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Notice And Request For Comment

Proposed National Instrument 41-101 *General Prospectus Requirements* and Companion Policy 41-101CP *General Prospectus Requirements*

Proposed Repeal of National Instrument 41-101 *Prospectus Disclosure Requirements*,

Proposed Amendments to National Instrument 14-101 *Definitions*

Proposed Amendments to National Instrument 44-101 *Short Form Prospectus Distributions* and Companion Policy 44-101CP *Short Form Prospectus Distributions*

Proposed Amendments to National Instrument 44-102 *Shelf Distributions* and Companion Policy 44-102CP *Shelf Distributions*

Proposed Amendments to National Instrument 44-103 *Post-Receipt Pricing* and Companion Policy 44-103CP *Post-Receipt Pricing*

Proposed Amendments to National Instrument 45-101 *Rights Offerings*

Proposed Amendments to National Instrument 51-102 *Continuous Disclosure Obligations* and Companion Policy 51-102CP *Continuous Disclosure Obligations*

Proposed Amendments to National Instrument 81-101 *Mutual Fund Prospectus Disclosure* and Companion Policy 81-101CP *Mutual Fund Prospectus Disclosure*

Proposed Amendments to National Instrument 81-104 *Commodity Pool*s and Companion Policy 81-104CP *Commodity Pools*

and

Proposed Amendments to National Policy 43-201 *Mutual Reliance Review System for Prospectuses*

December 21, 2006

We, the Canadian Securities Administrators (CSA) are publishing for a 90-day comment period the following:

- Proposed National Instrument 41-101 *General Prospectus Requirements* (Proposed NI 41-101);

- Proposed Form 41-101F1 *Information Required in a Prospectus* of NI 41-101 (Proposed Form 1);
- Proposed 41-101F2 *Information Required in an Investment Fund Prospectus* of NI 41-101 (Proposed Form 2);
- Proposed Companion Policy 41-101CP *General Prospectus Requirements* (the Proposed CP);

(collectively, Proposed Rule).
We are also publishing for a 90-day comment period proposed amendments to the following:
- National Instrument 14-101 *Definitions* (NI 14-101);
- National Instrument 44-101 *Short Form Prospectus Distributions* (NI 44-101);
- Form 44-101F1 *Short Form Prospectus* of NI 44-101 (Form 44-101F1);
- National Instrument 44-102 *Shelf Distributions* (NI 44-102);
- National Instrument 44-103 *Post-Receipt Pricing* (NI 44-103);
- Form 45-101F *Information Required in a Rights Offering Circular* of National Instrument 45-101 *Rights Offerings* (Form 45-101F);
- National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102);
- Form 51-102F2 *Annual Information Form* of NI 51-102 (Form 51-102F2);
- National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (NI 81-101);
- Form 81-101F1 *Contents of Simplified Prospectus* of NI 81-101 (Form 81-101F1);
- Form 81-101F2 *Contents of Annual Information Form* of NI 81-101 (Form 81-101F2);
- National Instrument 81-104 *Commodity Pools* (NI 81-104);

(collectively, Rule Consequential Amendments).
We are also publishing for a 90-day comment period amendments to the following:
- Companion Policy 44-101CP to National Instrument 44-101 *Short Form Prospectus Distributions* (44-101CP);
- Companion Policy 44-102CP to National Instrument 44-102 *Shelf Distributions* (44-102CP);
- Companion Policy 44-103CP to National Instrument 44-103 *Post-Receipt Pricing* (44-103CP);
- Companion Policy 51-102CP to National Instrument 51-102 *Continuous Disclosure Obligations* (51-102CP);
- Companion Policy 81-101CP to National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (81-101CP);
- Companion Policy 81-104CP to National Instrument 81-104 *Commodity Pools* (81-104CP);
- National Policy 43-201 *Mutual Reliance Review System for Prospectuses* (NP 43-201);

(collectively, Policy Consequential Amendments, and with the Rule Consequential Amendments, Consequential Amendments). Other than in Ontario, we expect to separately publish for a 90-day comment period, proposed amendments to Multilateral Instrument 11-101 *Principal Regulator System*.

We are also proposing, upon the coming into force of the Proposed Rule, to rescind the following policies or in Québec to repeal the following rules:

- National Policy 14 *Acceptability of Currencies in Material Filed with Securities Regulatory Authorities* because parts of it are now redundant as a result of the coming into force of National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (NI 52-107) and the remaining parts of it will be redundant upon the coming into force of the requirements in General Instruction (10) and section 1.5 of Proposed Form 1;

- National Policy 21 *National Advertising – Warnings* because it will be redundant upon the adoption of the guidance in Part 6 of the Proposed CP.

We are also proposing to withdraw the following notices upon the coming into force of the Proposed Rule:

- CSA Staff Notice 42-303 *Prospectus Requirements* because it will no longer be relevant upon the coming into force of the Proposed Rule;

- CSA Staff Notice 44-301 *Frequently Asked Questions Regarding the New Prospectus Rules* because Part A of it will no longer be relevant upon the coming into force of the Proposed Rule and we intend to update and replace Parts B and C of it before the Proposed Rule comes into force;

- Canadian Securities Administrators' Notice 3 *Pre-Marketing Activities in the Context of Bought Deals* because it will be redundant upon the adoption of the guidance in Part 6 of the Proposed CP.

Background

In Ontario, Ontario Securities Commission Rule 41-501 *General Prospectus Requirements* (OSC Rule 41-501) came into force in December 2000. In Quebec, Regulation Q-28 *Respecting General Prospectus Requirements* (Q-28) came into force in December 2000 and is substantially the same as OSC Rule 41-501 (OSC Rule 41-501 and Q-28 are collectively referred to as Rule 41-501). OSC Rule 41-501 has been adopted as the long form prospectus rule by all other jurisdictions in Canada. Some other jurisdictions, however, have kept local rules, including forms, relating to long form prospectuses so that issuers would have the option of complying with the local requirements.

Since December 2000, a number of national instruments prescribing continuous disclosure requirements for all issuers have been adopted, including NI 51-102 and National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106). These instruments collectively set out a comprehensive and national continuous disclosure regime.

A national short form prospectus regime was adopted at the same time as Rule 41-501. The short form prospectus requirements were streamlined and harmonized with the continuous disclosure regime when amended and restated NI 44-101 came into force in December 2005.

The Proposed Rule and the Consequential Amendments are another step towards harmonizing the prospectus and continuous disclosure requirements across Canada.

The text of the Proposed Rule is being published concurrently with this Notice and can be obtained on websites of CSA members, including the following:

www.bcsc.bc.ca
www.albertasecurities.com
www.sfsc.gov.sk.ca
www.msc.gov.mb.ca
www.osc.gov.on.ca
www.lautorite.qc.ca
www.gov.ns.ca/nssc/
www.nbsc-cvmnb.ca

We are publishing

- Proposed NI 41-101 (Schedule 1 of Appendix B);
- Proposed Form 1 (Schedule 2 of Appendix B);
- Proposed Form 2 (Schedule 3 of Appendix B);
- the Proposed CP (Schedule 4 of Appendix B);
- amendment instruments for
    - NI 14-101 (Appendix C);
    - NI 44-101 (Schedule 1 of Appendix D);
    - Form 44-101F1 (Schedule 2 of Appendix D);
    - NI 44-102 (Schedule 1 of Appendix E);
    - NI 44-103 (Schedule 1 of Appendix F);
    - Form 45-101F (Appendix G);
    - NI 51-102 (Schedule 1 of Appendix H);
    - Form 51-102F2 (Schedule 2 of Appendix H)
    - NI 81-101, Form 81-101F1 and Form 81-101F2 (Schedule 1 of Appendix I);
    - NI 81-104 (Schedule 1 of Appendix J);
- amendments for
    - 44-102CP (Schedule 2 of Appendix E);
    - 44-103CP (Schedule 2 of Appendix F);
    - 51-102CP (Schedule 3 of Appendix H);
    - 81-101CP (Schedule 2 of Appendix I);
    - 81-104CP (Schedule 2 of Appendix J);
    - NP 43-201 (Appendix K);
- black-lined version of 44-101CP (Schedule 3 of Appendix D).

Black-lined versions of NI 44-101 are available on the websites of certain CSA members.

Target implementation of the Proposed Rule and the Consequential Amendments is December 2007. Depending in part on the comments received, the Proposed Rule and the Consequential Amendments may be adopted in their entirety or in part.

Substance and Purpose of the Proposed Rule and the Consequential Amendments

A. Generally

The purpose of the Proposed Rule is to create a comprehensive, seamless and transparent set of national prospectus requirements for all issuers including investment funds (investment funds should also refer to the supplemental discussion on investment fund issues below). The purpose of adopting the Consequential Amendments is to conform other related national instruments and policies to the Proposed Rule.

The Proposed Rule is based on three general principles.

1. Harmonize and consolidate prospectus requirements across Canada

The Proposed Rule will harmonize across Canada and consolidate the general prospectus requirements among Canadian jurisdictions. It is primarily based on the requirements set out in Rule 41-501.

Proposed NI 41-101 assumes the coming into force of certain securities act amendments (Act Amendments) that have been proposed or adopted in all the jurisdictions under the CSA initiative to harmonize and streamline securities law in Canada. Other than in Ontario, the Act Amendments will result in certain of the prospectus-related provisions currently in the securities acts of each applicable jurisdiction being moved to Proposed NI 41-101. In Ontario, these prospectus-related provisions will remain in the *Securities Act* (Ontario). As a result, a number of provisions of Proposed NI 41-101 will not apply in Ontario and the similar requirements of the *Securities Act* (Ontario) will continue to apply. Please refer to Appendix L in Ontario for additional information.

We anticipate that the Act Amendments will come into force in all applicable jurisdictions before final implementation of the Proposed Rule. The list of proposed or adopted Act Amendments in an applicable jurisdiction is set out in Appendix L to this Notice published in that particular jurisdiction or may be published separately in each jurisdiction.

We have also considered other general prospectus requirements or guidelines currently found in other existing local rules, policies or notices. We have incorporated certain of these requirements into the Proposed Rule as appropriate.

2. Harmonize with other instruments

The Proposed Rule will substantially harmonize the general prospectus requirements with the continuous disclosure and short form prospectus regimes. For example, the significant acquisition requirements under Item 35 of Proposed Form 1 have been harmonized with the business acquisition report requirements under Part 8 of NI 51-102.

Specifically, the Proposed Rule has been harmonized with the following instruments that have been adopted since Rule 41-501 first became effective:

- National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities (NI 51-101)
- NI 51-102;
- NI 52-107;
- Multilateral Instrument 52-110 Audit Committees (MI 52-110);
- National Instrument 58-101 Disclosure of Corporate Governance Practices (NI 58-101);
- NI 81-106 (together with NI 51-102, NI 52-107, MI 52-110, and NI 58-101, CD Rules);
- NI 44-101.

As set out in the CSA Notice of Amendments to National Instrument 51-102 *Continuous Disclosure Obligations* dated **October 13, 2006,** NI 51-102, NI 52-107, and NI 44-101 are proposed to be amended. Subject to Ministerial approval in certain jurisdictions, we expect these proposed amendments to be in force on **December 29, 2006**. For the purposes of harmonizing the Proposed Rule to these instruments, we assumed that these proposed amendments will be in force. Also, the Consequential Amendments are being proposed on the assumption that these proposed amendments will be in force.

We also note that the CSA Notice and Request for Comment in respect of the proposed rescission of National Policy Statement 48 *Future-Oriented Financial Information* and related consequential amendments was published on **December 1, 2006**. The Proposed Rule does not reflect the proposals described in that notice. If those proposals come into force, however, we propose to reflect them in the final Proposed Rule.

3. Reflect current policy

The Proposed Rule takes into consideration changes in the principles underlying the existing general prospectus requirements that we have identified as a result of regulatory reviews, applications for exemptive relief, or public comment and consultation. For example, we are proposing to codify certain provisions in existing policies, including certain guidelines regarding certificates and undertakings in National Policy 41-201 *Income Trusts and Other Indirect Offerings*.

We are also proposing amendments to NI 44-102 with respect to the definition of “novel” as it pertains to “specified derivatives” (see discussion below). This may have implications for non-investment fund issuers. Specifically, the pre-clearance process for a new type of linked note offering that is novel to an issuer will apply if the underlying interest is substantially linked to the security of a single issuer that is not the issuer of the linked note. In these cases, the regulator will also consider qualification, liability, and disclosure issues during the pre-clearance process.

B. Investment Fund Issues

1. Harmonizing across Canada, consolidating, and updating the long form prospectus for investment funds

The Proposed Rule will also apply to exchange-traded investment funds, labour sponsored investment funds, commodity pools, scholarship plans and non-redeemable investment funds. The Proposed Rule will add a new prospectus form for these investment funds, which are currently subject to various different types of long form prospectus requirements. The Proposed Rule will consolidate the existing prospectus forms and tailor them to investment funds since the current long form is tailored to corporate issuers. While the form will be new for investment funds preparing a long form prospectus, the substance, for the most part, will not be new because we have created the form based upon the existing forms, industry practice and Form 81-101F1 *Contents of Simplified Prospectus* (Form 81-101F1) used by conventional mutual funds. Please note that the Proposed Rule will not apply to conventional mutual funds that are subject to NI 81-101.

2. Market timing response

Certain of the Consequential Amendments being proposed to the prospectus forms under NI 81-101 constitute the CSA's policy response to market timing activity that was the subject of the mutual fund trading practices probe which concluded in March of 2005. More specifically, enhanced disclosure of a mutual fund's practices regarding short-term trading has been added to Form 81-101F1 and Form 81-101F2 *Contents of Annual Information Form*. Details of these proposed prospectus amendments are discussed in Appendix A.

3. Amendments to NI 44-102 re: linked notes

We are also proposing certain amendments to NI 44-102 and 44-102CP. The focus of the amendments is on the definition of the term "novel" as it pertains to "specified derivatives".

We have become increasingly aware of the use of the shelf prospectus system for the distribution of investment products that are substantially similar to investment funds, but are not specifically subject to the investment funds regulatory regime. These products generally take the form of notes linked to certain underlying interests, including indices and notional reference portfolios. Given the retail focus of these linked notes, we believe the scope of specified derivatives that shelf eligible issuers must pre-clear in advance of distribution needs to be revisited. We expect that once the amendments are in place, an issuer will pre-clear the initial shelf prospectus supplement for each new type of linked note offering. As a result, except in the case of a specified derivative of an issuer where the underlying interest is a security of that issuer (i.e., "plain vanilla" options and warrants), an issuer will be required to pre-clear shelf prospectus supplements for products that are novel to that issuer, even if another issuer has already distributed a similar product. During the pre-clearance process, the regulator will focus on investment fund conflict of interest and disclosure concerns. Further details about the proposed amendments are discussed in Appendix A of this Notice.

Summary of the Proposed Rule and the Consequential Amendments
We have summarized the significant provisions of the Proposed Rule and the Consequential Amendments in Appendix A. This is not a complete list of all of the provisions of the Proposed Rule and the Consequential Amendments.

Alternatives Considered
The purpose of the Proposed Rule is to create a comprehensive, seamless and transparent set of national prospectus requirements based on the principles of harmonizing across Canada, consolidating, and updating the existing general prospectus requirements. The purpose of the Consequential Amendments is to conform other related national instruments and policies to the Proposed Rule. An alternative to the Proposed Rule and the Consequential Amendments would be to leave the existing requirements and address any issues on a case by case basis. We believe that the *status quo* is not an acceptable alternative because the existing local prospectus requirements are fragmented.

Anticipated Costs and Benefits
The Proposed Rule and the Consequential Amendments will primarily affect issuers, including investment fund issuers, offering, and investors purchasing, securities under a long form prospectus. Other persons or companies with an interest in the general prospectus requirements, including persons or companies who are required to sign certificates, credit supporters, and auditors and other experts, may also be affected.

At present, all CSA jurisdictions have similar, but not identical, general prospectus requirements. Market participants that wish to effect a multi-jurisdictional prospectus distribution must consider the requirements in the various acts, regulations, instruments, and policies of each of the relevant jurisdictions. Harmonizing across Canada and consolidating the general prospectus requirements will reduce the transaction costs for issuers offering securities in multiple jurisdictions.

The CD Rules have generally harmonized across Canada the continuous disclosure regime. Harmonizing the Proposed Rule with the CD Rules will reduce the transaction costs for reporting issuers offering securities and the continuous disclosure compliance costs for all issuers following a securities offering. For example, the significant acquisition requirements in the Proposed Rule have been harmonized with Part 8 of NI 51-102 [*Business Acquisition Report*], including taking into consideration the differences between the NI 51-102 requirements for venture and non-venture issuers. Currently, Rule 41-501 has a different set of significant acquisition requirements than NI 51-102. Harmonizing the requirements will reduce transactions costs for issuers that are required to include significant acquisition disclosure from a previously filed business acquisition report in its long form prospectus. Harmonizing the requirements will also reduce continuous disclosure compliance costs for issuers that will be required to file a business acquisition report after the completion of a probable acquisition for which disclosure is required in its long form prospectus.

Harmonizing the requirements will reduce transaction costs by eliminating the need to consider two different sets of rules.

NI 44-101 has generally harmonized across Canada the short form prospectus regime with the CD Rules. Harmonizing the general prospectus requirements with NI 44-101 eliminates any unintended differences between two alternative offering regimes. This will help issuers focus on the substantive differences between the Proposed Rule and NI 44-101 and choose the appropriate regime for that issuer. For example, the plan of distribution and description of the securities being offered requirements under Proposed Form 1 have been harmonized with the requirements in Form 44-101F1 *Short Form Prospectus* (Form 44-101F1).

We have also clarified regulatory requirements and obligations in the existing general prospectus requirements that we have identified as a result of regulatory reviews, applications for exemptive relief, or public comment and consultation. We believe these provisions will result in more efficient and effective regulation and provide direct benefits to investors. We do not believe that these provisions will impose significant costs on issuers.

For example, Part 5 of the Proposed Rule requires certificates from, other than in Ontario, a new class of person or company: substantial beneficiaries of the offering. We believe a person or company that controls the issuer or a significant business has the best information about the issuer or significant business. Such a person or company who also receives proceeds from the distribution should be liable for any misrepresentations in the prospectus about the issuer or a significant business.

We currently focus on whether such a person or company takes promoter liability or provides a contractual indemnity to the issuer in the event of a misrepresentation. We believe the new provisions are a better alternative to the existing practice resulting in more efficient and effective regulation for investors, issuers, and these persons or companies. Specifically, we believe these new provisions will create appropriate incentives for the person or company with the best information about the issuer or a significant business to ensure that the prospectus contains full, true and plain disclosure of all material facts relating to the securities being distributed. Better disclosure will directly benefit investors and prospective investors and, by raising confidence in our disclosure regime, indirectly benefit the capital markets as a whole.

Overall, we believe the net benefits of the Proposed Rule and the Consequential Amendments will outweigh the net costs. The simplification of the general prospectus requirements across the CSA and harmonization with the short form and continuous disclosure regimes will reduce administration, professional and regulatory costs, and reduce impediments for issuers accessing our capital markets. These benefits to issuers will not negatively impact investor protection and should outweigh any additional costs associated with the Proposed Rule and the Consequential Amendments.

Related Amendments

We propose to amend elements of local securities legislation, in conjunction with the implementation of the Proposed Rule and the Consequential Amendments. The provincial and territorial securities regulatory authorities may publish these proposed local changes separately in their jurisdictions. Proposed consequential amendments to rules, regulations or policies in a particular jurisdiction are in Appendix L to this Notice published in that particular jurisdiction. Some jurisdictions will need to implement the Proposed Rule using a local implementing rule.

Jurisdictions that must do so will publish the local implementing rule in Appendix L or separately.

Unpublished Materials
In proposing the Proposed Rule and the Consequential Amendments we have not relied on any significant unpublished study, report or other material.

Request for Comments
We request your comments on the Proposed Rule and the Consequential Amendments. The comment period expires on **March 31. 2007**. In addition to any comments you wish to make, we invite comments on the following specific questions:

Certificate requirements

1. Except in Ontario, Proposed NI 41-101 includes a new certificate requirement for "substantial beneficiaries of the offering". We believe a person or company that controls the issuer or a significant business has the best information about the issuer or significant business. Do you agree? Such a person or company who also receives proceeds from the distribution should be liable for any misrepresentations in the prospectus about the issuer or a significant business. Are the definitions of substantial beneficiary of the offering and significant business broad enough to cover this class of persons and companies?

2. The definition of "significant business" in section 5.13 of Proposed NI 41-101 is based on the significance tests for acquisitions. We consider that these tests provide a useful initial threshold in the determination of whether a prospectus certificate is necessary; however, we seek specific comment on whether these tests are the most appropriate measure of significance for the purposes of determining prospectus liability.

3. Control of a significant business and direct or indirect receipt of 20% of the proceeds of an offering are both required to bring a person or company within the definition of substantial beneficiary of the offering. Is this dual threshold too limited?

4. Is receipt of 20% of the proceeds of the offering the appropriate threshold for paragraph 5.13(2)(b) of Proposed NI 41-101?

Material contracts

5. Should each type of contract listed in subsection 9.1(1) of Proposed NI 41-101 be excluded from the exemption to file contracts entered into in the ordinary course of business? Are there other types of contracts not listed that should be excluded from the exemption to file contracts entered into in the ordinary course of business? If so, please identify the type of contract and explain why they should be excluded.

6. Is the list of provisions that are "necessary to understanding the contract" set out in subsection 9.1(2) of Proposed NI 41-101 appropriate? If not, why not?

Personal information form and authorization

7. Subparagraph 9.2(b)(ii) of Proposed NI 41-101 will require an issuer to deliver a completed personal information form and authorization for every individual described in this subparagraph with the first preliminary prospectus filed by the issuer after the Proposed Rule becomes effective. Please describe any significant practical difficulties an issuer may have in complying with this requirement.

Over-allocation

8. Section 11.3 of Proposed NI 41-101 and the definitions of over-allocation position and over-allotment option restrict the exercise of an over-allotment option to the lesser of the underwriters' over-allocation position and 15% of the base offering. This section substantially codifies and harmonizes across Canada the existing guidance in paragraph 10 of Ontario Securities Commission Policy 5.1 Prospectuses – General Guidelines; however, the time for the determination of the over-allocation position has been moved to the closing of the offering from the close of trading on the second trading day next following the closing of the offering. We believe that this change is consistent with current industry practice. We seek comment on this change.

Distribution of securities under a prospectus to an underwriter

9. Section 11.3 of Proposed NI 41-101 permits compensation options or warrants to be acquired by an underwriter under the prospectus where the securities underlying such compensation options or warrants are, in the aggregate, less than 5% of the number or principal amount of the securities distributed under the prospectus. Is 5% an appropriate limit?

Waiting period

10. Proposed NI 41-101 does not impose a minimum period of time between the issuance of a receipt by the regulator for a preliminary prospectus and the issuance of a receipt by the regulator for a final prospectus (though the MRRS review timelines will remain as they are set out in NP 43-201). In Ontario, the Securities Act (Ontario) imposes a minimum waiting period of at least 10 days but the proposed local implementing rule (see Appendix L) will vary this minimum waiting period so that it may be less than 10 days. Is a minimum waiting period necessary to ensure investors receive a preliminary prospectus and have sufficient time to reflect on the disclosure in the preliminary prospectus before making an investment decision?

Amendments to a preliminary or final prospectus

11. Part 6 of Proposed NI 41-101 requires the filing of an amendment to a preliminary prospectus upon the occurrence of a material adverse change. An amendment to a final prospectus must be filed upon the occurrence of a material change. This Part codifies the existing requirements under the securities legislation of most jurisdictions. The

requirements in Québec differ. An amendment to a preliminary prospectus is triggered if a material change is likely to have an adverse influence on the value or the market price of the securities being distributed and the existing requirement to amend a final prospectus is triggered if a material change occurs in relation to the information presented in the prospectus. “Material change” is not defined in Québec.

While not specifically included as an alternative in the proposed rule, we are soliciting your comments on whether we should instead be requiring an amendment based on the continued accuracy of the information in the 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 prospectus or prospectus be determined based on the continued accuracy of the disclosure in the prospectus, rather than changes in the business, operations or capital of the issuer?

Bona fide estimate of range of offering price or number of securities being distributed

12. We are proposing to require disclosure in the preliminary prospectus of a *bona fide* estimate of the range within which the offering price or the number of securities being distributed is expected to be set.

    We are also considering adding a requirement to provide disclosure throughout a preliminary prospectus based on the mid-point of the disclosed offering price range or number of securities. This would require that the consolidated capitalization table, earnings coverage ratios and any *pro forma* financial information in the preliminary prospectus be calculated and disclosed using the mid-point of the offering range rather than being bulleted. Would such a requirement be appropriate ?

2 years’ financial statement history

13. 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 reporting issuers using the long form system should only have to provide the same number of years financial history they would normally provide under the short form system?

Please provide your comments by **March 31, 2007** by addressing your submission to the securities regulatory authorities listed below:

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers

Nova Scotia Securities Commission
New Brunswick Securities Commission

Deliver your comments **only** to the three addresses that follow. Your comments will be forwarded to the remaining CSA member jurisdictions.

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If you are not sending your comments by e-mail, please send a diskette containing your comments (in Microsoft Word format).

We cannot keep submissions confidential because securities legislation in certain provinces requires that a summary of the written comments received during the comment period be published.

Questions – Corporate Finance
Please refer your questions to any of:

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APPENDIX A
Summary of Significant Provisions in the Proposed Rule

Provision	Summary and Purpose
	Proposed NI 41-101
Part 2 [*Requirements for All Prospectus Distributions]*	Proposed NI 41-101 generally applies to all types of prospectuses, other than a prospectus filed under NI 81-101. This includes prospectuses filed under the short form regime, though certain requirements in Proposed NI 41-101 do not apply to these prospectuses. Prospectuses filed under the short form regime are also subject to the requirements in NI 44-101. Generally, an issuer filing a prospectus under the short form regime must refer to both Proposed NI 41-101 and NI 44-101. An issuer filing a prospectus under the shelf or PREP regimes must also refer to any applicable requirements in NI 44-102 and NI 44-103. Proposed Form 1 does not apply to short form prospectus distributions as the disclosure requirements for short form prospectuses will remain in Form 44-101F1. The Proposed Rule also contains provisions specific to investment funds, including a separate form: Proposed Form 2.
Part 4 [*Financial Statements and Related Documents in a Long Form Prospectus*]	This Part requires issuers to include in a long form prospectus the financial statements and related documents prescribed by Proposed Form 1 and Proposed Form 2. The financial statement and management's discussion and analysis requirements for short form prospectuses remain in the incorporation by reference requirements of Form 44-101F1 . This Part also prescribes the audit, review and approval requirements for financial statements included in a long form prospectus. These requirements have been harmonized with NI 51-102, NI 81-106 and NI 44-101.
Part 5 [*Certificates*]	Existing requirements to include certificates in a prospectus are set out in applicable securities legislation. The certificate requirements in this Part harmonize Proposed NI 41-101 with the Act Amendments. The significant differences between the certificate requirements in this Part and the requirements under applicable securities legislation are as follows: 1. Sections 5.5, 5.6, 5.7, and except in Ontario section 5.4, clarify who is required to sign a certificate on behalf of an entity. We have added this clarification because of the increasing number of issuers that are not organized in corporate form. 2. Except in Ontario, section 5.8 includes a requirement that the prospectus of an issuer involved in a probable reverse takeover must contain a certificate signed by each individual who is a director, chief executive officer or chief financial officer of the reverse takeover acquirer. Unlike the issuer certificate which may be signed by certain directors on behalf of the issuer's board of directors, each individual who is director, chief executive officer or chief financial officer must sign such a certificate. 3. Except in Ontario, section 5.13 requires a certificate from a substantial beneficiary of the offering. We believe that a person or company that controls an entity has the best information about the entity. Such a person or company who also receives proceeds from the distribution, should be liable for any misrepresentations in the prospectus. 4. Except in Ontario, section 5.14 requires a certificate from a selling security holder. A selling security holder is liable under provincial and territorial securities legislation,

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	regardless of whether the selling security holder provides a certificate. The purpose of this requirement is to make this more transparent. 5. Section 5.15 imposes a certificate requirement for entities in which the primary business of the issuer is being conducted and for which the issuer is required to, or has undertaken to, file separate financial statements. We have added this certificate requirement to ensure that the entity which is responsible for the issuer's financial disclosure is also responsible for its prospectus disclosure. 6. Except in Ontario, subsection 5.11(4), subsection 5.13(6) and section 5.14 provides the regulator with the discretion to require a certificate from a control persons of promoters or former promoters, substantial beneficiaries of the offering or selling security holders. We have added these provisions to clarify that prospectus liability may not be avoided through the interposition of a holding entity. 7. Except in Ontario, section 5.16 also includes a requirement that the regulator may require any person or company to provide a signed certificate in the form the regulator considers appropriate. Except in Ontario, this section harmonizes across Canada an existing requirement under Alberta securities legislation.
Part 6 [*Amendments*]	Existing requirements regulating the filing of an amendment to a prospectus are set out in applicable securities legislation. The amendment requirements in this Part harmonize Proposed NI 41-101 with the Act Amendments. Certain provisions in this Part do not apply in Ontario. In Ontario, issuers must comply with the requirements in subsections 57(1) and (2) of the *Securities Act* (Ontario).
Part 8 [*Best Efforts Distributions*]	Subsection 8.1(1) harmonizes across Canada an existing regulation in Saskatchewan. This subsection also codifies an existing policy in Alberta. Subsections 8.1(2) and (3) harmonize across Canada and codify an existing policy in British Columbia.
Part 9 [*Requirements for Filing a Prospectus*] (documents affecting the rights of security holders)	Subparagraph 9.2(a)(ii) requires issuers to file documents including constating documents, by-laws, and other contracts that can be regarded as materially affecting the rights of security holders with the preliminary prospectus, unless previously filed. It is harmonized with section 12.1 of NI 51-102.
Part 9 [*Requirements for Filing a Prospectus*] (material contracts)	The filing requirements in subsections 9.1(1) and (2) and subparagraph 9.2(a)(iii) in respect of material contracts are generally harmonized with section 12.2 of NI 51-102. On December 9, 2005, we published for comment proposed amendments to NI 51-102. We specifically asked whether the information in Part 12 of NI 51-102 is useful to investors and whether the benefits to investors outweigh the costs to issuers of complying with that Part. On **October 13, 2006** we published a Notice of Amendments to NI 51-102, including a summary of comments with CSA responses, in which we said that we have decided to retain the requirement to file material contracts, other than contracts entered into in the ordinary course of business. We also said that, to address inconsistency in filings and confusion about what is in the ordinary course of business, we will develop further guidance for the companion policy in conjunction

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	with a project to harmonize the long form prospectus requirements. We believe that the existing carve out in subsection 12.2(1) of NI 51-102 for contracts entered into in the ordinary course of business may inappropriately be interpreted as permitting non-filing of certain material contracts. To address this concern, subsection 9.1(1) describes certain contracts that cannot be considered contracts entered into in the ordinary course of business. This subsection requires issuers to file copies of the material contracts listed. We believe that this is consistent with the approach regarding the filing of these types of material contracts under U.S. securities law. We also believe that further guidance regarding self-redaction or omission, as permitted under subsection 12.2(2) of NI 51-102, is necessary. This provision has been misinterpreted to mean that substantially all of a contract may be redacted or omitted so long as the contract includes a boilerplate confidentiality provision. To provide clarification, clause 9.2(a)(iii)(B) states that a provision may not be redacted or omitted if it contains information that would be necessary to understanding the contract. Subsection 9.1(2) lists a number of provisions that are deemed to be "necessary to understanding the contract". Finally, clause 9.2(a)(iii)(C) includes a requirement that the issuer must describe the provision redacted or omitted in the copy of the material contract that is filed. We are proposing consequential amendments to NI 51-102 that mirror these provisions. We also note that a requirement to file material contracts with the regulator means the document will be available to the public via SEDAR. Accordingly, we have not included a requirement that material contracts be made available for inspection.
Part 9 [*Requirements for Filing a Prospectus*] (personal information form)	Subparagraph 9.2(b)(ii) requires issuers to deliver a copy of a completed Personal Information Form, which includes an authorization to the indirect collection, use and disclosure of personal information. It harmonizes across Canada existing requirements under British Columbia and Québec securities legislation. An issuer will be required to deliver a completed personal information form and authorization for <u>every</u> individual described in this subparagraph with the first preliminary prospectus filed by the issuer after the Proposed Rule becomes effective (except in Ontario for certain individuals). For a subsequent prospectus, the issuer must only deliver a completed personal information form and authorization if it has not previously delivered an authorization and personal information form for that individual within three years before the date of the preliminary prospectus. An issuer may deliver a Personal Information Form in the form set out in Appendix A of Proposed NI 41-101 or in the form of a personal information form delivered to the Toronto Stock Exchange or the TSX Venture Exchange, if it was delivered to the applicable exchange and the information has not changed. If an Exchange Form is provided, the individual must still prepare and sign the statutory declaration. We believe that the form in Schedule 1 of Appendix A is substantially similar to an Exchange Form.
Part 9 [*Requirements for Filing a Prospectus*] (undertaking in respect of credit	Subparagraph 9.3(a)(x) requires the issuer to file an undertaking to file the periodic and timely disclosure of a credit supporter. Unlike the similar requirement in subparagraph 4.2(b)(ii) of NI 44-101, the undertaking is not limited to credit supporters for which disclosure is required to be included in the prospectus. We intend this difference to clarify that an undertaking is required even if the credit supporter is exempt from the requirement to include credit supporter disclosure under an exemption in item 34.3 or 34.4 of Form 41-101F1. We are proposing further guidance

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supporter disclosure)	in section 3.8 of the Proposed CP. We are proposing consequential amendments to NI 44-101.
Part 9 [*Requirements for Filing a Prospectus*] (undertaking in respect of continuous disclosure)	Subparagraph 9.3(a)(xi) requires issuers to file an undertaking, in a form acceptable to the regulator, to provide to its security holders separate financial statements for an operating entity that investors need to make an informed decision about investing in the issuer's securities, subject to certain conditions. It codifies the guidance set out in section 3.1 of National Policy 41-201 *Income Trusts and Other Indirect Offerings*.
Part 9 [*Requirements for Filing a Prospectus*] (undertaking to file documents and material contracts)	Subparagraph 9.3(a)(xii) requires issuers to file an undertaking to file promptly, and in any event within 7 days after the completion of the distribution, any document affecting the rights of security holders and any material contract required to be filed under subparagraph 9.3(a)(ii) or (iii) that has not been executed or become effective before filing a final long form prospectus. This subparagraph codifies existing practice.
Part 9 [*Requirements for Filing a Prospectus*] (undertaking in respect of restricted securities)	Subparagraph 9.3(a)(xiii) requires issuers to file an undertaking to give notice to holders of non-voting securities of a meeting of security holders if a notice of such meeting is given to its registered holders of voting securities. It harmonizes across Canada an existing requirement under Québec securities legislation.
Part 11 [*Over-allocation and Underwriters*] (over-allocation)	Subsection 11.2 requires that any securities that form part of the underwriters over-allocation position must be distributed under the prospectus. The intent of this provision is to clarify that all purchasers in the distribution receive the benefit of prospectus rights, regardless of whether the underwriters over-sell the offering to facilitate market stabilization following closing. The underwriters may be granted an over-allotment option for the purpose of covering the over-allocation position. An over-allotment option must be exercisable for the lesser of the over-allocation position determined as at the closing of the distribution and 15% of the base offering. The option must also expire within 60 days of closing. This section substantially codifies and harmonizes across Canada the existing guidance in paragraph 10 of Ontario Securities Commission Policy 5.1 *Prospectuses – General Guidelines*; however, the time for the determination of the over-allocation position has been moved to the closing of the offering from the close of trading on the second trading day next following the closing of the offering.
Part 11 [*Over-allocation and Underwriters*] (underwriters)	Section 11.3 prohibits the distribution of securities under a prospectus to a person acting as an underwriter for a distribution of securities under the prospectus, other than: (i) over-allotment options, or the securities issuable or transferable on the exercise of over-allotment options; and (ii) certain compensation securities.

