British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Nova Scotia Securities Commission

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March 29, 2007

Dear Sirs/Mesdames:

Proposed National Instrument 41-101, *General Prospectus Requirements*, ("NI 41-101") and Related Amendments

We are pleased provide our comments on this instrument and would welcome any opportunity to discuss our comments with you in greater detail.

Yours very truly

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I. Response to Certain Requests for Comment

Amendments to a preliminary or final prospectus

What should be the appropriate triggers for an obligation to amend a preliminary prospectus or final prospectus? Should the obligation to amend a preliminary or final prospectus be determined based on the continued accuracy of the disclosure in the prospectus, rather than on changes in the business, operations or capital of the issuer?

Response:

We tread into this complex legal area only to suggest one possible trigger for an amended final prospectus. The Five Year Review Committee Final Report (March 21, 2003) attached considerable importance to the release of financial information. The suggested that news releases filed on SEDAR be organized into three categories: (i) those filed in connection with a material change report; (ii) those containing financial information; and (iii) other.

We believe that the information delivered to a prospective investor should include any more recent financial information or financial statements filed by the reporting issuer before the termination of the distribution. Sections 32.6(1) and 35.8(1) of proposed Form 41-101F1 recognize the importance of more recent financial statements or financial information about the issuer and/or a significant acquired business, but only for the period up to the date the prospectus is filed. In the short form prospectus system, section 11.2 of Form 44-101F1 deems any document of the type described in section 11.1 filed before the termination of the distribution to be incorporated by reference into the short form prospectus. The documents described in section 11.1 include annual and interim financial statements and financial information more recent than the financial statements incorporated by reference. The absence of a comparable requirement in the long form prospectus form means that reporting issuers distributing securities under a long form prospectus are subject to a lower level of disclosure than those under a short form prospectus in terms of the financial information provided or deemed to be provided to prospective investors.

We recognize that the “deemed incorporation by reference” feature of the short form distribution system in most cases results in the incorporation of the more recent financial information or financial statements without triggering an amendment under the existing “material change” criterion, and therefore without triggering fresh rights of withdrawal. The incorporation by reference of more recent financial statements and related MD&A filed after the date of the final short form prospectus

also does not require any updating of the other information in the prospectus, such as pro forma financial statements, MD&A, etc.

In view of the comprehensiveness of the information contained in the audited annual financial statements and related MD&A we believe an amendment of the final prospectus (long form or short form) is warranted when such documents are filed after the final prospectus and before the termination of the distribution. As is presently the case for a short form prospectus distribution, there should be no requirement to update other information in the long form or short form prospectus, such as pro forma financial statements, MD&A, etc.

2 years of financial statement history

We are proposing to harmonize the requirements between the short form and long form prospectus systems for reporting issuers and therefore, propose that reporting issuers using the long form prospectus system be required to include only two years' financial statement history in the prospectus as opposed to three years' history on the basis that prior years' history is readily available on SEDAR. Do you agree that the reporting issuers using the long form prospectus system should only have to provide the same number of years financial history they would normally provide under the short form system?

Response:

We support two years of audited annual financial statement history because we agree with the general principle that existing reporting issuers should not be subject to different disclosure requirements between a long form prospectus and a short form prospectus. The availability of additional information on SEDAR is not a relevant factor in our view because the existence of such information cannot compensate for a failure to provide full, true and plain disclosure of all material facts in the prospectus.

We also see practical reasons to setting the benchmark at two years of financial statement history. NI 51-102 requires a reporting issuer to file comparative audited annual financial statements. Any change in accounting policy in the most recently completed financial year would be applied retrospectively to the comparative year, unless prospective application is permitted in the circumstance. However, if a three year history is required for a subsequently filed prospectus, then the reporting issuer would either have to prepare a new set of annual financial statements covering a three year period or include two sets of comparative audited annual financial statements that in total cover a three year period. In either case complications arise when the earliest of the three years requires adjustment to reflect a subsequent retrospective change in accounting policy. A steady pace

of changes in accounting standards can be expected as CICA standards converge with international standards. The two year requirement may provide some relief to existing reporting issuers from the burden of restating prior years' financial statements for retrospective changes in accounting standards.

