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Dear Sirs/Mesdames:

Re: Proposed National Instrument 41-101 *General Prospectus Requirements* (the "National Instrument") and Companion Policy 41-101CP *General Prospectus Requirements* (the "Companion Policy")

Thank you for the opportunity to provide comments on the proposed National Instrument and Companion Policy. We commend CSA for the significant effort undertaken to produce the National Instrument and Companion Policy and to harmonize the general rules relating to prospectuses in Canada. Other efforts on the part of CSA to harmonize disparate securities laws (in relation to prospectus and registration exemptions, for example) have, in our opinion, led to significant improvements and have done much to reduce the impact of geography on securities regulation in Canada. We strongly support the initiative to harmonize the prospectus rules contained in provincial securities laws, as harmonization holds out the prospect of a reduction in the inefficiencies associated with the review of multiple regimes in connection with the preparation, filing and clearance of prospectuses.

Although we believe there are multiple benefits to be derived from harmonization of the general prospectus rules, we believe that the National Instrument introduces a number of new elements to prospectus regulation, which may negatively affect public issuers in general and the oil and gas industry in western Canada in particular. In recent years, we have noticed a number of regulatory initiatives apparently driven by isolated incidents that caused concern among securities regulators. In a number of cases, we have questioned whether the impulse to "cure" those isolated incidents has led to a regulatory response out of proportion to the relevant incident. We wonder whether certain elements of the new prospectus rules also fall into that category.

In terms of approach, please note that we have not provided detailed comments on all aspects of the National Instrument and Companion Policy, but rather have confined our comments to the nine categories of inquiry set out in the December 21, 2006 Notice and Request for Comment that accompanied publication of the National Instrument and Companion Policy (the "Notice").

CERTIFICATE REQUIREMENTS

Comments concerning the proposed certification requirement for "substantial beneficiaries of the offering" comprise the bulk of this letter. A detailed discussion of our submissions follows the list of highlights set out below, which is included for convenience of reference.

- We expect that the proposed certification requirement will have far-reaching effects, which include rendering certain Canadian public entities uncompetitive in circumstances where assets are being pursued by multiple bidders.
- Imposing a certification requirement on a vendor and requiring a vendor to be responsible for all of an issuer's prospectus disclosure would create a significant due diligence obligation for the applicable vendor and may cause the vendor to simply decline to deal with a public entity where it is reasonable to expect that a request for certification will follow.
- Vendors will likely be unwilling to expose themselves to the post closing risk entailed by the certification requirement.
- Liquidators of businesses, in particular, will likely balk at dealing with a public entity where it is reasonable to expect that a request for certification will follow.
- Deprived of the ability to compete on even terms with private purchasers, non-Canadian entities and public entities that do not require financing, certain Canadian public entities will need to offer significant premiums for target assets.

- Persons qualifying as "substantial beneficiaries of the offering" may not have the best knowledge concerning the target business or assets.

- Imposition of the certification requirement may reduce the universe of potential acquirors, to the detriment of existing stakeholders in private entities.

- Imposition of the certification requirement may promote uneven treatment among stakeholders of a target and may give rise to significant conflicts of interest.

- Imposition of the certification requirement may effectively neuter drag-along rights in existing shareholder agreements.

- The certification requirement may give rise to a defensive tactic in the context of takeover bids.

The practical effects of the proposed certification requirement for "substantial beneficiaries of the offering" are far-reaching and we do not agree with the suggestion in the Notice that the requirement will not "impose significant costs on issuers". In fact, we expect that affected issuers will be exposed to very significant costs, which will include an inability to effectively compete with private purchasers and non-Canadian entities pursuing a target asset and public entities that do not need to raise funds in order to acquire a target asset.