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	The purpose of this section is to protect against the practice of so-called ‘back-door underwriting’, which refers to a circumstance where a person or company purchases securities under a prospectus, with a view to reselling the securities in the course of or incidental to the prospectus distribution, and improperly fails to furnish the subsequent purchaser in their resale with a copy of the prospectus in accordance with the prospectus requirement (and, in some cases, may also not comply with the underwriter registration requirement). With respect to over-allotment options and the securities issuable or transferable on the exercise of such an option, we are not concerned about a potential for back-door underwriting because the aggregate number of securities that are the subject of the over-allotment options must be less than the underwriters’ over-allocation position and the purchasers of the securities that result in the underwriters having an over-allocation position are required to receive a prospectus under section 11.2 of the Instrument. With respect to certain compensation securities, we understand that there is an existing market practice for dealers to be compensated, for acting as an underwriter in respect of a prospectus distribution, in part, through the issue or transfer of securities, including options. Where the amount of compensation securities satisfies the 5% limitations set out in paragraph 11.3(b), we believe that any risk that such securities are being acquired by the dealer with a view to resale in the course of or incidental to the prospectus distribution is reduced.
Part 12 [*Restricted Securities*]	This Part harmonizes across Canada Ontario Securities Commission Rule 56-501 *Restricted Shares* and Regulation Q-17 *Restricted Shares* in Québec (collectively, Restricted Share Rules)
Part 13 [*Advertising and Marketing in Connection with Prospectus Offerings*]	The legend requirements in sections 13.1 and 13.2 harmonize across Canada existing requirements in Saskatchewan and Québec. The requirements in these sections are also consistent with existing policies and administrative practices in a number of other jurisdictions. With respect to section 13.3, the current policies are tailored to corporate issuers and we have received a number of complaints regarding advertising during the waiting period because the policies are not clear for investment funds. Therefore to clarify the rules, we included this provision.
Part 14 [*Custodianship of Portfolio Assets of an Investment Fund*]	With respect to the custodian requirement, we included the provisions of National Instrument 81-102 *Mutual Funds* in Proposed NI 41-101 This requirement will put all investment funds on the same footing.
Part 15 [*Documents Incorporated by Reference by Investment Funds*]	With respect to the incorporation by reference of financial statements in the prospectus for investment funds in continuous distribution, we copied the requirements from NI 81-101 in NI 41-101. This would apply to labour sponsored investment funds, commodity pools and certain exchange-traded funds. The reasoning behind this is that these funds are technically mutual funds, however, NI 81-101 excludes them from using the simplified prospectus. Therefore, to level the playing field, we added this provision.
Part 16	Existing requirements regarding the distribution of preliminary prospectuses and maintenance of

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[*Distribution of Preliminary Prospectus and Distribution List*]	distribution lists are set out in applicable securities legislation. The requirements in this Part harmonize Proposed NI 41-101 with the Act Amendments. No change from the existing requirements is intended. This Part does not apply in Ontario. In Ontario, issuers must comply with the requirements in sections 66 and 67 of the *Securities Act* (Ontario).
Part 17 [*Lapse Date*]	Existing requirements regulating the refiling of prospectuses are set out in applicable securities legislation. The requirements in this Part harmonize Proposed NI 41-101 with the Act Amendments. No change from the existing requirements is intended. Certain provisions in this Part do not apply in Ontario. In Ontario, issuers must comply with the requirements in section 62 of the *Securities Act* (Ontario).
Notable exclusions	Proposed NI 41-101 does not include the following requirements: 1. **Significant dispositions**: We do not propose to include requirements in respect of significant dispositions because we believe there are sufficient disclosure requirements stipulated by GAAP relating to dispositions. 2. **GAAP, GAAS, Auditor's Reports and Other Financial Statement Matters**: We do not propose including requirements regarding GAAP, GAAS and other financial statement matters because these requirements are now in NI 52-107. 3. **Audit Committee Review of Financial Statements Included in Prospectus**: We do not propose including an audit committee review requirement because a similar requirement exists under MI 52-110. 4. **Multiple Individually Insignificant and Unrelated Acquisitions**: We do not propose including requirements regarding multiple individually insignificant and unrelated acquisitions (that are not predecessor entities) because there are no comparable requirements in NI 51-102. 5. **Auditor Comfort Letters:** We do not propose including a requirement to file an auditor's comfort letter regarding unaudited financial statements with a final long form prospectus. CICA Handbook Section 7110 - *Auditor Involvement with Offering Documents of Public and Private Entities* sets out the auditor's professional responsibilities when the auditor is involved with a prospectus or other securities offering document and requires that the auditor perform various procedures prior to consenting to the use of its report or opinion, including reviewing unaudited financial statements included in the document. 6. **Definitions of Convertible and Non-convertible:** We do not propose defining "convertible" and "non-convertible" in Proposed NI 41-101, and those terms will have their plain meaning. We note that these terms are defined in NI 44-101. We do not believe that those definitions are appropriate because the conversion right is tied solely to equity securities of an issuer. We do not believe that a security that is convertible into a non-equity security of the issuer should be a non-convertible security for the purposes of either the Proposed Rule or NI 44-101. Our proposed consequential amendments to NI 44-101 will delete those definitions.

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	Proposed Form 1
General	We have made extensive use of cross-referencing to comparable disclosure requirements in NI 51-102. This will help ensure the general prospectus and continuous disclosure requirements continue to be harmonized. We have also identified a number of necessary changes to the continuous disclosure requirements to ensure harmonization. We are proposing to make these changes as consequential amendments as discussed in this Notice.
Item 1 [*Cover Page Disclosure*] (non-fixed price distributions)	Paragraph 1.6(h) requires disclosure of a *bona fide* estimate of the range in which the offering price or the number of securities being distributed is expected to be set. We believe investors value this information. We understand that information regarding the pricing range is generally disclosed in green sheets and is required to be disclosed under U.S. securities law. As discussed in section 4.3 of the Proposed CP, we believe that a difference between this *bona fide* estimate and the actual offering price or number of securities being distributed is not generally a material adverse change for which an amended preliminary long form prospectus must be filed.
Item 1 [*Cover Page Disclosure*] and **Item 20** [*Plan of Distribution*] (IPO venture issuer)	If an issuer has complied with the requirements of the Proposed Rule as an IPO venture issuer, subsection 1.9(4) and item 20.11 generally requires prospectus disclosure that the issuer is not and does not intend to be a non-venture issuer.
Item 1 [*Cover Page Disclosure*], **Item 3** [*Summary of Prospectus*], and **Item 10** [*Description of the Securities Distributed*] (restricted securities)	Subsections 1.13(1) and 10.6(1), and paragraph 3.1(1)(f) require disclosure regarding any restricted securities being distributed. These subsections and this paragraph codifies and harmonizes across Canada the prospectus disclosure requirements in the Restricted Share Rules. We are proposing consequential amendments to add these disclosure requirements to Form 44-101F1.
Item 3 [*Summary of Prospectus*] (financial information)	Subsection 3.1(2) requires disclosure of the source of any financial information included in the summary section of a prospectus under Proposed Form 1, and whether such information has been audited. This subsection codifies existing practice.
Item 5 [*Describe the Business*]	Items 5.4 and 5.5 are harmonized with the disclosure requirements in items 5.4 and 5.5 of Form 51-102F2 *Annual Information Form* (Form 51-102F2).
Item 6 [*Use of Proceeds*]	Item 6.6 requires disclosure of any insider, associate or affiliate of the issuer who will receive more than 10% of the net proceeds of the distribution. This information will help investors

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	identify whether an insider, associate or affiliate will benefit from the distribution. Disclosure of the fact that a person or company with information about the issuer stands to benefit from the distribution, will help investors make informed investment decisions. This item is related to our proposal to require certificates from substantial beneficiaries of the offering.
Item 8 [*Management's Discussion and Analysis*]	This item sets out the management's discussion and analysis disclosure required to be included in a long form prospectus. The supplemental disclosure required is based on section 5.3 of NI 51-102. Item 8.7 requires additional disclosure for certain issuer's with negative operating cash flow. We have also added additional disclosure requirements regarding outstanding share data in item 8.4. We are proposing these new requirements to address disclosure deficiencies frequently noted in our reviews of long form prospectuses.
Item 9 [*Earnings Coverage Ratios*]	This item is harmonized with the disclosure requirements in item 6.1 of Form 44-101F1.
Item 10 [*Description of the Securities Distributed*]	Other than the requirements regarding restricted securities described above, this item is harmonized with the disclosure requirements in item 7 of Form 44-101F1.
Item 14 [*Escrowed Securities and Securities Subject to Contractual Restriction on Transfer*]	This item includes language to clarify that, in addition to disclosure regarding securities subject to regulatory escrow requirements, disclosure regarding securities subject to contract restriction on transfer is required. We are proposing a consequential amendment to add this requirement to Form 51-102F2.
Item 16 [*Directors and Executive Officers*]	Other than the requirements regarding junior issuers, this item is harmonized with disclosure requirements in item 10 of Form 51-102F2.
Item 17 [*Executive Compensation*]	This item is harmonized with the disclosure requirements in Form 51-102F6 *Statement of Executive Compensation*.
Item 18 [*Indebtedness of Directors and Executive Officers*]	This item is harmonized with the disclosure requirements in item 10 of Form 51-102F5 *Information Circular*.
Item 19 [*Audit Committees and Corporate Governance*]	Item 19.1 is harmonized with the disclosure requirements in Form 52-110F1 *Audit Committee Information Required in an AIF* and Form 52-110F2 *Disclosure by Venture Issuers*, except that subsection 19.1(3) sets out specific requirements for certain British Columbia issuers. Item 19.2 is harmonized with the disclosure requirements in Form 58-101F1 *Corporate Governance Disclosure* and 58-101F2 *Corporate Governance Disclosure (Venture Issuers)*. Sections 4.9 and 4.10 of the Proposed CP provide further guidance with respect to compliance with the requirements in these sections.
Item 20 [*Plan of*	Item 20.4 conforms to the substantive requirements in Part 8 of Proposed NI 41-101 regulating

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Distribution]	best efforts distributions. As discussed above, those substantive requirements harmonize across Canada and codify existing policies regarding best efforts distributions.
Item 21 [*Risk Factors*]	Other than the instruction, this item is harmonized with the disclosure requirements in item 5.2 of Form 51-102F2 and item 17.1 of Form 44-101F1. The instruction clarifies that issuers are required to disclose risks in the order of seriousness from most serious to the least serious.
Item 22 [*Promoters and Substantial Beneficiaries of the Offering*]	A person or company that controls an entity has the best information about the entity. If such a person also receives proceeds from the distribution, we believe a prospectus should include disclosure about that person or company comparable to the disclosure that would be required in respect of a promoter.
Item 24 [*Interests of Management and Others in Material Transactions*]	Item 24.1 is harmonized with the disclosure requirements in item 13.1 of Form 51-102F2.
Item 31 [*List of Exemptions from the Instrument*]	This item is harmonized with the disclosure requirement in item 19 of Form 44-101F1.
Item 32 [*Financial Statement Disclosure for Issuers*]	The financial statement requirements have been changed or modified based on three principles: 1. Existing reporting issuers should not be subject to a higher level of financial disclosure in a prospectus than they are subject to under NI 51-102. Therefore, we only require the financial statements that are otherwise required to be filed under NI 51-102 to be included in the prospectus. 2. Existing reporting issuers should not be subject to different disclosure requirements between a long form prospectus and a short form prospectus. As a result, reporting issuers are only required to include 2 years of financial statements in a long-form prospectus, the same as a short-form prospectus. 3. Issuers that are not reporting issuers immediately before filing a prospectus should generally not be required to provide financial disclosure in a prospectus that would not be required under the CD Rules. To establish a reporting history, however, certain historical financial statements that would not otherwise be required under the CD Rules are required. As such, non-reporting issuers will continue to be required to include 3 years of financial statements in a prospectus. To ensure this history is the most current as at the date of the prospectus, non-reporting issuers, including IPO venture issuers will be required to include annual financial statements for years ended more than 90 days before the date of the prospectus. The time period for inclusion of interim financial statements has been shortened from an interim period ended more than 60 days before the date of the prospectus to 45 days. In addition, in order to establish this history, 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.

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Item 34 [*Exemptions for Certain Issues of Guaranteed Securities*]	This Item is generally harmonized with the exemptions in Item 13 of Form 44-101F1, except for the following differences. We are proposing consequential amendments to harmonize Item 13 of Form 44-101F1 with this Item. We are also proposing consequential amendments to harmonize section 13.4 of NI 51-102 with this Item. 1. **Consolidating summary financial information**: Paragraph 34.3(1)(f) requires the inclusion of consolidating summary financial information in contrast with paragraph 13.2(f) of Form 44-101F1, which permits a statement that the financial results of the issuer and all subsidiary credit supporters are included in the consolidated financial results of the parent credit supporter in lieu. We believe that consolidating summary financial information disclosure in respect of any subsidiary credit supporters required under column (C) is necessary for investors to distinguish those assets on which they have a direct claim and those assets through which they will only have a claim through a guarantee. The issuer may combine the disclosure in columns (B) or (D), as applicable, with another column as permitted under subsection 34.3(2). Please also refer to paragraph 13.3(g) of the proposed consequential amendments to Form 44-101F1. 2. **Control of subsidiary credit supporters and credit supporters**: Paragraph 34.3(1)(e) requires that the parent credit supporter controls each subsidiary credit supporter in contrast with the condition in 13.2(e) of Form 44-101F1, which requires each subsidiary credit supporter to be a direct or indirect wholly owned subsidiary of the parent credit supporter. Paragraph 34.4(d) requires the issuer to control each credit supporter in contrast with the condition in 13.3(d) of Form 44-101F1, which requires each credit supporter be a direct or indirect wholly owned subsidiary of the issuer. These conditions codify exemptive relief that has been granted on a case-by-case basis. Please also refer to paragraphs 13.3(f) and 13.4(d) of the proposed consequential amendments to Form 44-101F1. 3. **Short form qualification**: The exemptions in sections 34.2 and 34.3 do not include the condition that the credit supporter satisfy the qualification criteria in section 2.4 of NI 44-101 in contrast with the conditions in paragraphs 13.1(b) and 13.2(b) of Form 44-101F1. These conditions ensure that the disclosure in a short form prospectus reflect the disclosure of either an issuer or a credit supporter that is qualified to file a short form prospectus. 4. **Wholly-owned subsidiaries**: Paragraphs 34.2(c) and 34.3(1)(d) require that the parent credit supporter be the beneficial owner of all the issued and outstanding voting securities of the issuer in contrast with the conditions in 13.1(d) and 13.2(e) of Form 44-101F1, which require the issuer be a direct or indirect wholly owned subsidiary of the parent credit supporter. The language in the conditions in paragraphs 34.2(c) and 34.3(1)(d) are harmonized with the continuous disclosure exemption in section 13.4 of NI 51-102. Please also refer to paragraphs 13.2(d) and 13.3(e) of the proposed consequential amendments to Form 44-101F1. 5. **Convertible debt securities or convertible preferred shares**: Paragraphs 34.2(b) permit the securities being distributed to be convertible into non-convertible securities of the parent credit supporter. Similarly, paragraph 34.4(c) permits the securities being distributed to be convertible into non-convertible securities of the issuer. We believe

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	that the exemptions in Item 34 should still apply in these cases because full, true and plain disclosure in the prospectus regarding the parent entity should be sufficient to support an informed investment decision regarding the underlying securities. Please also refer to paragraphs 13.2(c), 13.3d), and 13.4(c) of the proposed consequential amendments to Form 44-101F1. 6. **Drafting changes**: We are also proposing a number of drafting changes from the exemptions in Item 13 of Form 44-101F1. No substantive change is intended.
Item 35 [*Significant Acquisitions*]	As a result of harmonizing with the requirements under NI 51-102, we have made some changes to the significant acquisition requirements in Item 35. We have simplified the significance tests by adopting the tests from NI 51-102. As a result, there will only be one set of significance tests. Consistent with NI 51-102, venture issuers, including IPO issuers that intend to be venture issuers post-IPO, will have a higher significance threshold for disclosure than non-venture issuers. The disclosure requirements have also been modified to harmonize with those from NI 51-102. Instead of a requirement that results in the variation of the number of years of financial statements disclosure based on the level of significance, a standard 2 years of financial statements is required for any acquisitions considered to be significant. Lastly, instead of requiring all historical financial statements of a significant acquisition included in a prospectus to be audited, we will only require the most recent year financial statements to be audited, consistent with the business acquisition report requirements in NI 51-102. The prior year, as well as the most recent interim period will only require review level of assurance. The significant acquisition disclosure requirements in this Item are based on the following principles: 1. Issuers that filed a business acquisition report (BAR) under NI 51-102 should not be required to include in a prospectus more disclosure in respect of a significant acquisition than was included in the BAR. 2. Issuers that did not file a BAR in respect of a significant acquisition because they were not a reporting issuer on the date of the acquisition should be required to include in a prospectus the disclosure that would have been required to be included in a BAR as if they were required to file a BAR. 3. For recently completed acquisitions or probable acquisitions, issuers should be required to include in a prospectus the disclosure that would be required to be included in a BAR if one were required to be filed on the date of the prospectus.

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	Proposed Form 2
General Instructions	Instruction (11) provides that the items must be presented in the order specified in the form. While this is a new requirement, it is consistent with Form 81-101F1 *Contents of Simplified Prospectus* used for mutual funds and it makes it easier for advisers, investors, issuers and regulators to compare investment funds.
Item 1 [*Cover Page Disclosure*]	Part of item 1.3 is new and provides that the type of fund must be stated on the cover page, i.e. labour sponsored investment fund, commodity pool, non-redeemable investment fund, etc. This helps advisors and investors identify the type of fund immediately.
Item 4 [*Overview of the Investment*]	Item 4.1 is new and requires the investment fund to state whether it would be considered a mutual fund for securities legislation purposes. This helps advisers, investors and regulators to readily determine whether the investment fund would be subject to certain restrictions under securities legislation as a result of being a mutual fund.
Item 16 [*Independent Review Committee*]	This is new and requires disclosure of a description of the independent review committee of the investment fund required under National Instrument 81-107 *Independent Review Committee for Investment Funds*.
Item 39 [*Exemptions and Approvals*]	This is new and requires disclosure of all exemptions from or approvals under securities legislation obtained by the investment fund or the manager of the investment fund. This is helpful to advisers, investors and regulators to readily determine what provisions of securities legislation the investment fund may be exempted from.
Item 40 [*Documents Incorporated by Reference*]	This is new and provides that investment funds in continuous distribution may incorporate certain types of documents by reference into the prospectus. This puts all mutual funds on the same footing and emulates the provisions in NI 81-101.

Provision	Summary and Purpose
	Proposed CP
General	The Proposed CP primarily provides information relating to the interpretation of Proposed NI 41-101, Proposed Form 1, and Proposed Form 2 by securities regulatory authorities, and their application. It is based on existing guidance in the companion policy to Rule 41-501, the companion policy to NI 44-101, and the companion policy to NI 51-102, and reflects the significant provisions of the Proposed Rule as described in this Appendix. The Proposed CP also consolidates guidance that currently exists in other national and local policies and notices.

Provision	Summary and Purpose
	Proposed Consequential Amendments to NI 44-101
Part 1 [*Definitions and Interpretations*]	Many of the definitions in NI 44-101 are defined in proposed NI 41-101. Definitions used in proposed NI 41-101 will apply to the same terms used in NI 44 -101.
Part 4 [*Filing Requirements for a Short Form Prospectus*]	Filing requirements for a short form prospectus now mirror the filing requirements in Part 9 of NI 41-101. In particular the following requirements have been added or amended: • requirements for filing documents affecting the rights of security holders, material contracts and undertakings to file this material, • undertakings for credit supporter disclosure • undertakings to provide notice to non-voting security holdersof a meeting of security holders, • requirements to deliver personal information forms and an authorization to collect, use and disclose personal information • requirement to deliver a copy of a communication in writing from the exchange stating that an application for listing has been made and accepted if the issuer has made an application to list the securities being distributed on the exchange, The requirements for consents are governed by Part 10 proposedNI 41-101.
Part 5 [*Amendments to a Short Form Prospectus*]	This Part is repealed. The requirements for amendments to short form prospectuses are governed by Part 6 of proposed NI 41- 101.
Part 6 [*Non-fixed Price Offerings and Reduction of Offering Price under Short Form Prospectus*]	This Part is repealed. The requirements for non-fixed price offerings are governed by Part 7 of proposed NI 41-101.
Part 7 [*Solicitations of Expressions of Interest*]	A new section 7.2 has been added for over-allotments options to clarify that the prospectus requirement does not apply to solicitations of expressions of interest before the filing of a preliminary short form prospectus for securities to be issued pursuant to an over-allotment option that are qualified for distribution under a short form prospectus.
Appendices B [*Authorization of Indirect Collection, Use and Disclosure of Personal Information*]**, C** [*Issuer Form of*	These appendices are now in proposed NI 41-101.

Provision	Summary and Purpose
Submission to Jurisdiction and Appointment of Agent for Service of Process]**,** and **D** [*Non-Issuer Form of Submission to Jurisdiction and Appointment of Agent for Service of Process*]	

Provision	Summary and Purpose
	Proposed Consequential Amendments to Form 44-101F1
General	All the provisions in Form 44-101F1 apply only to short form prospectuses. None of the provisions in Proposed Form 1 apply to short form prospectuses.
Item 1 [*Cover Page Disclosure*]	Item 1.7.1 is added to require disclosure of a *bona fide* estimate of the range in which the offering price or the number of securities being distributed is expected to be set if the offer price has not been set as of the date of the preliminary prospectus. This conforms to a new requirement set in Proposed Form 1. Item 1.12 requires disclosure about any restricted securities being distributed. This conforms to the disclosure requirement in Proposed Form 1.
Item 7A [*Prior Sales*]	Item 7A.1 is added to ensure that the issuer discloses prior sales of its securities within the past 12 months. Item 7A.2 was added to ensure the prospectus contains trading price and volume information up to the date of the prospectus. These changes were made to conform to Proposed Form 1. The AIF only discloses prior sales for unlisted securities whereas the prior sales disclosure in the prospectus needs to be offering specific. Trading price and volume information in the AIF is only current to the issuer's most recently completed year-end. The prospectus disclosures will update the information to the date of the prospectus.
Item 10 [*Significant Acquisitions*]	10.1 and 10.2 - moves the reverse takeover disclosure requirements to a new section and conforms the disclosure to the Proposed Form 1 approach. See also the changes set out in 10A.
Item 10A [*Reverse Takeover and Probable Reverse Takeover*]	The reverse takeover disclosure conforms to the provisions in Proposed Form 1. Proposed Form 1 clarifies our position that the reverse takeover acquirer is considered to be the issuer for accounting purposes, and specifies the required disclosure in the form for completed or probable reverse takeover transactions. Under Rule 41-501, a general statement of principles was set out in the Rule for the treatment of reverse takeover transactions but the Form did not contain any detailed disclosure requirements.
Item 11 [*Documents Incorporated by Reference*]	Documents that are required to be incorporated by reference now includes the disclosure required under the Forms to NI 51-101 filed by an SEC issuer unless the issuer is exempted from that rule or its AIF is in the form of Form 51-102F2.
Item 13 [*Exemptions for Certain Issues of Guaranteed Securities*]	The exemptions for certain issues of guaranteed securities have been amended to harmonize with the exemptions in NI 41-101 and NI 51-102.
Item 16 [*Promoters*]	Current disclosure required about promoters of an issuer is extended to substantial beneficiaries of the offering.
Item 21	Certificate provisions will be governed by Proposed NI 41-101. The prescribed wording for issuer certificates and underwriter certificates for a prospectus filed under NI 44-101 has been

Provision	Summary and Purpose
[*Certificates*]	retained.

Provision	Summary and Purpose
	Proposed Consequential Amendments to NI 44-102
Part 1 [*Definitions and Interpretation*] (definition of "novel")	The CSA has noticed an increase in the use of the shelf prospectus system for the distribution of specified derivatives. In particular, an increase in the issuance of financial products where the payout is linked to an underlying interest that is not related to the operations or securities of the issuer. This includes notes linked to indices or notional reference portfolios. Although many of these products are similar to investment funds, they are not specifically subject to the investment funds regulatory regime. In addition, under the shelf prospectus system, the substantive details of such offerings are not typically available in the base shelf prospectus which is subject to regulatory review in advance of distribution. This results in the substantive details set out in a shelf prospectus supplement which, unless viewed by the issuer as a "novel" derivative, is generally filed after the distribution has taken place and can therefore only be reviewed on a post-filing basis. Since these linked note products are targeted at the retail market, this raises possible investor protection concerns that the CSA is proposing to address by broadening the pre-clearance requirement for issuers and selling securities holders that is set out in NI 44-102. One of the CSA's goals is to ensure adequate prospectus disclosure (either in the base shelf prospectus or the shelf prospectus supplement) of the material attributes of, and the risks associated with, linked note products. Because of the similarities between linked notes and investment fund products, the CSA is also interested in having an opportunity, prior to distribution, to determine whether certain elements of the investment funds regulatory regime should apply to such offerings. The proposed amendments broaden the scope of specified derivatives which issuers and selling security holders are required to pre-clear. This has been done by amending the definition of the term "novel" to capture each type of an issuer's linked note products. We consider the current definition of the term, as it pertains to specified derivatives, as too narrow since it only captures derivatives having characteristics not previously described in a prospectus in Canada. The proposed change to the definition of the term "novel" will capture specified derivatives of an issuer for which the underlying interests are not a security of that issuer. The fact that another issuer may have distributed a similar product will no longer preclude the issuer or selling security holder from having to pre-clear the shelf prospectus supplement. Additional linked note products that are not materially different from those that have already been pre-cleared by the issuer will not be caught. In addition, "plain vanilla" warrants will not be caught since the amended definition of novel carves out specified derivatives where the underlying interest consists of the issuer's own securities.
Part 4 [*Distributions of Novel Derivatives or Asset-backed Securities Under Shelf*]	To address market concerns regarding the ability of issuers to take advantage of perceived market opportunities, the CSA is also proposing to significantly reduce the time period that regulators have to provide comments from 21 days to 10 working days. This shorter timeframe is consistent with the review period outlined in subsection 5.3(2) of NP 43-201 in respect of complex offerings distributed under the short-from prospectus.
Appendices A [*Method 1 for Shelf*	Certificate provisions will be governed by Proposed NI 41-101. The prescribed wording for issuer certificates and underwriter certificates for a prospectus filed under NI 44-102 has been

Provision	Summary and Purpose
Prospectus Certificates] and **B** [*Method 2 for Shelf Prospectus Certificates*]	retained.

Provision	Summary and Purpose
	Proposed Consequential Amendments to NI 44-103
Parts 3 [*Base PREP Prospectuses*] and **4** [*Supplemented PREP Prospectuses*]	Certificate provisions will be governed by Proposed NI 41-101. The prescribed wording for issuer certificates and underwriter certificates for a prospectus filed under NI 44-103 has been retained.

Provision	Summary and Purpose
	Proposed Consequential Amendments to NI 51-102
Part 12 [*Filing of Certain Documents*]	We are proposing consequential amendments to the requirements in this Part to harmonize with certain requirements in Part 9 of Proposed NI 41-101.
Part 13 [*Exemptions*]	We are proposing consequential amendments to the requirements in this Part to harmonize with certain requirements in Item 34 of Proposed Form 1.

Provision	Summary and Purpose
	Proposed Consequential Amendments to NI 81-101
Subsections 2.2(4) [*Amendment to a preliminary simplified prospectus*] and **2.2(5)** [*Amendment to a simplified prospectus*]	Existing requirements regulating the filing of an amendment to a prospectus are set out in applicable securities legislation. The amendment requirements in this Part have been included in the proposed consequential amendments to harmonize with the Act Amendments.
Section 2.5 [*Lapse Date*]	Existing requirements regulating the refiling of prospectuses are set out in applicable securities legislation. The requirements in this Part have been included in these consequential amendments to harmonize with the Act Amendments. No change from the existing requirements is intended.
Section 2.6 [*Audit of financial statements*]	All financial statements, except interim financial statements, included in or incorporated by reference into the prospectus must be audited in accordance with Part 2 of National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106). This harmonizes the prospectus requirements with the continuous disclosure requirements.
Section 2.7 [*Review of unaudited financial statements*]	Any unaudited financial statements included in or incorporated by reference into the prospectus must be reviewed in accordance with the relevant standards set out in the Handbook. This harmonizes the prospectus requirements with the continuous disclosure requirements.
Section 2.8 [*Approval of financial statements and related documents*]	All financial statements, included in or incorporated by reference into the prospectus, must be approved in accordance with Part 2 of NI 81-106. This harmonizes the prospectus requirements with the continuous disclosure requirements.
Section 2.9 [*Consents of experts*]	Consents of experts must be filed with the prospectus.
Section 6.8 [*Certificates of corporate mutual funds*]	This designates who should sign a certificate for a corporate mutual fund. This is consistent with existing securities legislation.

Provision	Summary and Purpose
	Proposed Consequential Amendments to Form 81-101F1
Item 6(5) of Part A [*Purchases, Switches and Redemptions*]	This item is new and requires disclosure of the restrictions that may be imposed by the mutual fund to deter short-term trades, including the circumstances, if any, under which such restrictions may not apply or may otherwise be waived.
Item 8 of Part A [*Fees and Expenses*]	This item is amended by the addition of a line item in the Fees and Expenses Table that requires disclosure of the amount of any applicable short-term trading fee.

Provision	Summary and Purpose
	Proposed Consequential Amendments to Form 81-101F2
Subsections 12(9) and 12(10) [*Fund Governance*]	These subsections are new and require a description of a mutual fund's policies and procedures relating to the monitoring, detection and deterrence of short term trades of mutual fund securities by investors. They further require disclosure of any arrangements with any person or company to permit short-term trades in securities of the mutual fund.

LIST OF COMMENTERS

Proposed National Instrument 41-101
Prospectus Disclosure Requirements
Request for Comment December 21, 2006

	COMMENTER	NAME	DATE
1.	Heenan Blaikie	Mark Franko	March 13, 2007
2.	Canaccord Capital	Peter M. Brown	March 19, 2007
3.	TD Securities Inc.	Michael Faralla	March 19, 2007
4.	ARC Resources Ltd.	Van Dafoe	March 27, 2007
5.	Tristone Capital Inc.	David M. Vetters	March 27, 2007
6.	Bill Braithwaite, Private Investor	Bill Braithwaite	March 28, 2007
7.	Blakes, Cassels & Graydon LLP	Blakes, Cassels & Graydon LLP	March 28, 2007
8.	Freehold Royalty Trust	Joseph N. Holowisky	March 28, 2007
9.	Investment Industry Assocation	Susan Copland	March 28, 2007
10.	Phillips, Hager & North	Heidi Johnston	March 28, 2007
11.	TD Asset Management	Timothy Pinnington	March 28, 2007
12.	Bennett Jones LLP	N.P. Fader	March 29, 2007
13.	CIBC World Markets	Robert J. Richardson	March 29, 2007
14.	FirstEnergy Capital	John S. Chambers/ M. Scott Bratt	March 29, 2007
15.	KPMG LLP	Gordon C. Fowler/Alan G. Van Weelden	March 29, 2007
16.	RESP Dealers Association	Peter Lewis	March 29, 2007
17.	Tradex	Robert C. White	March 29, 2007
18.	ARC Energy Trust	David Carey	March 30, 2007
19.	ARC Financial Corp.	Nancy L. Smith	March 30, 2007
20.	Bonavista Energy Trust	Keith A. MacPhail	March 30, 2007
21.	Burnet, Duckworth & Palmer LLP	BD&P LLP	March 30, 2007
22.	Cinch Energy Corp.	Denise Ramage	March 30, 2007
23.	Cyries Energy Inc.	Donald F. Archibald	March 30, 2007
24.	Imperial Oil	Brian W. Livingston	March 30, 2007
25.	Irwin, White & Jennings	Jill W. McFarlane	March 30, 2007
26.	Kereco Energy Ltd.	Stephen C. Nikiforuk	March 30, 2007
27.	Macleod Dixon LLP	Kevin E. Johnson	March 30, 2007
28.	MD Funds Management	A. Guy Bélanger	March 30, 2007
29.	Ontario Bar Association	Securities Law Subcommittee	March 30, 2007
30.	Penn West Energy Trust	Todd Takeyasu	March 30, 2007
31.	Research Capital Corp.	Geoffrey G. Whitlam	March 30, 2007
32.	Spectra Energy	Bruce E. Pydee	March 30, 2007
33.	Superior Plus	Grant Billing	March 30, 2007
34.	Talisman Energy	M. Jacqueline Sheppard	March 30, 2007
35.	Triton Energy Corp.	Michael S. Zuber	March 30, 2007
36.	VenGrowth Private Equity Partners Inc.	Ryan Farquhar	March 30, 2007
37.	Yoho Resources	Brian A. McLachlan	March 30, 2007

38.	McCarthy Tétrault	McCarthy Tétrault	March 31, 2007
39.	RBC Financial Group	Reena S. Lalji/Frank Lippa	March 31, 2007
40.	Anfield Sujir Kennedy & Durno	Jay Sujir	April 1, 2007
41.	Borden Ladner Gervais LLP	Melinda Park	April 2, 2007
42.	Fidelity Investments	Christopher Bent	April 3, 2007
43.	Petro-Canada	Hugh L. Hooker	April 3, 2007
44.	Davies Ward Phillips & Vineberg LLP	Robert S. Murphy	April 4, 2007
45.	IGM Financial Inc.	W. Sian Burgess	April 4, 2007
46.	Ogilvy Renault	Tracey Kernahan/Christine Dubé	April 3, 2007
47.	Borden Ladner Gervais LLP	Rebecca Cowdery	April 5, 2007
48.	Osler, Hoskin & Harcourt LLP	Craig Wright/Elizabeth Walker	April 5, 2007
49.	TSX Group	Rik Parkhill/Linda Hohol	April 5, 2007
50.	Stikeman Elliott LLP	Simon A. Romano	April 5, 2007
51.	Nexen Inc.	John B. McWilliams	April 11, 2007
52.	Investment Funds Institute of Canada	Joanne De Laurentiis	April 11, 2007
53.	Canadian Bankers Association	Daniel Iggers	April 16, 2007
54.	Computer Share Trust Company	Stuart Swartz	April 26, 2007
55.	CIBC Mellon	Mark R. Hemingway	May 22, 2007
56.	Securities Transfer Association of Canada	William J. Speirs	May 22, 2007

March 13, 2007

ALBERTA SECURITIES COMMISSION
BRITISH COLUMBIA SECURITIES COMMISSION
SASKATCHEWAN FINANCIAL SERVICES COMMISSION
MANITOBA SECURITIES COMMISSION
ONTARIO SECURITIES COMMISSION
AUTORITÉ DES MARCHÉS FINANCIERS
NOVA SCOTIA SECURITIES COMMISSION
NEW BRUNSWICK SECURITIES COMMISSION

Patricia Leeson, Co-Chair of the CSA's Prospectus Systems Committee
Alberta Securities Commission
4th Floor, 300 – 5th Avenue S.W.
Calgary, Alberta T2P 3C4

Heidi Franken, Co-Chair of the CSA's Prospectus Systems Committee
Ontario Securities Commission
20 Queen Street West, Suite 1903, Box 55
Toronto, Ontario M5H 3S8

Anne-Marie Beaudoin, Co-Chair of the CSA's Prospectus Systems Committee
Directrice du secretariat
Autorité des marchés financiers
Tour de la Bourse
C.P. 246, 22e étage.
Montreal, Québec H4Z 1G3

Re: Proposed National Instrument 41-101 – General Prospectus Requirements and related proposed amendments to National Instrument 44-101 – Short Form Prospectus Distributions

Mark Franko

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Calgary, Alberta
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We have reviewed proposed National Instrument 41-101 – *General Prospectus Requirements* ("NI 41-101") and the related proposed amendments to National Instrument 44-101 – *Short Form Prospectus Requirements* ("NI 44-101") and wish to provide our comments thereon.

We are concerned with the proposed implementation of section 5.13 of NI 41-101 and the proposed amendments to Item 21 of Form 44-101F1. These provisions would have the effect, other than in Ontario, of requiring any "substantial beneficiary of the offering" to execute and include in a short or long form prospectus a certificate in the same form required from the issuer. More particularly, we believe the proposed certification requirements for substantial beneficiaries are excessively broad in scope.

The CSA, in their Notice and Request for Comment respecting NI 41-101, indicate that, "We believe a person or company that controls the issuer or a significant business has the best information about the issuer or significant business". However, the certification requirements are not limited, in the case of a current or former owner or control person of a significant business, to the portions of the prospectus dealing with the significant business. Instead, they would require that such a person certify all of the disclosure contained in the prospectus, including the documents incorporated by reference therein such as annual information forms, financial statements and management's discussion and analysis.

Imposing such an unlimited certification requirement would place an undue burden of due diligence on such a certifying party given that they would not necessarily have any particular knowledge of the business of the issuer.

In addition, the knowledge on the part of a proposed vendor of a significant business of the need to conduct such due diligence to avoid liability would either drive an increase in the purchase price of the significant business or place the issuer at a competitive disadvantage against any competing offers not directly or indirectly contingent on prospectus financing. This would impair market efficiency with respect to the purchase and sale of significant businesses.

In light of the above, we would request that the CSA reconsider the implementation of section 5.13 of NI 41-101 and the proposed amendments to Item 21 of Form 44-101F1 insofar as those provisions apply to current or former owners or control persons of significant businesses. In the alternative, we would urge that any certification requirements be limited to the portions of the prospectus dealing with the significant business in question.

If you have any questions or concerns, please do not hesitate to contact the writer at (403) 781-3390.

Heenan Blaikie LLP

(signed) "*Mark Franko*"

Mark Franko

CANACCORD
CAPITAL

PETER M. BROWN
CHAIRMAN & CHIEF EXECUTIVE OFFICER

March 19, 2007

Patricia Leeson
Co-Chair – CSA Prospectus Systems Committee
Alberta Securities Commission
4th floor, 300 – 5th Ave. S.W.
Calgary, AB T2P 3C4

Heidi Franken
Co-Chair – CSA Prospectus Systems Committee
Ontario Securities Commission
20 Queen Street West, Suite 1903, Box 55
Toronto, ON M5H 3S8

Dear Co-Chairs:

Canaccord Capital would like to comment on some of your proposed changes to the general prospectus requirements in the National Instrument 41-101.

