STIKEMAN ELLIOTT

Stikeman Elliott LLP Barristers & Solicitors

5300 Commerce Court West, 199 Bay Street, Toronto, Canada M5L 1B9
Tel: (416)·869-5500 Fax: (416) 947-0866 www.stikeman.com

Direct: (416) 869-5674
E-mail: ghogan@stikeman.com

BY EMAIL AND COURIER August 5, 2003

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Commission des valeurs mobilières du Québec
Securities Administration Branch, New Brunswick
Nova Scotia Securities Commission
Office of the Attorney General, Prince Edward Island
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Government of Yukon
Registrar of Securities, Department of Justice, Government of the Northwest Territories
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut

Rosann Youck
Chair of the Continuous Disclosure Harmonization Committee
British Columbia Securities Commission
PO Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, BC V7Y 1L2

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

Dear Sirs and Mesdames:

Re: Proposed National Instrument 71-102 and Companion Policy 71-102CP *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*

Based on certain recent discussions with securities regulators in the context of an application for continuous disclosure relief in which proposed

NI 71-102 was offered as a guide to conditions of relief, we encountered certain anomalies in the Instrument that we believe should be rectified.

Section 4.9 of proposed National Instrument 71-102 provides an exemption from the insider reporting requirement for insiders of SEC foreign issuers that are not SEDI issuers. Section 5.10 of proposed National Instrument 71-102 provides an exemption from the insider reporting requirement for insiders of designated foreign issuers that are not SEDI issuers. A SEDI issuer is a reporting issuer, other than a mutual fund, that is required to comply with National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*, including a foreign issuer referred to in paragraph 2 of subsection 2.1(1) of that Instrument. The foreign issuers referred to in paragraph 2 of subsection 2.1(1) of NI 13-101 are those that elect to become electronic filers under NI 13-101. Foreign issuers (SEDAR) (as they are called in that Instrument) are not otherwise required to comply with NI 13-101 or file documents electronically.

As section 1.3(2) of the Companion Policy to proposed NI 71-102 recognizes, this relief is somewhat more restrictive than the relief provided under National Instrument 71-101, which requires compliance with US laws as a condition of the relief. NI 71-102 adds to these conditions the condition that the SEC foreign issuer or designated foreign issuer, as the case may be, is not a SEDI issuer. It is this particular condition that we would suggest be deleted.

NI 71-102 generally recognizes that compliance with certain foreign laws will in most circumstances be sufficient, except in the case of insider reporting, where such compliance is not sufficient for an SEC foreign issuer or a designated foreign issuer unless the issuer is a SEDI issuer - no other relief that is available under NI 71-102 imposes this condition. The only difference between a SEDI issuer and a non-SEDI issuer is that SEDI issuers file electronically. It is unclear why a decision to provide disclosure through SEDAR, rather than filing it on paper as is permitted, should mean that insiders cannot avail themselves of relief from insider reporting requirements. This punishes foreign issuers who wish to provide more accessible disclosure, thus discouraging them from doing so.

We respectfully submit that the method of disclosure by an SEC foreign issuer or a designated foreign issuer is an insufficient basis upon which relief should be made available. If the requirements to comply with the foreign jurisdiction's laws and to file what is filed in that jurisdiction are satisfactory conditions for the insiders of some issuers but not others, such distinction should be made on the basis of the laws of that foreign jurisdiction and not on how the issuer in question makes disclosure in Canada. This is the

premise of proposed NI 71-102, other than in respect of insider reporting. The laws of such jurisdictions are either satisfactory or not, with the laws of designated foreign jurisdictions being those that are satisfactory. We would therefore recommend that the conditions in subsection 4.9(a) and subsection 5.10(a) be deleted from proposed NI 71-102.

In addition, it must be emphasized that the choice of method of disclosure by an SEC foreign issuer or a designated foreign issuer will, if proposed NI 71-102 is enacted as currently drafted, result in significantly different compliance burdens on their insiders. This compliance burden may cause SEC foreign issuers and designated foreign issuers to not elect to become electronic filers under NI 13-101, negatively affecting the ease of access to information about these issuers.

We recognize that this anomaly in proposed NI 71-102 may be aimed at the method of disclosing of insider reports, that is, if an issuer files electronically, then insider reporting is electronic and therefore SEDI is the method, and if an issuer files on paper, then insider reporting is on paper and foreign reports are therefore acceptable. However, this ignores the additional compliance burden of filing through SEDI and of inconsistent insider reporting requirements between Canadian and foreign jurisdictions. The balance of proposed NI 71-102 addresses this and we would submit that insider reporting should be similarly treated by deleting the conditions therein that the issuer not be a SEDI issuer.

We would be happy to discuss this matter further with you at your convenience.

Yours truly,

”Gregory J. Hogan”

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cc: Simon Romano, *Stikeman Elliott LLP*