require the circular to contain prospectus level financial statement disclosure for Issuer A. In a transaction of this nature we do not believe there should be a requirement for Issuer A to include such disclosure in a circular directed to its own shareholders. If the equivalent transaction were accomplished by Issuer B making a take-over bid, we believe it is clear that Issuer B's take-over bid circular would not be required to include the financial statements of Issuer A.

Secondly, in a straight forward business combination (i.e. not a reverse take-over) in which Issuer A is seeking approval from its shareholders to issue shares to acquire Target B, it appears that section 13.2 requires the circular to include prospectus level financial statement disclosure for <u>both</u> itself and Target B, because securities of each of these entities will be issued or exchanged. In a transaction of this nature there is no need for prospectus level financial disclosure for Issuer A and the prospectus level financial disclosure for Target B should be based on the requirements applicable to an acquired business, not on the financial statements "prescribed by the form of prospectus that the entity would be eligible to use…". There is an existing interpretation in section 2.2 of OSC Rule 54-501 that may be a helpful addition to section 13.2.

Response to Specific Requests for Comment

on NI 51-102

1. Criteria for Determining Financial Statement Filing Deadlines

(a) We have no alternative criteria to suggest, except as noted in (b) immediately below.
(b) We believe that the privileges of the short form prospectus regime demand the highest level of financial reporting. POP system issuers should be subject to the 90 and 45 day periods for annual and interim financial statements, regardless of whether or not they are senior issuers. Further, since the "senior issuer" status is not as transparent as the POP issuer status, we would support limiting the accelerated filing deadlines to POP issuers only.
(c) The move towards harmonization of world accounting standards will continue to generate a steady stream of changes in Canadian and US accounting standards, many of them complex in nature. We believe the leap to a 60 and 35 day reporting regime would make it very difficult for many senior issuers and their auditors to cope with these changes.
(d) No comment.

2. Elimination of Requirement to Deliver Financial Statements

We agree with the proposed approach. We don't have any "proof", but we suspect that a significant portion of the hard copies go straight into a wastebasket.

3. SEC Developments

We believe there is room to improve the disclosure by management of critical accounting estimates required in order to prepare their financial statements. The typical disclosures in financial statements under HB 1508 have become rather "boilerplate". MD&A provides a better medium for a description of the complexities entailed in the making critical estimates and a discussion of their impact on the financial results.

4. Combination of Financial Statement and MD&A Filings

From a SEDAR search perspective we would prefer to see these as separate filings. From a professional accounting perspective we would be very concerned if a single filing requirement could generate the perception that the financial statements are incomplete without MD&A.

We considered whether the requirement to concurrently file MD&A and financial statements might have the undesirable and unintended effect of delaying the filing of the financial statements, but concluded there was an overriding concern related to these filings. There are no presentation and disclosure guidelines in Canadian professional accounting standards or in Canadian securities legislation for "fourth quarter" reporting. The high level of demand for these reports proves that the financial markets cannot wait for the filing of the financial statements and MD&A. One does not have to look hard to find examples of formal filings of annual financial statements and MD&A months after the fourth quarter reports. There also are cases where the annual financial statements are available on the issuers' websites months before the annual financial statements are filed. In an ideal world we think the auditors, audit committees and management would work together to enable annual financial statements and MD&A to be filed within hours of their review and approval by the board of directors. A handful of leading reporting issuers are already there and we know from section 3.1 of the Companion Policy that the CSA members want to see this happening more often.

The Five Year Review Committee Draft Report in Chapter 14 states the Committee's concern about the release of financial information before interim and annual financial statements are approved by the board of directors or audit committee. (The Committee believes such releases are inconsistent with the requirements under Ontario securities law for board or audit committee approval.) The Committee also is particularly concerned about the release of financial information in advance of the financial statements and the report goes on to state: "Once the issuer's financial statements have been approved, as discussed above, then their release or the release of earnings information derived from them which has also been approved should be filed on SEDAR."

One way to deal with these concerns is to set more stringent rules. For example, the CD rules could state that annual and/or interim financial information cannot be released until and unless:

(a) 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);
(b) 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
(c) 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 (say 10 - 15 days) after the financial information is released, but no later than the relevant filing deadline for the MD&A and financial statements. The SEC considered and rejected a similar concept in arriving at their final Rule 33-8128. They were concerned that issuers would delay the release of financial information to avoid triggering a deadline to file the related reports. However, the SEC

did not appear to be concerned by comments that in some circumstances the audit and review processes were far from complete at the time earnings releases were issued.

5. Disclosure of Restructuring Transactions in Information Circulars

Please refer to our comments on Form 51-102F5 included elsewhere. We are very concerned about having the prospectus level financial statement disclosure qualified by the words "to the extent necessary to allow a reasonable securityholder to form a reasoned investment decision". We can appreciate that there may be no need or applicability for many of the non-financial prospectus disclosure requirements, so we would support having the non-financial disclosures qualified in the above manner. However, we believe the qualification as to financial disclosure will soon lead to 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.

6. Significant Acquisitions Disclosure

We support the introduction of continuous disclosure requirements for significant business acquisitions. We recognize that SEC issuers, including MJDS issuers, may benefit the most from having the disclosure requirements as consistent as possible with SEC requirements. We believe it also makes intuitive sense for the extent financial statement disclosure, in terms of financial years presented, to vary directly with the significance of the acquisition. However, if say a 30% threshold and a requirement for audited comparative annual financial statements of the acquiree would make it simpler for the small issuers, we would have no objection.

7. Requirement to File Material Documents

In the circumstances described we would support the requirement to file the documents because often "the devil is in the details".

8. Criteria for Identifying Small Issuers

We are in favour of making certain concessions to small issuers that will reduce the costs that would otherwise be incurred to comply with the disclosure rules. While there may be valid reasons for the different thresholds (e.g., because the underlying documents involved are not necessarily of equal importance), we believe it would be much simpler for small issuers if the thresholds were conformed.

9. Approach to Regulation of Small Issuers

We have no comments.

10. Cost Benefit Analysis

The market is demanding the filing of complete and accurate financial information 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. We believe the improvements are absolutely necessary and more stringent requirements are inevitable in the foreseeable future.

11. Credit Supporters and Exchangeable Shares

(a) We would support CD requirements in situations where financial statements of the guarantor would be included or incorporated by reference in a prospectus. As to the three options presented, any one of them might be appropriate depending on the circumstances. For example, if the issuer is a substantive operating company and the guarantee is a backstop in the unlikely event that the issuer gets into financial difficulty, we think the issuer's CD should be filed, with periodic supplemental CD of the guarantor. If the issuer is a shell company or a conduit, then the issuer's CD likely is meaningless and full CD of the guarantor should be filed.

(b) The exchangeable share situations we are familiar with generally result from the acquisition of the common shares of a Canadian issuer by a foreign issuer and issue the exchangeable shares for the convenience of Canadian shareholders that choose to defer tax consequences for a limited number of years. In the situations we have seen, the exchangeable shares also were listed on a Canadian stock exchange. Unless there are other outstanding public securities (e.g., debt or preferred shares) we would support an exemption from CD requirements for the exchangeable share issuer, because the economic equity interest held by the holder of the exchangeable shares is in the foreign issuer.

(c) We would support reduced CD 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. For the exchangeable share situations, we believe the CD requirements should apply only to the foreign acquirer, based on the requirements for eligible foreign issuers under proposed NI 71-102.

(d) No comments.