1. Limit of 5% on Compensation Securities Qualified Under a Prospectus

I understand that this interference in the market place and free negotiations is to address a concern as to "back door underwritings". If there is such a thing it would be such a rare occurrence that I fail to see the need to restrict the right of negotiations of all the participants. We would like to make the following points:

a) Canada probably has the most efficient public fund raising mechanism for small to medium companies in the world today.

b) You are making changes for reasons that are largely invalid in a system that works.

c) Compensation is rightfully a matter of negotiation between the company and its underwriter. In our experience, all companies try and limit warrants when they can and those with greater than 5% underwriter's warrants tend to be those names that are less known with less liquidity and therefore require a greater degree of marketing and market risk. In fact, some of these names require more work than the larger capitalized, well known corporate names and because by nature they are smaller underwritings, the cash compensation is also smaller and is made up to some degree by the extra warrant compensation.

d) Most of these small to mid cap financings are done by the independent firms whose margins are shrinking as commissions are compressed and costs are rising, particularly in the cost of technology, research and compliance. The regulatory bodies have added considerably to these costs and to limit the revenue opportunities for such an obscure reason makes no sense.

e) The Commission, in this case, would be interfering with the markets ability to price its services. The present system is producing good results in the small business area that is so important to the Canadian economy. I suggest the CSA look at hard evidence of so called "back door underwritings" as a percentage of the total small to mid cap financings that are successfully completed in Canada before trying to fix a system that is definitely not broken.

2. Marketing during the waiting period

Canaccord is disappointed that the CSA would, in this day and age, look to limit marketing materials and revert to the Prospectus document only. Many participants and regulators believe that the Prospectus is an outdated and cumbersome document that is little read by many purchasers as it is cumbersome, legalistic and not user friendly. Any survey of institutional and retail investors would confirm a frustration with the prospectus document and a preference for summaries and power point presentations together with the Prospectus document. We would hope that the CSA would take this opportunity to expand the information available to investors rather than limit it. The principal purpose of a capital market is to finance the country's corporate growth and I would suggest that financing the smaller corporation, which is the engine of employment, is paramount. Marketing for these issuers is a difficult process and these additional materials are a benefit to both the underwriter and the investor. It is hard to believe that the Commission believes that it is of benefit to the investing public to limit information to investors and it is equally hard to believe that the CSA is of the view that the regulators understand the investor's requirements and preferences better than the underwriter who has a one on one relationship with the investor.

We would hope the CSA would take this opportunity to rethink the entire policy. If they are concerned about promotional excess in the marketing material a more intelligent solution would be to require them to be filed with the Preliminary Prospectus – not for approval but only to receive negative comments in a limited period of time such as 72 hours.

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3. We understand the CSA would like to bring in new rules requiring a "substantial beneficiary" to assume the liability for the entire prospectus where the proceeds are used to make an acquisition. It is clear that this would put Canadian companies at a substantial disadvantage in pursuit of acquisitions and in fact in many cases would make a Canadian public company the purchaser of last resort. We believe this to have substantial impact in a competitive and global business climate.

We cannot help but be concerned about the thought processes that collectively bring about the recommendations listed above. None of them enhance investor protection materially or contribute to corporate competitiveness or market efficiency.

Yours truly,

Peter M. Brown
Chairman & CEO

cc: Doug Hyndman
Anne-Marie Beaudoin

TD Securities Inc.
Ernst & Young Tower
222 Bay Street, 7th Floor
Toronto, Ontario M5K 1A2

Delivered

March 19, 2007

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

c/o Ms. Heidi Franken,
Co-Chair of the CSA's Prospectus Systems Committee
Ontario Securities Commission
20 Queen Street West, Suite 1903, Box 55
Toronto, Ontario M5H 3S8

Dear Sirs / Mesdames,

Re: Proposed Amendments to National Instrument 41-101,
CSA Notice and Request For Comments dated December 21, 2006

This letter is in response to the above request for comments in relation to the proposed amendments to National Instrument 41-101 (the "Proposed Amendments") and, in particular, Section 5.13 thereof.

These comments do not represent the views of any particular client of our organization, and are submitted on a "without prejudice" basis in relation to any position taken by our organization on its own behalf or on behalf of any of its clients in respect of any matter which our organization may be or hereafter become involved.

By Section 5.13, the Proposed Amendments include a new certificate requirement for "substantial beneficiaries of the offering". We would submit that as drafted, Section 5.13 goes beyond what is necessary to ensure the integrity of Canadian capital markets and in so doing will likely prejudice the efficiency and competitiveness of Canadian public capital markets and their participants, contrary to one of the fundamental purposes of Canadian securities regulation.

While a person or company (herein, a "vendor") that controls a "significant business" may have the best information about that particular business, we respectfully submit that it does not necessarily follow that such person or company:

- has sufficient information with respect to the issuer (pre or post-acquisition), as distinct from the significant business, to ensure that the prospectus contains "full, true and plain disclosure of all material facts relating to the securities offered thereby" and "contains no misrepresentation that is likely to affect the value or the market price of the securities to be distributed"; or

- ought to assume liability for the disclosure in such prospectus for the disclosure therein relative to the issuer on a consolidated basis, or the significant business acquired (or proposed to be acquired) by the issuer.

To require a vendor to sign the applicable issuer certificate generally will require that this person or company undertake significant due diligence investigations of the issuer, including with respect to certain forward-looking matters (such as expected synergies) in relation to which they may well have had no input, and to make judgments as to materiality in respect of matters that they may be wholly ill-equipped to do.

It is entirely possible, if not likely, that the significant internal resources and costs associated with such due diligence exercises of a vendor, in addition to the contingent liability for misrepresentations in the prospectus that is the subject of the certificate contemplated by Section 5.13, will put Canadian public enterprises at a material competitive disadvantage when seeking to make "significant acquisitions" and to finance those acquisitions in any significant part, whether directly or indirectly, by accessing Canadian public capital markets. Such costs and liabilities will be borne by the vendor or have to be effectively reimbursed/indemnified by the prospective issuer-purchaser; in either case, adversely affecting the competitiveness of the prospective issuer-purchaser.[1]

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[1] The foregoing assumes that the issuer-purchaser would be willing to permit a vendor to conduct extensive due diligence on the issuer-purchaser. We would submit that many issuer-purchasers would be loath to permitting a vendor to conduct such due diligence investigations, especially if the vendor or its affiliates were current or potential competitors of the issuer-purchaser (which is often the case). In such circumstances, issuer-purchasers may prefer not to pursue a transaction that is otherwise in its best interests as a result of these proposed requirements.

Moreover, Section 5.13 will likely (and in our view unfairly) have a more significant adverse effect upon junior issuers, who often rely on accessing Canadian public capital markets to finance significant acquisitions to a greater extent than more senior issuers, who have greater internal cash resources and access to debt financing.[2]

We respectfully submit that responsibility for ensuring that the prospectus contains "full, true and plain disclosure of all material facts relating to the securities offered thereby" and "contains no misrepresentation that is likely to affect the value or the market price of the securities to be distributed" ought properly to rest with the issuer-purchaser and its agents or underwriters (in the case of the agents or underwriters, to the best of their knowledge) as it has in Canada, the United States and elsewhere for decades.

We further respectfully submit that Section 5.13 will unnecessarily discourage issuers from financing acquisitions by accessing Canadian public capital markets, significantly mitigating one of the principal reasons issuers become reporting issuers.

We acknowledge that there may be circumstances in which a vendor should properly take responsibility, as it were, for information contained in a prospectus concerning its former business; but, in our view, these circumstances would generally be confined to situations where the vendor is effectively the "promoter" of the issuer-purchaser and is clearly accessing Canadian public markets in an indirect fashion. Accordingly, to the extent such concern is not already addressed by Canadian securities laws as they relate to promoters, we would favour the more flexible approach currently reflected by National Policy 41-201.

Yours respectfully,

TD SECURITIES INC.

Should you require further information, please contact:

Michael Faralla, Managing Director

Tel (416) 307-8476

Fax (416) 982-4410

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[2] We believe it is currently unclear whether Section 5.13 would apply in circumstances where the issuer-purchaser finances its acquisition of a significant business with external debt and within the following year decides to repay that debt by accessing Canadian public capital markets. If so, the potentially anti-competitive problems discussed herein are compounded, as either or both of the issuer-purchaser and the vendor may cautiously assume that such a refinancing will occur within this time frame and accordingly costs will be incurred (and/or opportunities lost) even when no such financing occurs.

ARC RESOURCES LTD.

March 27, 2007

Alberta Securities Commission
400, 300 – 5th Avenue SW
Calgary, AB
T2P 3C4

RE: Proposed National Instrument 41-101 "General Prospectus Requirements"

Dear Sir or Madam,

In response to the Canadian Securities Administrators Notice and Request for Comment dated December 21, 2006 (the "Notice and Request") we would like to offer the following observations regarding the impact that the Proposed New Rules Governing Prospectuses Filed by Canadian Public Companies and Income Trusts (the "New Rules") will have on the oil and natural gas industry.

For the Canadian oil and natural gas industry the requirements under Part 5.13 "Certificate of Substantial Beneficiary of the Offering" of the New Rules will effectively limit the ability of the oil and gas industry, who have historically relied upon high levels of acquisitions as a means of rejuvenating their prospects, to finance their ongoing business plans in the Canadian capital markets by burdening one party to the transaction, with a potential liability to which it has no means of quantifying.

Within the Notice and Request the following specific question was asked:

1. We believe a person or company that controls the issuer, or a significant business, has the best information about the issuer or significant business. Do you agree? Such a person or company who also receives proceeds from the distribution should be liable for any misrepresentation in the prospectus about the issuer or a significant business. Are the definitions of substantial beneficiary of the offering and significant broad enough to cover this class of persons and companies?

    - While we do agree that a person or company that controls the issuer has the best information about that issuer we do not agree that a person or company who controls a "significant business" immediately prior to its acquisition by the issuer and is a "substantial beneficiary" of any subsequent equity offering has the best information regarding the issuer as a whole.

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- Within the context of the oil and natural gas industry it is our belief that the definition of both "substantial beneficiary" and "significant business" does not adequately capture the intent of this legislation. The relationship between the issuer, substantial beneficiary, and the significant business needs to be examined further.

Within the Notice and Request three other specific questions were posed. As we believe Part 5.13 is problematic in its entirety we have not offered a response to the remaining questions.

We are concerned that the certificate requirement under the New Rules will effectively end, or at the least significantly limit, our ability to complete substantial acquisitions when they are primarily financed through a public offering. Not only will the New Rules impair our ability to complete acquisition but will also have a negative affect on the prices realized by private and public sellers of assets and businesses as public entities may effectively be eliminated from the universe of potential buyers unless the seller is willing to assume inordinate risk. The New Rules will affect public issuers' ability to make acquisitions both domestically and outside Canada and will subject Canadian issuers to rules that do not apply to their U.S. and foreign competitors. The New Rules will adversely affect not only us but also all Canadian public issuers regardless of their business. It will certainly have the greatest impact on the oil and natural gas industry given the historically high levels of continuous asset rationalization common to the industry.

If you care to discuss this matter further please contact Dean Evans at (403) 503-8762 or myself at (403) 503-8772.

Regards,

Van Dafoe,
Treasurer

Tristone Capital Inc.
Suite 2020, 335–8th Avenue SW
Calgary, Alberta, Canada T2P 1C9

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Fax 403 294 9543
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TRISTONE CAPITAL

March 27, 2007

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

Re: Proposed NI 41-101 ("Proposed Rule") request for comments

To whom it may concern,

Tristone Capital is a global, energy advisory firm that provides comprehensive Investment Banking, Acquisitions & Divestitures and Global Equity Capital Markets services to oil & gas companies. Since being founded in 2001, Tristone has executed over 500 transactions including equity financings, asset divestitures and mergers & acquisitions for total value of over $38 billion.

Tristone believes that aspects of the Proposed Rule will adversely impact the oil & gas asset transaction market, lead to reduced investment in Canadian oil and gas assets and an increased reliance on private placement exemptions by Canadian issuers. Specifically, we are concerned with the requirement that a certificate of any "substantial beneficiary" of an offering be included in the prospectus if the issuer is proposing to acquire a "significant business" or has done so in the preceding year.

The oil and gas industry has comparatively high levels of asset rationalization which serves to foster investment in under-exploited assets by getting those assets into the hands of companies which will prioritize them in their capital budgets. In 2006, there were over $11.4 billion of acquisitions by Canadian junior, intermediate and royalty trust oil & gas companies in 54 transactions, representing 60% of all transaction activity in the sector. Of the acquiring companies, 70% also completed an equity financing in the 2006 calendar year, which is indicative of the high capital intensity of the oil & gas industry.

We believe that disposers of assets will not provide a certificate for an acquirer to include in a prospectus financing and would choose to accept a materially lower transaction price in order to avoid providing such a certificate. The Proposed Rule would require the seller to complete an unreasonable level of due diligence of the entire business of the acquirer even if the assets being sold only represent a fraction of disposer's business; in many cases, less than 5%. This will reduce the competitiveness of the transaction market, the ability of many junior producers to participate in the transaction market, the consideration received by sellers as well as the probability of successfully completing transactions.

Given the requirement that independent reserve engineers and independent auditors review the appropriate sections of an issuer's prospectus in cases where a material acquisition has occurred, and that management of the issuer is always required to certify that the information in the prospectus represents full, true and plain disclosure, we feel investors are already appropriately protected and implementation of the Proposed Rule as it stands will certainly have a material adverse affect on the acquisition and divestiture market as well as the Canadian equity capital markets.

Sincerely,

David M. Vetters
Managing Director, Investment Banking

March 28, 2007

Ref: 81-803 Implementing N1 81-101 Mutual Fund Prospectus Disclosure
Published December 22, 2006. Comments Close March 31, 2007
Section Proposed Fund Summary Form, Item 17. See Attached

Re: National Instrument 81-101
Mutual Fund Prospectus Disclosure
Form 81-101F1

Item 17 Dealer Compensation, See attached

Comments and Suggestion for better disclosure.

I have found that in many cases, the formula used in the calculation of trailing commissions is substantially different with many funds. For example, some funds may use an average of the daily close NAV for the quarter, and others may average the end of each month close NAV for the quarter. I have also found that, in some cases, the explanation of the basis of the calculation to be ambiguous. The result is that when a dealer or investor compares the rate of trailing commissions of one fund to another, he can be mislead.

A simple solution for better disclosure would be to require all funds to use the same standard formula for the calculation of the trailing commission. Each fund would be free to charge whatever rate it wishes to, but must use the same formula to calculate the trailing commission. My suggestion is that, the end of each month NAV be averaged for the quarter, and this average be multiplied by the rate the fund company wishes to charge with the result divided by 4

(((NAV close Jan + NAV close Feb + NAV close Mar)/3) X Annual Rate) /4 = Trailing Fee $ paid for quarter.

The advantages of using this simple formula as a standard is that the dealer or investor would only have to compare rates in order to know which fee is higher. Also, if he wanted to, it would be easy for him to do the calculation himself. For the quarter, he would only need to obtain three net asset values and the rate charged.

Improving transparency in this way will increase the efficiency of the market by encouraging competition

Sincerely

Bill Braithwaite, Private Investor

NATIONAL INSTRUMENT 81-101
MUTUAL FUND PROSPECTUS DISCLOSURE
FORM 81-101F1
CONTENTS OF FUND SUMMARY
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Item 17 Dealer Compensation

Provide, under the heading "Dealer Compensation", the disclosure of sales practices and equity interests required by sections 8.1 and 8.2 of National Instrument 81-105.

INSTRUCTIONS:

(1) Briefly state the compensation paid and the sales practices followed by the members of the organization of the mutual funds in a concise and explicit manner, without explaining the requirements and parameters for permitted compensation contained in National Instrument 81-105.

(2) For example, if the manager of the mutual fund pays an up-front sales commission to participating dealers, so state and include the range of commissions paid. If the manager permits participating dealers to retain the sales commissions paid by investors as compensation, so state and include the range of commissions that can be retained. If the manager or another member of the mutual fund's organization pays trailing commissions, so state this fact and provide an explanation of the basis of calculation of these commissions and the range of the rates of such commissions. If the mutual fund organization from time to time pays the permitted marketing expenses of participating dealers on a co-operative basis, so state. If the mutual fund organization from time to time holds educational conferences to which sales representatives of participating dealers may attend or from time to time pays certain of the expenses incurred by participating dealers in holding educational conferences for sales representatives, so state.

(3) If the members of the organization of the mutual funds follow any other sales practices permitted by National Instrument 81-105, briefly describe these sales practices.

(4) Include a brief summary of the equity interests between the members of the organization of the mutual funds and participating dealers as required by section 8.2 of National Instrument 81-105. This disclosure may be provided by way of a diagram or table.

Blakes

Blake, Cassels & Graydon LLP
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March 28, 2007

VIA EMAIL

Patricia Leeson, Co-Chair of the CSA's Prospectus Systems Committee
Alberta Securities Commission
4th Floor, 300 - 5th Avenue S.W.
Calgary, Alberta T2P 3C4

Heidi Franken, Co-Chair of the CSA's Prospectus Systems Committee
Ontario Securities Commission
20 Queen Street West, Suite 1903, Box 55
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Anne-Marie Beaudoin
Directrice du secretariat
Autorité des marches financiers
Tour de la Bourse
800, square Victoria
C.P. 246, 22e étage
Montréal, Québec H4Z 1G3

Re: Proposed National Instrument 41-101 *General Prospectus Requirements*, and Related Forms and Policy and Consequential Amendments

Dear Sirs/Mesdames:

This letter is being provided in response to the Notice and Request for Comment of the Canadian Securities Administrators ("*CSA*") dated December 21, 2006 with respect to proposed National Instrument 41-101 ("*Proposed NI 41-101*") and the related forms and companion policy, and the proposed consequential amendments to certain other National Instruments, forms and companion policies (the "*Consequential Amendments*"). We are generally supportive of the initiative of the CSA to harmonize the prospectus disclosure requirements both across Canada and with the continuous disclosure requirements and to include various policies and practices within Proposed NI 41-101. However, we submit that certain aspects of Proposed NI 41-101 are over-reaching, will unduly hamper certain aspects of the Canadian capital markets and business environment and go further than necessary to accomplish the stated policy objectives of the CSA in proposing such amendments. In addition, we have certain comments of a more technical nature on Proposed NI 41-101 and the Consequential Amendments.

A. PROPOSED NI 41-101 - CERTIFICATE REQUIREMENTS

Part 5 of Proposed NI 41-101 contains a comprehensive set of certificates that are proposed to be required, or may be required by the appropriate regulator, in a prospectus filed by an issuer, and therefore make the signatories liable for misrepresentations in a prospectus subject, in certain cases, to available defences.

(a) Section 5.13 - Certificate of Substantial Beneficiary of the Offering

The most significant proposed addition to the prospectus certificate requirements is contained in section 5.13 of Proposed NI 41-101, which proposes that a prospectus would be required to contain a certificate, in the applicable issuer certificate form, signed by each "substantial beneficiary of the offering". The proposed definition of "substantial beneficiary of the offering" contained in section 5.13(2) is extremely broad and includes any person or company that (a) currently holds, held within the year preceding the date of the prospectus, or following the completion of any transaction or series of transactions disclosed in the prospectus is reasonably expected to acquire, control of (i) the issuer, (ii) a "significant business of the issuer", or (iii) voting securities carrying 20% or more of the voting rights attached to any class of voting securities of the issuer or a significant business of the issuer, and (b) is reasonably expected to receive, directly or indirectly, 20% or more of the proceeds of the offering of securities under the prospectus, whether as consideration for property or services, repayment of debt or otherwise.

The stated policy objective of the CSA for this proposed amendment is that the CSA believes a person or company that controls the issuer or a significant business acquired or to be acquired by the issuer has the best information about the issuer or significant business, and that such a person who also receives proceeds from the distribution should be liable for any misrepresentations in a prospectus regarding the issuer or a significant business. In particular, the CSA has stated that it believes these new provisions will create appropriate incentives for the person or company with the best information about the issuer or a significant business to ensure the prospectus contains full, true and plain disclosure of all material facts relating to the securities being distributed, which will directly benefit investors and prospective investors and raise confidence in the Canadian disclosure regime: see "Anticipated Costs and Benefits" contained in the Notice and Request for Comment.

Although we concur with the CSA's policy objective of obtaining increased confidence in the Canadian capital markets, we believe the provisions contained in section 5.13 of Proposed NI 41-101 are overreaching in several respects. Our most significant concern relates to the apparent requirement for the vendor of a "significant business" – whether the transaction has been completed within the prior year or a definitive agreement has been executed at the time of the prospectus, and which would include an interest in an oil and gas property to which reserves have been specifically attributed (as per the definition of "business" in section 8.1 of National Instrument 51-102) – who might be "reasonably expected to receive, directly or indirectly, more than 20% of the proceeds of the offering of securities under the prospectus" as part of the purchase price for the business or assets, to sign the prospectus and assume full joint and several liability for the disclosure contained in the entirety of the prospectus, and not just the portions pertaining to the "significant business" acquired or to be acquired by the issuer from that vendor.

A prospectus generally contains a significant amount of disclosure regarding an issuer that is not related to the "significant business" being financed, including its historical operations (and previous acquisitions and transactions in which the "substantial beneficiary of the offering" had no involvement), description of the general industry and a list of applicable risk factors. We believe the requirement to have the "substantial beneficiary" certify the prospectus as a whole is unduly burdensome on potential vendors of businesses and assets, as this would require them to undertake a full due diligence review of the issuer and its business and operations in order to even position themselves as able to take advantage of a due diligence defence under the provisions of applicable securities legislation which defence, even if successful, may require significant cost and time to establish.

Additionally, the test as to when a person "directly or indirectly receives 20% or more of the offering of securities under the prospectus as consideration for property or services or repayment of debt" appears to be overly broad and subjective, as often an issuer will undertake multiple acquisitions or have significant capital expenditure programs where monies are fungible as between projects, particularly over the course of a one-year period.

Furthermore, the proposed requirement in section 5.13(6) to further potentially require any person or company that is a control person of a substantial beneficiary of the offering to sign a prospectus will lead to even further complications and provide additional disincentive for vendors to deal with issuers that would require access to the Canadian capital markets in connection with a potential significant acquisition, although we do understand the CSA's stated intention that such provisions would only be exercised where a person or company is attempting to avoid prospectus liability through the imposition of a holding company in its ownership structure.

We submit that even if a "substantial beneficiary" prospectus certification requirement was limited to the information concerning the "significant business" contained in the prospectus, to impose <u>any</u> type of prospectus certification requirement on the vendor of a business or assets where the purchaser may equity-finance a portion of the purchase price at any time within the year following the date of the transaction involving the significant business will create a significant "chill" on the mergers and acquisitions market in Canada. In particular, we submit that such a requirement will place significant restrictions and roadblocks on the ability of Canadian issuers to acquire businesses and assets that may require full or partial equity financing. Such a requirement would lead a rational seller to marginally prefer either foreign acquirors or, at a minimum, prefer large acquirors who could guarantee that an equity financing would not be required within a year following the date of the transaction so that the vendor could avoid any potential prospectus liability, either of which would significantly restrict the ability of smaller and mid-size Canadian businesses to grow for the benefit of their securityholders. While the CSA is seeking to protect participants in the Canadian capital markets, we submit that such measures will unduly and unnecessarily hamper Canadian issuers and capital markets and deny investors in Canadian issuers access to acquisitions that may be accretive and beneficial for such investors and the Canadian economy in general.

We submit that the existing prospectus liability regime provides investors with recourse and access to the appropriate parties for a misrepresentation in a prospectus, and certain of the CSA's concerns would be addressed under the current "promoter" certification/liability provisions of Canadian securities legislation. Vendors of a "significant business" to a Canadian issuer have generally already assumed and been allocated significant risk in the terms of the purchase agreement (by way of representations and warranties, indemnities and retained liabilities) with respect to the significant business sold or to be sold to the issuer, and adding an additional layer of uncertainty and risk on top of this will severely dissuade parties from completing transaction with Canadian issuers who may need to access the Canadian capital markets within the following year. In addition, purchasers of securities under a prospectus will generally have the ability to (indirectly) obtain recourse against the seller of a "significant business" for misleading commercial information provided about a "significant business" by way of a claim made by the purchaser/issuer under the indemnification clauses of a standard purchase and sale agreement for losses incurred by the purchaser/issuer as a result of the breach of the commercial representations and warranties in the agreement.

Under many purchase and sale transactions, the commercial representations and warranties are heavily negotiated in order to allocate risk and arrive at an agreeable transaction price, and the added uncertainty of potential prospectus liability for the vendor of a "significant business", at any time within the next year and for an amount over which it may have no control, will add additional complications and disincentives to the negotiation of the transaction by a seller as it removes the ability to appropriately negotiate the price and deal terms as risk is appropriately allocated.

Finally, the proposed requirement to have any person who "controls" an issuer, or who holds more than 20% of an issuer or a significant business of the issuer" to certify a prospectus is again over-reaching as this may catch otherwise passive investors, particularly at the 20% level. Several Canadian issuers and companies have passive investors that are significant securityholders (including pension funds and institutional investors) that have no particular control or direction over an issuer or an acquired "significant business" other than perhaps certain board representation, and we do not believe it is appropriate to have such persons sign a prospectus certificate. We submit the current "promoter" certification requirements address the policy objective of the CSA in this respect. Alternatively, we would recommend that in order to prevent persons from attempting to avoid prospectus liability through the imposition of a holding company, the CSA implement a provision whereby the regulator may require the certificate from a person who controls an issuer in such circumstances, as is done in other sections of Proposed NI 41-101.

(b) Section 5.5 - Trust Issuers

Many income or royalty trusts have appointed a corporate trustee such as Computershare Trust Company of Canada, CIBC Mellon Trust Company, etc.. as trustee, which has allocated or delegated the responsibility to govern and manage the business and affairs of the trust to a corporate or other entity that is a (direct or indirect) wholly-owned subsidiary of the Fund ("*Opco*"), either within the trust indenture or through some form of administration or delegation agreement. As a result, the directors and officers of Opco, which is not an "external management company", govern and manage the business and affairs of the trust, and it is the CEO and CFO of Opco, along with any two directors of Opco, that sign the prospectus on behalf of the trust just as such officers and directors would sign on behalf of a corporate issuer. We believe this is the appropriate practice given the definitions of "director" and "officer" in the *Securities Act* (Ontario) (the "*OSA*") and analogous legislation in other jurisdictions, which includes persons "acting in a capacity similar to that" of a director or officer of a company, which the directors and officers of a company such as Opco do.

The current wording in section 5.5(2) of Proposed NI 41-101 could require the chief executive officer, chief financial officer and directors of a corporate trust company such as Computershare Trust Company of Canada or CIBC Mellon Trust Company to be required to sign the prospectus certificate, which we do not believe to be the intent. We suggest that the situation may be rectified by amending section 5.5(1)(b) to read: "...on behalf of the trustees of the issuer by any two trustees of the issuer <u>or by any two individuals who perform functions similar to those performed by the directors of a company</u>." This approach, which is consistent with the proposed wording in section 5.5(1)(a) with respect to the CEO and CFO of a trust, would also be consistent with the definitions of "director" and "officer" in the OSA and tie into the prospectus liability provisions in section 130 of the OSA.

(c) Section 5.8 - Reverse Takeovers

The proposed requirement in section 5.8 of NI 41-101 to have a prospectus certificate signed by "each individual who is a director, chief executive officer or chief financial officer" of the reverse takeover acquiror is onerous as "reverse takeovers" can often involve large and sophisticated entities. To require each director of the reverse takeover acquiror to sign a certificate does not serve any further purpose than if the certificate were signed by the CEO, CFO and any two directors of the reverse takeover acquiror, as is done with a regular corporate issuer. If the CSA's concern is that, under section 130(1) of the OSA, liability is only imposed on all of the directors of the <u>issuer</u> regardless of which directors of the issuer sign the prospectus, and then only on each other person who actually signs the prospectus certificate, we would recommend either changing the legislation or taking the approach required for promoters where one authorized signatory executes the certificate on behalf of the promoter. This would result in corporate liability then attaching to the reverse takeover acquirer rather than the individuals, who in virtually all circumstances are will be protected form personal liability through corporate indemnities and directors' and officers' insurance in any event.

(d) Section 5.11 - Certificate of Promoter

We submit that the proposed requirement in section 5.11(4) of Proposed NI-41-101 whereby the regulator may require any person or company that is a control person of either a promoter of the issuer or a person or company who was a promoter of the issuer within the two preceding years to sign a prospectus certificate is potentially overreaching. If the intent of such a provision is solely to require certification where the regulator reasonably determines that a person or company is attempting to avoid prospectus liability merely through the insertion of a holding company to act as promoter, the concept is fine and we would suggest that the wording be amended to only address such situations. However, several companies have passive investors that are "control persons" (including pension funds and institutional investors) that have no particular control or direction over a "promoter" (other than perhaps certain board representation), and we do not believe it is appropriate to have such control persons sign a prospectus certificate, absent the "holding company" concern of the CSA noted above. Again, we submit that such a requirement is unnecessary as the definition of "promoter" includes "a person or company who, acting alone or in conjunction with one or more persons, companies or a combination thereof, directly or indirectly, takes the initiative ...". The definition is broad enough, and includes the concepts of acting in conjunction with others and direct and indirect actions, to already may require persons or companies attempting to avoid prospectus certification through the implementation of a holding company to be caught by the prospectus certification requirement. Accordingly, we would recommend that section 5.11(4) of Proposes NI 41-101 be eliminated and the appropriate guidance and policy be set forth in the Companion Policy.

(e) Section 5.15 - Certificate of Operating Entity

We understand the CSA's policy rationale for requiring a prospectus certificate to be provided on behalf of an "operating entity", but the requirement to have each individual who is a director, chief executive officer or chief financial officer of an operating entity is overly burdensome. Similar to our comments with respect to certificates to be signed by takeover acquirors in a reverse takeover situation, we believe adequate provisions can be made by having a single signatory sign the prospectus on behalf of an operating entity.

B. PROPOSED NI 41-101 - PERSONAL INFORMATION FORMS

Similar to the comments with respect to substantial beneficiaries and promoter certificates described above, we submit that the requirement in section 9.2(b)(ii)(D) of Proposed NI 41-101 to include a personal information form for each director and executive officer of a promoter or substantial beneficiary of the offering is unduly burdensome and does not benefit the capital markets, but simply creates another level of complexity and inconvenience on potential vendors of properties or assets who may otherwise engage in transactions with Canadian issuers but may avoid doing so in order to avoid the prospectus process and accompanying liability.

C. PROPOSED NI 41-101 - REQUIRED DOCUMENTS FOR FILING A LONG-FORM PROSPECTUS

The requirement contained in section 9.3(a)(xi) of Proposed NI 41-101 to file an undertaking with respect to an operating entity should be clarified that such a requirement would only be required where the issuer is not required to consolidate the results of the operating entity in the issuer's consolidated financial statements and disclosure.

D. PROPOSED AMENDMENTS TO FORM 44-101 F1

The proposed amendments to Item 16.1 of Form 44-101 to require a substantial beneficiary of the offering to disclose details regarding the value received from the issuer should not be required, as we submit that the overriding requirement of the issuer to provide full, plain, true disclosure in its prospectus in respect of a significant business or significant acquisition should be sufficient. Purchasers under the prospectus are investing in the issuer and not the substantial beneficiary and therefore such disclosure should not be relevant or required. Furthermore, the proposed requirement for a substantial beneficiary of the offering to disclose how the consideration was determined, the date the subject asset was acquired by the substantial beneficiary (i.e. the vendor to the issuer) and the cost of the asset to the substantial beneficiary of the offering provides no benefit to the public markets and again will provide a disincentive for vendors to do business with Canadian acquirors who may undertake a prospectus financing within the year following the date of the transaction. Similarly, the expanded disclosure with respect to substantial beneficiaries with respect to bankruptcies or other penalties and sanctions is unnecessary and of no value to investors, as the promoter disclosure requirements should address the CSA's concerns.

CONCLUSION

We hope you will consider the above comments and the potential significant negative impact on the Canadian capital and mergers and acquisitions markets and general environment that may result from certain of the proposed amendments. While investor protection and integrity of the Canadian capital markets is obviously a worthy goal, over-intrusion into the business sector will result in detrimental effects to Canadian issuers and, as a result, the securityholders that the CSA is trying to protect. We are happy to discuss these comments further with you at your convenience. Should you have any questions, please contact Chad Schneider at (403) 260-9660.

Yours truly,

Blake, Cassels + Graydon LLP

30764990.2

Freehold
ROYALTY TRUST

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CALGARY, ALBERTA T2P 3N4
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Via Electronic Correspondence to Addressees Indicated in Schedule A

March 28, 2007

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

Dear Sirs:

Re: Comments on Proposed National Instrument 41-101 "General Prospectus Requirements".

We are moved to comment on Part 5 of the Proposed Rule requiring certificates from any "substantial beneficiaries of the offering" and certificates of trust issuers.

Freehold Royalty Trust (Freehold) is an open ended mutual fund trust listed on the Toronto Stock Exchange (FRU.UN). Freehold is included in the S&P/TSX Trust Index. The Trust is an oil & gas energy trust and celebrated its 10th anniversary in November 2006.

Freehold's strategy is to acquire and hold royalties on oil and natural gas producing properties in Canada. Today approximately 78% of our oil and gas production volumes and 84% of our funds from operations are from royalty interests.

Our oil and gas production is very broadly diversified with royalty and other production derived from 23,000 oil and gas wells in British Columbia, Alberta, Saskatchewan, Manitoba and Ontario.

Royalties have been focus of our Trust for 10 years of its existence.

- Freehold issued its IPO in November 1996 to buy royalties and working oil and gas properties from our sponsor. To fund the acquisition of the original properties we issued 26.5 million Trust Units for sale proceeds of $265,000,000.
- In 2001 we purchased additional royalties previously owned by Marathon Canada Ltd. for $25.4, and issued, by prospectus, 3,300,000 Trust Units for gross proceeds of $31.8 million.

- At time of purchase from Marathon Canada, Freehold had interests in over 13,000 oil and gas wells.
- In 2006 we purchased additional royalty interests in Western Canada from Canadian Natural Resources Ltd. (CNRL) for $345 million issuing 13,505,000 Trust Units under prospectus dated May 3, 2005 for gross proceeds of approximately $210 million. Coincidentally with the sale, we issued 3,858,520 Trust Units to CNRL for gross proceeds of $60 million.
- Prior to purchase of Canadian Natural Resources Freehold had interests in approximately 1 million acres of land and over 17,000 oil and gas wells.

Under the new Rule proposed as Part 5.13(1) of Schedule 1 Appendix B to National Instrument 41-101 "General Prospectus Requirement

This new requirement that a "substantial beneficiary of an offering would be required to provide a certificate in support of the prospectus making them also liable for "full, true and plain disclosure of all material facts relating to the securities being distributed" will result in a definite and insurmountable hurdle for an existing Canadian issuer who wishes to use the proceeds of the issue to acquire oil and gas properties.

The need to include proforma information in a prospectus will result in the liability for the full, true and plain disclosure and including liability for all of the issuers pre issuance information and forecasts being extended to the seller of assets to such issuer. In the case of Freehold Royalty Trust in both its 2001 and 2005 sale of Trust Units under prospectus the sellers of the assets to be acquired would have to ensure that all the information regarding the issuer existing assets, business activities, prospects, plans and forecast was "full, true and plainly disclosed".

This would require, in our case, the seller evaluating, assessing and understanding a business with a very large and diverse asset base in full detail.

For a seller to sign a prospectus they also have to ensure the purchaser would continue to develop and operate the assets they owned prior to the acquisition and the assets being acquired in accordance with the assumptions incorporated in the prospectus. The potential for liability would have to be reflected in their financial information and would be difficult to quantify and an unacceptable byproduct of the asset sale particularly if the seller(s) were individuals.

<u>Our</u> belief is that neither Marathon or CNRL could have been convinced to co-sign our offering prospectus which permitted Freehold to finance the respective asset acquisitions:

- In the case of the Marathon acquisition, their sale was to facilitate their exit from Canada. Liability arising out of a prospectus related to that sale would not have permitted a "clean" exit.

- In the case of the CNRL acquisition, Freehold's purchase of the partnerships from them would have significantly increased the necessary time and effort which would have had to be dedicated to assess the validity of every aspect of Freehold's existing assets and business as well as the impact of the sale properties.

To be successful in completing our two major acquisitions in the environment of the proposed new rule 5.13(1) it is likely that Freehold would have had to finance 100% of the acquisition price for each of the acquisitions with the intent to raise equity to replace the debt immediately following the first anniversary of the acquisition when the proposed rule would no longer require the seller's certificate.

The property purchase from Marathon would have been possible under this scenario. The purchase from CNRL would not have been financed at acceptable terms due to the size of the transaction related to the size of Freehold.

Our expectation is that implementation of proposed Part 5 will put Canadian listed public entity at a very significant disadvantage to private entities or foreign listed public entities in transacting major deals for Canadian assets. Such disadvantages reduce the value of Canadian businesses and assets.

We respectfully request the Commission remove the proposed rule reflected in Part 5.13(1) of the Proposed Amendments to NI41-101 "General Prospectus Requirements".

Under the new Rule proposed as Part 5.5 of Schedule 1 Appendix B to National Instrument 41-101 "General Prospectus Requirement

We also have a concern with respect to the prospectus certification requirements for trusts provided for in Sections 5.5(1) and (2) of Schedule 1 to NI 41-101. As Freehold has a corporate trust, Computershare Trust Company of Canada, the requirement that the CEO and CFO of Computershare Trust Company of Canada and two directors of Computershare Trust Company of Canada execute any prospectus certificate is impracticable.