II. Comments on Proposed NI 41-101, 41-101CP and Form 41-101F1

NI 41-101

Subsection 9.1(2) - Subsection 3.6(1) of 41-101CP makes it clear that subsection 9.1(1) of NI 41-101 applies only to "material contracts". Presumably subsection 9.1(2) also is applicable only to "material contracts" in which case we do not understand the need for the additional use of the adjective "material" in paragraphs (a), (b), (f) and (g).

Subsection 9.1(2) – Paragraph (g) refers to "financing or credit agreements", whereas paragraph (b) of this subsection and paragraph (d) of subsection 9.1(1) refer only to "credit agreements". It is not clear to us why financing agreements would be excluded from the list of contracts in paragraph 9.1(1)(d) yet mentioned in paragraph 9.1(2)(g).

41-101CP

Subsection 4.4(2) – In the last sentence we believe the word "year" should be "period" in order to be consistent with the corresponding guidance in section 5.3 of 51-102CP.

Subsection 5.9(2) – The last sentence of the second paragraph indicates that the applicable time period for the optional test is derived from the most recent interim financial statements of the issuer and the acquired business or related businesses "before the date of the long form prospectus". In respect of the issuer, subparagraph 35.1(4)(b)(iii) actually requires use of the most recently completed interim period or financial year that is "included in the prospectus", so the above sentence is not accurate in this respect.

Subsection 5.9(2) – The last paragraph states that subsection 8.2(2) of NI 51-102 sets out the timing of disclosures for significant acquisitions "where the acquisition occurs within 45 days of the year end of the acquired business". We think "… within 45 days AFTER the year end …" would better paraphrase the actual wording in subsection 8.2(2), which sets out the timing "when the financial year of the acquired business ends 45 days or less before the date of the acquisition". We also have been unable to appreciate the difference highlighted in the last paragraph of subsection 5.9(2). For any significant acquisition that occurred within the timeframes stipulated in paragraph 35.3(1)(d) a reporting issuer would have already filed a BAR on or before the date of the prospectus. As we interpret it, subsection 35.3 merely ensures that an issuer that was not a reporting issuer on the date of acquisition includes the same disclosure in the prospectus that a reporting issuer would have included in a BAR filed as at the date of the prospectus. It would be helpful if an example could be added to illustrate when this difference might be important.

Indirect Acquisitions – Consider adding to this Companion Policy the guidance provided in subsection 4.9(3) of 44-101CP.

Proposed Form 41-101F1

Item 3 – Summary of Prospectus

This item requires a brief summary of financial information appearing elsewhere in the prospectus and subsection 3.1(2) requires disclosure of the source of the financial information. When neither the source of the financial information nor the financial information has been audited, paragraph 3.1(2)(d) requires prominent disclosure of that fact.

In current practice it is not unusual to see "Audited" over a column of financial information that has been derived from the audited financial statements included in the prospectus and "Unaudited" over a column of financial information that has been derived from the interim financial statements included in the prospectus. However, information extracted from a set of audited financial statements is not itself "audited", as explained in paragraph 8 of the letter to an underwriter in Example A of CICA 7200 "Auditor Assistance to Underwriters and Others". Accordingly, in most circumstances none of the information appearing in the typical summary of financial information can be accurately described as "audited". We are concerned that without additional guidance, the disclosure requirements in subsection 3.1(2) may lead to an increase in what we regard as "bad practice".

The SEC Staff Training Manual contains the following guidance on this subject in Section VI.F of Topic Four:

> ***F. Selected Financial Data***
> 1. An auditor may be engaged to report on selected financial data using the guidance of SAS 42. Identification of some or all columns of selected financial data as "audited" or other references to the auditor can create the impression that the registrant has so engaged the auditor. If no auditor association with the selected financial data has occurred but an investor could obtain such an impression from the manner of presentation, the staff should recommend revision of that presentation. A statement in a headnote to the data that the amounts presented for the fiscal years are derived from audited financial statements does not create the impression that the information was subject to an SAS 42 examination.
> 2. If an auditor was engaged to report on the selected financial data, the form of report specified by SAS 42 should be included in the filing and the auditor's consent to the report should make reference to its applicability to the selected financial data.