In cases where a vendor has received multiple offers for an asset, factors other than the prices offered by potential acquirors are considered, and if additional conditions are imposed by a particular bidder, that bidder's offer is discounted accordingly. When the conditions associated with a particular bid are perceived to be unusually onerous or to present inordinate risk (as compared to other possible transactions), the fact that the bid offers the highest purchase price does not ensure that the bid will be successful. An illustrative example that may be cited in this regard is the CNOOC Limited ("CNOOC") bid for Unocal Corporation in 2005. As you will recall, the offer presented by CNOOC entailed cash consideration in excess of the amount offered by the rival bidder, Chevron Corporation; but concerns over transaction risk and potential delays led the board of directors of Unocal to favor the lower bid proposed by Chevron. The reasons cited by the board of directors of Unocal in supporting the Chevron transaction included the following:

> the board's conclusion that, although it would be willing to accept the additional risks and complexities presented by a CNOOC transaction if the price offered were sufficient, in its view, to compensate Unocal's stockholders for such additional risks, it did not consider the CNOOC proposal, on the terms negotiated, to offer Unocal's stockholders sufficient compensation for assuming those risks. (See Supplement to Proxy Statement of Unocal Corporation, dated July 22, 2005.)

While the CNOOC example admittedly involved unusual circumstances, we often see this type of analysis applied in cases where companies or assets are marketed to multiple potential purchasers. Unusual conditions that have the potential to increase the risk of a transaction to the vendor are carefully analyzed, an effort is made to quantify the increased risk associated with such conditions and the consideration proposed by the bidder is then discounted to allow for comparisons with other offers. For practical purposes, this means that a bidder proposing to include unusual conditions in its offer (such as a requirement for vendor certification of a prospectus) must increase the amount of the consideration it would otherwise be prepared to pay for assets. For our part, we do not believe that a public issuer that is forced to increase the amount of the consideration it must offer to obtain a desired asset would agree with the foregoing assessment that the certification requirement does not entail significant additional cost.

The contest for Caremark Rx, Inc. ("Caremark"), which has played itself out in the United States in recent months, represents a more recent example in which the conditions associated with a bid led the board of directors of the target issuer to favor an alternative transaction that, on its face, offered less consideration to the stakeholders of that issuer. Background information relating to the merger between a subsidiary of CVS Corporation and Caremark (consummated in the face of a competing offer from Express Scripts, Inc.) is readily available from U.S. business news sources and we do not propose to review that information in any detail in this letter. For present purposes, one of the reasons cited by the board of directors of Caremark for rejecting the unsolicited takeover proposal received from Express Scripts, Inc. is of particular interest. In a January 7, 2007 news release, in which Caremark announced its commitment to the CVS Corporation transaction, Caremark noted that its board of directors had determined not to pursue a transaction with Express Scripts, Inc. due to antitrust concerns and timing delays, which introduced an element of transaction risk not perceived in relation to the proposed CVS Corporation transaction. Although there were other factors at play (which were outlined in detail in the Caremark news release), the concern that certain conditions introduced an unacceptable level of transaction risk reinforces the point noted above that such conditions involve real costs and, perhaps, an inability to even compete with an alternate transaction not subject to similar conditions.

In addition to the pricing issues to which public issuers will be exposed in relation to target assets, we believe that the imposition of a certification requirement will often leave vendors simply unwilling to deal with a public issuer at all. Requiring a vendor to provide a certificate in support of a prospectus will be perceived to greatly increase the risk of a disposition transaction to a vendor and many vendors will simply be unwilling to accept that risk. The perception of an unacceptable level of additional risk will be exacerbated if the certification requirement is implemented in the form outlined in the National Instrument, as requiring a vendor to sign an "applicable issuer certificate form" will expose the vendor to potential liability for any misrepresentation in the prospectus, not just a misrepresentation in disclosure relating to the assets sold by the vendor. We believe that it is (i) inappropriate to require a vendor of assets to review the prospectus disclosure of a purchaser and satisfy itself that the applicable prospectus is free from misrepresentation and (ii) unreasonable to expect that a vendor will undertake full due diligence of the purchaser so as to put the vendor in a position to sign a prospectus certificate.

