Ernst & Young LLP
Chartered Accountants
Ernst & Young Tower
P.O. Box 251, 222 Bay St.
Toronto-Dominion Centre
Toronto, Canada M5K 1J7

Phone: (416) 864-1234
Fax: (416) 864-1174

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

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

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

Ladies and Gentlemen:

Re: Second Publication of Proposed National Instrument 51-102 *Continuous Disclosure Obligations*, its related forms and companion policy (together, the Second Publication)

We have read the Second Publication and provide you with our comments in this letter. Capitalized terms in this letter have the same meaning as those in the Amended Proposed Rule, except as otherwise indicated.

We appreciate the responsiveness of the CSA to industry participants' comments on the first publication of the continuous disclosure rule. We find most of the changes made in the Second Publication advantageous and worthwhile. We provide below our thoughts and comments on certain of the significant changes. The latter part of this letter addresses the specific questions you have listed in the request for comments.

COMMENTS ON CERTAIN SIGNIFICANT CHANGES

Criteria to distinguish issuers

One of the major improvements made in the Second Publication is the use of a single threshold for differentiating continuous disclosure requirements among issuers. This reduces confusion, while balancing the costs and benefits of regulation among different types of issuers.

We agree that the proposed threshold, that is, the definition of a "venture issuer", is transparent, certain, and easy to apply. In most circumstances, this threshold would successfully differentiate the larger issuers, who should be subject to more stringent continuous disclosure requirements, from their smaller counterparts. However, this may not necessarily be the case. Since the definition of a venture issuer is not based on size, the use of this definition as the differentiating criteria will unavoidably subject small issuers listed on the Toronto Stock Exchange to burdensome disclosure requirements, while not capturing larger issuers listed on the TSX Venture Exchange. Moreover, this method does not take into consideration a company's growth. A company may not necessarily move from the TSX Venture Exchange to a senior exchange even though it has grown in terms of assets or market capitalization. Similarly, a Toronto Stock Exchange issuer may divest and become a much smaller issuer, but would still be subject to stringent continuous disclosure requirements under the proposed rules.

As we indicated in our comment letter to the first publication, we are in favour of using the $75 million market value test as the single criterion for differentiating between issuers. This method may be slightly more complex to apply than the venture issuer definition, but is still relatively easy to use, and has been in use for a period of time under existing continuous disclosure obligations. We believe this method more appropriately distinguishes issuers by size, and allows for flexibility when issuers' conditions change.

Significance Tests

We generally support the change of the significance tests to the thresholds proposed in the Second Publication. We agree that the proposed thresholds appropriately balance the costs and benefits of providing a BAR. However, since the proposed thresholds would be inconsistent with existing prospectus requirements, you should consider amending the prospectus rules to facilitate an integrated disclosure system.

Auditor Changes

We note that the proposed rules call for a press release in connection with an auditor termination or resignation if there have been any reportable events. In the case of an auditor termination, the press release is required to describe the information in the reporting package. However, the corresponding press release requirement for the appointment of a new auditor does not require a description of the information in the reporting package. When reportable events are involved, we believe a press release should be required and that the press release should describe the information in the reporting package, including the nature of the reportable event. These requirements should apply regardless of whether an auditor termination or an auditor appointment is being reported.

Proposed rules 4.11(8) requires the successor auditor to communicate with the reporting issuer and the securities regulatory authorities if the successor auditor becomes aware that the reporting issuer has not met its reporting obligations regarding a change in auditors. We recommend that both the former auditor and the successor auditor assume this responsibility, particularly since some auditor terminations could occur without the timely appointment of a successor auditor.

RESPONSES TO QUESTIONS LISTED IN REQUEST FOR COMMENT

The numbered responses below correspond to the numbers of the questions in the request for comment.

1. *Filing documents*

   a) We believe the requirement to file materials sent to security holders should apply regardless of the number of security holders in the class. Information related to one security class may also be useful to other security holders. All information should be available to the security holders, leaving it to the security holders to decide whether the information is useful for their decision-making.

   b) Based on the same rationale as a), we recommend that material contracts should be filed on a continuous basis. This requirement would facilitate an integrated disclosure system since the prospectus rules currently require material contracts to be filed together with a prospectus.

2. *Business acquisition disclosure*

   We are in favour of the proposed model of filing a BAR for a significant acquisition. As you have indicated, this model achieves consistency with the prospectus rules. Market participants are familiar with the concepts of significant acquisitions and significance tests. On the other hand, the definition of a material change is relatively more subjective and has frequently resulted in inconsistencies in application. Information about significant

acquisitions is extremely important to security holders, and it warrants a separate filing category of its own, rather than being grouped with other material changes.

3. *Disclosure of auditor review of interim financial statements*

We believe that the CSA should mandate auditor reviews of interim financial statements rather than focussing on disclosures about whether or not the auditor was involved. Auditor reviews of interim financial statements will improve the quality of interim financial reporting and enhance the effectiveness of the independent audit function through more timely and continuous interaction between the auditor and the reporting issuer.

Should you not require auditor reviews of interim financial statements at this time, we have the following comments with respect to the proposed rules.

a) We agree with the proposed approach under which disclosure would be required if the auditor has not reviewed the interim financial statements. However, we would prefer that the disclosure be prominent and presented in a consistent location within the interim report. For these reasons, we suggest that the proposed disclosure alternatives (footnotes or MD&A) be deleted and a legend, such as "Not reviewed by independent auditor", be required when appropriate on the face the interim balance sheet, income statement and cash flow statement. A positive statement regarding the performance of a review by the auditor is not necessary if a reporting issuer is required to disclose when a review is not performed.

b) When a reporting issuer voluntarily discloses that a review has been performed, we believe that the auditor's review report should be reproduced in the interim report. The purpose of including the report is to inform readers of the limited nature of the review engagement and therefore the limited nature of the assurance that should be derived therefrom. While the public is familiar with audit reports and the nature of an audit engagement, which have been required by securities regulations for decades, they have no similar experience with review engagements and review engagement reports. Readers are likely to ascribe too high a degree of assurance to the auditor's review of interim financial statements without access to the review report.

4. *Added MD&A disclosure*

a) A clear definition of "off-balance sheet arrangements" has the benefit of preventing inconsistencies in application, and serves as additional guidance to the requirements of the rules. The definition of the term in the SEC's final rule on disclosure of off-balance sheet arrangements in MD&A, which we have reproduced below, can be used as a reference.

"the definition of "off-balance sheet arrangement" includes any contractual arrangement to which an unconsolidated entity is a party, under which the registrant has:

- *Any obligation under certain guarantee contracts;*
- *A retained or contingent interest in assets transferred to an unconsolidated entity or similar arrangement that serves as credit, liquidity or market risk support to that entity for such assets;*
- *Any obligation under certain derivative instruments;*
- *Any obligation under a material variable interest held by the registrant in an unconsolidated entity that provides financing, liquidity, market risk or credit risk support to the registrant, or engages in leasing, hedging or research and development services with the registrant."*

b) We believe small or venture issuers should be exempted from the requirement to discuss changes in their accounting policies as well as the adoption of an initial accounting policy. Disclosures of impact of the adoption of a new accounting policy are already required to be made in financial statements under GAAP, and further discussion in the MD&A will not provide significant additional benefits. The impact of accounting policies expected to be adopted is often unknown until a detailed analysis is performed, and venture issuers should be exempted from having to do such analysis before an accounting policy becomes effective.

Should you have any questions or comments on this letter, we would be pleased to hear from you.

Yours sincerely,

Ernst & Young LLP

Douglas L. Cameron/Charlmane Wong
(416) 943-3665/3620