(Note: SAS 42 provides guidance on reporting on condensed financial statements and selected financial data that are derived from audited financials statements.)

In codifying current practice, we recommend the addition of an instruction to Item 3 illustrating how the requirement in subsection 3.1(2) may be satisfied. For example:

Year ended	Three months ended
December 31, 2006 (1)	March 31, 2007 (2)

(1) This information has been extracted from the audited financial statements of the Company for the year ended December 31, 2006.
(2) This information has been extracted from the unaudited interim financial statements of the Company for the three months ended March 31, 2007.

Section 10.3 – Asset-backed securities

In many initial public offerings of asset-backed securities the issuer is a newly created entity that will issue asset-backed securities in exchange for receivables to be purchased from a very large, well-known reporting issuer. The seller of the receivables generally is regarded as a promoter and therefore must sign a prospectus certificate.

In these IPO circumstances the prospectus generally includes information required under subsection 10.3(b) compiled from a larger pool of the same assets from which the securitized assets are to be randomly selected, as permitted under Instruction 2 to section 10.3. This information is derived from the accounting records of the seller and typically consists of three calendar years of annual data and data for a "stub period" ending within 90 days of the date of the prospectus. The stub period data often is extracted from the accounting records of the seller as at a date that does not coincide with the seller's financial reporting periods. Where the seller is a reporting issuer, we believe it is preferable to extract this information from the accounting records as of the date of the seller's most recently filed financial statements, because such financial statements as a whole have been subject to management's interim or annual financial statement reporting procedures and to review and/or approval by the seller's audit committee and board of directors. We would be satisfied if Instruction 2 at least permitted the most recent information on pool assets to coincide with the seller's most recently issued financial statements, which may not necessarily be within 90 days of the prospectus.

Item 32 – Financial Statement Disclosure for Issuers

100% Significant Acquisition

The Summary of Significant Provisions in the Proposed Rule in Appendix A states: "…we will require all issuers to include up to 3 years of financial statements of any acquisitions within 3 years of the date of the prospectus that are significant to the issuer at over 100% level under any of the significance tests." We noted that a 100% significant acquisition is regarded as the "primary business" of the issuer under paragraph 5.3(1)(c) of 41-101CP such that the financial statements of the acquired business must be included pursuant to subsection 32.1(b) of Form 41-101F1. Paragraph 5.3(1)(c) of 41-101CP indicates that the significance would be determined under subsection 35.1(4) of Form 41-101F1. That subsection permits the application of optional tests using the issuer's financial statements for the most recently completed interim period or financial year included in the prospectus. We do not believe that the subsequent growth of the issuer should eliminate financial statement disclosure for its primary business and therefore we believe that the optional tests should be excluded for this purpose. The financial disclosure of the primary business would remain subject to the provisions of subsection 32.2(6) such that the financial statements in the prospectus would cover at least 3 years of operations of the primary business (unless the business has existed for a shorter period).

Interaction of subsections 32.4(d) and (e) with item 32.3

Subsections 32.4(d) and (e) provide relief from the annual financial statements otherwise required when the issuer includes audited financial statements for a period of at least 9 months commencing after the most recently completed financial year for which financial statements are required under item 32.2. Since the audited financial statements for this more recent period of at least 9 months are effectively treated as "financial year" statements for purposes of determining the audited annual financial statement requirements, we believe the inclusion of these more recent audited financial statements should also eliminate the requirement to include the interim financial statements under item 32.3 otherwise required. For example, if an issuer that is not an existing reporting issuer satisfies the annual financial statement requirements by including audited balance sheets as at September 30, 20X7 and December 31, 20X6 and statements of earnings, cash flow and retained earnings for the nine months ended September 30, 20X7 and the years ended December 31, 20X6 and 20X5, as permitted by subsection 32.4(e), we believe it would be inappropriate for item 32.3 to also require unaudited interim financial statements for the nine months ended September 30, 20X7 and 20X6. We recommend an exception be added to the interim financial statement requirement in item 32.3 when the issuer has complied with the requirements of subsection 32.4(d) or 32.4(e), as applicable.