Based upon our representation of a large number of vendors over many years, we believe that one of the principal concerns of vendors in disposition transactions (in addition to receipt of an acceptable purchase price) is to precisely understand and document the nature and extent of post-closing liability risk and to limit and control that risk. In short, vendors wish to be assured that they will receive acceptable consideration for any assets sold and that they may deploy the proceeds of the disposition transaction in other ways compatible with their individual financial objectives. Otherwise, they simply will not complete the transaction. While individual vendors have, on occasion, accepted a holdback involving a limited portion of the purchase price of assets (which remained in effect for a defined period of time (generally the survival period for representations and warranties identified in the purchase and sale agreement)), we believe that vendors will find the additional risk entailed by the certification requirement to be unacceptable. In fact, as counsel to a vendor, we would advise the vendor to favor alternate transactions not involving a prospectus financing, except in cases where the purchase price offered by a public entity is sufficiently in excess of alternatives as to create a clearly favorable risk/reward balance. In short, the price offered will have to be significantly in excess of the available alternatives. Again, the acquiring public issuer will be exposed to real and potentially significant costs.

Asset dispositions are routinely conducted in the oil and gas industry in western Canada through financial advisors in reliance on an auction style process in which multiple bidders provide acquisition proposals to the vendor. In our experience, it has become customary for offers on such assets to be entirely without financing conditions, as the addition of such conditions would render the offeror's bid uncompetitive. The imposition of the proposed certification requirement would, in our view, serve to place Canadian public entities at a significant disadvantage to (i) Canadian private entities, (ii) public entities that do not require financing and (iii) non-Canadian entities, in relation to these types of auction transactions.

On a related note, we question the reaction of liquidators to the certificate requirement. In our experience, the organizations generally charged with liquidating businesses provide only modest representations and warranties relating to those businesses, having regard to their obligation to maximize the return for creditors and promote certainty of outcome in respect of a disposition transaction. Again, in the absence of a significant premium in the purchase price offered by a public entity, it is unlikely that a liquidator would agree to a disposition transaction that might involve a significant risk of post-closing liability for the creditors it represents -- who, presumably, are already poised to receive a less than acceptable return. We believe that a public entity proposing a certification requirement as a condition to the purchase of assets from a liquidator will face a very difficult obstacle.

In the Notice, CSA indicated that the person who controls an issuer or a significant business has the best information about the issuer or significant business. We do not find that argument persuasive. In the case of most acquisitions, the acquiring entity generally plans to operate or exploit the target assets in a different way than incumbent management and the more compelling disclosure, in our view, is a description of the acquiror's plans for the assets post-closing, and the value it sees in the assets when combined with its existing business. Moreover, we are aware of numerous circumstances where principal shareholders are not involved in the day-to-day business of the organization (but rather are passive investors) and would not possess the level of knowledge of the target management group, or the acquisitions group tasked with review of a prospect on behalf of a potential acquiror. In short, ownership of a control block does not necessarily mean that the principal shareholder is the person or organization in possession of the "best information" about the organization and its assets.

On a related note, even if the prospectus disclosure for which the vendor is responsible were confined to information relating to the acquired assets, we would consider the imposition of a certification requirement overreaching and impractical. In order to satisfy itself that it will be in a position to complete an acquisition, a purchaser that plans to undertake a financing transaction to repay acquisition debt, for example, will require an ironclad undertaking from the vendor to certify the applicable prospectus. Any responsible vendor will insist upon seeing the applicable disclosure before making a commitment in that regard. In short, the prospectus disclosure would likely have to be prepared contemporaneously with the acquisition agreement, which would introduce unacceptable delays and completion risk into the transaction and, presumably, a very conservative approach to disclosure on the part of the vendor. The mere prospect of such additional procedures, in our view, will cause all but the most desperate of vendors to eschew involvement with a public issuer where it is reasonable to expect a condition relating to certification. In fact, in cases where organizations or assets are widely marketed, such as in the western Canadian oil and gas sector, it may be anticipated that bid packages would contain an express proviso to the effect that offers containing a certification condition will not be considered. The extent to which public entities may be disadvantaged in such circumstances is obvious.