Our declaration of trust, like most public energy trusts, provides that the trustee is a corporate trustee appointed by our unitholders. Our declaration of trust delegates, among other things, the authority to make all decisions relating to public offering including to execute prospectus certificates to the board of directors of Freehold Resources Ltd., as subsidiary of Freehold. In addition, the board of directors of Freehold Resources Ltd. oversees all operations of the controlled entities of Freehold, including Freehold Resources Ltd., and all public reporting by Freehold. Computershare Trust Company of Canada's primarily responsibilities are to hold the assets of Freehold (shares, subsidiary trust units, debt and net profit interests issued by Freehold's various controlled entities) and managing the cash distributions to unitholders. In performing its responsibilities under the declaration of trust Computershare Trust Company of Canada and its officer and directors would not have been in a position to execute a prospectus certificate. Freehold has filed many prospectuses which have contained certificates executed by the CEO and CFO of Freehold Resources Ltd. and two directors of Freehold Resources Ltd. on behalf of the board of directors of Freehold Resources Ltd. We submit that requiring certification of Computershare Trust Company of Canada would not add meaningful protection for investors.

We note that Section 5.5(3) of Schedule 1 to NI 41-101 provides an exemption from the requirements of Sections 5.5(1) and (2) of Schedule 1 to NI 41-101 to issuers that are investment funds in similar circumstances. **We respectfully request the Commission provide a similar exemption be provided to trusts that meet the same criteria.**
If no exemption is provided, we would request that a reasonable transition period be provided so that a meeting of unitholders of Freehold can be called to substantially reorganize the trust in order that it may have access to the public markets.

Yours truly,

FREEHOLD ROYALTY TRUST

(signed) “Joseph N. Holowisky”

Joseph N. Holowisky
Vice-President, Finance & Administration
C.F.O. and Secretary

INVESTMENT INDUSTRY ASSOCIATION OF CANADA
ASSOCIATION CANADIENNE DU COMMERCE DES VALEURS MOBILIÈRES

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Director - IIAC

March 28, 2007

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Dear Sirs/Mesdames

Re: National Instrument 41-101 – *General Prospectus Requirements* and related instruments

Thank you for providing us with the opportunity to comment on the above noted instrument. The Investment Industry Association of Canada (IIAC or the Association) is the professional association representing over 200 investment dealers in Canada. Our mandate is to promote efficient, fair and competitive capital markets for Canada and assist our member firms across the country.

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General

The Association generally supports CSA initiatives that consolidate and harmonize regulation across Canada. We believe it is essential to simplify and streamline the Canadian regulatory framework.

To the extent that the proposed changes to NI 41-101 achieve this harmonization objective, we are supportive. However, we have concerns as to how it is proposed that harmonization and consistency is to be achieved.

It appears that in the harmonization process, little attention was paid to simplifying the Instrument or revisiting whether there is an actual need for the regulation contained within it. The resulting Instrument contains more layers of prescriptive regulation which now include provisions from various provinces. The industry would have been better served by a carefully considered review of whether such prolific and detailed regulation is required, and how the industry and investors could be better served by a more principles-based document.

We are also concerned that certain provisions in the Instrument are not applicable to all provinces. Most notably, a number of certificate requirements (many of which are burdensome) do not apply in Ontario. This increases the complexity and cost from a compliance standpoint. It also results in a non-level regulatory playing field among jurisdictions, as there would be a regulatory disincentive to file in the other provinces. It is misleading to characterize such regulation as a National Instrument when key features do not apply to the nation's largest province.

Specific Issues

In addition to the general issues described above, there are a number of key provisions in the Instrument that are of concern to our members.

Substantial Beneficiaries of the Offering

The requirement for "substantial beneficiaries of the offering" to sign the certificate is very problematic. The certificate requirement is a blunt and unfocussed means to address the CSA concerns about liability avoidance by parties with significant information about the issuer.

If implemented, this requirement will have significant unintended negative consequences. Requiring substantial beneficiaries to certify the disclosure of the *entire prospectus*, rather than the portions to which they have specific information, imposes a significant burden on these parties. The resulting costs will not only accrue to the parties to the transaction, but to entire sectors of the economy. These costs are not properly aligned with the intended benefits of the requirement.

Making a substantial beneficiary responsible for all of the information in the prospectus and potentially liable for the entire amount of the offering, whether it relates to their transaction and whether such funds flow to them, creates a disproportionate risk profile and cost/benefit outcome for potential vendors. It is also an ineffective and improperly focused means of ensuring appropriate prospectus disclosure. Although the substantial beneficiary is clearly in the best position to provide and certify the accuracy of the information relating to its business, it generally does not have first hand information or knowledge relating to the purchaser's business.

Requiring the substantial beneficiary to obtain third party assistance to investigate and verify this information imposes a significant regulatory cost without a clear benefit. The regulation currently requires that this disclosure be certified by parties with direct knowledge and access to information. The requirement places the risk on the wrong party. It is unclear why a vendor should be liable for information of a purchasing entity. The risk should be proportionate and link to matters over which the vendor has control and expertise.

The certification burden introduces time and cost elements that will likely result in many transactions becoming uneconomical. As a result, there is a real danger that substantial acquisitions undertaken by public issuers in Canada will be materially reduced. This distortion of the market by regulatory transaction costs ultimately will affect issuers and industry segments (particularly the oil and gas sector) by making them less profitable. Certain vendors may choose not to undertake business with Canadian public companies due to the greatly increased regulatory risk. This has significant implications for the economic standing and competitiveness of Canadian issuers, as similar requirements do not exist in the U.S. or elsewhere.

Rather than impose such a broad and far reaching requirement to address a specific and identifiable issue, the CSA should use its prospectus receipting powers to target situations that appear to have been constructed to avoid liability. This focused use of existing rules would send a strong message to those seeking to structure such transactions, and would not result in the significant damage to the industry that would flow from the broad certification requirement.

Restriction of Compensation Options

We oppose this provision on a number of fronts. The first is that it is not apparent that the problem this restriction is intended to solve has been an issue in the industry.

We are not aware of any practice in which dealers acquire securities through compensation agreements with a view to re-sell them without the prospectus liability. In fact, many dealers voluntarily impose time based resale restrictions on such securities. The CSA should not create new regulation unless it is clear that a problem exists. If it is clear that there is a market problem, the proposed solution must address the issue directly to avoid unintended consequences.

The proposed restriction appears to fall short on both counts. If the problem of backdoor underwriting can be shown to exist, an attempt to eradicate it through limits on broker compensation is a badly targeted solution. If the regulators are concerned about liability on a post prospectus distribution, they should deal with that issue directly rather than placing restrictions on broker compensation, which appears to be only peripherally, related to the issue. Would such a problem not be adequately addressed by the civil liability regime that is being introduced throughout Canada?

It is not an appropriate for the CSA to regulate market forces. Compensation agreements between issuers and dealers are not matters affecting the public interest, and should not be the subject of regulation, either directly or under the auspices of dealing with another market issue.

Bona Fide Estimate of the Range of the Offering Price

Members have expressed concern about mandating disclosure of an estimated price range in the preliminary prospectus. In an initial public offering in particular, the estimated price range may change materially due to market conditions from the initial filing of the preliminary prospectus. Certain of our members are concerned that the range provided in the preliminary prospectus will effectively limit the issuer's flexibility as investors' expectations will be set and the effectiveness of the price discovery process constrained.

Although an estimate may provide potential investors with useful information in some circumstances, the fact that the issuer may change the price without amending the preliminary prospectus is evidence that the CSA does not believe it to be essential to investor protection. Issuers should be afforded the flexibility to include or exclude this information, depending on the circumstances of the offering.

We would further note that in an initial public offering, the price range is generally set after the initial preliminary prospectus is filed. If a concern exists regarding inconsistencies between the green sheets and the preliminary prospectus, a more practical solution with fewer unintended consequences would be to only require the estimated price to be included in the amended preliminary prospectus filed immediately prior to the commencement of marketing activities. The estimated price would also be included in the commercial copies of the preliminary prospectus.

Advertising and Marketing

The provisions in the companion policy interpreting the advertising and marketing requirements highlights a clear difference between regulatory expectations and industry practice. The provisions in the companion policy, if followed, would lead to a rather bizarre result in respect of dealer "road shows" conducted to ascertain interest in potential offerings. In particular sections 6.5(3) and (4) would not permit dealers making a presentation to potential investors to communicate any details about the commercial features of the issue beyond: the type of security; price, if determined (which it may not be at that stage); the business of the issuer (but only if it is a non reporting issuer); if the security qualifies for special tax treatment (but they cannot explain how); and how many securities will be available.

The resulting presentation would not permit registrants to convey any meaningful information to potential investors, even when such information is contained in the prospectus. It appears that even an oral presentation discussing the prospectus would be prohibited. Surely, this is not the intention of the regulation.

Potential investors seeking information would not be well served by this interpretation, as rather than being provided with a summary of the salient aspects of the transaction, with a facility to ask questions, their information session would consist of a supervised prospectus reading session which investors or their representatives would be unlikely to attend. It is not clear why, at a minimum, it is not permissible to extract and present information directly from the prospectus or from other publicly available information, as this would serve the interests of investors without public interest concerns. If the CSA has concerns about selective disclosure in these information sessions, they have existing powers that can be used to address this problem.

Conclusion

The Association supports CSA efforts to harmonize and consolidate regulation. However, it is critical that in undertaking these efforts the CSA examine whether there is a real market need for the regulation, and if so, whether that need can be accommodated in a more flexible, less prescriptive principles-based framework. If this analysis is not undertaken, the result will be a continued proliferation of complex and costly regulation. The benefits of harmonization under such a scenario are marginal and arguably not worth the significant effort to achieve it.

Thank your for considering our comments. If you have any questions please do not hesitate to contact the undersigned.

Sincerely,

Susan Copland
Director, IIAC

SCHEDULE A

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March 28, 2007

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Dear Sirs and Mesdames:

Re: Response to Canadian Securities Administrators' (CSA's) Request for Comments on Proposed National Instrument 41-101 General Prospectus Requirements and Related Amendments

Phillips, Hager & North Investment Management Ltd. ("PH&N") is one of Canada's oldest independent investment management firms with assets under management of over $60 billion. PH&N manages investments for corporate and multi-employer pension plans, endowments, non-profit entities, government and private accounts.

PH&N supports the CSA's initiative to harmonize prospectus and continuous disclosure requirements across Canada. However, we would like to take this opportunity to address one of the proposed consequential amendments to National Instrument 81-101 *Mutual Fund Distributions* ("NI 81-101) specifically an amendment to Part 2 of NI 81-101 that would add a new section 2.7 as follows:

> Any unaudited financial statements included in or incorporated by reference in a simplified prospectus must have been reviewed in accordance with the relevant standards

> set out in the Handbook for a review of financial statements by the mutual fund's auditor or a public accountant's review of financial statements.

The stated summary and purpose for this change, as set out in the Notice and Request for Comments is as follows:

> Any unaudited financial statements included in or incorporated by reference into the prospectus must be reviewed in accordance with the relevant standards set out in the Handbook. This harmonizes the prospectus requirements with the continuous disclosure requirements.

Currently, National Instrument 81-106 *Investment Fund Continuous Disclosure* ("NI 81-106") does not require auditor review of interim financial statements. There is, however, a requirement in section 2.12 of NI 81-106 to disclose the fact that interim financial statements have not been reviewed by an auditor coupled with the additional requirement, set out in section 2.5 of NI 81-106, to have the board approve interim financial statements.

In the last four years the timing, form and presentation of information given to unitholders of prospectus qualified mutual funds ("Prospectus Funds") has dramatically changed. The 2003 survey conducted by Compass Inc. for the CSA in connection with NI 81-106 revealed a need for readable reports containing useful information. The introduction of a new continuous disclosure regime aimed at providing more timely and useful information to investors was clearly an effort to address this need. A key feature of this regime was a requirement that Prospectus Funds make available annual and interim management reports of fund performance. The additional costs associated with creating and distributing these reports was considered acceptable based on the benefits of providing more timely and useful information.

Our concern is that requiring an auditor to review interim financial statements does not contribute to this process or otherwise benefit unitholders in a way that justifies the cost. PH&N has long championed low-fee investment funds and makes every effort to maximize performance while containing costs. The costs associated with an auditor's review of the interim financial statements will ultimately be borne by unitholders who, in our experience, rarely request or access interim financial statements.

While we appreciate that a review of interim financial statements is a requirement in other prospectus qualified offerings, we believe that the Prospectus Funds are unique for the following reasons:

- Prospectus Funds are in constant distribution and information included in the prospectus is updated annually;
- Prospectus Funds are subject to restrictions on investments and related party dealings all of which provide protection and additional assurance to investors; and
- the continuous disclosure regime for Prospectus Funds is extensive and provides a steady stream of updated information that has been specifically tailored to the needs of mutual fund investors.

In a context where annual financial statements are audited, interim financial statements are approved by the board, prospectuses are renewed annually and unitholders can receive ongoing information on the performance and outlook of their investments, we believe incurring the additional costs of an auditor's review of interim statements is not in the best interests of unitholders.

Thank you for this opportunity to address our concern regarding proposed amendments to NI 81-101. We would be pleased to discuss our comments with you.

Yours truly,

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March 28, 2007

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Dear Mesdames:

Re: Request for Comments on Notice of Proposed NI 41-101, specifically with respect to proposed amendments to NI 81-101 Mutual Fund Prospectus Disclosure

We are pleased to respond to the request for comments on the Canadian Securities Administrators ("CSA") proposed NI 41-101 General Prospectus Requirements (the

"Proposed Instrument"), specifically with respect to certain proposed amendments to NI 81-101 Mutual Fund Prospectus Disclosure, more particularly described below.

TD Asset Management Inc. ("TDAM") is a wholly owned subsidiary of The Toronto-Dominion Bank and is one of Canada's largest asset managers. As of February 28, 2007, TDAM managed approximately $160 billion for mutual funds, pooled funds and segregated accounts and provided investment advisory services to individual customers, pension funds, corporations, endowments, foundations and high net worth individuals. TDAM managed approximately $53 billion in retail mutual fund assets on behalf of more than 1.4 million investors at that date.

We are responding in our capacity as an investment fund manager.

1. *Auditor Review of Interim Financial Statements (NI 81-101 s. 2.7)*

Under Appendix I, Schedule 1, of the Proposed Instrument, the following amendment to NI 81-101 is proposed:

> **Review of unaudited financial statements** – Any unaudited financial statements included in or incorporated by reference in a simplified prospectus must have been reviewed in accordance with the relevant standards set out in the Handbook for a review of financial statements by the mutual fund's auditor or a public accountant's review of financial statements.
>
> (hereinafter the "Proposed Amendment 2.7")

In effect, should the CSA adopt Proposed Amendment 2.7, all investment funds regulated by NI 81-102 will be required to have their interim financial statements ("Interims"), whether filed prior to or after the filing of a simplified prospectus, reviewed by an auditor.

We appreciate the CSA's desire to adopt a comprehensive set of rules for all issuers including investment funds. While we support the CSA's initiative to substantially harmonize the general prospectus requirements with the continuous disclosure rules set out in other related National Instruments, we have three main concerns with the Proposed Amendment 2.7; namely, the additional cost that would be borne by unitholders, the relative value of an auditor's review of Interims to investors and the time allocated to complete such review.

From a cost benefit perspective, we believe the additional costs associated with having an auditor review our Interims would outweigh the related benefits. We are of the opinion that in order to create added value to an investor, such a review would have to result in a quasi-audit or full audit of the Interims. However, given that investment fund managers are already held to a high degree of liability, as Interims are incorporated by reference in a simplified prospectus and the board of directors of an investment fund's manager is required to approve the fund's Interims, we strongly believe that an auditor's review would be redundant and not justify the additional costs to be borne by investors.

TDAM believes that there would be little value to unitholders in having an auditor review its investment funds' Interims. In accordance with current policies and procedures set out in NI 81-106, our Interims are prepared in essentially the same format and employ the same accounting policies as used in our most recent annual financial statements. Having an auditor review an investment fund's Interims may not necessarily reveal any material errors nor substantially enhance their quality. By way of comparison, corporations are dramatically different from investment funds in that many corporations experience frequent and complex changes that do not occur in an investment fund. For example, such changes may include:

(a) acquisitions;
(b) sale of corporate assets; and
(c) complex judgments with respect to reserves and other matters.

Investment funds do not have the same degree of variability as corporations, and the nature of the disclosure contained in an investment fund's Interims is substantially the same as contained in its corresponding annual financial statements.

Pursuant to NI 81-106, an investment fund is required to file and deliver its Interims and interim management report of fund performance on or before the 60th day after the end of the most recent interim period of an investment fund. If we are required to have an auditor review our Interims, we would be adding significant time to an already compressed production timeline. The result may jeopardize our ability to file and deliver these documents within the required time period. Moreover, adding this extra step to the delivery process would decrease the little flexibility there currently is in our production schedule.

We do believe, however, that it may be reasonable to require an auditor to review the Interims of an investment fund, only in the following circumstances:

(a) a material change in the accounting policy of an investment fund;
(b) a material change in the regulatory or generally accepted accounting principles that would impact an investment fund's disclosure; or
(c) a new fund is launched for which a most recent annual financial report does not exist.

This would be consistent with our current practice.

It is worth noting that an auditor's review of an investment fund's Interims may serve to confuse the minds of investors as to the meaning of an "auditor review" versus an "audit".

Certain changes previously made to NI 81-106 were made with a view to conforming Canadian and U.S. regulation. The Proposed Amendment 2.7 is not a requirement in the U.S. and the proposed changes would therefore not further the CSA's objective of comparable regulation on this topic.

2. ***Disclosing a Description of a Mutual Fund's Policies and Procedures Relating to the Monitoring, Detection and Deterrence of Short Term Trades (NI 81-101F2 ss. 12(9) and 12(10))***

While we commend the CSA's initiative to amend certain form requirements of NI 81-101 to enhance disclosure, we do not feel that the adoption of this amendment is warranted.

We are of the opinion that the meaning of short term trades is synonymous with early redemptions, and as such, we currently disclose in Part A of our prospectuses the ability of the fund manager to charge an early redemption fee for redemptions made within 30 days of the purchase of units (90 days in the case of eSeries units), and our policies applicable thereto.

However, if the term "short-term trading" refers to excessive trading (i.e., multiple transactions in a fund made in a relatively short period of time), we would agree with disclosing that we have policies and procedures in place to monitor and deter such activity. However, we would not support disclosing in detail our policies and procedures. Such disclosure could potentially provide investors with an alternative method to attempt to circumvent such policies, thereby restricting our ability to take necessary action to prevent excessive trading behaviour. Also, our policies and procedures may change from time to time to keep in line with market changes. We do not believe that the legal fees and costs associated with printing and filing prospectus amendments to reflect such changes would be justified.

3. ***Adding a New Class or Series of Securities (NI 81-101CP s. 2.7)***

Under Appendix I, Schedule 2, of the Proposed Instrument, the following amendment to NI 81-101CP, is proposed, in relevant part:

> ...If a mutual fund adds a new class or series of securities to a simplified prospectus that is referable to a new separate portfolio of assets, a preliminary simplified prospectus must be filed. However, if the new class or series of securities is referable to an existing portfolio of assets, the new class or series may be added by way of an amendment.

After considering the above language, we are of the opinion that if we create a new series of units of an existing mutual fund in a different simplified prospectus than other units of the same fund are offered, we could proceed to initiate the renewal by way of an amendment as opposed to filing a new preliminary prospectus.

We recommend that the CSA provide further interpretive guidance in this area.

CONCLUSION

TDAM is grateful to have had the opportunity to comment on the Proposed Instrument, specifically with respect to the proposed amendments to NI 81-101. While we appreciate the importance of the CSA creating a set of national prospectus requirements for all issuers and harmonizing such rules across Canadian jurisdictions, we strongly believe that the above amendments would add little value to investors given the existing regulatory framework in place with respect to continuous disclosure obligations.

Notwithstanding our opinion that the Proposed Amendment 2.7 would be more appropriately addressed in NI 81-106 and NI 51-102 rather than NI 81-101, we are concerned with the potential impact of adopting the Proposed Amendment 2.7 based on the limited value to investors, the additional costs to be borne by unitholders and the limited time to have such a review completed. We do believe, however, that it would be reasonable to require an auditor review in the circumstances set out above.

We would be pleased to provide any further explanations or submissions with respect to matters discussed above and would make ourselves available at any time for further discussion.

Yours truly,

Timothy Pinnington
President, TD Mutual Funds

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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.

[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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March 29, 2007

Alberta Securities Commission
British Columbia Securities Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Department of Justice, Government of the Northwest Territories
Nova Scotia Securities Commission
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut
Ontario Securities Commission
Prince Edward Island Securities Office
Autorité des Marchés Financiers
Saskatchewan Financial Services Commission
Registrar of Securities, Government of Yukon

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Re: Proposed NI 41-101 *General Prospectus Requirements* and related amendments

Dear Sirs:

I am pleased to respond on behalf of CIBC World Markets Inc. to your Request for Comments dated December 21, 2006 regarding Proposed NI 41-101 *General Prospectus Requirements* (the "Proposed Rule") and the proposed amendments to National Instrument 44-102 - Shelf Distributions.

CIBC World Markets Inc. supports many aspects of the Proposed Rule that are expressly intended to harmonize and organize the prospectus requirements in of each of the jurisdictions. However, we have concerns about other aspects of the Proposed Rule, which contemplate unanticipated and substantive changes to the existing prospectus requirements.

<u>Certificate of Substantial Beneficiary</u>

CIBC World Markets Inc. objects to the CSA's proposed implementation of section 5.14 of NI 41-101 and the proposed corresponding amendments to Form 44-101F1. These provisions would have the effect, other than in Ontario, of requiring any substantial beneficiary of an offering to certify the content of an issuer's short form or long form prospectus. The term "substantial beneficiary" is defined overly-broadly to include, among others, any person or entity who, alone or acting in concert with third parties, is reasonably expected to receive, directly or indirectly, 20% or more of the proceeds of the offering and who:

- Now controls or owns 20% or more of the issuer's voting rights; or
- Has controlled or owned 20% or more of the issuer's voting rights within the preceding 12 months; or
- Will control or own 20% or more of the issuer's voting rights following completion of the offering; or
- Now controls or owns 20% or more of any significant business of the issuer; or
- Has controlled or owned 20% or more of any significant business of the issuer in the preceding 12 months; or
- Will control or own 20% or more of any significant business of the issuer following completion of the offering.

The proposed certification would make the substantial beneficiary responsible for the *entire content* of the issuer's prospectus and would *not be subject to any knowledge qualifier or due diligence defence*. CIBC World Markets Inc. does not believe that such a requirement would be warranted or appropriate. We believe that this proposal would unduly interfere with the efficiency of Canadian capital markets and significantly reduce the range of potential outcomes of M&A transactions.

Substantial beneficiary certification would materially limit a reporting issuer's ability to use equity financing to grow its business through significant acquisitions. Currently, it is not unusual for reporting issuers to finance their growth through equity offerings, including through offerings of subscription receipts. If the Proposed Rule were adopted as proposed by the CSA, we would expect such offerings to become far less common. Substantial beneficiary certification would require the vendor of any significant business to complete a comprehensive due diligence investigation of the purchasing reporting issuer's business and financial position sufficient to independently verify that the issuer's public disclosure does not contain any misrepresentation. Such a requirement would place any "cash poor" reporting issuer at a distinct disadvantage (from both timing and purchase price perspectives) relative to any prospective buyer of the significant business that is not a reporting issuer, because that other prospective buyer would not be burdened by the Proposed Rule's substantial beneficiary certification requirement and is would therefore be able to complete an acquisition more quickly.

To compete on a level playing field in connection with any significant acquisitions, any cash poor reporting issuer would likely need to use leverage, through bank borrowings or similar non-equity financing techniques, to finance its significant acquisition. However, even the use of borrowed money may be caught by the substantial beneficiary certification requirement because section 5.14 of NI 41-101 also catches "indirect" equity financings that involve a significant beneficiary. The "indirect" application would be problematic from a practical perspective. For example, a reporting issuer may elect to finance an acquisition through a pre-existing bank line, with a view to deciding after completion of the acquisition – based upon prevailing market conditions at that time - whether to refinance the bank line or repay it from other borrowings, a bond offering or an equity offering. The Proposed Rule would significantly limit this important flexibility without achieving any demonstrable benefit.

In explaining the policy underlying the substantial beneficiary certification proposal, the CSA has noted in the Notice and Request for Comment accompanying the Proposed Rule that, "We believe a person or company that controls the issuer or a significant business has the best information about the issuer. Such a person or company who also receives proceeds from the distribution should be liable for any misrepresentation about the issuer or a significant business." We strongly disagree. Securities legislation correctly places the principal burdens of prospectus disclosure on issuers and, in the case of secondary offerings, on selling securityholders. Even the latter point, imposing prospectus liability on a selling securityholder without permitting any due diligence defence, is already a blunt instrument that warrants reconsideration by the CSA.

In our view, contrary to the CSA's assertion in the Notice and Request for Comment, substantial beneficiary certification would not "benefit the capital markets as a whole." Instead, in our view, requiring substantial beneficiary certification would:

- Place reporting issuers at a distinct disadvantage in any attempts to grow their businesses through substantial acquisitions financed, directly or indirectly, by new equity;
- Unduly interfere with the efficiency of Canadian capital markets and significantly reduce the range of potential outcomes of M&A transactions; and
- Unfairly create statutory liability, without any due diligence defence, for several categories of important capital markets participants who do not face any similar liability under the securities laws of other jurisdictions, including the United States.

We do not believe that the foregoing significant costs would be outweighed by any unproven potential for enhanced disclosure. Accordingly, we would urge the CSA to reconsider section 5.14 of the Proposed Rule in its entirety. Alternatively, we request that the CSA propose an alternative that would require a vendor to certify only the prospectus disclosure relating to the significant business being acquired by the reporting issuer, provide a due diligence defence to the vendor, limit the vendor's liability to the amount of proceeds actually received by the vendor and not apply the certification requirement to indirect equity financings (e.g. arm's-length borrowings that are not repaid within 30 days).

Certificate of Other Persons

CIBC World Markets Inc. is also concerned with the CSA's proposed implementation of section 5.16 of the Proposed Rule and the proposed corresponding amendments to Form 44-101F1. These provisions would have the effect, *other than in Ontario*, of requiring any "substantial beneficiary" of an offering to certify the content of an issuer's short form or long form prospectus.

Securities legislation in most provinces already provides staff of the provincial securities regulators with the discretion, in effect, to refuse to receipt a final prospectus if they determine that it would not be in the public interest to do so (e.g. section 61 of the *Securities Act* (Ontario)). In the event that staff exercises their discretion to refuse a receipt, securities legislation in most provinces provide the person or company who filed the prospectus with a right to a hearing before the securities regulator.

We believe that section 5.16 of NI 41-101 and the proposed corresponding amendments to Form 44-101F1 are unnecessary because existing securities legislation provides regulators with sufficient power to ensure that proper persons certify the contents of a prospectus. Moreover, we are concerned that, if "other person certification" becomes a requirement under the Proposed Rule, some staff may require certification of a prospectus in ways that were entirely unintended by the CSA at the time of drafting the Proposed Rule. We note that there is no guidance in the related Companion Policy to NI 41-101 (the "Proposed CP") and – unlike the corresponding provisions of securities legislation - the Proposed Rule does not provide any right to be heard in the event that the reporting issuer, or some other person who is required by staff to certify the issuer's prospectus, disagrees with staff's position concerning the application of section 5.16 of NI 41-101.

In our view, if the CSA determines to include other person certification in the Proposed Rule, the Proposed CP should provide some clear guidance concerning its intended use and the criteria that would be taken into account by staff in determining the appropriate form of the certificate. In addition, the Proposed Rule should afford an opportunity to be heard in the event that staff exercises its discretion to require a certificate pursuant to section 5.16 of NI 41-101. Requiring an issuer to obtain a certificate from a third party after filing a preliminary prospectus may jeopardize completion of the offering if it was a risk not bargained for between the business parties.

The CSA should also consider the interaction between any such certificate and the civil liability provisions of securities legislation. For example, although section 5.16 of NI 41-101 is one of many provisions of the Proposed Rule that are intended to apply "except in Ontario," clause 130(1)(e) of the *Securities Act* (Ontario) makes any person who signs a certificate in a prospectus liable for the contents of that prospectus. The same observation could be made concerning the "substantial beneficiary certification" contemplated by section 5.14 of NI 41-101, which is also intended to apply "except in Ontario." Unless the CSA is contemplating that issuers would file two versions of the prospectus, one in Ontario (without the certificates contemplated by sections 5.14 and 5.16 of the Proposed Rule) and the other (with such certificates) in the other provinces and territories, it's not clear that the "except in Ontario" qualification would accomplish much.

Compensation Securities

CIBC World Markets Inc. is concerned with the CSA's proposed implementation of section 11.3 of the Proposed Rule, which would limit prospectus-qualified compensation securities to 5% of the base offering. Although it is not common for CIBC World Markets Inc. to receive compensation securities in connection with our securities underwriting business, we see no policy reason for the CSA to place arbitrary limitations on the amount of compensation securities permitted by the Proposed Rule.

We are not aware of any "backdoor underwritings" and believe that the CSA's stated policy concern underlying this limitation is largely academic. In our view, any underwriter would be very reluctant to employ compensation options to effect a backdoor underwriting given that several provinces' securities legislation defines a "distribution" to include any transaction or series of transactions involving the purchase and sale or repurchase and resale of securities in the course of or incidental to a distribution. However, if the CSA is concerned about backdoor underwritings, a more appropriate means for addressing that concern might be to require a minimum hold period of 60 days for compensation securities.

So long as it's properly disclosed in the reporting issuer's prospectus, we don't believe that the quantum of underwriter compensation should attract securities regulatory intervention, whether such intervention is based upon the CSA's assertion of public interest jurisdiction or otherwise, and is a matter best left for negotiation between the issuer and its underwriters in the context of specific transactions.

Marketing and Advertising

Part 6 of the Proposed CP proposes to codify, in one instrument, a variety of existing policy statements, staff notices and other instruments not having the force of law. CIBC World Markets Inc. is supportive of any effort to bring more clarity to the requirements or guidelines relating to the marketing and advertising of securities.

We appreciate that there are a variety of policy objectives behind those requirements and we recognize that the existing patchwork of policy statements, staff notices and other guidance may not reflect today's market practices or the many competing policy objectives underlying those requirements. For example, existing regulatory guidance does not sufficiently distinguish between initial public offerings (where "preparing the market" should be the principal policy consideration) and subsequent offerings (where "tipping" should be the principal policy consideration). Similarly, some of the existing guidance reflected in Part 6 of the Proposed CP seems outdated. Increasingly, most of the CSA's policy and regulatory initiatives have been shifting away from episodic, transaction-specific offering documents towards continuous disclosure and an integrated disclosure system. The broadening of eligibility criteria for short form prospectuses and the implementation of statutory civil liability for continuous disclosure warrants a thorough re-thinking of the CSA's existing guidance. Any new CSA guidance concerning the marketing and advertising of securities offerings should be consistent with that broader theme.

By way of illustration, subsection 6.5(1) of the Proposed CP seems to suggest that the CSA would even limit institutional investor "roadshows" to identifying the security offered, stating the price (if then determined) and identifying the underwriters. Subsection 6.5(2) says that, in the CSA's view, "The use of any other marketing materials during the waiting period would result in a violation of the prospectus requirement." Taken together, these provisions seem to indicate that there is a substantial difference between the CSA's interpretation of securities legislation and industry practice.

We do not feel that it would be appropriate to address these requirements in the Proposed CP without a thorough, consultative discussion between the CSA and market participants. CIBC World Markets would be pleased to participate actively in any such consultation.

Minimum Waiting Period

CIBC World Markets Inc. does not believe that any significant policy objective would be achieved by retaining the existing 10-day minimum waiting period prescribed by the *Securities Act* (Ontario).

Disclosure of Price Range in Preliminary Prospectus

Section 1.7 of Form 41-101F1 – Information Required in Prospectus, which is attached as Appendix B to the Proposed Rule, would require a preliminary prospectus to disclose a *bona fide* estimate of the range in which the offering price or the number of securities being distributed is expected to be set. CIBC World Markets Inc. does not believe that this requirement is necessary or, at least in the case of follow-on offerings by existing reporting issuers, desirable. In the case of follow-on offerings, if any face page pricing disclosure is required, it should be the market price of the securities at the time of filing the preliminary prospectus, with appropriate caveats.

If the CSA determines to include a version of section 1.7 s in the final version of Form 41-101F1, we would suggest that the last sentence of section 4.2 of the Proposed CP be deleted and replaced with, "A difference between this *bona fide* estimate and the actual offering price or number of securities being distributed is not *in itself* a material adverse change for which the issuer must file an amended preliminary long form prospectus." [Emphasis added]. CIBC World Markets Inc. would not be supportive of adding a further requirement in the Proposed Rule for issuers to reflect the mid-point of that range to fill the bullets in the capitalization table, earnings coverage ratios and pro forma financial information in the preliminary prospectus. Such a requirement would unduly restrict pricing flexibility and could contribute to an unwarranted conclusion that changing the numbers in those tables as a result of final pricing constitutes a material adverse change requiring an amended preliminary long form prospectus.

Novel Derivatives and Asset-backed Securities

CIBC World Markets Inc. is concerned with the CSA's proposed amendments to the definition of "novel" in section 1.1 of *National Instrument 44-102 – Shelf Distributions* (the "Shelf Rule"). Under the proposed amendments, reporting issuers will be required to pre-clear the initial shelf prospectus supplement for each new type of specified derivative or asset-backed security, regardless of whether another reporting issuer has previously distributed a similar specified derivative or asset-backed security under a prospectus receipted by securities regulators. We do not believe that this proposed change is warranted.

If the CSA is concerned about the prospectus disclosure relating to the distribution of linked notes and similar specified derivatives qualified by way of shelf prospectus, CIBC World Markets Inc. would be quite willing to work cooperatively with the CSA in developing detailed disclosure requirements or guidelines relating to such offerings. We believe that requiring pre-clearance on an issuer basis may be cumbersome and inefficient because it would make it more difficult for issuers to respond to particular market opportunities and will not be transparent to other issuers of similar types of securities. Accordingly, we would urge the CSA to reconsider amending the definition of "novel" in the Shelf Rule.

Except in Ontario

We note that the phrase "except in Ontario" appears 48 times in the Proposed Rule and the related documents that accompany the CSA's Notice and Request for Comment.

We can appreciate that there may be good and valid policy reasons for one or more provinces not to be aligned with the remainder of the CSA on all rules. However, we are concerned that the Proposed Rule will not achieve the CSA's stated purpose of harmonizing and consolidating the prospectus requirements across Canada so long as several significant components of the Proposed Rule will not apply in Ontario, which is home to approximately 40% of the population of Canada and a large number of significant participants in Canada's capital markets. Also, as noted above, excluding Ontario from the new prospectus certification requirements of the Proposed Rule may leave to persons who are obligated to sign certificates under other provinces' requirements under the Proposed Rule nonetheless liable under Ontario securities legislation in the event that a prospectus contains a misrepresentation.

We trust the foregoing is satisfactory and would be pleased to answer any questions you might have.

Yours truly,

Robert J. Richardson
Vice- President, Legal

cc.
David Leith
Managing Director
Head of Investment & Corporate Banking

Arthur Korpach
Vice Chairman & Managing Director
Head of Calgary Investment Banking

Roman Dubczak
Managing Director
Head of Equity Capital Markets

VIA E-MAIL

March 29, 2007

Patricia Leeson, Co-Chair of the CSA Prospectus Systems Committee
Alberta Securities Commission
4th Floor, 300 – 5th Avenue, S.W.,
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Anne-Marie Beaudoin
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Authorité des marchés financiers
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Dear Madames:

Re: Proposed National Instrument 41-101 *General Prospectus Rules*

Please accept this letter as our comments on proposed National Instrument 41-101 *General Prospectus Requirements* ("NI 41-101") and related policy and instrument amendments as outlined in the Notice and Request for Comment dated December 21, 2006 (the "Notice").

As a general comment we are pleased to see a concerted effort on behalf of the members of the Canadian Securities Administrators (the "CSA") to harmonize the rules applicable to long form prospectus offerings in all Canadian jurisdictions. We are also pleased to see the proposed adoption of a uniform long form prospectus form.

However, one specific requirement in proposed NI 41-101 causes us significant concern. Specifically, we note the CSA's proposal to require, in all provinces except Ontario, a certificate requirement from "substantial beneficiaries" of a prospectus offering (the "Certificate Requirement") filed within the previous year of a significant acquisition or where the prospectus proceeds will be used to acquire a significant business or assets. We note that the CSA has restricted the requirement to persons who will receive 20% or more of the proceeds of the offering and who are control persons of the issuer or the acquiree.

Leaving aside the obvious undesirability of having different requirements in different jurisdictions (once again), we do not believe that the Certificate Requirement is necessary or appropriate for the reasons outlined below. In fact, contrary to the CSA's assertions in the Notice, we believe that the addition of this requirement will have a detrimental impact on the ability of issuers to raise capital via prospectus to fund acquisitions of new business and assets. Further, contrary to the assertion in the Notice that this new requirement will "reduce impediments for issuers accessing our capital markets", we believe the opposite to be true – i.e., that this requirement will present a formidable obstacle to issuers seeking to raise funds via prospectus offering to fund the acquisition of new assets or businesses because the vendors of those assets or business will not be willing to sign the certificate.

We are not aware of any precedent for requiring the recipients of funds raised in a public offering to sign the certificate page of the offering document.

