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Toronto, March 9, 2006

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission - Securities Division
Manitoba Securities Commission
Ontario Securities Commission
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

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

Anne-Marie Beaudoin
Secretary
Autorité des marchés financiers
Stock Exchange Tower
800 Victoria Square
P.O. Box 246, 22nd Floor
Montréal, Québec H4Z 1G3

Dear Mesdames:

RE: Comments on Proposed Amendments to National Instrument 51-102 – Continuous Disclosure ("NI 51-102")

This letter is submitted in response to the request for comments made by the Canadian Securities Administrators ("CSA") on the above proposed amendments and is being submitted by the Securities Law Group of Ogilvy Renault LLP. We appreciate the opportunity to comment on the proposed amendments.

NI 51-102

1. ***Venture issuers and debt-only issuers***

You have invited comments on whether issuers that issue only debt to the public merit similar accommodations under NI 51-102 as venture issuers. NI 51-102 exempts venture issuers from the requirement to file an AIF and allows such issuers longer periods to file financial statements. In addition, such issuers are relieved of certain requirements under other national or multi-lateral instruments. We believe debt-only issuers do merit similar accommodations as venture issuers under NI 51-102 and certain other instruments.

The exemptions available to venture issuers are largely based on a cost-benefit analysis and on the expectations of investors. The issues pertaining to debt-only issuers also relate to a cost-benefit analysis, but are mainly based on the nature of the securities being issued and how they are assessed by investors.

The nature of debt securities is different than that of equity securities and the needs of their holders are also different, as reflected in the instruments that create debt securities. Indeed, the rights and obligations of debt holders are specifically described in these instruments, including obligations to provide certain types of information to debt holders.

The nature of debt securities has an important impact on the way that securities are assessed by investors. The decision to trade in debt securities is not based upon the possibilities for future growth of an entity, as in the case of an equity investment. A debt investor is concerned with the ability of the issuer or guarantor institution to repay the debt. As a result, the key factor is the creditworthiness of the issuer as opposed to the growth of its business. Hence, the decision to purchase debt securities is most often based upon the rating of such debt, as determined by independent rating agencies. This fundamentally distinguishes a debt investment from an equity investment.

The protection granted to debt holders through governance provisions contained in debt indentures and the fact that debt will have a preferential treatment over equity in the case of a winding-up or bankruptcy, also justifies, from a cost-benefit analysis, that debt-only issuers be relieved from certain disclosure requirements.

The definition of venture issuer currently contains a "listing" test, in effect affording the exemption only to those issuers whose securities are not listed or quoted on certain marketplaces. This is consistent with the policy objective of granting the exemption only to junior issuers whose investors would not expect more and who may have cost issues in providing the disclosure.

We submit that in the case of debt-only issuers, the "listing test" is inappropriate. In fact, the "listing test" can be counter-productive for many debt-only issuers that list their debt securities in foreign marketplaces purely as a formality. For example, a European listing is often obtained by debt-only issuers to facilitate investment by European institutional investors. Such investors will require such listing or quotation in order to satisfy their internal investment policies and restrictions. In effect the "listing test" is not a good proxy for debt-only issuers, which should benefit from the same accommodations as venture issuers.

The issue as to the appropriate treatment of debt-only issuers is not restricted to appropriate disclosure requirements under NI 51-102. A similar definition of venture issuers is also used in several other instruments including NI 52-110 *Audit Committees* and NI 58-201 *Disclosure of Corporate Governance Practices* with the result that debt-only issuers with listings receive different treatment from debt-only issuers without a listing under these instruments. Proposed MI 52-111 *Reporting on Internal Control over Financial Reporting* in its current proposed form will also result in divergent treatment of debt-only issuers. In light of this we suggest that the CSA give consideration to extending the venture issuer regime to debt-only issuers whether or not they have listed debt.

2. ***Delivery of Financial Statements***

Proposed section 4.6(1) of NI 51-102 requires the delivery of annual and interim financial statements to requesting shareholders within 10 calendar days after the "filing deadline" of such statements. For non-venture issuers, annual financial statements must be delivered to requesting shareholders (or all shareholders pursuant to the exemption contained in section 4.6(3)) by the 100th day following an issuer's year-end. While the proposals allow an additional 10 days for delivery following the filing deadline, both for delivery to requesting shareholders and to all shareholders pursuant to the exemption in section 4.6(3), the new requirements do not provide any flexibility for issuers. The amendments will accelerate the date of delivery for issuers which choose to deliver to all shareholders. This in turn will result in an accelerated timetable for annual meetings for issuers who wish to combine the mailing of their financial statements, meeting materials, and annual report (which includes the financial statements).

When NI 51-102 was originally proposed in 2002, the intention was to eliminate the requirement to deliver to all shareholders and to require delivery only to requesting shareholders "as soon as practicable" following filing. This original language provided more flexibility for issuers to deal with printing delays and other practical issues. A fixed 10 day period following the filing date may result in issuers needing to seek exemptive relief for minor delays. During this period, access to the financial statement would be available through SEDAR and therefore, it would not be detrimental to shareholders to provide more flexibility to issuers.

We would also submit that shortening the period of delivery to all shareholders from the current interpretation of 140 days to 100 days will increase the costs for issuers who may not be able to do a combined mailings for their annual meeting due to timing constraints. As a result of the shortening of this period, issuers may need to do a mailing of financial statements to requesting shareholders, followed by a separate delivery of the annual report and meeting materials. Given the widespread availability of electronic information, it appears there is no compelling investor protection mandate to force issuers to hold their meetings earlier where they wish to do one mailing or, in the alternative, require issuers to do two mailings if they wish a later meeting date.

The delivery of financial statements to registered holders is already prescribed for corporate issuers by relevant corporate legislation and delivery to beneficial owners (other than those who have declined to receive such material) is ensured by the operation of National Instrument 54-101 – *Communication with Beneficial Owners of Securities of a Reporting Issuer*.

3. ***Filing of Certain Documents***

You have requested comments on whether the requirements prescribed in Part 12 of NI 51-102 (filing of constating documents, securityholder agreements and material contracts outside the ordinary course) are beneficial to investors and whether or not the requirement should be eliminated. We would submit that the filing of material contracts outside the ordinary course of business is not beneficial to shareholders. This is due to the fact that such agreements are often negotiated in the context of particular circumstances (for e.g., between two or more commercial parties to a transaction, which includes representations and warranties that represent an allocation of risk negotiated in that context) and are not disclosure documents that can be read in isolation. An investor should be receiving the necessary information regarding the issuer from the "true, plain and full disclosure" an issuer makes of all material information in its AIF and other continuous disclosure documents.

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This letter has been prepared by the Securities Law Group of Ogilvy Renault LLP. If you have any questions concerning these comments, please contact Tracey Kernahan (direct line (416) 216-2045 or by e-mail at tkernahan@ogilvyrenault.com or by fax at (416) 216-3930 or Paul Raymond direct line (514) 847-4479 or by fax at (514) 286-5474 or by e-mail at praymond@ogilvyrenault.com).

Yours very truly,

Ogilvy Renault LLP.

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