From the broader perspective, the proposed certification requirement will likely reduce the universe of potential acquirors. This is not without consequence in the context of the western Canadian oil and gas business, having regard to the relatively high rate at which oil and gas assets are recycled, as compared to other industries. We are aware of numerous non-public oil and gas companies that have been formed in recent years, with the intention of building production to a certain critical mass and then completing a sale of the enterprise to create liquidity for stakeholders. Reducing the universe of potential purchasers of those companies may have a dramatic effect on existing stakeholders, as the most logical purchaser of an enterprise (and the one willing to pay the most) may find itself out of contention as a result of the need to impose a certification condition. We expect that stakeholders in existing companies will be concerned about this prospect. The mere imposition of the certification requirement may have the effect of reducing the value of their investment -- by narrowing the field of potential acquirors that they are otherwise looking to as possible sources of a liquidity event.

We note that, in the case of an acquisition of a significant business, not all stakeholders of the acquired business will necessarily be required to sign a certificate and assume the risk of liability for a misrepresentation. In short, the National Instrument may promote uneven treatment among the stakeholders of a target and may give rise to significant conflicts of interest. We can envision a circumstance, for example, in which all shareholders enthusiastically support a disposition transaction, except the principal shareholder, who is opposed to the transaction as a result of a concomitant need to certify a prospectus that the acquiring entity proposes to file. The principal shareholder may well favor a transaction involving less consideration per share, if the alternate transaction does not involve the certification of a prospectus. The potential for conflict may be exacerbated where the "substantial beneficiary of the offering" is a large, but passive investor and the members of the management team who have actual knowledge of the business or assets in question do not qualify as "substantial beneficiaries". Having regard to the well-documented concerns of securities regulators respecting potential conflicts of interest in business combination transactions, the desire to institutionalize a further potential source of conflict is somewhat surprising. Of course, if the foregoing circumstance were to arise in relation to an issuer, the non-principal shareholders of the affected organization may well find that the certification requirement has significant costs from their perspective.

As well, we believe that the imposition of a certification requirement could render drag along rights in existing shareholder agreements ineffective. For example, a significant stakeholder who has agreed that other holders may drag him into a liquidity transaction may be able to effectively neuter the drag along right in the case of a proposed takeover by a public issuer - by simply refusing to agree to certify a prospectus proposed to be filed by the public issuer in connection with an offering to raise the proceeds needed to repay acquisition debt. It is not clear that parties will be able to guard against such an outcome in shareholder agreements. Certainly, there is much to consider and the impact of the proposed certification requirement on commonly used commercial arrangements in shareholder agreements is one of the "far-reaching" ramifications of the certification requirement referred to above.

In addition to the foregoing, the requirement for certification would appear to give rise to a number of concerns in the context of takeover bids. To illustrate, assume that ABC Co. makes an offer to purchase all of the issued and outstanding shares of XYZ Co. and that XYZ Co. is of sufficient size to represent a "significant acquisition" vis-à-vis ABC Co. The consideration offered is cash and is financed in first instance through a credit facility. ABC Co., however, wishes to repay the indebtedness at the earliest opportunity, and proposes to undertake a prospectus offering as soon as practicable following completion of the takeover bid. Assume further that XYZ Co. has a principal shareholder, Mr. I, who beneficially owns 30% of the outstanding voting securities of XYZ Co. Under the proposed certification requirement, Mr. I would be required to sign a certificate in respect of the prospectus to be filed by ABC Co. (and complete a Personal Information Form for filing with the preliminary prospectus). It is reasonable to assume that Mr. I would wish to define the nature of his relationship with ABC Co. for purposes of the prospectus filing with a high degree of precision, perhaps requesting an indemnity and other comfort. Would that indemnity and additional comfort amount to a collateral benefit for purposes of the takeover bid rules? In the context of an unsolicited takeover bid, could the certification requirement give rise to a de facto defensive tactic, allowing a principal shareholder (who owns greater than 20% but less than 33⅓% of the outstanding securities of a target) to refuse to co-operate in relation to the certification of the acquiring entity's prospectus and to thereby thwart a takeover that the remaining shareholders wish to accept?