The only other analogous requirement in Canadian securities legislation is the requirement for the preparation and filing of a business acquisition report under National Instrument 51-102 *Continuous Disclosure Obligations* ("NI 51-102") in those instances where a reporting issuer makes a significant acquisition based on the tests outlined in that instrument. The business acquisition report is not required to be signed or certified by the principals of the vendor of the business or assets being acquired. Further, as you are aware, the NI 51-102 provides an exemption from this requirement where the required information for the acquired business or assets has been disclosed in an information circular or filing statement and the acquisition is within nine months of the date of the disclosure document. In other words, the issuer can make the disclosure about the acquired business or assets in either a business acquisition report or an information circular/filing statement (as the case may be), neither of which is required to be certified by the acquiree.

We note that proposed NI 41-101 also contains a requirement for a certificate to be signed by a promoter of the issuer. Given that the definition of promoter encompasses persons who receive 10% or more of the of the proceeds of a securities offering and who participate in the founding, organizing or re-organizing of the issuer, we query why the promoter certificate requirement is not sufficient to catch the persons contemplated in the Certificate Requirement.

As you know, in the context of a long form prospectus offering, extensive due diligence is performed by the issuer of the securities and the underwriter(s) involved in the offering. As you also know, both parties are required to sign the certificate page of the prospectus. We believe that this makes sense in principle because those parties are and act as agent on behalf of, respectively, the issuer of the securities being offered for sale. Requiring a substantial beneficiary of the offering proceeds to perform the same level of due diligence and to be responsible for the entire contents of the prospectus is inappropriate, especially in those cases where the business or assets being acquired by the offering issuer represent a small portion of the substantial beneficiary's business or assets.

No information has been provided by the CSA about the mischief the Certificate Requirement is attempting to address. The only discussion about the Certificate Requirement is found in the Notice, which simply infers (without stating directly) that the current practice by the CSA of determining whether the acquiree takes promoter liability or provides a contractual indemnity to the issuer in the event of a misrepresentation is insufficient. Has the CSA encountered wide spread examples of misrepresentations in prospectuses about the assets or business to be acquired with the prospectus proceeds? We assume that the CSA would not impose a new and significant requirement such as this in the absence of empirical data or specific examples of situations where the omission of a certificate signed by the acquiree has caused significant harm to investors or others. Assuming that to be the case, it would be helpful if the Notice contained a more fulsome explanation of the reasons behind imposing this new requirement.

Based on the foregoing, we believe that the CSA should not impose the Certificate Requirement and respectfully submit that it be removed altogether from proposed NI 41-101.

Thank you for giving us the opportunity to provide comments on proposed NI 41-101. We hope that you will find our feedback helpful.

Yours truly,

FIRSTENERGY CAPITAL CORP.

"J.S. Chambers"	*"M. Scott Bratt"*
John S. Chambers Managing Director & President	M. Scott Bratt Managing Director, Corporate Finance

cc: William (Bill) S. Rice, Q.C.,
Chair, Alberta Securities Commission
David Wilson,
Chair, Ontario Securities Commission
Joseph Oliver,
President & CEO, Investment Dealers Association of Canada
Managing Directors, FirstEnergy Capital Corp.

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
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Patricia Leeson, Co-Chair of the CSA's Prospectus Systems Committee
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Anne-Marie Beaudoin, Secretary
Autorité des marchés financiers
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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

Gordon C. Fowler
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National Assurance and Professional Practice
416-777-3490

Alan G. Van Weelden
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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 December 31, 2006 (1)	Three months ended 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.

RESP DEALERS ASSOCIATION OF CANADA

ASSOCIATION DES DISTRIBUTEURS DE REÉÉ DU CANADA

Via electronic mail

March 29, 2007

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

Delivered To: Patricia Leeson, Co-Chair of the CSA's Prospectus Systems Committee
Alberta Securities Commission
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Heidi Franken, Co-Chair of the CSA's Prospectus Systems Committee
Ontario Securities Commission
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Re: Proposed National Instrument 41-101 *General Prospectus Requirements*

The following comments are being submitted in response to the Request for Comments of the Canadian Securities Administrators (CSA) published on December 21, 2006 on behalf of the RESP Dealers Association of Canada (RESPDAC). RESPDAC represents 4 of Canada's leading Registered Education Savings Plan (RESP) providers, specifically C.S.T. Consultants Inc., Children's Education Funds Inc., Heritage Education Funds Inc. and USC Education Savings Plans Inc.

1. Proposed National Instrument 41-101 (the "Proposed Rule") requires that a scholarship plan must follow prospectus Form 41-101F2. We are of the view that a simplified prospectus regime along the lines of that available to mutual funds would provide more clear and understandable disclosure for prospective investors. We recognize that NI 81-101 would have to be modified to suit the scholarship plan industry. However, we would welcome the opportunity to present a

framework to the CSA for a simplified prospectus regime that would be applicable to scholarship plans. We support the CSA in its efforts to encourage and mandate concise plain language disclosure documents. We believe that the length and the level of detail of the current and proposed long form prospectus for a scholarship plan actually discourages most prospective investors from properly reviewing the prospectus. A summary document that includes the basic features of RESPs with reference to other documents (such as an AIF) that would be available through SEDAR and upon request from the distributor, is more likely to achieve the objective of properly informing the retail investor.

2. The Proposed Rule specifically excepts scholarship plans from mandatory incorporation by reference of the documents listed in section 40.1 of Form 41-101F2. We have been unable to identify the reason for the different treatment being accorded to scholarship plans with respect to mandatory incorporation by reference. Please clarify whether it is the intention of the CSA that scholarship plans be permitted, but not obligated to incorporate by reference. If it was not the intention of the CSA in the Proposed Rule to permit scholarship plans to incorporate by reference, we feel very strongly that it is inappropriate to discriminate against scholarship plans in this way. The cost of including financial statements and MRFP information in the prospectuses for scholarship plans is very significant and utilizes funds that could otherwise be invested for the benefit of plan participants. Also, with reference to our remarks in item 1 above, the delivery of the volume of material that is being required to be provided to investors is overwhelming to the average person and therefore, does not promote a better understanding of the essential operation of scholarship plans and the nature of their investments.

3. Section 2.2 of the Proposed Rule – We would like to know whether the CSA intends to provide any guidance as to who would be acceptable to provide a translation certificate.

4. Although the general instructions in Form 41-101F2 indicate that no reference needs to be made to inapplicable items, we believe some clarification is required in the specific form items as to whether it is the intention of the CSA that these items have application to scholarship plans. In certain instances, specific form items exclude a particular type of investment fund from a requirement, whereas in other instances this is not the case. In particular, we seek clarification with regard to the following items:

   a. Section 8.1 of the Proposed Rule - The distribution period for securities being distributed on a best efforts basis is limited to 90 days. We assume that continuous offerings by investment funds are not meant to be captured by this provision. However, this is not clear.

   b. A number of form items prescribe specific headings under which information is to be disclosed. We would like clarification that these headings can be modified where appropriate for scholarship plans. Due to the unique nature of scholarship plans, we believe that in certain instances the use of the prescribed headings will be confusing to investors. For example, investors establish an RESP by entering into an education savings plan agreement with their provider which is then registered with the Canada Revenue Agency. The use of the heading "Enrolment and Registration" or something similar rather than "Purchase of Securities" is more appropriate in the circumstances of an RESP.

   c. General Instruction (11) – We believe that the prescribed order of the form items will make it difficult for prospective investors to fully understand the features of a group education savings plan. In particular, the risk factor disclosure will not be very meaningful if read before the description of plan attributes.

   d. Section 12.1 of the Proposed Rule - We are concerned that the term "restricted securities" could be construed to capture a scholarship plan agreement. We believe that this is not the intention of the CSA and would ask that this be clarified.

e. Form 41-101F2 - Section 1.4 - Scholarship plans cannot comply with the requirement for a distribution table presented on a per security basis due to the variety of contribution frequencies and amounts as set out in the contribution tables included in the prospectuses for scholarship plans. Therefore, we request confirmation that a distribution table is not required for scholarship plans.

f. Form 41-101F2 - Section 1.9 - The statement required by clause 1.9(3) should not be required for scholarship plan securities. Although there is no secondary market for these securities, they are savings plans and they are not purchased with any intention or expectation of secondary market trading. Therefore the inclusion of such a statement would likely be confusing to prospective purchasers.

g. Form 41-101 F2 - Sections 3.5 and 28 - Although scholarship plan prospectuses include a Statement of Policies regarding the activities of the principal distributors of the scholarship plans being offered by the prospectus, the cover page disclosure mandated by NI 33-105 *Underwriting Conflicts* for issuers which are connected or related to an underwriter has never been enforced by securities regulators for scholarship plans. We would like clarification that this cover page disclosure is not intended to be applicable to scholarship plan prospectuses. The plans and their distributors are not related issuers and we are of the view that the nature of the connection between the plans and the distributors does not present the type of conflict that requires face page disclosure, particularly since all of the net proceeds are deposited into the trusts that hold plan assets. In addition, as a result of the disclosure that has otherwise been mandated by the CSA for the face page of a scholarship plan prospectus, additional text would have the effect of reducing the clarity and the perceived importance of the face page disclosure since the text on the face page is already quite crowded.

h. Form 41-101F2 - Section 3.6(5) and 7.2 - We assume that the disclosure of MER information is not intended to apply to scholarship plans. However, unlike NI 81-106 there is no specific exemption for scholarship plans from the requirement to calculate and disclose MERs.

i. Form 41-101F2 - Section 13.1 – Information regarding prior sales is not required to be included for labour sponsored investment funds and commodity pools. We respectfully submit that this disclosure should not and cannot be included by scholarship plans since prior sale pricing is dependent on the circumstances of individual contributors (eg. age of beneficiary, frequency of deposits).

j. Form 41-101F2 - Sections 23.2 and 23.3 - Scholarship plans are exempted from the requirement to describe how net asset value of the fund is determined, but they are not exempted from the requirement to describe how net asset value will be reported. Please clarify that the latter disclosure is also not intended to apply to scholarship plans.

k. Form 41-101F2 - Sections 25 – Specific escrow arrangements which are described in the prospectuses for scholarship plans are in place to deal with contributions for investors who have not yet obtained social insurance numbers for their beneficiaries. We don't believe it is the intention of the CSA that the disclosure mandated by item 25 is intended to apply to these arrangements and we seek clarification in this regard.

Thank-you for the opportunity to comment on the Proposed Rule. We would be pleased to discuss any matters raised herein with representatives of the CSA. Please direct any questions or comments on our submissions to:

Lisa Davis
Vice-President, General Counsel and Corporate Secretary
C.S.T. Consultants Inc.
600 – 240 Duncan Mill Road
Toronto ON M3B 3P1
Fax: (416) 445-9291
e-mail: ldavis@cst.org

All of which is respectfully submitted,

RESP Dealers Association of Canada

Per:
Peter Lewis
Chair

cc: Al Haid, Founder, Children's Education Funds Inc.
Bruce Elliott, Senior Vice President, Compliance and Corporate Affairs, Heritage Education Funds Inc.
Robin Morrissey, Director Corporate Affairs, USC Education Savings Plans Inc.
Jim Deeks, Executive Director, RESP Dealers Association of Canada

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March 29, 2007

Ms. Heidi Franken
Co-Chair of the CSA's Prospectus Systems Committee
Ontario Securities Commission
20 Queen Street West, Suite 1900
Toronto, Ontario, M5H 3S8

Dear Ms. Franken,

I am writing to provide the CSA with Tradex Management Inc.'s comments on the proposed amendments to National Instrument 41-101. Tradex is one of the oldest mutual fund companies in Canada and therefore has a very strong interest in ensuring that capital markets in Canada operate efficiently and that there is a high level of investor confidence.

Our comments relate specifically to Appendix I, Schedule 1 of NI 41-101 whereby there is a proposed consequential amendment to NI 81-101 Mutual Fund Prospectus disclosure such that paragraph 2.7 is added as follows:

> "Review of unaudited financial statements---Any unaudited financial statements included in or incorporated by reference in a simplified prospectus must have been reviewed in accordance with the relevant standards set out in the Handbook for a review of financial statements by the mutual fund's auditor or a public accountant's review of financial statements."

In 2006 the Tradex Funds paid the following audit fees (figures include GST and are rounded):

	Audit Fee	Cost in terms of MER
Tradex Equity Fund Limited	$33,000	2.5 basis points
Tradex Bond Fund	$ 8,500	8.0 basis points
Tradex Global Equity Fund	$ 9,000	10.6 basis points

We estimate that the incremental cost associated with the proposed requirement that all interim financial statements be "reviewed" by our auditor would be approximately 40% of the cost of the annual audit. Therefore, the estimated cost to the Tradex Funds would be approximately $20,000 per year. Depending on the individual mutual fund, this would translate into an increase of 1.0 to 4.2 basis points per year in the MER for the Tradex Funds.

Based on the estimated cost for Tradex, we further estimate that adoption of this proposal would cost the Canadian mutual fund industry (mutual fund investors) several million dollars each year. Thus, we believe that the overall benefit to Canadian investors (and the Canadian financial services sector) from this proposal would be far less than the cost of implementing it since we believe that the proposal would do very little to enhance investor protection in Canada.

Furthermore, from a public policy point of view, Tradex believes that the millions of dollars in additional costs that would be incurred each year as a result of this proposal could be far better spent on other initiatives such as, for example, contributing to an Investor Protection Plan for mutual fund investors. Therefore, we would recommend that a full cost/benefit analysis be conducted regarding the economic benefits of this proposal versus other proposals that would improve investor protection.

For the above reasons, we would ask that the CSA reconsider the proposal to require all interim financial statements for mutual funds to be "reviewed" by an audit firm. In our view, the money that mutual fund groups would have to spend on this proposal could be used much more efficiently and effectively for other initiatives that would enhance the integrity of the Canadian financial services sector.

Yours truly,

Robert C. White
President
Tradex Management Inc.

Via Electronic Correspondence to Addressees Indicated in Schedule A

March 30, 2007

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

Dear Sirs:

Re: Comments on Proposed National Instrument 41-101 *General Prospectus Requirements* ("NI 41-101")

We are responding to your notice and request for comment dated December 21, 2006 (the "Notice") on NI 41-101, the forms prescribed by NI 41-101 and the companion policy to NI 41-101.

ARC Energy Trust

ARC Energy Trust is an open-end investment trust created on May 7, 1996 under the laws of the Province of Alberta pursuant to a declaration of trust. Computershare Trust Company of Canada has been appointed as trustee under the declaration of trust. The beneficiaries of the trust are holders of the trust units.

ARC Energy Trust is a reporting issuer in each province of Canada. Our trust units are listed on Toronto Stock Exchange.

Our controlled entities are actively engaged in the business of oil and natural gas exploration, development, acquisition and production in Canada with current production of approximately 63,000 barrels of oil equivalent per day. We have a current market capitalization of approximately $4.5 billion, an enterprise value of approximately $5.2 billion and book asset value of approximately $3.5 billion.

Comments

We have two areas of substantial concerns relating to NI 41-101:

Trustee Certification

We have a concern with respect to the prospectus certification requirements for trusts provided for in Sections 5.5(1) and (2) of Schedule 1 to NI 41-101. As ARC Energy Trust has a corporate trustee, Computershare Trust Company of Canada, the requirement that the CEO and CFO of Computershare Trust Company of Canada and two directors of Computershare Trust Company of Canada execute any prospectus certificate is impracticable.

Our declaration of trust, like most public energy trusts, provides that the trustee is a corporate trustee appointed by our unitholders. Our declaration of trust delegates, among other things, the authority to make all decisions relating to public offerings, including the responsibility for executing prospectus certificates, to the board of directors of ARC Resources Ltd., a subsidiary of ARC Energy Trust. In addition, the board of directors of ARC Resources Ltd. oversees all operations of the controlled entities of ARC Energy Trust, including ARC Resources Ltd., and all public reporting by ARC Energy Trust. Computershare Trust Company of Canada's primary responsibilities are to hold the assets of ARC Energy Trust (shares, subsidiary trust units, debt and net profit interests issued by ARC Energy Trust's various controlled entities) and managing the cash distributions to unitholders. In performing its responsibilities under the declaration of trust Computershare Trust Company of Canada and its officer and directors would not be in a position to execute a prospectus certificate. ARC Energy Trust has filed many prospectuses which have contained certificates executed by the CEO and CFO of ARC Resources Ltd. and two directors of ARC Resources Ltd. on behalf of the board of directors of ARC Resources Ltd. We submit that requiring certification of Computershare Trust Company of Canada would not add meaningful protection for investors.

We note that Section 5.5(3) of Schedule 1 to NI 41-101 provides an exemption from the requirements of Sections 5.5(1) and (2) of Schedule 1 to NI 41-101 to issuers that are investment funds in similar circumstances. We would submit that a similar exemption should be provided to trusts that meet the same criteria.

If no exemption is provided, we would submit that a reasonable transition period should be provided so that a meeting of unitholders of ARC Energy Trust can be called to substantially reorganize the trust in order that we may have continued access to the public markets.

Certification of Substantial Beneficiaries

We have serious concern with respect to the prospectus certification requirements for a "significant beneficiary of the offering" provided for in Section 5.13 of Schedule 1 to NI 41-101. We believe that requiring a third party seller, dealing at arm's length with ARC Energy Trust, to certify our prospectus will materially impair our ability to compete in making substantial acquisitions. In addition, if NI 41-101 is implemented in its current form our disposition practises will have to change to exclude any issuer from a sales process who will require ARC Energy Trust to certify its prospectus.

We have grown our business through a combination of internally generated exploration and development activities as well as strategic acquisitions. In making acquisitions we compete with many public and private entities including large multinational corporations, senior Canadian and

U.S. independents, trusts and junior issuers many of whom would not be effected by NI 41-101. We are required to compete both on price and terms, including risk allocation between the buyer and seller. We have no ability to arbitrarily allocate risk to the seller. NI 41-101 would require the seller to not only accept greater risk relating to its properties than is common in the marketplace, but also have to assume risk with respect to ARC Energy Trust's disclosure. Even if a seller were willing to accept this level of risk, which is unlikely, we would no doubt be required to increase the purchase price to compensate the seller for the assumption of this risk. We do not believe that paying an above market price for assets would be in the best interest of our unitholders.

Since conversion to the trust structure we have completed numerous acquisitions, including an acquisition in December 2005 from a major corporation which was considered a significant acquisition pursuant to subsection 35.1(4) of Form 41-101F1 (which refers to the significant acquisition definitions in NI 51-102 *Continuous Disclosure Obligations* "NI 51-102")) as they were asset acquisitions or acquisitions of a subsidiary entity of another party and the purchase price of which exceeded 20 per cent of our book asset value. This acquisition was made from parties dealing at arm's length to ARC Energy Trust and was made in the context of the competitive market place for acquisitions. We believe it would have been very unlikely to obtain the agreement of the seller to execute our prospectus. We completed a public offering where the proceeds were directly or indirectly used to partially finance this acquisition. Investors were provided with full disclosure on the acquisition including independent engineering prepared in accordance with NI 51-101, audited property financial statements and the benefit of the due diligence conducted by our staff.

We of course could seek other methods of financing such as private debt or private placements. These would have a number of disadvantages including potentially higher costs, assumption of greater leverage risk and exclusion of our retail unitholders from participating in such financings.

In the case of dispositions, we cannot envision any circumstances where we would be willing to execute a prospectus certificate of an issuer dealing at arm's length of us. No reasonable premium could be paid by an issuer to compensate us for this risk of executing such issuers prospectus compared to the price which could be paid by another buyer not subject to these rules. We also believe that it would be impracticable for ARC Energy Trust to undertake the level of due diligence on such an issuer to comply with our disclosure and internal control requirements. By excluding potential buyers from a sale process we reduce the likelihood of receiving the highest price for our assets, which ultimately will adversely affect return to unitholders.

We respectfully submit that the negative impact of NI 41-101 on us, and ultimately our public unitholders who will bear the cost of NI 41-101, will far outweigh the additional investor protection provided to investors.

We respectfully submit that the provisions of Section 5.13 of Schedule 1 to NI 41-101 should be withdrawn or, if not withdrawn, modified to only apply to situations where the parties do not deal at arm's length.

Thank you for your consideration of the issues we have raised.

Yours truly,

ARC ENERGY TRUST

David Carey
Senior Vice-President, Capital Markets
ARC Resources Ltd.

ARC financialcorp
energy capital partners

Nancy L. Smith
Managing Director

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March 30, 2007

CONFIDENTIAL

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

c/o Patricia Leeson
Co-Chair of the CSA's Prospectus Systems Committee
Alberta Securities Commission
4th Floor, 300 - 5th Avenue SW
Calgary, Alberta T2P 3C4

Dear Sirs/Madames:

Re: Proposed New Prospectus Certification Provisions

I am writing this letter in response to the proposed new prospectus certification provisions contained in the Proposed National Instrument 41-101 and in particular Section 5.13 thereof. ARC Financial Corp. is very concerned that the proposed vendor certification requirement will effectively reduce the number of potential acquirors of junior energy companies thereby negatively impacting shareholder liquidity and value realization.

On behalf of institutional investors, ARC Financial Corp. manages the ARC Energy Funds with a mandate to invest primarily in junior Canadian energy companies. We have invested over $1.4 billion in over 130 junior energy companies in the last ten years. A key component of our success in achieving positive returns to investors has been exiting our investments through corporate sales to larger energy companies. We believe that the proposed vendor certification requirements would seriously impair shareholders' ability to sell companies as it is not reasonable to expect vendors to certify the contents of an acquiror's prospectus.

We therefore strongly encourage you to eliminate the vendor certification requirements from the proposed National Instrument. We would also note that we believe there are sufficient protections under the existing regulatory regime for aggrieved purchasers of securities to have recourse to the issuer without the necessity of recourse to vendors.

Please do not hesitate to contact me if you would like to discuss this further.

Yours very truly,

ARC FINANCIAL CORP.

Nancy L. Smith
Managing Director

SCHEDULE A

Patricia Leeson
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BONAVISTA ENERGY TRUST

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Via Electronic Correspondence to Addressees Indicated in Schedule A

March 30, 2007

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

Dear Sirs:

Re: Comments on Proposed National Instrument 41-101 *General Prospectus Requirements* ("NI 41-101")

We are responding to your notice and request for comment dated December 21, 2006 (the "Notice") on NI 41-101, the forms prescribed by NI 41-101 and the companion policy to NI 41-101.

Bonavista Energy Trust

Bonavista Energy Trust is an open-end investment trust created on May 22, 2003 under the laws of the Province of Alberta pursuant to a declaration of trust. Valiant Trust Company has been appointed as trustee under the declaration of trust. The beneficiaries of the trust are holders of the trust units. We commenced operations on July 2, 2003 as a result of the completion of a plan of arrangement under the *Business Corporations Act* (Alberta). Pursuant to this plan of arrangement, holders of common shares of Bonavista Petroleum Ltd. received either trust units or exchangeable shares for their common shares.

Bonavista Energy Trust is a reporting issuer in each of the province of Canada. Our trust units and convertible debentures are listed on Toronto Stock Exchange.

Our controlled entities are actively engaged in the business of oil and natural gas exploration, development, acquisition and production in Canada with current production of approximately 53,000 barrels of oil equivalent per day. We have a current market capitalization of approximately $3.25 billion, an enterprise value of approximately $3.75 billion and book asset value of approximately $2.1 billion.

Comments

We have two areas of substantial concerns relating to NI 41-101:

Trustee Certification

We have a concern with respect to the prospectus certification requirements for trusts provided for in Sections 5.5(1) and (2) of Schedule 1 to NI 41-101. As Bonavista Energy Trust has a corporate trustee, Valiant Trust Company, the requirement that the CEO and CFO of Valiant Trust Company and two directors of Valiant Trust Company execute any prospectus certificate is impracticable.

Our declaration of trust, like most public energy trusts, provides that the trustee is a corporate trustee appointed by our unitholders. Our declaration of trust delegates, among other things, the authority to make all decisions relating to public offerings, including the responsibility for executing prospectus certificates, to the board of directors of Bonavista Petroleum Ltd., a subsidiary of Bonavista Energy Trust. In addition, the board of directors of Bonavista Petroleum Ltd. oversees all operations of the controlled entities of Bonavista Energy Trust, including Bonavista Petroleum Ltd., and all public reporting by Bonavista Energy Trust. Valiant Trust Company's primarily responsibilities are to hold the assets of Bonavista Energy Trust (shares, subsidiary trust units, debt and net profit interests issued by Bonavista Energy Trust's various controlled entities) and managing the cash distributions to unitholders. In performing its responsibilities under the declaration of trust Valiant Trust Company and its officer and directors would not be in a position to execute a prospectus certificate. Bonavista Energy Trust has filed many prospectuses which have contained certificates executed by the CEO and CFO of Bonavista Petroleum Ltd. and two directors of Bonavista Petroleum Ltd. on behalf of the board of directors of Bonavista Petroleum Ltd. We submit that requiring certification of Valiant Trust Company would not add meaningful protection for investors.

We note that Section 5.5(3) of Schedule 1 to NI 41-101 provides an exemption from the requirements of Sections 5.5(1) and (2) of Schedule 1 to NI 41-101 to issuers that are investment funds in similar circumstances. We would submit that a similar exemption should be provided to trusts that meet the same criteria.

If no exemption is provided, we would submit that a reasonable transition period should be provided so that a meeting of unitholders of Bonavista Energy Trust can be called to substantially reorganize the trust in order that we may have continued access to the public markets.

Certification of Substantial Beneficiaries

We have a serious concern with respect to the prospectus certification requirements for a "significant beneficiary of the offering" provided for in Section 5.13 of Schedule 1 to NI 41-101. We believe that requiring a third party seller, dealing at arm's length with Bonavista Energy Trust, to certify our prospectus will materially impair our ability to compete in making substantial acquisitions. In addition, if NI 41-101 is implemented in its current form our disposition practises will have to change to exclude any issuer from a sales process who will require Bonavista Energy Trust to certify its prospectus.

We have grown our business through a combination of internally generated exploration and development activity as well as strategic acquisitions. In making acquisitions we compete with many public and private entities including large multinational corporations, senior Canadian and U.S. independents, trusts and junior issuers many of whom would not be effected by NI 41-101. We are required to compete both on price and terms, including risk allocation between the buyer and seller. We have no ability to arbitrarily allocate risk to the seller. NI 41-101 would require the seller to not only accept greater risk relating to its properties than is common in the marketplace, but also have to assume risk with respect to Bonavista Energy Trust's disclosure. Even if a seller were willing to accept this level of risk, which is unlikely, we would no doubt be required to increase the purchase price to compensate the seller for the assumption of this risk. We do not believe that paying an above market price for assets would be in the best interest of our unitholders.

Since conversion to the trust structure we have completed numerous acquisitions, including two acquisitions which would be considered significant acquisitions pursuant to subsection 35.1(4) of Form 41-101F1 (which refers to the significant acquisition definitions in NI 51-102 *Continuous Disclosure Obligations* "NI 51-102")) as they were asset acquisitions or acquisitions of a subsidiary entity of another party and the purchase price of which exceeded 20% of our book asset value. All of these acquisitions have been made from parties dealing at arm's length to Bonavista Energy Trust and have been made in the context of the competitive market place for acquisitions. We believe it would have been very unlikely to obtain the agreement of either seller to execute our prospectus. In both cases we completed a public offering where the proceeds were directly or indirectly used to finance these acquisitions. Investors were provided with full disclosure on the acquisition including independent engineering prepared in accordance with NI 51-101, audited property financial statements and the benefit of the due diligence conducted by our staff.

We also point out that the method of calculation of significance in NI 51-102 and the relatively low book value of our assets to our market value would categorize acquisitions in the $400 million range as significant acquisitions. While this would be a large acquisition it would only represents approximately 13% of our market capitalization and 11% of our enterprise value which, from a unitholder point of view, would not fundamentally change the nature of their investment. We of course could seek other methods of financing such as private debt or private placements. These would have a number of disadvantages including potentially higher costs, assumption of greater leverage risk and exclusion of our retail unitholders from participating in such financings.

In the case of dispositions, we cannot envision any circumstances where we would be willing to execute a prospectus certificate of an issuer dealing at arm's length of us. No reasonable premium could be paid by an issuer to compensate us for this risk of executing such issuers prospectus compared to the price which could be paid by another buyer not subject to these rules. We also believe that it would be impracticable for Bonavista Energy Trust to undertake the level of due diligence on such an issuer to comply with our disclosure and internal control requirements. By excluding potential buyers from a sale process we reduce the likelihood of receiving the highest price for our assets, which ultimately will adversely affect return to unitholders.

We respectfully submit that the negative impact of NI 41-101 on us, and ultimately our public unitholders who will bear the cost of NI 41-101, will far outweigh the additional investor protection provided to investors.

We respectfully submit that the provisions of Section 5.13 of Schedule 1 to NI 41-101 should be withdrawn or, if not withdrawn, modified to only apply to situations where the parties do not deal at arm's length.

Thank you for your consideration of the issues we have raised.

Yours truly,

BONAVISTA ENERGY TRUST

(signed) *"Keith A. MacPhail"*

Keith A. MacPhail
Chairman, President and CEO
Bonavista Petroleum Ltd.

SCHEDULE A

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Burnet,
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Law Firm

Via Electronic Correspondence to Addressees Indicated in Schedule A

March 30, 2007

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

Dear Sirs:

Re: Comments on Proposed National Instrument 41-101 *General Prospectus Requirements* ("NI 41-101" or the "Rule")

The Securities Group at Burnet, Duckworth & Palmer LLP are responding to your notice and request for comment dated December 21, 2006 (the "Notice") on NI 41-101, the forms prescribed by NI 41-101 and the companion policy to NI 41-101. Prior to providing our comments, we would like to commend the initiative taken by the Canadian Securities Administrators (the "CSA") to create a national instrument to encompass all the various prospectus requirements from the local jurisdictions. We understand that this was a substantial undertaking and we appreciate the effort that staff at the various commissions have taken in drafting the Rule.

We have the following comments with respect to the Rule:

1. Section 5.5 – Trust Issuer

We have a concern with respect to the prospectus certification requirements for trusts provided for in section 5.5 of NI 41-101.

Most public energy trusts have been organized with a corporate trustee such as Computershare Trust Company of Canada, CIBC Mellon Trust Company or Valiant Trust Company. The requirement that the CEO and CFO of such trust companies and two directors of their directors executing any prospectus certificate is impracticable for these energy trusts.

Most of the declarations of trust of these energy trusts provides that the trustee will be a licensed corporate trustee appointed by unitholders. These declarations of trust delegate, among other things, the authority to make all decisions relating to public offerings, including the responsibility for executing prospectus certificates, to the board of directors of the primary operating entity of the trust. Generally the board of directors of the primary operating entity oversees all operations of the trust's controlled entities and all public reporting by the trust. The corporate trustee's primarily responsibilities are to hold the assets of the trust (shares, subsidiary trust units, debt and net profit interests issued by trust's various controlled entities) and managing the cash distributions to unitholders. In performing its responsibilities under the declaration of trust the corporate trustee and its officer and directors would not be in a position to execute a prospectus certificate. We submit that requiring certification of Computershare Trust Company of Canada, CIBC Mellon Trust Company or Valiant Trust Company would not add meaningful protection for investors.

We note that subection 5.5(3) of NI 41-101 provides an exemption from the requirements of subsections 5.5(1) and (2) of NI 41-101 to issuers that are investment funds in similar circumstances. We would submit that a similar exemption should be provided to trusts that meet the same criteria.

If no exemption is provided, we would submit that a reasonable transition period should be provided so that each trust effected by this provision can call a meeting of unitholders to approve the substantial reorganize the trust in order that we may have continued access to the public markets.

2. Section 5.13 - Certificate of Substantial Beneficiaries of the Offering

This comment is in response to the specific requests for comment in the Notice on the new requirement contained in section 5.13 of the Rule that substantial beneficiaries of the offering are required to sign a certificate in the prospectus. We believe this requirement will have drastic consequences on many of our clients as well as Canadian public entities generally.

We are concerned that this requirement may effectively end, or significantly limit, substantial acquisitions by Canadian public entities where the public entity is financing the acquisition (or repaying acquisition debt) through a public offering. Not only will the requirement impair the ability of Canadian public entities to complete acquisitions, but it may also have a negative effect on the prices realized by private and public sellers of assets and businesses as public entities may effectively be eliminated from the universe of potential buyers unless the seller is willing to assume inordinate risk. Section 5.13 will affect public issuers' ability to make acquisitions both domestically and outside Canada and will subject Canadian issuers to rules that do not apply to their U.S. and foreign competitors. This requirement will adversely affect all Canadian public issuers regardless of their business but may have an even greater impact on the oil and natural gas industry given the historically high levels of continuous asset rationalization among oil and natural gas industry participants.

Section 5.13 will require that a prospectus contain a certificate of any "substantial beneficiary of the offering", which is defined in the Rule as any person or company who is reasonably expected to receive, directly or indirectly, 20% or more of the proceeds of the offering if that person or company is or was, within one year of the date of the prospectus, or following the completion of transactions contemplated by the prospectus:

(a) a control person of the issuer or a significant business of the issuer; or

(b) the holder of voting securities carrying 20% or more of the voting rights attached to any class of voting securities of the issuer or of a significant business of the issuer.

The term "significant business" means any business of the issuer or any business in which the issuer proposes to acquire an interest that would be considered a significant acquisition pursuant to subsection 35.1(4) of Form 41-101F1 *Information Required in A Prospectus* ("Form 41-101F1") (which refers to the significant acquisition definitions in NI 51-102 *Continuous Disclosure Obligations* "NI 51-102")). The definition is broad enough to capture assets of an issuer or distinct subsidiary entities of an issuer.

We believe that this section will have unintended or undesirable consequences. The following are two possible scenarios when a prospectus will be required to contain a certificate of a substantial beneficiary:

> **Scenario 1 -** Company A is purchasing oil and gas properties from Company B. To finance the acquisition, Company A is raising money by a prospectus offering. More than 20% of the proceeds of the offering will be used to finance the acquisition. The purchased properties will be considered a significant business for Company A because they meet the tests for significant acquisition contained in NI 51-102. As Company B owned 100% of the properties they will be considered to control a significant business of Company A within the year preceding the acquisition. Company B will therefore be required to sign a certificate in the prospectus.
>
> **Scenario 2 -** Company A makes a cash take-over bid for all the shares of Company B. Mr. C holds 25% of the shares of Company B. Company A finances the bid through an acquisition facility. Company A files a prospectus to pay down the acquisition facility immediately after the closing of the bid. Company B will be considered to be a significant business for Company A because it meets the test for significant acquisition contained in NI 51-102. As Mr. C owned 25% of the shares of Company B within one year of the financing he would be required to sign the certificate in the prospectus as he indirectly received more than 20% of the proceeds of the offering.

In both scenarios the substantial beneficiary will face potential liability for the entire amount of the offering if the prospectus contains a misrepresentation regardless of whether the misrepresentation relates to the significant business. The substantial beneficiary will be faced with having to perform full due diligence on the issuer even if the sale only represents a small portion of the substantial beneficiary's business. Attempts to obtain indemnification from the issuer with respect to the issuer's information may not be enforceable as violation of public policy and, from a practical point of view even if enforceable, are often worthless as they are only called upon when the issuer has a total financial failure. Substantial beneficiaries that are public issuers will also face challenges in complying with their own disclosure control and internal control policies. We expect that most entities will not be willing to sell their business or assets to a public issuer who is planning to finance the acquisition by a prospectus offering as they will not want to accept the potential liability or the costs of performing due diligence. This will likely be the case even if the liability were limited to the business or assets being sold given the lack of limitations that would be found in a normal commercial sale. Those that are willing to sign the prospectus will no doubt demand a significant premium to assume these risks.

In addition, please note that section 5.13 will have a retroactive effect. For instance if sometime in the year before the Rule becomes effective an issuer has made an acquisition of a significant business financed through an acquisition facility and then the issuer files a prospectus after the Rule becomes effective and the proceeds of the offering are used to repay the acquisition facility the person or company who sold the significant business to the issuer will be considered a significant beneficiary and be therefore forced to sign a certificate in the Prospectus. This is not fair to either party to the transaction as this requirement may not have been contemplated at the time they entered into the transaction and would need to be the subject of a covenant in favour of the issuer. If the seller of the significant business is not willing to sign the prospectus the issuer will potentially default on its acquisition facility. If the CSA decides to maintain this requirement in section 5.13 of the Rule, at a minimum, transitional provisions should be included.

We believe that due to the severe impact that section 5.13 will have on public issuers this requirement should be removed from the Rule in its entirety. However, if the CSA decides to maintain this requirement it may be possible to amend the section to prevent unintended and undesirable consequences. One possible fix would be to amend the definition of significant beneficiaries so that it only includes persons or companies who are control persons of the issuer or of a significant business of the issuer after the completion of the transactions contemplated by the prospectus. This would help prevent the undesirable consequences in scenario 1 and scenario 2 above.

If the CSA decides to keep section 5.13 in the Rule we urge you to carefully consider this provision and amend it to ensure that it does not have unintended or undesirable consequences. It may be prudent to have formal or informal industry consultations with respect to this issue or at a minimum seek further guidance from the Security Advisory Committees in the various jurisdictions.

3. Section 10.2 – Licences, Registrations and Approvals

Section 10.2 of the Rule requires that when an issuer is raising funds through a prospectus to fund in whole or in part a new business of the issuer and the issuer has not obtained all material licences, registrations and approvals necessary for the operation of the business all the funds raised pursuant to the distribution must be held in trust by a registered dealer, Canadian financial institution or lawyer until such time as all material licences, registrations and approvals have been received. If all material licences, registrations and approvals necessary for the operation of the business have not been obtained within 90 days from the date of receipt of the final prospectus, the person holding the proceeds of the distribution must return the funds to the purchasers.

