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Commission des valeurs mobilières du Québec
Office of the Administrator, New Brunswick
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Newfoundland and Labrador Securities Commission
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Registrar of Securities, Nunavut

Re: Proposed National Instrument 51-102 *Continuous Disclosure Obligations*

The following comments are provided by Talisman Energy Inc. ("Talisman") in response to the CSA's notice and request for comments regarding the proposed National

Instrument 51-102 *Continuous Disclosure Obligations*, its six forms and companion policy (the "National Instrument").

Talisman is a large, independent, Canadian-based oil and gas producer with oil and gas operations and related activities, whether directly or through its subsidiaries, in Canada and in more than ten countries around the world. As a cross-border issuer with shares listed on Toronto Stock Exchange and the New York Stock Exchange, Talisman makes use of the Multi-Jurisdictional Disclosure System ("MJDS") for Securities and Exchange Commission filings. Accordingly, Talisman generally supports the types of initiatives proposed by the National Instrument that harmonize Canadian and U.S. requirements and that are compatible with the MJDS.

Talisman supports the CSA's proposal not to require that financial statements be filed and delivered to shareholders concurrently (National Instrument Sections 4.2, 4.4 and 4.6). This proposal would eliminate an inconsistency between Canadian and U.S. law. In addition, the proposed change would promote timely disclosure of information without the delay caused by the requirement to print documents prior to filing, which is necessary in order to file and mail the documents to shareholders concurrently. Talisman supports the proposal to uncouple these requirements.

Talisman believes that not permitting an issuer's board of directors to delegate the task of reviewing and approving interim financial statements would add an unnecessary additional layer of process, would increase issuer costs without providing a corresponding benefit for investors, and could delay publication of interim financial information (National Instrument Section 4.5). Talisman believes that boards should be permitted to delegate to their audit committees the task of reviewing and approving interim financial statements before they are released. Audit committees are well-placed to review such statements as they are made up of independent members of the board who have an appropriate level of financial understanding. The statements they review are prepared and checked by an experienced internal group of experts. In many cases, including Talisman's, the statements are then reviewed by an independent team of expert auditors. The audit committee then receives a detailed presentation on the financial statements in the presence of management and the auditor before the statements are finalized. At the first full board meeting following an audit committee meeting, the chairman of the audit committee advises the board of all proceedings and matters covered by the committee. Accordingly, the standard and quality of financial statements reviewed and approved by an audit committee are high and the full board of directors is kept fully informed.

Recognizing that audit committee review is sufficient for interim statements, the law customarily has permitted boards of directors to delegate review and approval of interim financial statements to their audit committees. For example, see Ontario Securities Commission Rule 52-501. Talisman is not aware of any problems caused by permitting such delegation. We submit that prohibiting such delegation would add a layer of

process that is unnecessary in light of the level of review to which the financial statements are subjected every quarter. As a practical matter, legislating the requirement for board approval after audit committee review would require many companies to call an additional board meeting immediately after an audit committee meeting, resulting in additional cost and in delay of issuance of the interim financial statements to the public. The burden of such an additional board meeting would not be offset by an appreciable additional benefit to investors. For these reasons, Talisman believes that the National Instrument should permit boards to delegate review and approval of interim financial statements to their audit committees.

Talisman suggests that two obligations to disclose material contracts be clarified and scaled back. The proposed National Instrument includes two requirements to disclose material contracts. Section 12.1(e) would require a reporting issuer to file "any other contracts including indentures, excluding contracts entered into in the ordinary course of business, of the issuer or a subsidiary of the issuer that create or materially affect the rights or obligations of securityholders where the class of security is held by more than 50 securityholders, if those contracts can reasonably be regarded as material to an investor in securities of the reporting issuer." In addition, item 15 of Form 51-102F1 *Annual Information Form* would require issuers to "give particulars of every contract, other than a contract entered into in the ordinary course of business, that can reasonably be regarded as material to an investor in securities of your company and that was entered into within the two years before the date of the AIF. State a reasonable time and place at which the executed contracts, or copies of them, may be inspected."

The difference between the two provisions is that the first requires reporting issuers to file material contracts that create or materially affect the rights or obligations of securityholders, whereas the second requires issuers to give particulars of material contracts and make them available for inspection. Without clarification from the CSA, the logical conclusion is that the first provision's application is limited to corporate documents whereas the second provision extends to business contracts as well. In respect of both requirements, it would be helpful if the companion policy included a narrative and some examples clarifying the meaning of "entered into in the ordinary course of business" in this context. In the absence of such a discussion, Talisman believes that almost all business contracts, including material acquisitions and dispositions, are entered into in the ordinary course of its business because such transactions regularly occur in the oil and gas industry, even if they do not occur frequently. Accordingly, pursuant to the current wording of Form 51-102F1, it appears that only very infrequently, if ever, would Talisman be required to make a business contract available for inspection. Talisman respectfully requests clarification and confirmation of this view.

Assuming the interpretation of the two provisions discussed above is correct, Talisman believes that item 15 of Form 51-102F1 is too broad in that it requires an issuer to make certain material contracts available for inspection. For the following three reasons,

Talisman believes that issuers should not be required to produce copies of business contracts, whether they are entered into in the ordinary course of business or not.