As noted above, we are concerned that the imposition of a certification requirement for "significant beneficiaries of the offering" will have negative effects on public entities that require financing to undertake acquisition transactions and on stakeholders in existing entities that view the prospect of an acquisition as a liquidity strategy. That regulatory initiatives may have significant effects on customary transaction structures and strategies for achieving business objectives may be illustrated by a couple of examples. The first was the introduction, by the Ontario Securities Commission, of prospectus rules (OSC Rule 41-501) requiring the production and inclusion of historical financial statements for oil and gas assets. After the introduction of those rules in 2000, we noticed a shift in the financing strategies of public oil and gas issuers, who gravitated to private placements as a means to finance acquisitions, even in cases of issuers who were otherwise eligible to utilize the short form prospectus procedures. Private placements could be completed without any need to comply with the acquisition accounting rules associated with prospectus financings and became the financing vehicle of choice, particularly in cases where historical financial statements were simply not available. As a result, a limited universe of individuals and organizations was provided with the opportunity to finance compelling oil and gas stories, and members of the retail market were forced to the sidelines where they missed out on the opportunity to participate in many financing transactions that produced significant returns for the accredited investors who were able to acquire treasury securities. A second example is the effect on tender offers of the 1986 best price rules introduced by the United States Securities and Exchange Commission (the "SEC"). As you are aware, the best price rules required a purchaser to pay the same price per share to all shareholders of a target organization, which seemed straightforward enough. However, we understand that after adoption of those rules, target stakeholders started to commence lawsuits against employees, directors and other shareholders in an effort to obtain a larger piece of the acquisition pie. Among other things, stakeholders attacked severance and change of control payments to officers, payments for non-competition covenants and compensation provided under consulting arrangements. This, combined with a lack of consistency from the courts in litigation involving alleged violations of the best price rules, lead to a significant reduction in the use of tender offers, even in cases where a tender offer would otherwise have been the preferred transaction approach. We understand that the number of tender offers declined dramatically in the years following the introduction of the best price rules (and, more precisely, the development of conflicting case law), as buyers determined that the prevailing uncertainty militated against the use of tender offers and opted instead for the statutory merger structure. Eventually, the SEC determined to take steps to reverse the trend, noting its belief that "the interests of securityholders are better served *when all acquisition structures are viable options*"[1] (emphasis added). In October 2006, the SEC amended the best price rules to, among other things, clarify that those rules apply only to the price paid for securities tendered and not to amounts paid to shareholders for other purposes, such as compensation and severance.

We agree with the SEC's observation concerning the availability of alternative structuring options and would encourage CSA to reconsider the likely effects of the proposed certification requirement on public entities who wish to fund acquisitions through prospectus offerings.

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[1] *Amendments to the Tender Offer Best-Price Rule*, 71 Fed. Reg. 216, 65393 (2006) (commentary) at 65395.

MATERIAL CONTRACTS

Comments concerning the proposed material contract-filing requirement also comprise a significant component of this letter. A detailed discussion of our submissions follows the list of highlights set out below, which is included for convenience of reference.

- The proposed deeming provisions in relation to contracts not entered into in the ordinary course of business are unduly broad.