We believe this requirement may create a problem for many issuers starting a new business as the funds raised from the distribution may be necessary to obtain all material licences, registrations and approvals necessary for the operation of the business. Therefore, this new requirement should be removed or in the alternative a provision should be made to allow certain funds to be released from trust to pay for any material licences, registrations and approvals.

4. Part 11 – Over-Allocation Position and Underwriters

Our next comment relates to section 11.3 of NI 41-101. Although this section is intended to limit the number of securities issuable to underwriters as compensation or pursuant to an over-allotment option it may have the effect of prohibiting underwritten financings. The concept of an underwritten financing is that the underwriter acts as agent to the issuer to sell and distribute the issuer's securities to the public and if the underwriter is unable to sell and distribute the total amount of securities agreed to the underwriter agrees to purchase the remaining securities directly from the issuer. However, section 11.3 of NI 41-101, as currently worded, only allows securities qualified by a prospectus to be issued to an underwriter pursuant to an the over-allotment option and as compensation. This would prevent any securities that are distributed as part of the base offering to be distributed to the underwriter and therefore no prospectus offering could be done on an underwritten basis.

With respect to the limit in paragraph 11.3(b) on the securities to be distributed to the underwriter as compensation it may be worth considering having the percentage limit based on not only the base offering but the over-allocation position as well. General industry practice is that the compensation payable to underwriters (whether it be cash or securities) is based on the total securities issued pursuant to the offering.

5. Part 12 of NI 41-101 – Restricted Securities

The provisions in Part 12 of NI 41-102 will prohibit issuers from filing a prospectus for a distribution of restricted securities or subject securities (subject securities are defined as securities which upon the issuance will have the effect of making a currently issued and outstanding class of shares restricted securities) unless the minority shareholders have approved either the distribution or the prior creation of the restricted securities or subject securities (the creation must be approved at a time when the shareholder is a reporting issuer). Part 12 also requires issuers to use prescribed terms for the description of securities in the prospectus. In addition to the requirements of Part 12, proposed Form 41-101F1 contains certain prospectus disclosure requirements for an issuance of restricted securities. Although we believe that the additional disclosure requirements will provide useful information for investors we believe that some of the shareholder approval requirements with respect to restricted shares are too onerous. In particular we believe that shareholder approval should not be required if the issuer contemplates issuing restricted securities which have less rights than currently outstanding securities. The issuance of securities is a business decision which corporate law has always recognized as within the authority of the directors of the corporation. Therefore it is questionable why the issuance of securities that have less rights than the currently issued and outstanding shares should be approved by shareholders when the issuance of the same class of shares with the same rights as the issued and outstanding shares does not require shareholder approval.

Thank you for your consideration of the issues raised above.

Yours truly,

"*Burnet, Duckworth & Palmer LLP*"

SCHEDULE A

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Via Electronic Correspondence to Addressees Indicated in Schedule A

March 30, 2007

The British Columbia Securities Commission
Alberta Securities Commission
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Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Nova Scotia Securities Commission
New Brunswick Securities Commission

Dear Sirs:

Re: Comments on Proposed National Instrument 41-101 *General Prospectus Requirements* ("NI 41-101")

We are responding to your notice and request for comment dated December 21, 2006 (the "Notice") on NI 41-101, the forms prescribed by NI 41-101 and the companion policy to NI 41-101. Thank you for the opportunity of providing these comments.

Cinch Energy Corp. ("Cinch" or the "Corporation") is a junior oil and gas company listed on the Toronto Stock Exchange and is a reporting issuer in certain provinces in Canada. Our market capitalization is approximately $67 million.

We would like to respond to one principal area of concern relating to the proposed amendments to NI 41-101. That relates to the requirement for certification by a "substantial beneficiary of the offering" as is proposed to be prescribed by Section 5.13(1) of Schedule 1 to NI 41-101. As a junior oil and gas company, our business model involves both the exploration and development of petroleum and natural gas products and also completing acquisitions that are strategic to the Corporation.

By its terms, the certification requirements may apply to a vendor of properties if those properties constitute a significant business of the issuer, if such vendor is reasonably expected to receive 20% or more of the proceeds of an offering of securities under a prospectus (including by way of repayment of debt or otherwise).

This requirement may require a vendor of properties to sign a certificate to our prospectus if the properties would constitute a "significant acquisition" to us (where more than 20% of the proceeds are used for the acquisition or to repay debt incurred in connection with the acquisition). By its terms, in such circumstances, this would apply to a third party vendor even when dealing at arm's length to the Corporation. We believe that this requirement would materially impair our ability to complete acquisitions and, in fact, we anticipate it will prevent us from even participating in acquisition processes.

In making acquisitions, we must compete with other entities, both private and public, including large corporations, trusts, and other mid-size and junior issuers. Having a smaller market capitalization and asset base clearly puts the Corporation at a disadvantage to other parties that may be competing for acquisitions that may not be "significant acquisitions" to them. We are required to compete both on price, timing and term, including risk allocation between buyer and seller. NI 41-101 will require the vendor to not only accept greater risk relating to the properties which it is disposing than has been negotiated with at arms length and which is common in the marketplace, but also to assume risk with respect to the Corporation's disclosure. It is doubtful that a vendor would be willing to accept this level of risk, and if they would, it would seek compensation by an increase in the purchase price to compensate the vendor for the assumption of this risk. We anticipate, however, that vendors of a property would simply not accept acquisition proposals from us if they would have to, or if there is a possibility that they would have to, certify or be involved in any way in our prospectus.

From a vendor's point of view, we cannot envision circumstances where a vendor (which may include the Corporation) would be willing to execute a prospectus certificate of another issuer dealing at arm's length. We do not believe that a vendor would be able to be properly compensated for this risk and the likely result, as discussed above, would be that certain potential acquirors would simply be excluded from the process or the ability to bid for or acquire properties. In addition, we do not envision a vendor would be amenable to the confidentiality provisions and possible restrictions related thereto that may be needed as a result of their access to a prospectus which has not yet been issued publicly. Both of these items would reduce the competitive process in the purchase and sale of properties and will therefore likely also artificially affect prices that oil and gas properties are sold for in the industry.

We would also question how a vendor of a property could undertake an appropriate level of due diligence in connection with certifying another issuer's prospectus so that the vendor could comply with its disclosure and internal control requirements.

In summary, we believe that the proposed requirement that a "substantial beneficiary of the offering" certify a prospectus may have a severe adverse effect, not only on the Corporation but on the industry generally. It will prevent certain parties from participating in the process to acquire properties solely based on their size and will affect the price that oil and gas properties are bought and sold for. Given the nature of the oil and gas industry, in which acquisitions and dispositions are a material part of the business model and necessary and appropriate to ensure that assets are developed and exploited in the most efficient manner, we would strongly submit that this proposal be reconsidered.

Thank you for your consideration of this matter and for allowing us to comment.

Yours truly,

CINCH ENERGY CORP.

Denise Ramage

Chief Financial Officer

SCHEDULE A

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March 30, 2007

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Dear Sirs/Madames

Re: Proposed New Prospectus Certification Provisions

I am writing this letter to comment on the proposed new prospectus certification provisions contained in the Proposed National Instrument 41-101 and in particular Section 5.13 thereof. As the Chairman and CEO of Cyries Energy Inc., I am deeply troubled that the proposals will adversely affect the ability of Cyries to effectively compete for acquisitions significant to Cyries and which typically require public equity financing thereby giving rise to the proposed vendor certification requirement. I strongly believe the certification requirement would be a substantial deterrent and may well preclude a vendor selling to a party where the vendor certification requirement would arise. As such these proposals, in my view, would create an uneven playing field amongst competitive acquirors. For Canadian public companies, large entities would have a competitive advantage over the small. More broadly, private and non-Canadian companies who do not finance in the Canadian markets would have a competitive advantage over Canadian public companies. These results are completely unfair, inappropriate and unwarranted. I believe there are more than sufficient protections under the existing regulatory regime for aggrieved purchasers of equity securities to have recourse to the issuer without the necessity of recourse to the vendor.

Cyries is a reporting issuer, the common shares of which are listed on the Toronto Stock Exchange. Cyries is engaged in the acquisition, exploration, development and production of crude oil and natural gas in western Canada. Cyries currently produces in excess of 10,000 barrels of oil equivalent per day and has a market capitalization in excess of $600 million. Cyries commenced operations in July of 2004 at which time it had production of approximately 1,050 boepd. Cyries has achieved this very substantial growth through a combination of acquisitions and drilling. The predecessor companies of Cyries managed by principally the same management team and board of directors as currently managing Cyries, achieved significant growth and value accretion through the same strategy of acquisitions and drilling from the early

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1990's. A key component to the success achieved by Cyries and its predecessors has been a successful acquisition strategy, many of which were significant and financed in the public markets. As mentioned, I believe the proposed vendor certificate requirements would create an uneven playing field and would seriously impair the ability of Cyries to effectively compete for acquisitions.

I encourage you to eliminate the vendor certification requirements from the proposed National Instrument. I would be pleased to discuss this with you further if you wish.

Yours very truly,

CYRIES ENERGY INC.

Per: ______________________________

Donald F. Archibald
Chairman and Chief Executive Officer

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March 30, 2007

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Authorité des marchés financiers
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Re: Notice and Request for Comment dated December 21, 2006 (the "Notice") on Proposed National Instrument 41-101 General Prospectus Requirements and Companion Policy 41-101 CP General Prospectus Requirement

This is Imperial Oil Limited's ("Imperial's") response to the CSA request for comment dated December 21, 2006 relating to Proposed National Instrument 41-101 (the "Proposed Rule") and Companion Policy 41-101 CP (the "Proposed Companion Policy") and amendments to related instruments referred to in the Notice.

Imperial is one of Canada's largest integrated oil companies and is active in all phases of the petroleum industry in Canada, including the exploration for, and production and sale of, crude oil and natural gas. Imperial's shares trade on the Toronto Stock Exchange and its shares are admitted to unlisted trading privileges on the American Stock Exchange.

Imperial is active in the Canadian oil and gas acquisition and divestiture market. In 2006, Imperial divested seven oil and gas producing properties for a total sale price of $126 million. It is Imperial's practice to sell these assets for cash and not shares or other securities after purchase. Imperial has no further role in connection with the divested assets after the transaction closes.

Imperial generally supports the stated objectives of harmonizing and consolidating prospectus requirements across Canada and harmonizing those prospectus requirements with other instruments. However, Imperial has significant concerns with the proposed implementation of section 5.13 of the Proposed Rule and the proposed amendments to Item 22 of Form 44-101F1 requiring any "substantial beneficiary of the offering" to provide a certificate in the same form required from the issuer certifying that the prospectus constitutes full, true and plain disclosure of all material facts relating to the securities offered by the prospectus.

Under the proposed amendments, where Imperial divests properties and where the purchaser makes a public offering within a year of that divestiture, Imperial may find itself a "substantial beneficiary of the offering" by virtue of it receiving directly or indirectly 20% or more of the proceeds of the offering of securities under the prospectus. Imperial would then be required to certify all of the disclosure contained in the prospectus, including the documents incorporated by reference therein.

Imperial notes the CSA's statement that "We believe a person or company that controls the issuer or a significant business has the best information about the issuer or significant business." Imperial does not agree that, at the time of the public offering, it would have the best information about a business that is then a "significant business" of its purchaser. In a typical sale of oil and gas properties, the vendor's books and records relating to the divested properties will be transferred to the purchaser. Often the vendor's employees who are most knowledgeable about the divested properties become employees of the purchaser after closing, leaving the vendor with no detailed knowledge about the purchaser's "significant business".

Further, for Imperial, it is often the case that the divested assets are not material to it. Imperial may sell a small amount of producing assets to a small start-up oil and gas company. For the purchaser, the assets may be highly material. It follows that the systems of internal controls and procedures for these assets and the knowledge of Imperial's officers, directors and employees of these assets would not be as detailed as for the purchaser.

Imperial Oil

Imperial also notes the CSA's statement that "a company who also receives proceeds from the distribution should be liable for any misrepresentations in the prospectus about the issuer or a significant business". In transactions for the sale of oil and gas assets between arm's-length parties, the vendor expects that its liability will be limited to that provided in its purchase and sales agreement. Under the Proposed Rule, a vendor would potentially find itself inadvertently liable as a result of its purchaser's public offering long after closing its sale transaction. The vendor has no control, or in many cases, knowledge, of the means of financing used by its purchaser. It would be wrong for the vendor to have responsibility for the purchaser after the sale is complete.

Nor does the vendor have any control over the purchaser's operation of the divested assets. In the event that the purchaser's prospectus details expected reserves and production, the vendor is in no way able to influence delivery of production volumes, particularly given that reserves are highly price dependent.

Imperial believes that these amendments create powerful disincentives for companies such as Imperial to divest oil and gas assets to small oil and gas companies in light of the potential for triggering substantial liability for vendors as a result of the purchaser's subsequent public offering. The vendor would also take on prospectus liability in connection with all disclosure relating to its purchaser's other business and assets.

Accordingly, it is Imperial's view that these particular sections of the Proposed Rule and Form 41-101F1 should be substantially modified or abandoned.

Yours truly,

Brian Livingston

Brian W. Livingston

IRWIN, WHITE & JENNINGS

BARRISTERS AND SOLICITORS

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March 30, 2007

BY ELECTRONIC MAIL

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

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Dear Sirs/Mesdames:

Re: Proposed National Instrument 41-101 – General Prospectus Requirements

We are counsel to the following investment funds:

(i) GrowthWorks Atlantic Venture Fund Ltd. ("GWAVF"),

(ii) GrowthWorks Canadian Fund Ltd. ("GWCF"),

(ii) GrowthWorks Commercialization Fund Ltd. (“GWComm”), and

(iii) Working Opportunity Fund (EVCC) Ltd. (“WOF”),

(together the “GrowthWorks Funds”) .

We are writing on behalf of ourselves and on behalf of the GrowthWorks Funds to provide comments on Proposed National Instrument 41-101 (“NI 41-101”). We and our clients appreciate the opportunity to provide input on this regulatory process.

BACKGROUND

Each of GWCF and GWComm is a labour-sponsored venture capital corporation registered under the *Income Tax Act* (Canada). Each is also a labour-sponsored investment fund corporation registered under the *Community Small Business Investment Funds Act* (Ontario), and an approved fund under the *Labour-sponsored Venture Capital Corporations Act* (Saskatchewan). GWCF offers its securities in Ontario, Saskatchewan, Manitoba, Alberta, the Northwest Territories, Yukon and Nunavut, through appropriately registered dealers. GWComm offers its securities in Ontario, Saskatchewan and Alberta.

GWAVF is registered as a labour-sponsored venture capital corporation under the *Income Tax Act* (Canada), the *Equity Tax Credit Act* (Nova Scotia) and the *Labour-Sponsored Venture Capital Tax Credit Act* (Newfoundland and Labrador) and is a prescribed registered labour-sponsored venture capital corporation under the *New Brunswick Income Tax Act*. GWAVF offers its securities in Nova Scotia, New Brunswick, PEI and Newfoundland and Labrador through appropriately registered dealers.

WOF is an employee venture capital corporation (“EVCC”) registered under the *Employee Investment Act* (British Columbia) and is a prescribed labour sponsored venture capital corporation under the *Income Tax Act* (Canada). WOF offers its securities only in British Columbia.

Each of the Funds is managed by an affiliate of Growth Works Ltd. (together the “GrowthWorks group of companies”). The GrowthWorks group of companies is the second largest independent manager of labour-sponsored investment funds (“LSIFs”) in Canada with approximately $800 million in assets under management.

Each of GWCF, GWComm, GWAVF and WOF offers its securities on a continuous offering basis. Each of GWCF, GWComm and GWAVF is considered a “mutual fund” under applicable securities laws. While not technically a mutual fund under the *Securities Act* (British Columbia), WOF has obtained exemptive relief on the basis that it is substantially similar to a mutual fund and that its offering of securities is analogous to that of a mutual fund (see 2000BCSCCOM 269, 2001BCSCECCOM 847, 2003 BCSCECCOM 234, 2005 BCSECCOM 107, 2006 BCSCECCOM 232).

COMMENTS ON NI 41-101 AND 41-101F2

Our comments on proposed NI 41-101 are set out below. We have separated our comments into topics. We have also identified the relevant provisions of NI 41-101 and 41-101F2.

Why Maintain a Separate Prospectus Regime for Some Investment Funds?

In the notice and request for comments regarding NI 41-101 dated December 21, 2006 (the "Notice"), the Canadian Securities Administrators (the "CSA") stated that the purpose of NI 41-101 is "to create a comprehensive, seamless and transparent set of national prospectus requirements for all issuers, including investment funds". However, there is a specific acknowledgment of the carve out for conventional mutual funds that are subject to National Instrument 81-101 ("NI 81-101").

We submit that all investment funds should be subject to the same prospectus regime and the more appropriate regime is NI 81-101. In the alternative, to the extent separate prospectus regimes and forms are deemed necessary by the CSA for different types of investment funds, we submit that the more appropriate regime for LSIFs is NI 81-101. WOF is an LSIF and has used, as a result of exemptive relief obtained from the British Columbia Securities Commissions, the simplified form of prospectus since 1992 (currently under NI 81-101 and previously under National Policy 36).

National Instrument 81-106 ("NI 81-106") created a harmonized set of continuous disclosure and financial reporting requirements for all investment funds. The CSA's stated purpose of harmonizing reporting obligations would allow for easier and better comparison by investors. We submit that a similar approach should be taken for the regulation of prospectus offerings by all investment funds in order to achieve the CSA's stated goal of having prospectus disclosure that allows for better and easier comparison of investment funds.

We note that NI 41-101 has several sections that duplicate obligations under NI 81-102, including requirements with respect to advertising and custodians. We believe this added layer of regulation is unduly burdensome and, for this reason and along with the reasons set out below, we submit that NI 41-101 should not apply to investment funds.

We also note that the eligibility criteria for the short form prospectus regime under National Instrument 44-101 was expanded by the CSA in December 2005 to effectively allow all listed issuers to use the short form regime despite the fact that there are many differences among listed issuers with respect to tax treatment and types of offerings. The short form prospectus regime under NI 44-101 for issuers is analogous to the simplified prospectus regime under NI 81-101. We believe a similar expansive approach to the use of the simplified prospectus regime should be considered at this time.

In Ontario, LSIFs have historically been required to use Form 45 – *Information to be Included in Prospectus of a Labour Sponsored Investment Fund Corporation*. With respect to the application of

NI 41-101 to labour sponsored funds in particular, we believe it maintains a historic and somewhat artificial distinction between labour sponsored investment funds and mutual funds that are permitted to use NI 81-101 F1 and F2.

BC does not have a prescribed form of prospectus for labour sponsored funds. After its initial offering in 1992, WOF has consistently used the simplified form of prospectus for its offering documents rather than the long form prospectus. Because it is not technically a mutual fund under the *Securities Act* (British Columbia), WOF has had to seek and obtain various exemptions from the British Columbia Securities Commission to use the simplified form of prospectus.

Under 2000BSCECCOM 269, WOF is permitted to use the forms of simplified prospectus and annual information form under National Instrument 81-101 with such additions and amendments thereto as are appropriate to explain the unique nature and features of the offering. This relief is based upon the fact that WOF's offering of securities is analogous to that of a conventional mutual fund that uses 81-101F1 and F2 because WOF:

- invests in a portfolio of qualifying securities meeting its statutory and self-imposed investment criteria;
- is taxed as a mutual fund corporation;
- calculates and publishes the value of its offered securities based on the net underlying value of its assets and offers its securities continuously on the basis of that net underlying value;
- ultimately redeems its securities on essentially the same basis as a mutual fund;
- distributes its securities through dealers that distribute mutual funds; and
- complies in all material respects with NI 81-101.

We submit that offerings by other labour sponsored investment funds like GWCF, GWComm and GWAVF, share the above characteristics, and therefore their offerings are also analogous to those of conventional mutual funds that are permitted to use 81-101F1 and F2.

WOF has worked with the British Columbia Securities Commission to develop a form of prospectus and annual information for WOF in accordance with NI 81-101F1 and F2 that we believe provides investors and potential investors with full, true and plain disclosure in a format that makes it easier for advisers, investors, issuers and regulators to compare WOF to "like" investment funds – that being conventional mutual funds.

Accordingly, we submit that meaningful comparability among investment funds can really only be achieved if all investment funds are subject to the same prospectus regime and we believe the more appropriate prospectus regime is NI 81-101 rather than proposed NI 41-101. In the alternative, we submit that that LSIF offerings are more analogous to those of mutual funds that are permitted to use 81-101F1 and F2 rather than the other types of investment funds currently subject to proposed NI 41-101. As such, in a multiple prospectus regime system for investment funds, we submit the more appropriate regime for LSIFs is NI 81-101.

A Single Prospectus for Multiple Series Funds

We seek clarification from the CSA that investment funds that offer multiple series of shares under a single prospectus can continue to do so provided that separate disclosure is provided in response to particular items in 41-101F2 where the response would not be identical for all series. In particular, was it intended that if a single corporate entity offers multiple series in circumstances where it cannot be said that the series are referable to the exact same portfolio, then: (a) can the entity prepare a single prospectus provided that separate disclosure is provided in response to particular items in 41-101F2 where the response would not be identical for all series; or (b) would each series be required to prepare its own prospectus? If the intended result is (b), we submit that this will result in significant increases in cost and paper burden for a number of entities without a corresponding benefit for investors.

For example, each of WOF and GWCF are multiple series funds that have switch rights among their series. Each fund has currently has one prospectus. We submit this practice enhances investor understanding of their investment and avoids unnecessary and costly duplication of disclosure. Indeed, we believe this is the basis on which regulators have receipted WOF and GWCF current prospectuses (for copies of WOF's and GWCF's current prospectuses, please see www.sedar.com or www.growthworks.ca.)

WOF offers 6 different Venture Series Shares - Balanced Shares, Growth Shares, Income Shares, Financial Services Shares, Resource Shares and Diversified Shares - under a single "Part B – Fund-Specific Information" of its simplified prospectus. Investors may switch among the different series of Venture Series Shares. The only material difference among these series with respect to the offering thereof is the fact that the incidental, non-venture funds are invested differently. This results in there being separate disclosure about the non-venture component of each of these series but for all other matters, disclosure is combined.

GWCF offers Venture / Balanced Shares, Venture / Growth Shares, Venture / Income Shares, Venture / Financial Services Shares, Venture / Resource Shares and Venture / Diversified Shares under a single prospectus prepared under Form 45. Investors may switch among the different series of shares. Like WOF, the only material difference among these series with respect to the offering thereof is the fact that the incidental, non-venture funds are invested differently. Again, like WOF, this results in there being separate disclosure about the non-venture component of each of these series but for all other matters, disclosure is combined.

In the case of WOF and GWCF, because the incidental, non-venture component is invested differently for each series, it cannot be said that all series are referable to the same portfolio. If each series of WOF and GWCF was required to have its own prospectus, this would result in 13 separate prospectuses instead of the current 2. We strongly submit that this is unduly burdensome. Based on our review of 41-101F2, for these two funds we would expect there to be series-specific disclosure in response to only <u>two</u> items in the form, namely item 5.2 "Investment Strategies" and item 8.1 "Risk Factors". In addition, some series have relatively low net asset value (e.g. under $2 million). Requiring a separate prospectus for these smaller series would not be economical and therefore, GrowthWorks may have to consider ceasing to offer such series. This would result in less choice in portfolio management tools for investors which we believe is not desirable.

As a result, we believe that Item 13 of the general instructions to 41-101F2 should be clarified to permit the current approach taken by multiple series funds like WOF and GWCF of having a single prospectus (or in the case of WOF, a single "Part B" of its simplified prospectus) in circumstances where all material differences between the series are disclosed.

Certificate of Investment Fund Manager – Section 5.10 of NI 41-101

Please clarify the required signatures for the certificate of the investment fund manager. Subsection 5.10(2)(b) suggests that two directors of the investment fund should be signing the certificate of the investment fund manager. Also, please clarify who should sign the certificate when the investment fund manager has only one director, which is the case for the managers of WOF, GWCF, GWComm and GWAVF. We submit that investment fund managers should not be required to increase the size of their boards simply to comply with the certificate requirements of NI 41-101 (particularly when the CEO and CFO of the fund manager are also signing).

Clarification Regarding Pro-Forma Filings – Section 9.2(b) of NI 41-101

Please confirm that a "pro forma filing" for investment funds which have a continuous offering is not considered a "preliminary prospectus" under NI 41-101. We seek this clarification because of the lead-in to section 9.2(b) which states "concurrent with the filing of a preliminary long form prospectus, the following: (i) **Blacklined Copy** – If the issuer is an investment fund, a copy of the *pro forma* prospectus (if applicable) blacklined to show changes and the text of deletion from the latest prospectus previously filed;". We would expect a blacklined prospectus to be included in a pro forma prospectus filing but not in a preliminary prospectus filing.

Auditors Consent – Section 10.1 of NI 41-101

Please confirm whether an auditors consent must be filed at the time audited financials are filed on SEDAR and automatically incorporated by reference into an investment fund's previously filed prospectus.

Restricted Securities – Section 12.1(2)(c) of NI 41-101

Please clarify in the instrument that if Part 9 of NI 41-101 does not apply to an investment fund by virtue of section 12.1(2)(c), then the disclosure requirements in Items 13.1 and 21.6 of Form 41-101F2 regarding restricted securities similarly do not apply to the investment fund.

Additional Legending Requirements – Section 13.2 of NI 41-101

Most LSIFs are subject to NI 81-102 legending requirements and restrictions on advertising. We submit the additional legending requirements in section 13.2 of NI 41-101 are duplicative in nature and unnecessary given the requirements of NI 81-102. Accordingly, we submit that investment funds subject to NI 81-102 should not be also be subject to the requirements of Section 13.2 of NI 41-101.

Ontario Exceptions

Please confirm that applicable cross-references to the Ontario legislation will be maintained in the final instrument in order to streamline compliance obligations.

Involvement of Underwriters – Item 1.11 of Form 41-101F2

We submit that the requirement in Item 1.11 of 41-101F2 to state in bold that underwriters have not performed any review of the prospectus or any independent due diligence of the contents of the prospectus is unnecessary given that securities laws require a registrant to be involved in all non-exempt purchases of securities. We note that no similar requirement exists in 81-101F1.

Table of 5% LSIF Investments – Item 5.4 of Form 41-101F2

Item 5.4 of the Form provides that an LSIF prospectus must include a table disclosing information with respect to each entity, 5% or more of whose securities of any class are beneficially owned directly or indirectly by the LSIF (the "5% Table"). We would suggest that this requirement be eliminated because more relevant information regarding an LSIF's investments is contained in its Management Reports of Fund Performance ("MRFP") which is incorporated by reference into the new prospectus form.

We think investors construe an LSIF's 5% Table as a listing of the fund's most significant investments. In many instances, this may not be the case. An LSIF investment in a particular entity may represent more than 5% of a given class of securities of an entity and yet contribute little or no value to the overall value of the fund. Conversely, an LSIF investment in another entity may represent less than 5% of a given class of securities of an entity and yet carry considerable value. The first investment would feature in the 5% Table while the second would not, conveying a misleading message as to the relative significance of the investments.

Under Item 5 of 81-106F1, each MRFP must disclose the top 25 positions held by the LSIF, expressed as a percentage of the net assets of the LSIF (the "Top 25 Table"). Again, we think investors will construe the Top 25 Table as a listing of the fund's most significant investments. It may often be the case that investments that feature in the 5% Table will not feature in the Top 25 Table and *vice versa* given the different methods for determining what investments must be included in each table. The Top 25 Table provides a much better approximation of an LSIF's most significant venture investments than the 5% Table. We submit that the 5% Table is more likely to cause confusion than add further meaningful disclosure for investors.

Use of "Pricing NAV"

LSIFs are allowed to include the unamortized balance of up-front sales commissions (in some jurisdictions, only commissions booked prior to December 31, 2003) in calculating their share prices for issuing and redeeming shares. This price is often referred to as "Pricing NAV". Accordingly, we request that NI 41-101 and 41-101F2 expressly provide for the use of "Pricing NAV per Share" in applicable jurisdictions provided that the investment fund include relevant disclosure concerning the difference between the Pricing NAV per Share and the net asset value per share calculated under GAAP.

Conclusion

We appreciate the opportunity to provide our comments and welcome the opportunity to discuss them further.

Best regards,

"Jill W. McFarlane"

Jill W. McFarlane

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March 30, 2007

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VIA EMAIL

Dear Ms. Leeson, Ms. Franken and Ms. Beaudoin,

I am writing to provide my very brief, and unfortunately last minute, comments regarding the Proposed National Instrument 41-101 *General Prospectus Requirements ("NI 41-101")*.

Given the commentaries I have seen on NI 41-101, I have serious concerns with respect to the potential impact this will have on my company specifically, but also on the Canadian oil and gas industry in general. I question, and would very much like to understand, the rationale for requiring a "significant beneficiary" to have to provide a certification with respect to a prospectus to be filed by an issuer within one year after the acquisition of a "significant business".

Although I do not profess to know whether it was desired, the result appears to try to shift the responsibility for success of not only an acquisition, but the success of the entire business of the purchaser subsequent to that acquisition back onto the vendor. In my opinion, I do not believe that will be a risk that any vendor can, or will be willing to, accept – even if that risk is only limited to the significant business itself.

The fallout would likely be an extreme reduction in asset acquisitions and dispositions or in takeovers of corporations with significant shareholders – which would further reduce the avenues on any companies our size or smaller which avenues they can grow from.

I understand that a key mandate of all of the Canadian Securities Regulatory bodies is the protection of investors in our capital markets. However, I trust that the mandate does not include protecting them from potential positive returns – which is what I believe these proposals, in their current form, have the possibility of impacting directly.

Sincerely,

KERECO ENERGY LTD.

Stephen C. Nikiforuk, C.A.
Vice President, Finance and Chief Financial Officer

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March 30, 2007

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

Dear Sirs/Mesdames:

Re: Notice and Request for Comment dated December 21, 2006 (the "Notice") on Proposed National Instrument 41-101 General Prospectus Requirements and Companion Policy 41-101 CP General Prospectus Requirements

This is our firm's response to the CSA request for comment dated December 21, 2006 relating to Proposed National Instrument 41-101 (the "**Proposed Rule**") and Companion Policy 41-101 CP (the "**Proposed Companion Policy**") and amendments to related instruments referred to in the Notice.

In general we support the purposes of the Proposed Rule and the underlying principles of harmonizing and consolidating prospectus requirements across Canada, harmonizing the general prospectus requirements with the continuous disclosure and short form prospectus regimes and having the Proposed Rule reflect current policy. However, we have significant concerns with certain aspects of the Proposed Rule. Our comments on the specific questions raised by the CSA and on other aspects of the Proposed Rule and related amendments are set out below.

Questions 1 to 4 Certificate Requirements

We believe that the proposals for certificates to be signed by substantial beneficiaries of offerings are seriously misguided and would have significant detrimental effects on offerings generally, on sales of "significant businesses" as defined in the Proposed Rule to Canadian public issuers and on the competitiveness generally of Canadian public issuers. Our major concerns with these proposals are as follows:

(1) As no separate form of certificate is specified, it appears that a full issuer certificate would be signed by the substantial beneficiary of the offering. The full issuer certificate would involve certification by the substantial beneficiary of the

full contents of the prospectus, which would require the beneficiary to do full due diligence on the issuer. This would impose an undue burden on the beneficiary and could significantly impact the timing of an offering. This could effectively preclude bought deal financings for acquisition transactions. The delays encountered would impair the efficiency of the capital markets. We note that the primary justification for the certificate appears to be the contention that the beneficiary has the best information related to the significant business. While this may be true in some cases, we also note that the beneficiary does not have the best, or in most cases any, information relating to the remaining assets or business of the issuer and it is accordingly unfair to impose liability on the vendor for other information relating to the issuer. Nor do we believe it is an answer to impose a limited certificate requirement on the beneficiary, because in many cases the information relating to the acquired business will be integrated with other information relating to the issuer, making segregation impossible or impractical. In addition, we anticipate that most vendors, having specifically negotiated representations and warranties in the sale agreement, will not be prepared to expose themselves to any third party liability resulting from the sale.

(2) There is no assurance that a purchasing issuer would in fact be able to obtain the signatures to the certificate when required or at all. It is anticipated that this could particularly be a problem where the vendor is a foreign entity.

(3) The proposals could negatively impact the costs of financing or alternatively the ability of smaller issuers to access the capital markets. We expect that a vendor selling a business in circumstances where a prospectus certificate could be required would respond in one of the following manners:

(a) refuse to sell to a purchaser if to do so could involve a requirement to sign a prospectus certificate; or

(b) impose a one-year no public financing covenant on the purchaser. This would force purchasers to do non-public bridge financing or private placements for a year until the certificate requirement is not applicable. This may not be in the best interests of the purchaser or its security holders. Alternatively, this could force issuers to do "war chest" financings so that they have funds to do future acquisitions, which is contrary to what we believe securities administrators generally prefer; or

(c) impose a cost obligation on the issuer consisting of a higher sales price or an indemnity for the costs of the vendor incurred in connection with the prospectus and for liability that it may incur as a result of signing the certificate. It is not unreasonable to conclude that this would adversely impact in a very significant manner the cost of offerings in these circumstances.

(4) This is not a requirement of U.S. securities laws or, to our knowledge, the laws of other jurisdictions. Such a provision would provide encouragement for Canadian based issuers to seek to list and raise funds under the laws of other jurisdictions and would also provide encouragement for foreign issuers who are looking to list in Canada to list in other markets which do not have these requirements.

(5) It could reasonably be expected to have a negative effect on the market for the sales of "businesses" and could result in foreign purchasers, non-publicly traded purchasers or issuers which do not require access to the public capital markets becoming favoured purchasers. This could distort the market for sales and also result in Canadian public issuers having reduced commercial opportunities available to them.

(6) The reach of the provisions is unduly broad. There have not, to our knowledge, been significant instances of misrepresentations in connection with acquisition transactions and the Proposed Rule does not offer adequate justification for such a significant change in the securities laws. The reach of the provisions is unduly broad as they apply to all issues and issuers regardless of their size and whether the issuer is doing an IPO or repeat offering. For example, there have been two recent instances where very significant well established Canadian public issuers have acquired significant businesses from U.S. based vendors and financed the acquisitions with contemporaneous offerings of subscription receipts. One may question whether the investors in these issues require the protection of a certificate of the vendor. One may also question if these Canadian public companies would have been successful bidders if they had been required to negotiate signature of a prospectus certificate by the vendors of the business. If there are specific problems that the commissions consider of concern, they should be more specifically addressed rather than through provisions with such a broad reach and potential negative consequences.

(7) The definition of business for this purpose is too broad, particularly insofar as it applies to oil and gas properties. The impact of these provisions will be particularly felt in Alberta due to the inclusion in the definition of business of an interest in an oil and gas property to which reserves have been attributed. Oil and gas properties frequently change hands and major companies frequently dispose of "non-core" properties which may not be material to them but which could be considered material to the purchaser. This could result in major companies who sell properties being required to certify the contents of a prospectus of a smaller purchaser. It is not unreasonable to expect that major companies would not sell to a purchaser if a prospectus certificate could be required by the vendor. As noted above, this may force the purchaser to limit its financing options, which may not be in the best interests of the purchaser or its security holders. Since oil and gas properties are not stand alone businesses and there is significant independent third party information available with respect to such properties (for example,

independent third party reserve reports), the underlying rationale for the inclusion of a certificate by the vendor is not present.

(8) It is not clear whether the provisions will only apply to transactions that are completed after the effective date of the Proposed Rule or if they could apply to transactions completed prior to the effective date. In this respect, it is our view that the provisions, if implemented, should only apply to transactions that are completed after the effective date, as the parties to transactions completed prior to that date will not have negotiated the transactions with these provisions in mind.

(9) Question 4 relates to the appropriateness of the thresholds. It is our view that any threshold imposed could give rise to the significant negative impacts set out above. As noted above, if there are specific problems that are of concern to the commissions and require addressing, they should be more specifically addressed rather than through provisions with such a broad reach and potential negative consequences.

(10) While we acknowledge that the prospectus liability provisions of securities acts may contemplate liability for anyone who signs a certificate in a prospectus, we question the appropriateness of the commissions making such a fundamental extension to prospectus liability without a specific amendment being made to the securities acts.

In summary, it is our view that to proceed with this proposal in any way, shape or form is misguided and should be abandoned. It is our view that the proper approach is to leave the responsibility for disclosure on issuers and their directors, officers and underwriters and to ensure (as the Proposed Rule does) that there is disclosure in the prospectus of the information available to the issuer relating to the acquired business, who it was acquired from, the terms of the acquisition, the use of the proceeds and who may in effect be direct or indirect beneficiaries of the offering. Armed with such information, investors are able to determine if they are comfortable with investing in these circumstances. We believe that the goal of securities legislation and rules is not, and should not be, to eliminate risk and provide absolute protection to investors, but rather should continue to be to ensure that investors have appropriate information (including cautions where that information is derived from third parties or is unverifiable) and to allow investors to make their investment decision based on the risk associated with the circumstances.

Additional comments on Certificate Requirements

(11) Section 5.13(1) of the Proposed Rule includes a prospective aspect which could require a certificate of a beneficiary to be provided even though the sale has not been completed. It is hard to imagine a vendor agreeing to sign a certificate in a prospectus of a third party purchaser before the transaction has closed.