1. Analysts and securityholders can get the information they need about a contract from a well-written summary of the main terms of the contract. Such people would likely not need to see the other terms of the contract to make informed investment decisions. Those most likely to benefit from full disclosure of all terms of business contracts include a company's competitors and litigants. Disclosure rules should not facilitate the advancement of such persons' interests when the rules provide only minimal additional value to legitimate investors.

2. Certain terms of business contracts are confidential and may not be disclosed to the public. In addition to confidentiality obligations arising from business transactions, privacy law also requires certain information to be kept confidential. For example, for transition purposes a contract effecting an acquisition or disposition might include a schedule of employees, their salaries and their resumés. Investors do not need this type of information to make informed investment decisions and companies are not permitted to disclose it. Rather than having issuers black out confidential information in a contract before making it available for inspection, Talisman suggests that an issuer's disclosure obligation be limited simply to summarizing the material terms of such contracts for the investment community without producing the contracts themselves.

3. The cost to issuers of disclosing or making available copies of business contracts is not justified by an appreciable benefit to investors. The implied new requirement of determining what terms of a contract are confidential and must be blacked out could be a boon to lawyers, a new expense for issuers and an area of uncertainty for securities regulators. The benefit for investors derived from such an exercise would be minimal.

While Talisman is generally in favour of initiatives to harmonize Canadian and U.S. requirements, we would like to register our strong objection to the proposal to require the production on request of business contracts. Talisman's view, which is shared by many other issuers, is that this requirement in force in the U.S. is an unnecessary and extreme burden on issuers that is not offset by a corresponding benefit to investors. Accordingly, Talisman recommends that the CSA not require disclosure or productions of actual contracts.

Talisman proposes that the National Instrument include a provision recognizing compliance in another jurisdiction. Alternatively, Talisman suggests that the securities regulators provide interim relief from duplicative provisions of the National Instrument until the *Canada Business Corporations Act* ("*CBCA*") is amended. The *Securities Amendment Act* will repeal Section 212 of the *Securities Act*, when the National Instrument comes into effect. Section 212 states:

212(1) Unless otherwise provided by the Alberta securities laws, a person or company that has complied with the requirements of the laws of the jurisdiction in which

(a) in the case of a person, the person carries on the substantial part of the person's business, or

(b) in the case of a company, it is incorporated, organized or continued,

is deemed to have complied with the requirements of the Alberta securities laws if the requirements of that jurisdiction and the Alberta securities laws are substantially the same and the documents that are filed in that jurisdiction are also promptly filed with the Executive Director.

(2) The Commission may, if the Commission considers that it would not be prejudicial to the public interest to do so, make an order exempting in whole or in part

(a) a person or company or a class of them, or

(b) a transaction or a class of them,

from the requirements of Section 152, Part 13 or Part 15 of this Act or the requirements of the regulations.

In the past, Talisman, a Canadian corporation, has relied on Section 212 to prepare its management proxy circular and form of proxy in accordance with the *CBCA* and related regulations. The repeal of Section 212 from the *Securities Act* without the inclusion of a substantially similar replacement provision in the proposed National Instrument will necessitate complying with two slightly different sets of rules – one under the *CBCA* and one under the *Securities Act* – in preparing the management proxy circular and form of proxy. Although the two rules are materially the same, minor differences exist and will have to be identified to ensure compliance under both statutes. The additional cost and time implied by this duplication is not justified by any clear benefit for investors. Accordingly, Talisman believes that a provision similar to that formerly set out in Section 212 should be included in the National Instrument. Alternatively, Talisman suggests that the CSA attempt to coordinate with the federal government to have duplicative provisions removed from the *CBCA*, and that the securities regulators provide interim relief until that is accomplished.

Talisman requests that Section 11.1 of the National Instrument be qualified to apply only to disclosure material. Section 11.1 of the proposed National Instrument would require issuers to file copies of any materials they send to their securityholders. Without a qualifier, a literal reading of this provision requires issuers to file every document, no matter how immaterial, if the document is sent to securityholders. This would include the return envelope for completed proxies and a letter encouraging securityholders to register for electronic document delivery. If the CSA does not intend issuers to file such materials, a qualifier that only disclosure materials need be filed should be included in Section 11.1 of the National Instrument.

Talisman suggests that the CSA should play a role in causing a change to Section 159 of the *CBCA* so that federally incorporated companies may take advantage of

the National Instrument's proposed procedure of permitting issuers to only deliver financial statements to shareholders who request them (National Instrument Section 4.6). *CBCA* Section 159 requires a corporation to mail annual financial statements to all shareholders except those who inform the corporation in writing that they do not want a copy. Unless the CSA coordinates with the federal government to have this provision amended, the National Instrument's proposed procedure of putting the onus on shareholders to request the annual financial statements will not be available to *CBCA* companies. Talisman respectfully requests that the CSA raise this issue with the federal government.

Talisman proposes that the requirement to file material corporate documents as attachments to the AIF be modified to require such documents to be filed as exhibits to the AIF (National Instrument Part 12). Investors and others may find it easier to locate information contained in exhibits rather than embedded in another document.

Talisman believes that it would be helpful to issuers for references to all information required in the AIF to be listed in Form 51-102F1. Currently information required in the AIF is set out in various sources. Including in Form 51-102F1 references to the AIF requirements included in Part 12 of the National Instrument as well as in Form 52-110F1 could serve as helpful reminders to include all required information in the AIF.

Yours truly,

M. Jacqueline Sheppard
Executive Vice-President,
Corporate and Legal