- The proposed constraints on the ability to redact sensitive business information are inappropriate -- public entities should be permitted to redact portions of contracts that would otherwise reveal sensitive business information to competitors, for example, even in circumstances where the non-inclusion of such information may impair a reader's understanding of the contract.

- We have concerns respecting the interplay between filed material contracts and the secondary market civil liability regimes in Canada and would suggest that public issuers be permitted to redact information from filed material contracts that might be misinterpreted by market participants as statements of actual fact.

We are concerned that the circumstances set out in subsection 9.1(1) of the National Instrument (in which contracts will be deemed not to have been entered into in the ordinary course of business) are unduly broad. For example, in subparagraph (a), we are unable to discern any materiality threshold, with the result that a number of agreements that would otherwise be characterized as "ordinary course" will not qualify as such, including agreements evidencing the annual grant of options to officers and directors, contracts that may be formed when a director or officer submits a notice respecting the acquisition of securities under a purchase plan, and similar arrangements that may have only a trivial effect on the capitalization of the issuer. As well, query the reference to "current" assets in that subparagraph -- is it the intention to confine the types of assets that are to fall within the scope of the exclusion to those that would be categorized as "current" for balance sheet purposes? If so, we are unable to identify a compelling reason to distinguish those assets from assets that would be considered non-current for balance sheet purposes.

We do not agree that "credit agreements" should necessarily be considered agreements entered into outside the ordinary course of business and believe that the regulatory focus on "distributable cash" in the context of income trusts has motivated CSA to include credit agreements in this category, without due regard to whether they are actually "ordinary course".

In addition, we have significant concerns with respect to the rules governing redaction of sensitive business information in material contracts that must be filed with a preliminary prospectus. In particular, we note clause 9.2(E)(iii)(B), the requirements of which must be satisfied in order to support the redaction of text; we believe that clause 9.2(E)(iii)(A) correctly identifies the primary concerns that should govern the treatment of redactions from material contracts -- adherence to confidentiality obligations and prejudice to the interests of the issuer. Those concerns currently find expression in Part 12 of National Instrument 51-102, which appears to strike a reasonable balance between the interests of issuers and persons who may wish to review material contracts entered into by an issuer. Of course, the universe of persons who may wish to review an issuer's material contracts includes its competitors, and we believe that public entities should be able to protect competitively sensitive information by redacting that information from filed material contracts, without regard to arguments concerning the impairment of understanding of the contract. To be sure, in certain cases the redaction of competitively sensitive business information may impair the utility of a filed material contract from the perspective of a person who wishes to understand more about the impact of that contract on the business and affairs of the issuer (or someone who wishes to understand more about the contract so as to put themselves in a position to more effectively compete with the issuer). As a result, it is necessary to choose between competing priorities, and we believe it is reasonable to resolve that competition in favor of public issuers being able to protect against the disclosure of sensitive business information. In our view, clause 9.2(E)(iii)(B) may create uncertainty with respect to determinations made under 9.2(E)(iii)(A) and we consider that undesirable.

While we believe that adherence to the requirement contemplated by clause 9.2(E)(iii)(C) will often give rise to a tedious and expensive exercise of questionable utility (as the nature of redacted information will often be obvious to anyone concerned), there will arguably be circumstances in which investors may benefit from a description of the type of information redacted and, accordingly, resolving competing priorities in the manner proposed in clause 9.2(E)(iii)(C) does not appear to be unreasonable.