(12) Section 5.5 of the Proposed Rule makes provision for certificates by Trust Issuers and requires the certificate to be signed both by persons who perform CEO and CFO like duties as well as by the Trustee. In many cases, a corporate trustee, such as Computershare Trust Company of Canada or Valiant Trust Company, is the Trustee but all administrative power is delegated to a third party administrator. In these cases the certificate should be signed by representatives of the actual administrator rather than the corporate trustee as the corporate trustee has no power over or involvement in the business. From a practical perspective, it is unlikely that the CEO, CFO and two directors of the corporate trustee are going to agree to certify the information in a prospectus. It is suggested that the proper approach is to extend the carve out in subsection 5.5(3) that currently applies to investment funds to situations involving corporate trustees of trust issuers where management authority has been delegated.

(13) In the case of reverse take-overs, Section 5.8 extends the certificate requirement to include all directors of the reverse take-over acquiror. We do not understand the rationale for requiring the signature of all directors. This will create significant logistical problems for issuers, particularly those with directors who reside outside of Canada.

Questions 5 and 6 Material Contracts

The provisions referred to in questions 5 and 6 are illustrations of the inherent problems with a "rules" based system which attempts to draft finite rules applicable to all issuers regardless of their size, business or assets. It is practically impossible to draft rules of this nature that will not create more problems than they solve. This is particularly true of the provisions in section 9.1(2) which attempts to designate which provisions must be disclosed. It is suggested that guidance of this nature is more appropriately provided in a companion policy which is a more flexible format than being contained in the Proposed Rule.

We offer the following specific comments on this part of the Proposed Rule:

(1) It does not provide a useful definition of what is a material contract;

(2) The 20% threshold in Paragraph 9.1(1)(c) may be realistic and material for some issuers who are large in size and whose assets are of a nature to make such test relevant whereas for other issuers, such as many junior oil and gas companies, it will require disclosure of information that is not significant or useful to an investor; and

(3) We do not concur with the amendments being proposed to NI 51-102 Continuous Disclosure as issuers should be permitted to redact information which it considers seriously prejudicial even if it is constitutes one of the designated items as being "necessary to understanding the contract" as provided in section 9.1(2) of the Proposed Rule. Redaction is a particularly important right, and even the provision

of names of contracting parties can in some cases (particularly for technology or IT companies) be of extreme importance. We believe that filed material contracts are generally of more interest to competitors and professional advisers than to investors.

Question 7 Personal Information Forms

Although we question the need for the information provided in these forms beyond that which was previously provided, in general we have no objection to the requirement to file Personal Information Forms from directors and executive officers of the issuer provided that the form is interchangeable with the similar forms required by the Toronto Stock Exchange and the information will in fact serve a useful purpose for the commissions. We question the need to in effect re-file these forms every three years. It should be noted that the requirement to file PIFs will impose a significant administrative and timing burden on both the issuers (who will need to file these manually in each jurisdiction in which they file a prospectus since the forms are not suitable for SEDAR filing) and for the commissions (who will require dedicated resources to review the forms and maintain them in a manner consistent with the highly confidential nature of the forms). We question whether all commissions will really want to receive and deal with the large number of forms that will be filed with them. The Proposed Rule should make it clear that an individual who holds multiple directorships does not have to file more than once every three years.

We object to the inclusion in section 9.2(b)(ii)(C) and (D) of Personal Information Forms for directors and executive officers of substantial beneficiaries of the offering. The purpose of the form is presumably to enable the commissions to assess the suitability of the directors and executive officers of an issuer and not those from whom it may have acquired a business. In addition, whether a director or executive officer of a substantial beneficiary of the offering is prepared to complete and sign such a form is beyond the control of the issuer and could substantially delay or impede financings.

Question 8 Over Allocation

We defer to comments provided by underwriters on this question.

Question 9 Distribution of Securities Under A Prospectus

We defer to comments provided by underwriters on this question.

Question 10 Waiting Period

We concur with the proposal not to impose a minimum waiting period between the issuance of a receipt for a preliminary prospectus and the receipt for the final prospectus. We note that National Policy 43-201 - Mutual Reliance System For Prospectuses already effectively imposes a waiting period by setting out in sections 5 and 7.5 the time frames in which a principal regulator has to issue a comment letter or MRRS decision document.

Question 11 Amendments to Preliminary or Final Prospectus

We favour retention of the existing provisions or alternatively establishing a material adverse change test for both the preliminary and final prospectus. Imposing a test that will require more frequent amendments to a final prospectus will add uncertainty to the markets and potentially unnecessarily delay the completion of offerings.

Question 12 Bona Fide Estimate of Offering Price

We believe that issuers should have the right but not the obligation to insert an estimate of the offering price and size in a preliminary prospectus. We believe that mandatory insertion in a preliminary prospectus of a *bona fide* estimate of the offering price and disclosure at the mid point of the range would not provide information that is not otherwise available to those who wish to receive it or that is in many cases useful to a prospective purchaser as it has not at that time been agreed to by the issuer and the underwriter and the range may change during the marketing period. We believe that issuers should have the optional right to include such information if the issuer feels that such information is useful to an understanding of the offering.

Question 13 2 Year Financial History

We concur with the attempt to harmonize the financial disclosure requirements of the long form and short form prospectus systems, but believe clarification is required with respect to Item 32 of the Proposed Form 41-101F1, how the exemption available in section 32.4(a) works in concert with the requirement set out in section 5.3(1) of the Companion Policy and Item 32 of Appendix A to the notice with respect to the "primary business" situation.

Additional Comments

Restricted Securities

We believe the requirement imposed on issuers under section 12.3(1) of the Proposed Rule to seek shareholder approval on a class basis for the prospectus distribution has an undesirable impact on small companies which do not meet the definition of "private issuers" and were not reporting issuers at the time of the reorganization which created the restricted securities.

Risk Factors

We believe that the requirement to place the risk factors in order of importance is not appropriate in the Proposed Rule because it gives rise to the question of the consequences of being incorrect, when the assessment of order of importance is highly subjective. If guidance is provided it should be done in the Proposed Companion Policy, which is a more flexible format.

We hope that these comments will be of assistance to you and would be happy to discuss any questions you may have with respect to our comments.

Yours truly,

MACLEOD DIXON LLP

K. Johnson

Kevin E. Johnson

March 30, 2007

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Directrice du secrétariat
Autorité des marchés financiers
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Re: National Instrument 41-101 – General Prospectus Requirements and related proposed amendments

Dear Co-Chairs,

We would like to provide our comments on some of the proposed changes to National Instrument 41-101 and the related proposed consequential amendment to National Instrument 81-101 that will affect investment funds.

We are concerned about the proposed consequential amendment to Section 2.7 of NI-81-101, which will require any unaudited financial statements included in or incorporated by reference into the prospectus be reviewed in accordance with the relevant standards set out in the CICA handbook.

This amendment will require all unaudited financial statements issued by investment funds to be subject to a review. We do not believe this additional review will provide value to the unit holders. By contrast, the costs of the required review will ultimately be borne by the unit holder through higher expenses charged to the fund, thus decreasing the return to the unit holders.

By their nature, investment funds must have sound financial controls, not only to ensure that the fund financial statements are accurate, but also to ensure that the daily valuations are accurate as well. The financial controls over daily valuations are often the same controls that help ensure fund financial statements are accurate. We are not aware of a significant problem within the industry relating to inaccurate interim financial information.

Reporting issuers, other than investment funds, provide interim financial statements to the market on a quarterly basis. There is no requirement to have interim financial information reviewed by the reporting issuer's auditors. Thus the proposed amendment will subject investments funds to a different and more costly standard than other reporting issuers.

In light of our concerns raised above, we ask that the CSA reconsider the consequential amendment to 81-101, which requires that unaudited financial statements included or incorporated by reference to the prospectus be subject to a review. We believe that the additional costs associated with this amendment add little value to the unit holders.

Yours truly,

A. Guy Bélanger
President and CEO
MD Funds Management Ltd.
1870 Alta Vista Drive
Ottawa, Ontario
K1G 6R7

March 30, 2007

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

c/o Ontario Securities Commission
20 Queen Street West, Suite 1903, Box 55
Toronto, Ontario M5H 3S8

Attention: Heidi Franken
Co-Chair, CSA Prospectus Systems Committee

Dear Sirs and Mesdames:

Re: Proposed National Instrument 41-101 *General Prospectus Requirements*

This submission is made by the Securities Law Subcommittee of the Business Law Section of the Ontario Bar Association (the "OBA Subcommittee") in reply to the request for comments published December 22, 2006 on proposed National Instrument 41-101 ("NI 41-101").

Our comments are presented in the following order: general comments, comments in answer to specific requests contained in the request for comments (and which are reproduced below in italics and numbered to correspond to the notice), and additional comments on certain aspects of NI 41-101.

General Comment

We are supportive of the Canadian Securities Administrators' harmonization initiative relating to prospectus requirements. We are concerned however that the exclusion of Ontario from the application of certain provisions of NI 41-101 will result in significant differences between the requirements applicable to prospectuses filed in Ontario and those filed elsewhere. In this respect, the introduction of NI 41-101 may result in a less harmonized regulatory scheme than is currently the case.

While we understand that the *Securities Act* (Ontario) may not at this time contain rule making authority to permit uniform application of NI 41-101, we would hope that the members of the CSA will seek to harmonize their rule making authority to ensure that CSA projects requiring the adoption of harmonized rules can be implemented uniformly across Canada. In particular, we urge the Ontario Securities Commission to move as quickly as possible to obtain the rule making authority needed to allow it to eliminate the Ontario exceptions.

Specific Comments

The following are our comments on certain of the specific questions set out in the request for comments, which are repeated below (*in italics*).

Certificate requirements

1. (a) We believe a person or company that controls the issuer or a significant business has the best information about the issuer or significant business. Do you agree?

We do not agree with the above proposition. We are of the view that the persons who are responsible for the management of a business are those that "have the best information" about that business. Although in certain circumstances the shareholders who control the business are also the managers of that business, that is not necessarily the case.

We submit that the CSA's proposition is inconsistent with the obligations imposed on directors and officers of a corporation under the *Canada Business Corporations Act*. The implication of the CSA's proposition is that control persons have better information about an issuer than management, which is inconsistent with our views.

(b)Such a person or company who also receives proceeds from the distribution should be liable for any misrepresentations in the prospectus about the issuer or significant business. Are the definitions of substantial beneficiary of the offering and significant business broad enough to cover this class of persons and companies?

Canadian securities legislation generally imposes liability for misrepresentations in a prospectus on persons who directly receive proceeds from the distribution of securities. This approach is reflected in section 130 of the *Securities Act* (Ontario) which codifies a cause of action against "a selling security holder on whose behalf the distribution is made".

In addition, securities regulatory authorities have in certain circumstances effectively imposed civil liability on parties that indirectly receive distribution proceeds. In particular, National Policy 41-201 - *Income Trusts and Other Indirect Offerings* states that "a vendor that receives, directly or indirectly, a significant portion of the offering proceeds as consideration for services or property in connection with the founding or organizing of the business of an income trust issuer, is a promoter and should sign the prospectus in that capacity." Even though this statement arguably goes beyond what may be supported by the current legislative definition of "promoter", securities authorities have relied on subsection 58(6) of the *Securities Act* (Ontario) and equivalent provisions to require a promoter's certificate in these circumstance.

The proposal in NI 41-101 is to expand the class of persons subject to liability in respect of a prospectus to include "substantial beneficiaries of the offering". The definition of the term "substantial beneficiary of the offering" in NI 41-101 may be summarized to mean any person or company that (a) controls the issuer or significant business of the issuer or holds, held or will hold voting securities carrying 20% or more of the voting rights of the issuer, and (b) together with its affiliates and associates, is reasonably expected to receive, directly or indirectly, 20% or more of the proceeds of the offering of securities under the prospectus, whether in consideration for property or services, repayment of debt or otherwise, other than by virtue of its ownership of voting securities of the issuer.

We are concerned with the breadth of paragraph (b) of the definition, particularly the possibility that the indirect receipt of proceeds of the offering (regardless of the relationship between the "substantial beneficiary" and the issuer or the purchasers of the securities) could result in that person being subject to liability under a prospectus. Two examples are illustrative: the first, a person that some years before the date of the prospectus divested of a business to the issuer and received share consideration (thereby holding 20% or more of the equity of the issuer) and non share consideration (e.g. cash or promissory notes) and the second, a controlling shareholder who at a similar point in time lends money to an issuer. As cash resources are generally fungible, each may in certain circumstances be characterized as being an indirect recipient of the proceeds of the offering (whether or not amounts due to such shareholder are repaid from the proceeds) notwithstanding that the person may neither be consulted by the issuer in connection with the offering nor have an opportunity to influence the disclosure in the prospectus.

We submit that the inclusion of "substantial beneficiaries of the offering" as a new class of persons required to sign a certificate should be re-thought. We believe that this inclusion, as currently drafted, will result in uncertainty for issuers (and possibly impose additional costs on issuers) who may now be required to obtain consents or acknowledgements from third parties (e.g. the vendor of a business, the controlling shareholder who acts as a lender) to contemplate the possibility that those third parties may in future be required to accept liability for distribution of securities by the issuer.

We also note the inclusion of a "control person" as a class of person which may be required (if requested by the regulator) to sign a certificate to the prospectus (see section 5.14 of NI 41-101). As would be the case with "substantial beneficiaries of the offering", the inclusion of "control persons" could result in the imposition of liability on persons who have no ability to influence the disclosure of the issuer and do not benefit from an offering in any manner that is different from security holders of the issuer generally.

We agree with the CSA that current requirements relating to certification of prospectuses are problematic and need to be revised. However, in our view, such revisions should be made as part of an overall review of the liability provisions relating to prospectuses rather than in isolation.

Material Contracts

5. Should each type of contract listed in subsection 9.1(1) of Proposed NI 41-101 be excluded from the exemption to file contracts entered into in the ordinary course of business? Are there other types of contracts not listed that should be excluded from the exemption to file contracts entered into in the ordinary course of business? If so, please identify the type of contract and explain why they should be excluded.

Paragraph 9.1 (1)(a) of NI 41-101 may, in practice, require the filing of "any contract to which directors, officers… are parties…". We note that, as a result of the inclusion of the term "officer", an issuer will be required to file employment contracts for a significant number of individuals (unless the issuer can readily conclude that the contracts are not material). These contracts are likely to include contracts which are not required to be disclosed in an information circular under NI 51-102-F6 as the requirement therein is limited to "Named Executive Officers". We submit that the list of contracts with officers which are not considered to be in the ordinary course of business should be limited to contracts with "Named Executive Officers".

6. "Is the list of provisions that are "necessary to understanding the contract" set out in subsection 9.1(2) of Proposed NI 41-101 appropriate? If not, why not?"

NI 41-101 would allow issuers to omit certain portions of the material contract where an executive officer has reasonable grounds to believe that the omitted provisions do not contain information relating to the issuer or its securities "that would be necessary to understanding the contract" (and certain other conditions are satisfied). We are concerned that the terms prescribed as "necessary to understanding the contract" may not necessarily be material to the contract and would otherwise merit omission in accordance with subsection 9.2(a)(iii) of NI 41-101. We suggest that the CSA consider removing the prescriptive list in subsection 9.2(a)(iii) and providing guidance on this point in the Companion Policy.

Distribution of securities under a prospectus to an underwriter

9. Section 11.3 of Proposed NI 41-101 permits compensation options or warrants to be acquired by an underwriter under the prospectus where the securities underlying such compensation options or warrants are, in the aggregate, less than 5% of the number or principal amount of the securities distributed under the prospectus. Is 5% an appropriate limit?

We question whether the introduction of a limit on the number of securities issued as compensation to underwriters and which may be qualified under a prospectus is necessary except perhaps in circumstances where the offered securities will not be traded on a recognized market that imposes appropriate standards of trading oversight. We would suggest that the issue of compensation options would be more appropriately considered in the context of regulation of securities dealers generally by their self-regulatory organization.

Waiting Period

10. Is the minimum waiting period necessary to ensure investors receive a preliminary prospectus and have sufficient time to reflect on the disclosure and the preliminary prospectus before making an investment decision?

We support the elimination of a minimum "waiting period" in NI 41-101. We do not believe that a mandatory "waiting period" to ensure "time to reflect on the disclosure" is consistent with the general approach to the regulation of sales of securities in Canada. We submit that the 48-hour right of withdrawal (following confirmation of a purchase of securities qualified by prospectus) provides investors sufficient time period to consider their investment decision. Moreover, we note that the waiting period for securities distributed under a short-form prospectus has been eliminated.

Amendments to a preliminary or final prospectus

11. We are soliciting your comments on whether we should instead be requiring an amendment based on the continued accuracy of the information in the 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 prospectus or a prospectus be determined based on a continued accuracy of the disclosure in the prospectus, rather than changes in the business, operations or capital of the issuer?

We interpret the request for comment as focusing on circumstances which could result in a prospectus containing a misrepresentation at some time during the period of distribution (notwithstanding that it did not contain such a misrepresentation as of the date of filing) even though no material change occurred in the business, operations or capital of the issuer.

We believe that the requirements relating to obligations to amend prospectus need to be considered in the context of liability for a misrepresentation in a prospectus. Whether liability should arise if a prospectus is found to contain a misrepresentation at any time during the period of distribution or only if a prospectus contains a misrepresentation at the date of the prospectus is an issue which is central to the possible imposition of obligations to amend a prospectus during the period of distribution. We believe that as in the case of prospectus certification requirements, the issue of prospectus amendment "triggers" should be considered as part of an overall review of the liability provisions relating to prospectuses rather than in isolation.

Bona fide estimate of range of offering price for number of securities being distributed

12. We are proposing to require disclosure in the preliminary prospectus of a bona fide estimate of the range within which the offering price or the number of securities being distributed is expected to be set. We are also considering adding a requirement to provide disclosure throughout a preliminary prospectus based on the mid-point of the disclosed offering price range or number of securities. This would require that the consolidated capitalization table, earnings coverage ratios and any pro forma financial information in the preliminary prospectus be calculated and disclosed using the mid-point of the offering range rather than being bulleted. Would such a requirement be appropriate?

Subject to our comments in the next paragraph, we do not object to the presentation of the suggested information in respect of an initial public offering. However, price range information in respect of an additional offering should not be required to be disclosed as the current market price should provide investors with sufficient information relating to possible pricing. We believe that this approach is consistent with the U.S. regime i.e. the requirement to disclose a price range in the preliminary prospectus applies to an IPO but not an additional offering.

We also note that in connection with such a requirement for IPOs, consideration will need to be given to the procedural consequences of a final offering price that falls outside the range indicated in the preliminary prospectus. The corresponding U.S. rules may be instructive, although we understand that they have sometimes been problematic in their application. In any case, we suggest that the requirements make it clear that where the offering price is less than disclosed range, such event in and of itself may not necessarily require an amendment and recirculation of the preliminary prospectus prior to filing a final prospectus (absent a material change to the proposed uses of proceeds).

Other Comments

Investment Fund Issues – Harmonizing across Canada

We support in principle the CSA's initiative in adding a new form for investment funds. We note however that different types of investment funds (exchange traded funds, labour sponsored funds, scholarship plans and non-redeemable funds) have distinct characteristics which may not lend themselves to a common form requirement, absent comprehensive instructions as to when certain items are applicable or not with regard to specific types of securities.

* * * * * *

The above is respectfully submitted by the Subcommittee.

The members of the Subcommittee are listed in the attached appendix. Please note that not all of the members of the Subcommittee participated in or reviewed this submission, and that the views expressed are not necessarily those of the firms and organizations represented by members of the Subcommittee.

Thank you for this opportunity to comment. If you have any questions, please direct them to Philippe Tardif (416-367-6060, ptardif@blgcanada.com), Susan McCallum (416-483-6687, simccallum200650@aol.com) or Richard Lococo (416-926-6620, richard_lococo@manulife.com).

Yours truly,

Securities Law Subcommittee
Business Law Section
Ontario Bar Association

c.c. Alberta Securities Commission
Attention: Patricia Leeson
Co-Chair, CSA Prospectus Systems Committee

Autorité des marchés financiers
Attention: Anne-Marie Beaudoin
Directrice du secretariat

Appendix

OBA SECURITIES LAW SUBCOMMITTEE

Members:

Richard A. Lococo (Chair), *Manulife Financial*
Simon Archer, *Barrister & Solicitor*
Aaron J. Atkinson/Janne M. Duncan, *Fasken Martineau DuMoulin LLP*
Timothy S. Baikie, *Canadian Trading and Quotation System Inc.*
Justin Beber/Kenneth R. Wiener, *Goodmans LLP*
Mary Condon, *Osgoode Hall Law School of York University*
Gil I. Cornblum, *Dorsey & Whitney LLP*
Anoop Dogra, Blake, *Cassels & Graydon LLP*
Eleanor K. Farrell (Secretary), *CPP Investment Board*
Paul J. Franco, *Heenan Blaikie LLP*
Matthew Graham, *Phillips, Hager & North Investment Management Ltd.*
Margaret I. Gunawan, *Barclays Global Investors Canada Limited*
Henry A. Harris, *Gowling Lafleur Henderson LLP*
Barbara J. Hendrickson, *McMillan Binch Mendelsohn LLP*
Michael D. Innes, *Osler, Hoskin & Harcourt LLP*
Andrea Jeffery (Secretary), *CPP Investment Board*
Glen R. Johnson/Cornell C.V. Wright, *Torys LLP*
William R. Johnstone/Kathleen Skerrett, *Gardiner Roberts LLP*
David R. Kerr/Kay Y. Song, *Manulife Financial*
Samir Y.A. Khan, *Russell Investments Canada Limited*
Steven R. Kim, *CIBC World Markets*
Kenneth G. Klassen/J. Alexander Moore, *Davies Ward Phillips & Vineberg LLP*
Walter C. Lehman, *OMERS*
Susan I. McCallum, *Barrister & Solicitor*
Caroline Mingfok/Richard Wyruch, *Rockwater Capital Corporation*
Brian L. Prill, *McLean & Kerr LLP*
Richard Raymer, *Hodgson Russ LLP*
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Robert N. Spiegel, *Stikeman, Graham, Keeley & Spiegel LLP*
Philippe Tardif, *Borden Ladner Gervais LLP*
D. Grant Vingoe, *Arnold & Porter LLP*
Arlene D. Wolfe, *Barrister & Solicitor*

Liaison:

Erez Blumberger, *Ontario Securities Commission*
Luana DiCandia/Julie K. Shin, *Toronto Stock Exchange*

PENN WEST
ENERGY TRUST

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Via Electronic Correspondence to Addressees Indicated in Schedule A

March 30, 2007

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

Dear Sirs:

Re: Comments on Proposed National Instrument 41-101 *General Prospectus Requirements* ("NI 41-101")

We are responding to your notice and request for comment dated December 21, 2006 (the "Notice") on NI 41-101, the forms prescribed by NI 41-101 and the companion policy to NI 41-101.

Penn West Energy Trust

Penn West Energy Trust is an open-end investment trust created on April 22, 2005 under the laws of the Province of Alberta pursuant to a declaration of trust. CIBC Mellon Trust Company has been appointed as trustee under the declaration of trust. The beneficiaries of the trust are holders of the trust units. We commenced operations on June 30, 2005 as a trust entity as a result of the completion of a plan of arrangement under the *Business Corporations Act* (Alberta). Pursuant to this plan of arrangement, holders of common shares of Penn West Petroleum Ltd. received trust units for their common shares.

Penn West Energy Trust is a reporting issuer in each of the province of Canada. Our trust units are listed on the Toronto Stock Exchange and New York Stock Exchange.

Our controlled entities are actively engaged in the business of oil and natural gas exploration, development, acquisition and production in Canada with current production of approximately 130,000 barrels of oil equivalent per day. We have a current market capitalization of approximately $8.3 billion, an enterprise value of approximately $9.6 billion and book asset value of approximately $7.0 billion.

Comments

We have two areas of substantial concerns relating to NI 41-101:

Trustee Certification

We have a concern with respect to the prospectus certification requirements for trusts provided for in Sections 5.5(1) and (2) of Schedule 1 to NI 41-101. As Penn West Energy Trust has a corporate trustee, CIBC Mellon Trust Company, the requirement that the CEO and CFO of CIBC Mellon Trust Company and two directors of CIBC Mellon Trust Company execute any prospectus certificate is impracticable.

Our declaration of trust, like most public energy trusts, provides that the trustee is a corporate trustee appointed by our unitholders. Our declaration of trust delegates, among other things, the authority to make all decisions relating to public offerings, including the responsibility for executing prospectus certificates, to the board of directors of Penn West Petroleum Ltd., a subsidiary of Penn West Energy Trust. In addition, the board of directors of Penn West Petroleum Ltd. oversees all operations of the controlled entities of Penn West Energy Trust, including Penn West Petroleum Ltd., and all public reporting by Penn West Energy Trust. CIBC Mellon Trust Company's primarily responsibilities are to hold the assets of Penn West Energy Trust (shares, subsidiary trust units, debt and net profit interests issued by Penn West Energy Trust's various controlled entities) and managing the cash distributions to unitholders. In performing its responsibilities under the declaration of trust CIBC Mellon Trust Company and its officer and directors would not be in a position to execute a prospectus certificate. We submit that requiring the certification of CIBC Mellon Trust Company would not add meaningful protection for investors.

We note that Section 5.5(3) of Schedule 1 to NI 41-101 provides an exemption from the requirements of Sections 5.5(1) and (2) of Schedule 1 to NI 41-101 to issuers that are investment funds in similar circumstances. We would submit that a similar exemption should be provided to trusts that meet the same criteria.

If no exemption is provided, we would submit that a reasonable transition period should be provided so that a meeting of unitholders of Penn West Energy Trust can be called to substantially reorganize the trust in order that we may have continued access to the public markets.

Certification of Substantial Beneficiaries

We have serious concerns with respect to the prospectus certification requirements for a "significant beneficiary of the offering" provided for in Section 5.13 of Schedule 1 to NI 41-101. We believe that requiring a third party seller, dealing at arm's length with Penn West Energy Trust, to certify our prospectus will materially impair our ability to compete in making substantial acquisitions. In addition, if NI 41-101 is implemented in its current form our disposition practises will have to change to exclude any issuer from a sales process who will require Penn West Energy Trust to certify its prospectus.

We have grown our business through a combination of internally generated exploration and development activity as well as strategic acquisitions. In making acquisitions we compete with many public and private entities including large multinational corporations, senior Canadian and U.S. independents, trusts and junior issuers many of whom would not be effected by NI 41-101.

We are required to compete both on price and terms, including risk allocation between the buyer and seller. We have no ability to arbitrarily allocate risk to the seller. NI 41-101 would require the seller to not only accept greater risk relating to its properties than is common in the marketplace, but also have to assume risk with respect to Penn West Energy Trust's disclosure. Even if a seller were willing to accept this level of risk, which is unlikely, we would no doubt be required to increase the purchase price to compensate the seller for the assumption of this risk. We do not believe that paying an above market price for assets would be in the best interest of our unitholders.

We of course could seek other methods of financing such as private debt or private placements. These would have a number of disadvantages including potentially higher costs, assumption of greater leverage risk and exclusion of our retail unitholders from participating in such financings.

In the case of dispositions, we cannot envision any circumstances where we would be willing to execute a prospectus certificate of an issuer dealing at arm's length of us. No reasonable premium could be paid by an issuer to compensate us for this risk of executing such issuers prospectus compared to the price which could be paid by another buyer not subject to these rules. We also believe that it would be impracticable for Penn West Energy Trust to undertake the level of due diligence on such an issuer to comply with our disclosure and internal control requirements. By excluding potential buyers from a sale process we reduce the likelihood of receiving the highest price for our assets, which ultimately will adversely affect return to unitholders.

We respectfully submit that the negative impact of NI 41-101 on us, and ultimately our public unitholders who will bear the cost of NI 41-101, will far outweigh the additional investor protection provided to investors.

We respectfully submit that the provisions of Section 5.13 of Schedule 1 to NI 41-101 should be withdrawn or, if not withdrawn, modified to only apply to situations where the parties do not deal at arm's length.

Thank you for your consideration of the issues we have raised.

Yours truly,

PENN WEST ENERGY TRUST

Todd Takeyasu
Senior Vice-President and Chief Financial Officer
Penn West Petroleum Ltd.

SCHEDULE A

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Alberta Securities Commission
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March 30, 2007

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Re: Request for Comments – National Instrument 41-101 – General Prospectus Requirements and related proposed amendments to National Instrument 44-101 – Short Form Prospectus Distributions

Research Capital Corporation ("RCC") has reviewed the revised and proposed changes to the above National Instruments and we wish to provide our comments as these relate to Part 11: Over-Allocation and Underwriters and Part 5: the Certification Requirements for Substantial Beneficiaries of the Offering.

RCC has specific concerns relating to the proposed sections and the implications this will have to the timeliness and efficiency that are currently afforded to prospectus offerings currently completed in Canada.

Section 11 of the Proposed National Instrument 41-101

RCC has reviewed comments provided by others to the CSA on the proposed revisions to the National Instrument and RCC is in agreement with the comments made by Canaccord Capital regarding Section 11. In addition to those comments made RCC would like to add the following in relation to Section 11.3.

The proposed section 11.3 prohibits the distribution of securities under a prospectus to a person acting as an underwriter for a distribution of securities under the prospectus, other than; (1) over-allotment options, or (2) certain compensation securities. The CSA reasoned that there was a need to protect against the practice of "back-door underwriting" whereby the person receiving said securities re-sells these securities without providing the purchaser with a copy of the prospectus. More specifically securities issued under (2) are restricted to 5% of the base offering. The CSA reasoned that "any risk that such securities are being acquired by the dealer with a view to resale in the course of or incidental to the prospectus distribution is reduced."

RCC would like to make the following comments in response to the above and the proposed addition of Section 11.3 of National Instrument 41-101:

1. Compensation Securities, (more commonly referred to as "Broker Warrants"), are generally granted as part of compensation in more junior offerings where the risks and amount of work to be performed by the Underwriter is high relative to the cash compensation. Limiting the non-cash compensation may only make the junior Canadian capital markets less competitive. The regulations should favor disclosure over dictating the negotiations between arm's length parties.
2. The proposed limit is arbitrary and inconsistent with the objective of preventing "back-door underwriting". If the reasoning of adding 11.3 to the National Instrument is to prevent "back-door underwriting" then the amount of securities provided as part of compensation would not be relevant, as any amount might be material to individual purchasers. If however the CSA believes that an incidental compensation amount would be of less of a risk and not purport to be a "back-door underwriting" then the allowable amount should not be tied to the financing in question but should be linked to the capitalization of the Issuer. By way of example: 5% of a large financing on a small cap Issuer would be greater than 10% of a small financing for an Issuer with a larger capitalization. The former would result in a greater number of shares being sold to the public through the secondary market than the latter.

3. The instrument penalizes underwriters of small-cap Issuers by placing a ceiling on the amount of shares that can be paid to the underwriter without restriction. Restricted shares issued to an Underwriter would require a legend resulting in a hold period of four months. This increases the risks of the financing to the Underwriter if payment is tied to the exercise and sale of the broker warrants. While we acknowledge point 4 below it should also be considered that in the case of a restricted share the Underwriter is required to absorb greater market risks given the inability to liquidate broker warrants that are greater than the 5% ceiling noted by the Instrument. Small-cap Issuers generally provide for an option greater than 5% given the risks and size of the offering. Restricting the amount of the offering may deter underwriters from financing small to mid-cap Issuers in some instances. Ultimately it will increase the cost of financing to the Issuers and the general public as compensation will need to come directly from the funds raised.
4. Our experience is that broker warrants are usually exercised and sold at a date which is long after the period of distribution of an issue. Brokers do not generally give-up the "option value" of 18 to 24 month warrants to realize the small spread which may exist between the trading price and new issue price at the time a prospectus distribution is being completed. Imposing the complexity of tracking free-trading and restricted broker warrants will only add cost and further administration with little added protection to investors.
5. While investors who purchase securities issued from the exercise of broker warrants may not have a right of rescission, the rights provided under civil law would protect these purchasers in the event that full, plain and true disclosure was provided in the prospectus.

Section 5 of Proposed National Instrument 41-101

RCC has reviewed comments provided by others to the CSA on the proposed National Instrument and RCC is in agreement with many of the comments made in regard to Section 5 including those made specifically by TD Securities. We would however like to add the following comments in relation to Section 5:

1. In the event of a proxy battle, or other dissident shareholder situation a control block owner could prevent the completion of a financing by refusing to sign a certification. This may place a strain on an Issuer if funds were required to complete a specified transaction. This could also have the added result of causing a transaction to fail because of a failed financing;
2. The certification process could add time and cost constraints necessary to complete a financing as a beneficial owner may feel compelled to conduct additional due diligence, review all due diligence completed or conduct separate due diligence before signing said certification.

RCC would respectfully request that the CSA consider the points made in our comment letter and re-consider the proposals and/or wording noted in the proposed Instrument 41-101.

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Yours respectfully,

Geoffrey G. Whitlam, President
Telephone: (416) 860-7641

Spectra Energy Income Fund
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March 30, 2007

By email

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

c/o Patricia Leeson, Co-Chair of the CSA's Prospectus Systems Committee
Alberta Securities Commission
4th Floor, 300 – 5th Avenue S.W.
Calgary, Alberta T2P 3C4

-and-

c/o Heidi Franken, Co-Chair of the CSA's Prospectus Systems Committee
Ontario Securities Commission
20 Queen Street West, Suite 1903, Box 55
Toronto, Ontario M5H 3S8

-and-

c/o Anne-Marie Beaudoin, Directrice du secretariat
Autorité des marchés financiers
Tour de la Bourse
800, square Victoria
C.P. 246, 22e étage
Montréal, Québec H4Z 1G3

Dear Sirs/Mesdames:

Re: Proposed National Instrument 41-101 *General Prospectus Requirements* and Companion Policy 44-101CP *General Prospectus Requirements*

The following comments are provided by Spectra Energy Facilities Management Inc. as the general partner for and on behalf of Spectra Energy Facilities Management LP, the administrator of Spectra Energy Income Fund, in response to the Canadian Securities Administrators' request for comments in connection with proposed National Instrument 41-101 *General Prospectus Requirements* (**"Proposed NI 41-101"**) and Companion Policy 44-101CP *General Prospectus Requirements* (the **"Companion Policy"**).

We support the efforts of the Canadian Securities Administrators to harmonize the long-form prospectus requirements in Canada. However, we do not support the inclusion of a new certificate for "substantial beneficiaries of the offering" (the **"Certification Proposal"**).

We believe that the addition of the Certification Proposal is not appropriate for the following reasons:

(a) Requiring substantial beneficiaries of the offering to sign a certificate and assume liability for any misrepresentation in a prospectus will have a material adverse effect on an issuer's ability to compete for acquisitions with other non-public potential acquirors, such as private equity firms, pension funds and closely-held issuers that do not require access to the public capital markets to fund acquisitions as vendors in such transactions with non-public purchasers would not be required to sign a prospectus certificate.

(b) A vendor may also favour a transaction with an issuer that does not need to raise all or a significant portion of the purchase price by way of a public offering in order to avoid the cost of conducting full due diligence on the issuer, particularly when the sale may only represent a small portion of the vendor's business. The effect of this is that large issuers will be in a more favourable position to make acquisitions because they may have more financing options.

(c) Similarly, small vendors may have their options limited to selling only to non-public issuers in light of the significant costs of the due diligence necessary in connection with signing a prospectus certificate.

(d) A potential further complication from the vendor's perspective may arise where the vendor is itself a public issuer and must comply with internal and disclosure control policies in connection with signing a certificate to a prospectus.

(e) The Certification Proposal could potentially have the effect of distorting an issuer's ability to make commercially reasonable business decisions in connection with an acquisition by providing it with an incentive to fund acquisitions by way of an exempt offering or credit facility when the prudent course of action may be to fund the acquisition by way of a prospectus offering.

(f) The Certification Proposal seems to be premised on the assumption that (i) vendors and purchasers do not act in a commercially reasonable manner and do not appropriately allocate risk between them contractually notwithstanding that this is a fundamental component of commercial transactions; and (ii) any risks to the issuer that funds the acquisition through a public offering cannot be fully and properly set out in the related prospectus. Neither of these assumptions is, in our view, accurate or consistent with market practise.

Liability for misrepresentations in a prospectus that are based on information provided by vendors can effectively be dealt with contractually between the vendor and the issuer and, to the extent necessary, through disclosure in the relevant prospectus. We believe that this is a more efficient way to ensure a level playing field between a purchaser that is a public issuer and the competing buyers who are not as noted above.

(g) An issuer can ensure that its prospectus contains full, true and plain disclosure regarding a significant acquisition by undertaking a thorough due diligence process. The due diligence role of the underwriters in the offering process also serves to accomplish this goal.

(h) We suspect that the Certification Proposal may arise from the concerns identified in Part 4 of National Policy 41-201 *Income Trusts and Other Indirect Offerings* ("NP 41-201"). We do not believe that the concerns identified in NP 41-201 are necessarily applicable to a majority of income trust or other issuers or are addressed by virtue of having promoters sign a certificate to a prospectus. We are not aware of any demonstrable deficiencies under the existing certification regime.

(i) We understand that there is no analogous requirement imposed by applicable securities laws in the United States. While we recognize the importance of and support the harmonization of Canadian prospectus requirements, it is also important that capital markets participants in Canada and the United States have a level of consistency as a practical matter.

If you have any questions with respect to our comments, please feel free to contact the undersigned.