Pro Forma Financial Statements

The existing prospectus and continuous disclosure instruments address the need for pro forma financial statements solely in the context of a significant acquisition. The recent amendments to NI 51-102 introduced a definition for a "restructuring transaction" and enhanced disclosure requirements in Form 51-102F3 for a material change report filed for the closing of a restructuring transaction. We believe that the financial effects of some restructuring transactions are best presented in accompanying pro forma financial statements. When a restructuring transaction is proposed in connection with a prospectus offering we believe the rules should expressly permit the inclusion of pro forma financial statements giving effect to that proposed transaction.

Item 34 – Exemptions for Certain Issues of Guaranteed Securities

Subparagraphs 34.1(1)(2)(b) and (c) – These subparagraphs require all subsidiary entity columns to account for investments in non-credit supporter subsidiaries under the equity method. The requirements for consolidating financial information appear to be largely drawn from the comparable provisions in Rule 3-10 to Regulation S-X. Based on our understanding of the application of the SEC requirements, which was confirmed in a recent SEC filing, a subsidiary entity column must account for investments in ALL subsidiaries (included both guarantor and non-guarantor subsidiaries) under the equity method. If our assumption as to the intent of the provisions in Item 34 for consolidating financial information is correct, we encourage the CSA to confirm our understanding of actual SEC practice with appropriate SEC contacts and amend the above subparagraphs to require all subsidiary entity columns to account for all investments in subsidiaries under the equity method. We would very much like to avoid US GAAP reconciling items in this area.

Item 35 – Significant Acquisitions

Subparagraph 35.1(4)(b)(vi) – This subparagraph seems to reference an old version of NI 51-102. The reference to statements "required to be filed" no longer exists in Part 8 of NI 51-102.

Subsection 35.7 – We support this new provision which allows an issuer to present in one set of pro forma financial statements the combined effects of all of the significant acquisitions that are proposed or have occurred since the beginning of the issuer's most recently completed financial year for which financial statements are included in the prospectus.

This subsection expressly allows an issuer providing this one set of pro forma financial statements to exclude the pro forma financial statements otherwise required for each acquisition. However, the guidance in subsection 5.9(7) of 41-101CP on updated pro forma financial statements appears to

contradict this aspect of Item 35. Please clarify the intent of subsection 5.9(7) of 41-101CP vis-à-vis subsection 35.7 of Form 41-101F1.

III. Comments on Consequential Amendments to Other Instruments

NP 43-201 "Mutual Reliance Review System for Prospectuses and Annual Information Forms"

Appendix A to NP 43-201 contains references to an auditors' comfort letter in connection with final and amended simplified prospectuses which we presume will be deleted if the proposed mandatory review requirement is adopted.

44-101CP

Subsection 4.9(3) – Consider adding this guidance on indirect acquisitions to the Companion Policy to NI 41-101.

Subsection 4.10 – Updated pro forma financial statements to date of prospectus – Please see our comments under subsection 35.7 of Item 35 of Form 41-101F1 requesting clarification of the apparent contradiction in between subsection 5.9(7) of 41-101CP and subsection 35.7 of Form 41-101F1.

Form 44-101F1

Paragraph 6(b) of Item 11.1 – The proposed amendment to this paragraph refers to the "issuer's most recent financial statements". The corresponding provision in section 35.4 of Form 41-101F1 refers the "issuer's most recent audited financial statements included in the prospectus". We suggest that reference in paragraph 6(b) be conformed to be consistent with the long form prospectus requirements, i.e., refer to the "issuer's most recent audited annual financial statements incorporated by reference into the short form prospectus" or to the "issuer's current annual financial statements".

Multiple acquisitions – We believe a provision for "multiple acquisitions" comparable to section 35.7 of Form 41-101F1 should be added to Form 44-101F1 so that an issuer filing a short form prospectus would have the same option available to an issuer filing a long form prospectus to include one set of pro forma financial statements reflecting all significant acquisitions that are probable or have occurred since the beginning of the most recently completed financial year for which financial statements are included in the prospectus and to exclude pro forma financial statements otherwise required to be incorporated by reference for those acquisitions.