A further concern respecting the filing of material contracts, and limits on the provisions that may be redacted, relates to the application of the secondary market civil liability regimes introduced in various provinces. A filed material contract will qualify as a "document" for purposes of such regimes (being a written communication required to be filed with a securities commission). Although contracts are generally not prepared as disclosure documents, the position taken by the SEC in its March 1, 2005 Report concerning Titan Corporation (Release No. 51283) highlights a concern that representations and warranties included in commercial agreements (solely for risk allocation purposes) may be an unexpected source of potential secondary market civil liability. The background to the SEC Report is as follows. In September 2003, Titan Corporation entered into a merger agreement with Lockheed Martin Corporation. The merger agreement contained a number of representations, including a representation respecting compliance by Titan Corporation with the provisions of the United States Foreign Corrupt Practices Act (the "FCPA"). It was subsequently alleged that Titan Corporation had violated the FCPA -- its agent in Benin, Africa had provided approximately $2 million to the election campaign of that country's incumbent President to improve the position of Titan Corporation in relation to a telecommunications project in Benin. The merger agreement between Titan Corporation and Lockheed Martin Corporation was appended to Titan's proxy statement and filed with the SEC. The merger agreement was available to members of the public through EDGAR. In its report, the SEC noted that issuers have a responsibility:

> … to ensure that disclosures regarding material contractual provisions such as representations are not misleading. When an issuer makes a public disclosure of information -- via filing a proxy statement or otherwise -- the issuer is required to consider whether additional disclosure is necessary in order to put the information contained in, or otherwise incorporated into that publication, into context so that such information is not misleading. The issuer cannot avoid this disclosure obligation simply because the information published was contained in an agreement or other document not prepared as a disclosure document.

Following this line of reasoning, a warranty in a commercial agreement may become a source of civil liability, notwithstanding the fact the warranty was provided only for the benefit of the counterparty to the contract (and for risk allocation purposes only) and not with the intention that the warranty be relied upon by participants in the secondary securities markets[2]. Having regard to the deemed reliance provisions in the secondary market civil liability regimes in Canada, it is not clear that the disclaimer option suggested by the SEC would be effective to shield issuers and others from secondary market civil liability. Against that backdrop, we would suggest that the National Instrument expressly permit an issuer to redact risk allocation provisions contained in commercial agreements that might be misinterpreted by participants in the secondary securities markets as statements of fact. Factual disclosure relied upon by market participants should be confined to documents (such as prospectuses, annual information forms and financial statements) that are actually intended to serve as disclosure documents.

PERSONAL INFORMATION FORMS AND AUTHORIZATIONS

In our experience, completion of PIF's (on the suggested form) is a time-consuming exercise, which occasionally requires hours of work on the part of those involved to collect historical information that might otherwise be considered dated. The burden associated with the completion of personal information forms is exacerbated in the case of persons resident in the United States, having regard to the customary approach to certain federal pleadings. We understand that, under federal securities laws in the United States, it is insufficient for a plaintiff to merely allege negligence in relation to a securities claim -- intentional conduct on the part of the defendant is required in order to make out a successful claim. As a result, the commission of a fraud is routinely alleged in proceedings under federal securities laws. The routine assertion of fraud in U.S. pleadings gives rise to difficulties in relation to PIF's, as the form requires individuals to provide details with respect to claims (against the individual or an issuer of which

[2] We note, for example, that vendors occasionally provide strict environmental warranties to purchasers, notwithstanding the fact they are not in a position to know, with absolute certainty, whether the warranty is correct. As well, technology companies provide warranties to the effect that their technology does not infringe the intellectual property rights of others, notwithstanding the fact it is often impossible to know, with absolute certainty, whether that is, in fact, the case. In both of these examples, the warranty is not intended to do anything other than allocate risk as between the parties to the applicable contract. Whether the vendor is in a position to know with certainty that the factual basis for the warranty is correct is not particularly relevant to the purchaser, who simply wants an assurance that if the warranty is not correct, it will be in a position to recover damages.

the individual is a director, officer, promoter, insider or control person) that are based, in whole or in part, on "alleged fraud". As well, the apparent requirement to determine whether an issuer with whom a person *has been* associated in the past is *currently* subject to an allegation of "fraud" (or certain other allegations) represents a significant additional burden. We would encourage CSA to reconsider its approach in this regard.

In our experience, significant delays are often encountered following the submission of a PIF to a stock exchange for a person not resident in Canada. Those delays are caused by the background checks that are performed by stock exchanges. We note the reference to "background checks" in Schedule 2 to Appendix A of the National Instrument. Is it anticipated that background checks will be undertaken by securities commissions, based upon information in PIF's, and that the receipt for a final prospectus may be delayed while applicable securities regulatory authorities await the results of background inquiries undertaken in other jurisdictions?

We note that the proposed requirements in respect of PIF's extend to "substantial beneficiaries of an offering" and, in some cases, directors and executive officers of a "substantial beneficiary of the offering". As noted above, we believe that requiring the involvement of "substantial beneficiaries" in the prospectus process (through the imposition of a certification requirement) would give rise to a significant disincentive on the part of vendors to deal with certain publicly traded entities. Requiring such persons to complete and deliver PIF's, will only add to that disincentive.

OVER-ALLOCATION

We believe that the proposed change in the date of determination of the over allocation position (to the closing of the offering, from the close of trading on the second trading day after the closing of the offering) is appropriate and consistent with current industry practice.

DISTRIBUTION OF SECURITIES UNDER A PROSPECTUS TO AN UNDERWRITER

We are of the view that there should be no limit imposed on the number of compensation options or warrants that may be acquired by an underwriter under a prospectus. Issuers and underwriters should, in our view, be permitted to negotiate the level of compensation they consider to be appropriate in the circumstances, provided the level of compensation is accurately and fully disclosed.

WAITING PERIOD

For our part, we do not believe that a minimum waiting period is necessary to ensure that investors receive a preliminary prospectus and have sufficient time to reflect on the disclosure in that prospectus before making an investment decision. At some point, investors must take responsibility for their own actions and if they do not believe they have had sufficient time to digest information concerning a proposed offering of securities, they should decline to purchase any of those securities.

AMENDMENTS TO A PRELIMINARY OR FINAL PROSPECTUS

We believe that the status quo should be maintained in respect of the circumstances giving rise to the amendment of a preliminary prospectus or final prospectus, and we would not support the introduction of a requirement linking amendments to preliminary and final prospectuses to the continued accuracy of information in the prospectus. Of course, issuers cannot stand still during a prospectus financing and there is always some risk that developments affecting the issuer will render certain information in the prospectus dated. However, we agree with the historical approach to this issue, under which amendments are only required in relation to material changes.

BONA FIDE ESTIMATE OF RANGE OF OFFERING PRICE OR NUMBER OF SECURITIES BEING DISTRIBUTED

We are unaware of any offering in which harm to investors or the capital markets occurred as a result of bulleted pricing (and derivative) information in a preliminary prospectus and do not perceive any compelling need to alter the status quo, notwithstanding the fact ranges of prices are a feature of U.S. securities laws. There have been a number of IPO's in the United States in which the trading price of newly issued securities escalated dramatically following closing, suggesting that the offering of securities was inappropriately priced. We are uncertain whether the U.S. practice of providing a range of prices had any effect on the ultimate pricing decision in relation to those IPOs. Nonetheless, it is clearly undesirable, from the perspective of an issuer, to leave "money on the table" in an offering of securities, and we worry that fixing a range of prices in a preliminary prospectus could create inertia around that range, which might militate against higher pricing. As well, we are concerned that if it becomes necessary to state a range of prices in a preliminary prospectus, pricing negotiations between issuers and their agents will need to occur at an earlier stage in the process and that those negotiations may also create inertia around a price range established early in the exercise.

TWO YEARS' FINANCIAL STATEMENT HISTORY

We note our agreement with the proposal in the National Instrument to reduce the historical financial statement requirement to two years, although we believe the more compelling rationale for setting the requirement at two years relates to the limited utility of dated financial information, rather than the availability of prior years' financial information on SEDAR.

Please note that the following members of our Public Markets Group have participated in the preparation of this letter and may be contacted directly in the event you have any questions concerning our submissions:

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Yours truly,

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