NI 51-102

Paragraph 8.4(5)(b) and subparagraph 8.10(3)(e)(ii) – We support these modifications of NI 51-102 to require the pro forma income statement for the most recently completed financial year to give effect to significant acquisitions completed since the beginning of that financial year. We believe these changes will provide more meaningful pro forma financial information because they require the issuer to consider and reflect the financial effects of all other significant acquisitions that occurred during the period covered by the pro forma income statement.

NI 81-101

Appendix A: Summary of Significant Provisions in the Proposed Rule under "Section 2.7 [*Audit of financial statements*]"features a requirement for unaudited financial statements included in or incorporated by reference into the prospectus to be reviewed in accordance with the relevant standards contained in the Handbook. The explanation indicates that this proposed amendment harmonizes the prospectus requirements with the continuous disclosure requirements. We do not understand this explanation because section 2.12 of NI 81-106 does not mandate a review of the interim financial statements by the fund's auditors.

Many investment funds file their renewal prospectuses shortly after the audited annual financial statements are filed and do not engage their auditors to review the semi-annual financial statements filed later in the year. Because these interim financial statements are deemed to be incorporated by reference into the simplified prospectus under section 3.1 of NI 81-101, we understand the new requirement in section 2.7 of NI 81-101 will require an auditors' review prior to the filing of the fund's semi-annual financial statements. This is not in harmony with the continuous disclosure requirements and would represent a dramatic change to existing practice.

As auditors of an investment fund our association with the fund's simplified prospectus in most cases ends at the date we consent to the use of our audit report in connection with the filing of the simplified prospectus. The professional standards in CICA 7110 do not oblige us to perform any procedures after the date of our consent unless we are engaged to perform additional procedures (e.g., we may be engaged to issue an updated comfort letter to the underwriters at the closing date of an offering). CICA 7110.65 explicitly addresses a circumstance where no auditors' consent is required in connection with the filing of a shelf prospectus supplement and indicates that the auditors are not required to send the CICA 7110.14 notice to the board of directors and are not obligated to perform any procedures.

We appreciate that in concept this proposal is consistent with the existing requirements under NI 44-101 and NI 44-102 as they apply to interim financial statements filed during the course of a

continuous distribution of securities. The preparation of interim financial statements for most reporting issuers subject to NI 51-102 involves the application of numerous significant accounting policies, some of which are quite complex. In contrast, the preparation of the semi-annual financial statements for a "portfolio of securities" is a less onerous process, although it is still important for these statements to be properly prepared. While we would be pleased to undertake these interim review engagements, we are content to leave it to other market participants to argue whether the additional costs to the funds are warranted in these circumstances.

TSX and TSX-V Requirements

The Toronto Stock Exchange Company Manual and related forms presently contain requirements for listed companies to submit an auditor's comfort letter on unaudited financial statements included in a listing application and, where applicable, a compilation report on pro forma financial statements. The TSX Venture Exchange Corporate Finance Manual and related forms presently contain requirements for an auditor's comfort letter on unaudited financial statements, a compilation report and an auditor's consent in connection with certain filing statements or information circulars. In many of these documents the auditor's association with the filing is governed by CICA Handbook Section 7110.

In the types of circumstances in which these Exchange requirements arise (e.g., initial listing application, qualifying transaction, reverse takeover, change in the business) we support a continuation of the mandatory involvement of the auditors of the issuer and other entities involved in the transaction(s). We hope certain CSA members will encourage their respective Exchanges to update their policies, manuals and forms on a timely basis to conform to the changes adopted in the final long form prospectus instrument (e.g., by deleting requirements for compilation reports on pro forma financial statements and auditor's comfort letters on unaudited financial statements).

In particular, when an auditor's consent under CICA Handbook Section 7110 is included in a filing, we believe the Exchanges should accept it as satisfactory evidence of the nature and extent of auditor's involvement with documents such as those described above. Where applicable, these procedures would include performing certain procedures on pro forma financial statements and reviewing unaudited financial statements included in the filing statement or information circular and there should be no need for Exchange staff to insist on receiving compilation reports, comfort letters or other forms of auditors' consents that are not required under the provisions of the governing securities legislation applicable to such documents.