Yours truly,

SPECTRA ENERGY INCOME FUND by
SPECTRA ENERGY FACILITIES MANAGEMENT
INC., as general partner for and on behalf of
SPECTRA ENERGY FACILITIES MANAGEMENT
LP, administrator of Spectra Energy Income Fund.

Bruce E. Pydee
Vice President, Government Relations
and General Counsel

Superior Plus

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March 30, 2007

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

c/o Patricia Leeson, Co-Chair of the CSA's Prospectus Systems Committee
Alberta Securities Commission
4th Floor, 300- 5th Ave S.W.
Calgary, Alberta T2P 3C4
email: patricia.leeson@seccom.ab.ca

Dear Sirs/Madams

Re: Proposed New Prospectus Certification Provisions

I am writing this letter to comment on the proposed new prospectus certification provisions contained in the Proposed National Instrument 41-101 and in particular Section 5.13 thereof. As the Executive Chairman and CEO of Superior Plus Inc., I am deeply troubled that the proposals will adversely affect the ability of Superior to effectively compete for acquisitions significant to Superior and which typically require public equity financing thereby giving rise to the proposed vendor certification requirement. I strongly believe the certification requirement would be a substantial deterrent and may well preclude a vendor selling to a party where the vendor certification requirement would arise. As such these proposals, in my view, would create an uneven playing field amongst competitive acquirers. For Canadian public companies, large entities would have a competitive advantage over the small. More broadly, private and non-Canadian companies who do not finance in the Canadian markets would have a competitive advantage over Canadian public companies. These results are completely unfair, inappropriate and unwarranted. I believe there are more than sufficient protections under the existing regulatory regime for aggrieved purchasers of securities to have recourse to the issuer without the necessity of recourse to the vendor.

Superior Plus Income Fund is a reporting issuer with its trust units and convertible debentures traded on the Toronto Stock Exchange. Superior was one of the first income trusts in Canada with its holdings in Superior Propane, Canada's largest distributor of propane and related products. Since that time Superior has grown from a market capitalization of approximately $250 million to approximately $1.4 billion and has distributed to unit holders during that period in excess of $1 billion. Much of this success has derived from the strategy of Superior to grow value and distributions for its unit holders through an acquisition strategy.

Superior Plus LP | 2820, 605 – 5 Avenue SW, Calgary, Alberta T2P 3H5 | Tel: 403-218-2970, Fax: 403-218-2973 | Toll Free: 866-490-PLUS, Web: www.superiorplus.com

This acquisition strategy has included a number of very significant acquisitions financed in the Canadian public markets. As mentioned, I believe the proposed vendor certification requirements would create an uneven playing field and would seriously impair the ability of Superior to effectively compete for significant acquisitions.

I encourage you to eliminate the vendor certification requirements from the proposed National Instrument. I would be pleased to discuss this with you further if you wish.

Yours very truly,

SUPERIOR PLUS INC.

Per: ____

Grant Billing
Executive Chairman and Chief Executive Officer

C:\Grantletters\leeson033007

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Calgary, Alberta T2P 3H5 | Tel: 403-218-2970
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M. Jacqueline Sheppard
Executive Vice-President,
Corporate and Legal and Corporate Secretary
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TALISMAN
ENERGY

DELIVERED VIA E-MAIL

March 30, 2007

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

Patricia Leeson, Co-Chair of the CSA's Prospectus Systems Committee
Alberta Securities Commission
4th Floor, 300- 5th Ave S.W.
Calgary, Alberta T2P 3C4

Re: Notice and Request for Comment dated December 21, 2006 (the "Notice") on Proposed National Instrument 41-101 General Prospectus Requirements and Companion Policy 41-101 CP General Prospectus Requirement

This is Talisman Energy Inc.'s ("**Talisman Energy**") response to the CSA request for comment dated December 21, 2006 relating to Proposed National Instrument 41-101 (the "**Proposed Rule**") and Companion Policy 41-101 CP (the "**Proposed Companion Policy**") and amendments to related instruments referred to in the Notice.

Talisman Energy Inc. is an independent upstream oil and gas company headquartered in Calgary, Alberta, Canada. Talisman has operations in Canada and its subsidiaries operate in the North Sea, Southeast Asia, Australia, North Africa, the United States and Trinidad and Tobago. Talisman's subsidiaries are also active in a number of other international areas. Talisman's shares are listed on the Toronto Stock Exchange in Canada and the New York Stock Exchange in the United States under the symbol TLM.

Talisman Energy is active in the Canadian oil and gas acquisition and divestiture market. In 2006 we disposed of a number of low working interest properties in arms length transactions. We have announced plans to sell additional non-core Canadian assets with 2006 year-end production of approximately 16,000 boe/d.

In general we support the purposes of the Proposed Rule and the underlying principles of harmonizing and consolidating prospectus requirements across Canada, harmonizing the general prospectus requirements with the continuous disclosure and short form prospectus regimes and having the Proposed Rule reflect current policy. However, we have serious concerns with those aspects of the Proposed Rule that would require prospectus certificates from "substantial beneficiaries". These concerns are outlined below.

Insufficient Policy Basis for the Certificate Requirements

We believe that the proposals for certificates to be signed by substantial beneficiaries of the offering are seriously misguided and would have significantly detrimental effects on offerings generally, the sales of "significant businesses" as defined in the Proposed Rule and the competitiveness generally of Canadian issuers, and in particular Canadian oil and gas issuers.

We disagree with the statements made by the CSA in the Notice as justification for the proposed substantial beneficiary certificate requirement. In particular, we take issue with the following statements:

(a) **CSA Statement: "We believe a person or company that controls the issuer or a significant business has the best information about the issuer or significant business".** This is not always the case, and is often not the case in the context of sales of oil and gas properties by large capitalization issuers such as Talisman Energy to small or micro cap purchasers. Standards of materiality for Talisman Energy are vastly different from the standards of materiality for a micro capitalization company. For example, Talisman Energy might sell 100 boe/d of producing assets to a start-up public oil and gas company. This amount of production amounts to 0.02% of Talisman Energy's daily production, so is not material to Talisman Energy by any standard. For the purchaser, however, the purchased assets would be highly material, perhaps its only substantial assets. Accordingly, the systems of internal controls and procedures for these same assets and the knowledge of Talisman Energy's executive officers and directors of these assets, would be significantly less detailed than the systems of internal controls and procedures and knowledge of the purchaser's executive officers and directors.

Talisman Energy does not report independently evaluated or audited oil and gas reserves, as it evaluates its reserves internally and is exempt from the independent evaluation or audit requirement of NI 51-101. A small oil and gas purchaser, however, would need to have the purchased reserves independently evaluated or audited before including them in a prospectus. The reserves estimate which the purchaser would include in its prospectus will be the estimate it arrives at with its independent reserves evaluator or auditor, and it may or may not be the same as Talisman Energy's estimate. Also, given that production often declines at rapid rates, production and reserves on day 1 can be vastly different than on day 365, which makes the proposed one year look-back even more problematic.

The very same asset, for example a license, could legitimately be viewed differently by different petroleum engineers. The purchaser might legitimately have a different view on probable reserves that it could be right or wrong on. We the vendor may never have thought of the purchaser's interpretation.

In a typical sale of oil and gas properties, the vendor's books and records relating to the sold properties are transferred to the purchaser. Accordingly, if the purchaser files a prospectus after closing of the property sale, the vendor will have no books and records relating to the sale. In some cases, the vendor's employees who are most knowledgeable about the sold properties may also become employees of the purchaser after closing, thereby leaving the vendor with no officers or employees with detailed knowledge of the sold properties.

(b) **CSA Statement: "Such a person or company who also receives proceeds from the distribution should be liable for any misrepresentations in the prospectus about the issuer or a significant business".** We strongly disagree with this value statement. In an arms-length negotiated transaction in the oil and gas business, the vendor's reasonable expectation is that its liability will be determined by the purchase and sale agreement it negotiates with the purchaser.

Under the CSA's proposals, the limitations on the vendor's liability contained in the purchase and sale agreement, including representations and warranties qualified by "knowledge", floors and caps on indemnities, strict time limitations for claims, etc., would be essentially worthless.

In the oil and gas business, a small issuer who purchases properties from a large issuer such as Talisman Energy may also raise financing to further appraise or develop those properties. Why should the vendor be liable for funds raised by the purchaser to fund expenditures that are part of the purchaser's business plan, not the vendor's business plan?

The vendor neither decides nor typically influences how the purchaser will finance the purchase and sale transaction. Why should the purchaser's method of financing affect the vendor's liability? The CSA has failed to provide convincing reasons for its sweeping value statement that the vendor "should be liable".

(c) **CSA Statement: "Specifically, we believe these new provisions will create appropriate incentives for the person or company with the best information about the issuer or a significant business to ensure the prospectus contains full, true and plain disclosure of all material facts relating to the securities being distributed".** We believe the proposed substantial beneficiaries provisions will in fact provide disincentives to oil and gas issuers such as Talisman Energy from entering into transactions with issuers or potential issuers who would trigger substantial beneficiary liability for the vendor. Potential liability comes with potential risk and costs associated with mitigation of the risk. The riskier the transaction is for the vendor, the higher the price it will require from the purchaser. As a result, it is likely that the proposed provisions will provide incentives for vendors of oil and gas properties to conclude transactions with purchasers who can finance the transactions with private capital, as those purchasers will be more attractive on a risk-adjusted basis than issuers who require public financing.

If the Proposed Rule had been in place during 2006, many of the sales which Talisman concluded in 2006 would have resulted in Talisman being a "substantial beneficiary" as a result of public financings by the purchasers. It is highly unlikely that Talisman would have sold properties to those purchasers if the Proposed Rule would have been in place.

The disincentive is even higher for a vendor to sell assets which would constitute a significant business to a larger issuer, because the vendor would take on prospectus liability for disclosure relating to the purchaser's pre-existing business and assets.

(d) **CSA Statement: "Better disclosure will directly benefit investors and prospective investors and, by raising confidence in our disclosure regime, indirectly benefit the capital markets as a whole".** As we commented above regarding the CSA's "knowledge" assertion, we disagree that imposing liability on the vendor will necessarily result in better disclosure by the purchaser. We also believe that capital markets would be harmed, not benefited, by the proposed provisions, because they will result in a significant reduction in public offerings by junior oil and gas issuers and deprive those issuers of an important source of capital. This reduction in access to public financing could stifle the creation and growth of such issuers. With a smaller pool of potential purchasers, it is possible that Canadian oil and gas asset values will decline, to the detriment of existing holders of securities of Canadian oil and gas producers.

Inappropriate Transitional Provisions

It is not clear whether the provisions will only apply to transactions that are completed after the effective date of the Proposed Rules or if they could apply to transactions completed prior to the effective date. In this respect, it is our view that the provisions, if implemented, should only apply to transactions that are completed after the effective date, as the parties to transactions completed prior to that date will not have negotiated the transactions with these provisions in mind.

Concluding Comments

While our comments above have been provided in the framework of your proposal, we believe it is appropriate to make some broader comments on this initiative. We believe the proposal undermines basic principles of the capital market system including independence, limited liability of single entities and accountability by corporations, their boards and managements, for their own actions. In today's regulatory environment, we do not see managements or boards being prepared to accept liabilities for prospectus disclosure of any other "independent" entity, nor do we see how auditors of public entities or insurers of the vendor can manage this without large costs to an already very burdened sector. We shudder to imagine situations where public capital is raised following several asset purchases, each of which requires the vendor's substantial beneficiary certificate. We then end up taking on exposure for assets sold by all vendors. Also, and perhaps most importantly, the far reaching and detrimental erosion of the very pillars of our capital market system is in our opinion beyond the mandate of the securities commissions.

In summary, it is our view that to proceed with this proposal in any way, shape or form is misguided and should be abandoned. It is our view that the proper approach is to leave the responsibility for disclosure on issuers and their directors, officers and underwriters and to ensure (as the Proposed Rule does) that there is disclosure in the prospectus of the acquired business, who it was acquired from, the terms of the acquisition, the use of the proceeds and who may in effect be direct or indirect beneficiaries of the offering. Armed with such information, the purchaser of the securities is able to determine if they are comfortable with investing in these circumstances.

Yours truly,

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

TRITON
ENERGY CORP.

Via Electronic Correspondence to Addressees Indicated in Schedule A

March 30, 2007

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

Dear Sirs:

Re: Comments on Proposed National Instrument 41-101 *General Prospectus Requirements* ("NI 41-101")

We are responding to your notice and request for comment dated December 21, 2006 (the "Notice") on NI 41-101, the forms prescribed by NI 41-101 and the companion policy to NI 41-101. Thank you for the opportunity of providing these comments.

Triton Energy Corp. ("Triton" or the "Corporation") is a junior oil and gas company listed on the TSX Venture Exchange and is a reporting issuer in certain provinces in Canada. Our market capitalization is approximately $40 million.

We would like to respond to one principal area of concern relating to the proposed amendments to NI 41-101. That relates to the requirement for certification by a "substantial beneficiary of the offering" as is proposed to be prescribed by Section 5.13(1) of Schedule 1 to NI 41-101. As a junior oil and gas company, our business model involves both the exploration and development of petroleum and natural gas products and also completing acquisitions that are strategic to the Corporation.

By its terms, the certification requirements may apply to a vender of properties if those properties constitute a significant business of the issuer if such vendor is reasonably expected to receive 20% or more of the proceeds of an offering of securities under a prospectus (including by way of repayment of debt or otherwise).
This may therefore require a vendor of properties to sign a certificate to our prospectus if the properties would constitute a "significant acquisition" to us if we concurrently or subsequently finance the acquisition through a prospectus where more than 20% of the proceeds are used for the acquisition or to repay debt incurred in connection with the acquisition. By its terms, this would apply to a third party vendor in such circumstances, even when dealing at arm's length to the Corporation. We believe that requiring this may materially impair our ability to complete

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Telephone: 1-403-266-5541 www.tritonenergy.ca Facsimile: 1-403-266-5579

acquisitions, and in fact we anticipate it will prevent us from even participating in processes to consider acquisitions.

In making acquisitions, we must compete with other entities, both private and public, including large corporations, trusts, and other mid-size and junior issuers. Having a smaller market capitalization and asset base clearly puts the Corporation at a disadvantage to other parties that may be competing for acquisitions that may not be "significant acquisitions" to them. We are required to compete both on price and term, including risk allocation between buyer and seller. NI 41-101 will require the vendor to not only accept greater risk relating to its properties than is common in the marketplace, but also to assume risk with respect to the Corporation's disclosure. It is doubtful that a vendor would be willing to accept this level of risk, and if they would, it would seek compensation by an increase in purchase price to compensate the vendor for the assumption of this risk. We would, however, anticipate that vendors of property would simply not accept proposals from us for acquisitions if the result is that they would have to, or there is a possibility that they would have to, certify or be involved in any way in our prospectus.

From a vendor's point of view, we cannot envision circumstances where a vendor (which may include the Corporation) would be willing to execute a prospectus certificate of another issuer dealing at arm's length. We do not believe that a vendor (which may include us) would be able to be properly compensated for this risk and the likely result, as discussed above, would be that certain potential acquirors would simply be excluded from the process or the ability to bid for or acquire properties. This would reduce the competitive process in the purchase and sale of properties and will therefore likely also artificially affect prices that oil and gas properties are sold for in the industry. We would also question how a vendor of property could undertake an appropriate level of due diligence on another issuer that acquired properties from it that would allow it to comply with its disclosure and internal control requirements in connection with the certification of another issuer's prospectus.

In summary, we believe that the proposed requirement that a "substantial beneficiary of the offering" certify a prospectus may have a severe adverse effect, not only on the Corporation but on the industry generally. It will prevent certain parties from participating in the process to acquire properties solely based on their size and will affect the price that oil and gas properties are bought and sold for. Given the nature of the oil and gas industry, in which acquisitions and dispositions are a material part of the business model and necessary and appropriate to ensure that assets are developed and exploited in the most efficient manner, we would strongly submit that this proposal be reconsidered.

Thank you for your consideration of this matter and for allowing us to comment.

Yours truly,

TRITON ENERGY CORP.

Per: ______________________

Michael S. Zuber, President & CEO

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SCHEDULE A

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VenGrowth
PRIVATE EQUITY PARTNERS INC.

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March 30, 2007

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

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Dear Sirs/Mesdames:

Re: Proposed National Instrument 41-101 (the "Instrument") and related amendments

We are writing to provide our comments on the Instrument. Our comments are limited to the impact of the Instrument on investment funds. VenGrowth's $1.1 billion under management includes several labour-sponsored investment funds (LSIFs), an open-ended fund governed by NI 81-104, and a closed-end fund. We hope that our comments from this perspective will be helpful.

General Comments

We support the general approach taken with Form 41-101F2; particularly the implementation of plain language principles.

We are concerned that there may be instances where the Instrument may contradict other Instruments governing mutual funds. For example, both the Instrument and NI 81-102 set forth requirements in respect of custodians and advertising that would apply to LSIFs. We submit that NI 81-102 should govern as there should only be one set of rules. Further, NI 81-102 would be more appropriate since it was specifically developed for open-ended funds.

Specific Questions/Comments in respect of the Instrument

1. Section 4.1 requires that investment funds include a management report of fund performance in a long form prospectus in accordance with the Instrument. Instrument s. 15.1(1) stipulates that the management report of fund performance be incorporated by reference. For clarity, we submit that s. 4.1 be subject to s. 15.1(1) so that it is clear that funds in continuous distribution be permitted to incorporate such documentation by reference, as is the case for investment funds governed by NI 81-101.

2. Section 4.3(1) requires that any unaudited financial statements included in a long form prospectus must have been reviewed by an auditor in accordance with the relevant standards set out in the Handbook. NI 81-106 does not require investment funds to have interim financial statements reviewed (please see Section 2.12 of NI 81-106 and Section 3.4 of NI 81-106CP). NI 81-106 applies to funds governed by NI 81-101 and we submit that on this point, NI 81-106 should apply to all investment funds in continuous distribution. The issue was clearly addressed when NI 81-106 was implemented. A recurring obligation to have interim statements reviewed would be a substantive and costly change for funds in continuous distribution; the impact is much less severe for other issuers, for whom the review would be a one-time cost. Moreover, we see no policy rationale for treating some funds differently than others simply because they offer under different forms.

3. Section 9.2 contemplates items to be filed with a preliminary long form prospectus. Certain references are made to *pro forma* prospectus under this heading (see s. 9.2(b)(ii)). We submit that s. 9.2 specifically identify and/or distinguish the required documents for filing a preliminary long form prospectus and the required documents for filing a *pro forma* long form prospectus

Specific Questions/Comments in respect of the Form 41-101F2

4. Part 7 of the Instrument deals with “Non-Fixed Price Offerings” and is specifically not applicable to investment funds in continuous distribution. On its face, this suggests that section 1.6(c) of the form, which is entitled “Non-Fixed Price Distributions”, would not apply to funds in continuous distribution that offer under the form, such as LSIFs and funds governed by NI 81-104. This would leave the prospectuses of such funds with no disclosure of the items set out in section 1.6. We submit that the heading of section 1.6(c) be changed and that “net asset value of a security” be added as fourth pricing option in section 1.6(c).

5. Section 5.4 of the form requires LSIF prospectuses to include a table containing certain information about their investee companies. We submit that this table should be removed. Although a similar requirement is included in Ontario Form 45 (the current LSIF prospectus form that is being replaced through the Instrument), in substance this disclosure is already required by NI 81-106 in a clearer and more meaningful way.

The first and second columns of the table largely replicate information that LSIFs are already required to include in their financial statements pursuant to Part 8 of NI 81-106 (specifically, name and sector of each investee company) and LSIFs are also required to list their top 25 holdings in their MRFP. The third column is meaningless to investors since it provides partial details about the ownership of private companies whose overall capital structures are not publicly known and who often have many classes of shares. By mandating disclosure of "value", the fourth column would effectively force LSIFs to disclose the carrying value of each private investee. When NI 81-106 was drafted, extensive discussions were held between the securities regulators and members of the LSIF community about this issue. The discussions concerned the prejudice that would result from disclosure of the carrying value of individual private companies; both to the investee companies and to stakeholders of LSIFs. In finalizing NI 81-106, it was determined that the appropriate disclosure of value would be made in the Statement of Investment Portfolio by aggregating investments in investees by stage and sector.

Alternatively, if this table is to be retained, we submit that the disclosure in the fourth column be determined based on "cost" rather than "value".

6. Section 12.1(2)(a) of the Instrument states that Part 12 of the Instrument does not apply to mutual funds. Therefore, we submit that s. 21.6 be deleted from Form 41-101F2 to eliminate potential confusion.

Thank you for your consideration of the foregoing. Should you have any questions or concerns, please do not hesitate to contact me at (416) 628-9256.

Yours truly,

(signed)
Ryan Farquhar
Legal Counsel

Yoho Resources

Via Electronic Correspondence to Addressees Indicated in Schedule A

March 30, 2007

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

Dear Sirs:

Re: Comments on Proposed National Instrument 41-101 *General Prospectus Requirements* ("NI 41-101")

We are responding to your notice and request for comment dated December 21, 2006 (the "Notice") on NI 41-101, the forms prescribed by NI 41-101 and the companion policy to NI 41-101. Thank you for the opportunity of providing these comments.

Yoho Resources Inc. ("Yoho" or the "Corporation") is a junior oil and gas company listed on the TSX Venture Exchange and is a reporting issuer in certain provinces in Canada. Our market capitalization is approximately $53 million.

We would like to respond to one principal area of concern relating to the proposed amendments to NI 41-101, which relates to the requirement for certification by a "substantial beneficiary of the offering" as is proposed to be prescribed by Section 5.13(1) of Schedule 1 to NI 41-101. As a junior oil and gas company, our business model involves both the exploration and development of petroleum and natural gas products and also completing acquisitions that are strategic to the Corporation.

By its terms, the certification requirements may apply to a vender of properties if those properties constitute a significant business of the issuer if such vendor is reasonably expected to receive 20% or more of the proceeds of an offering of securities under a prospectus (including by way of repayment of debt or otherwise).

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Suite 750, 736 - Sixth Avenue S.W. Calgary, Alberta, T2P 3T7
Telephone: 403.537.1771 Fax: 403.537.1775

This may therefore require a vendor of properties to sign a certificate to our prospectus if the properties would constitute a "significant acquisition" to us if we concurrently or subsequently finance the acquisition through a prospectus where more than 20% of the proceeds are used for the acquisition or to repay debt incurred in connection with the acquisition. By its terms, this would apply to a third party vendor in such circumstances, even when dealing at arm's length to the Corporation. We believe that requiring this may materially impair our ability to complete acquisitions, and in fact we anticipate it will prevent us from even participating in processes to consider acquisitions.

In making acquisitions, Yoho must compete with other entities, both private and public, including large corporations, trusts, and other mid-size and junior issuers. Having a smaller market capitalization and asset base clearly puts the Corporation at a disadvantage to other parties that may be competing for acquisitions that may not be "significant acquisitions" to them. We are required to compete both on price and term, including risk allocation between buyer and seller. NI 41-101 will require the vendor to not only accept greater risk relating to its properties than is common in the marketplace, but also to assume risk with respect to the Corporation's disclosure. It is doubtful that a vendor would be willing to accept this level of risk, and if they would, it would seek compensation by an increase in purchase price to compensate the vendor for the assumption of this risk. We would, however, anticipate that vendors of property would simply not accept proposals from us for acquisitions if the result is that they would have to, or there is a possibility that they would have to, certify or be involved in any way in our prospectus.

From a vendor's point of view, we cannot envision circumstances where a vendor (which may include the Corporation) would be willing to execute a prospectus certificate of another issuer dealing at arm's length. We do not believe that a vendor (which may include us) would be able to be properly compensated for this risk and the likely result, as discussed above, would be that certain potential acquirors would simply be excluded from the process or the ability to bid for or acquire properties. This would reduce the competitive process in the purchase and sale of properties and will therefore likely also artificially affect prices that oil and gas properties are sold for in the industry. We would also question how a vendor of property could undertake an appropriate level of due diligence on another issuer that acquired properties from it that would allow it to comply with its disclosure and internal control requirements in connection with the certification of another issuer's prospectus.

In summary, we believe that the proposed requirement that a "substantial beneficiary of the offering" certify a prospectus may have a severe adverse effect, not only on the Corporation but on the junior oil and gas industry generally. It will prevent certain parties from participating in the process to acquire properties solely based on their size and will affect the price that oil and gas properties are bought and sold for. Given the nature of the oil and gas industry, in which acquisitions and dispositions are a material part of the business model and necessary and appropriate to ensure that assets are developed and exploited in the most efficient manner, we would strongly submit that this proposal be reconsidered.

Thank you for your consideration of this matter and for allowing us to comment.

Yours truly,

YOHO RESOURCES INC.

Brian A. McLachlan

President and Chief Executive Officer

SCHEDULE A

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McCarthyTétrault

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March 31, 2007

BY E-MAIL

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

c/o Patricia Leeson, Co-Chair of the CSA's Prospectus Systems Committee
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-and-

c/o Heidi Franken, Co-Chair of the CSA's Prospectus Systems Committee
Ontario Securities Commission
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-and-

c/o Anne-Marie Beaudoin, Directrice du secretariat
Autorité des marchés financiers
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Montréal, Québec H4Z 1G3

Dear Sirs/Mesdames:

Re: Proposed National Instrument 41-101 *General Prospectus Requirements* and Companion Policy 44-101CP *General Prospectus Requirements*

The following comments are provided by McCarthy Tétrault LLP in response to the Canadian Securities Administrators' request for comment regarding proposed National Instrument 41-101 *General Prospectus Requirements* ("**Proposed NI 41-101**") and Companion Policy 44-101CP *General Prospectus Requirements* (the "**Companion Policy**").

General Prospectus Requirements

We support the efforts of the Canadian Securities Administrators to harmonize the long-form prospectus requirements. With respect to Proposed NI 41-101 and the Companion Policy, we are generally supportive of the provisions that provide guidance regarding the filing of material contracts, specify the requirements for filing of personal information forms, impose restrictions on the exercise of over-allotment options, require disclosure of a *bona fide* estimate of pricing information in a preliminary prospectus and require inclusion of only two years' financial statement history in a prospectus.

Specific Questions Identified for Comment

We have the following comments regarding the specific questions identified in the Request for Comment (using the same numerical sequence):

<u>Certificate Requirements</u>

1. We believe that the addition of a new certificate requirement for "substantial beneficiaries of the offering" (the "**New Certification Proposal**") would not be appropriate. In our view, liability for misrepresentations in a prospectus that are based on information provided by substantial beneficiaries should be dealt with contractually between the issuer and those persons and, to the extent necessary, through disclosure of such arrangements in the relevant prospectus.

   In our view, requiring substantial beneficiaries of the offering to sign a certificate and assume liability for a misrepresentation in a prospectus under the New Certification Proposal will have a material adverse effect on an issuer's ability to effectively compete for acquisitions of targets with certain other potential buyers, such as private equity firms, pension funds and closely-held issuers that do not require access to the public capital markets to fund acquisitions.

   Typically, the negotiations to acquire a target are conducted on an arm's length basis between the vendor and the issuer (and, to the extent that an acquisition involves related parties, the issuer would be required to comply with OSC Rule 61-501 and AMF Policy Q-27, unless exempted from those requirements). To the extent that an issuer proposing to make an acquisition must raise all or a portion of the purchase price of an acquisition by way of a public offering, the vendor is indifferent to the source of the purchase price proceeds, does not initiate the public offering and generally has no material involvement in the offering process itself, other than in connection with the due diligence review undertaken by the issuer's underwriters regarding the business and affairs of the target. If anything, the need for a bidder to conduct a public offering to fund the acquisition increases the deal completion risk for the vendor as the ability of the purchaser to complete the transaction is entirely or partially dependent upon a successful offering.

In our view, the New Certification Proposal may have the effect of distorting an issuer's ability to make commercially reasonable business decisions by providing an incentive to fund acquisitions with bank debt or by way of a private placement of securities when the more prudent course of action would be to raise funds by way of a public prospectus offering. Further, the New Certification Proposal appears to be predicated on the assumptions that (i) vendors and purchasers are unable to appropriately allocate risk between themselves contractually, and (ii) any risks to the issuer that funds the acquisition through a public offering cannot be fully and properly set out in the related prospectus delivered to investors. Neither of these assumptions is, in our view, accurate.

The issuer can ensure that its prospectus contains full, true and plain disclosure of information regarding a significant probable acquisition by undertaking a thorough due diligence process. The due diligence role of the underwriters in the offering process also serves to safeguard against a misrepresentation in the prospectus. We believe that the liability for a misrepresentation in a prospectus would be more appropriately dealt with contractually (e.g., representations and warranties and indemnities) between the vendor of the target and the issuer. In our view, this is a more efficient way to ensure a level playing field between an issuer and the competing buyers described above than the New Certification Proposal.

We presume that this proposed requirement has arisen from the concerns identified in Parts 4 and 5 of National Policy 41-201 *Income Trusts and Other Indirect Offerings* ("**NP 41-201**"). We do not believe that the concerns identified in NP 41-201 are applicable to all issuers. We also understand that there is no analogous requirement imposed by applicable securities laws in the United States and therefore to impose such a requirement in Canada would put the Canadian capital markets at a serious disadvantage.

2. Please refer to our response in paragraph 1 above.

3. Please refer to our response in paragraph 1 above.

4. Please refer to our response in paragraph 1 above.

Material Contracts

5. We agree with the proposal in subsection 9.1(1) of Proposed NI 41-101 to identify specific types of contracts that will be excluded from the exemption for the filing of contracts entered into in the ordinary course of business. This will provide reporting issuers with more certainty surrounding what must be filed. However, we believe that the carve-out in paragraph 9.1(1)(a) from contracts to which directors, officers, promoters, substantial beneficiaries, selling security holders or underwriters are a party should also extend to the delivery or provision of services at fair value. We also note that the blanket carve-out of "credit agreements" in paragraph 9.1(1)(d) may be overly-broad and is inconsistent with similar rules adopted by the U.S. Securities and Exchange Commission.

6. We commend the CSA for providing issuers with certainty surrounding the redaction of certain provisions from a material contract filed under Proposed NI 41-101.

Personal Information Form and Authorization

7. We do not see any practical difficulties with requiring an issuer to deliver a completed personal information form and authorization for every individual described in subparagraph 9.2(b)(ii) of Proposed NI 41-101 with the first preliminary prospectus filed by the issuer. In addition, we also commend the CSA for attempting to eliminate unnecessary duplication by permitting an issuer to deliver personal information forms in the form set out in Appendix A of Proposed NI 41-101 or in the form of a personal information form delivered to the Toronto Stock Exchange or the TSX Venture Exchange, if it was delivered to the applicable exchange and has not changed.

Over-Allocation

8. We generally agree with the manner in which Proposed NI 41-101 restricts the exercise of an over-allotment option to the lesser of the underwriters' over-allocation position and 15% of the base offering. We also agree with the change to the time for the determination of the over-allocation position to the closing of the offering from the close of trading on the second trading day next following the closing of the offering.

Distribution of Securities Under a Prospectus to an Underwriter

9. Compensation options and warrants are key forms of compensation used by issuers, and particularly by junior issuers, conducting a prospectus offering. We note that where compensation is paid in the form of option or warrant coverage, it is customarily in excess of the 5% ceiling proposed under Proposed NI-41-101 and often in the range of 7% to 8% of the number or principal amount of the securities

being distributed under the prospectus. In our view, the number of compensation options or warrants issued to underwriters would be best left to negotiation between the issuer and the underwriters, subject to appropriate disclosure in the prospectus. Concerns with “back-door underwriting” could be more appropriately dealt with in other ways, including by imposing transfer restrictions on the compensation securities.

Waiting Period

10. We do not believe that a minimum waiting period is necessary to ensure investors receive a preliminary prospectus and have sufficient time to reflect on the disclosure in the preliminary prospectus before making an investment decision. The statutory rights of rescission are sufficient to address any issues in this regard. Also, the regulators’ review process for a preliminary long form prospectus will necessarily involve a period of time during which investors can digest the information in a preliminary prospectus.

Amendments to a Preliminary or Final Prospectus

11. We believe that the current requirements to file amendments to a preliminary prospectus upon the occurrence of a material adverse change and to a final prospectus upon the occurrence of a material change are appropriate. Any effort to tie the requirement to amend a prospectus to the “continued accuracy of disclosure” must in any case import a materiality concept to be useful. Accordingly, the distinction drawn between accuracy of disclosure versus changes in the business, operations or capital of the issuer is not helpful.

Bona Fide Estimate of Range of Offering Price or Number of Securities Being Distributed

12. We believe that there is merit in requiring disclosure in a preliminary prospectus of a *bona fide* estimate of the range within which the offering price or the number of securities being distributed is expected to be set. This approach is consistent with practice in the United States and issuers and underwriters generally estimate pricing for green sheet purposes in any event. This additional disclosure would provide investors with meaningful pro forma information in a preliminary prospectus based on a given offering price.

We note, however, that there would be some uncertainty regarding whether a change in the offering price outside of the estimated range would require an amendment to the preliminary prospectus. Section 4.2 of the Companion Policy states that a difference between the estimate and the actual offering price or number of securities being distributed is not “generally” a material adverse change for which the issuer must file an amended preliminary long form prospectus. It would be helpful if a bright line approach were used for these purposes – for example, requiring an amendment where the actual offering price is more than a specified percentage (e.g., 5% or 10%) outside of the high- or low-end of the estimated range.

2 Years' Financial Statement History

13. We agree that reporting issuers using the long form system should only have to provide the same number of years financial history that they would normally provide under the short form system.

Other Comments

We have the following additional comments regarding Proposed NI 41-101:

(a) We note that subparagraphs 9.3(a)(x) through (xiii) of Proposed NI 41-101 contemplate the preparation and filing of certain undertakings by an issuer filing a final long form prospectus. We believe that it would streamline the long form prospectus filing process if the filing of these undertakings was eliminated and the subject matter of the undertakings simply included as requirements imposed by Proposed NI 41-101 or National Instrument 51-102 *Continuous Disclosure Obligations*, as applicable.

(b) With respect to the proposed amendments to National Instrument 81-101, Form 81-101F1 and Form 81-101F2, we generally agree with the effort to clarify and consolidate the filing requirements for simplified prospectuses, amendments thereto and supporting documents. We have the following specific comments:

(i) We believe that there is a typographical error in Section 1.4 of Appendix I, Schedule 1 such that references that are currently to Section 2.8 should be to Section 2.9.

(ii) There is a requirement in proposed Section 2.3(1)(b)(iv) and proposed Section 2.3(2)(b)(vi) to include a signed letter to the regulator (typically referred to as a "comfort letter") from the auditor of the mutual fund if a financial statement of the mutual fund included in the preliminary or pro forma simplified prospectus is accompanied by an unsigned auditor's report. We believe that a comfort letter in such circumstances is an unnecessary expense and logistical difficulty that provides no value to prospective investors or to the regulators. In the context of a new mutual fund the comfort letter would be with regard to the draft balance sheet filed with a preliminary prospectus, which balance sheet is a simple statement typically containing no financial information whatsoever. With respect to the pro forma filing, a pro forma simplified prospectus is not typically filed for public access on

SEDAR but only for review by the regulators and there is no benefit to the public to having a comfort letter filed along with the pro forma prospectus.

We appreciate the opportunity to comment on Proposed NI 41-101 and the Companion Policy. If you have any questions with respect to our comments, please feel free to contact any one of Jonathan Grant (416-601-7604), Robert Hansen (416-601-8259) or Katherine Gurney (416-601-8230) in Toronto, Sven Milelli (604-643-7125) in Vancouver, Peter Goode (403-260-3649) in Calgary, Virginia Schweitzer (613-238-2174) in Ottawa or Nathalie Forcier (514-397-5462) in Montreal.

Yours truly,

"McCarthy Tétrault LLP"

RBC Financial Group

Royal Bank of Canada
Royal Trust Tower, 6th Floor
Toronto, Ontario
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March 31, 2007

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
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New Brunswick Securities Commission
Nova Scotia Securities Commission

c/o Patricia Leeson, Co-Chair of CSA's Prospectus Systems Committee
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and

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Montreal, Quebec H4Z 1G3
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Dear Ms. Leeson, Ms. Franken and Ms. Beaudoin:

Re: Proposed National Instrument 41-101
Consequential Amendment to National Instrument 81-101

We are responding to the request for comments on the Canadian Securities Administrators' (the "CSA") consequential amendment to National Instrument 81-101 Mutual Funds Prospectus Disclosure ("NI 81-101") on behalf of RBC Asset Management Inc. ("RBC AM"). RBC AM is an indirect, wholly-owned subsidiary of the Royal Bank of Canada. It provides a broad range of investment services to investors through mutual funds, pooled funds and separately managed portfolios and currently has over $78 billion in assets under management. We participated in the preparation of the comment letter submitted to you by the Investment Funds Institute of Canada and are generally supportive of its contents. This letter highlights one issue that is of particular concern to us.

Currently, a fund's auditor is only required to review interim financial statements at the time that the auditor is involved in a simplified prospectus filing. The proposed additional sections 2.7 and 2.9 of NI 81-101 represent a significant change for the fund industry as they require a review of all unaudited financial statements and the filing of an auditors' consent.

Mutual funds are marked to market daily and therefore the trustee or manager must have appropriate policies and procedures in place to ensure that the net asset value of a fund is fair and accurate. The requirement for an auditors' review of and consent on interim financial statements would add no value to the daily valuation process for mutual funds. While an auditors' review is appropriate for corporate issuers because investors and their advisers rely on and utilize interim financial statements when making investment decisions, the same does not hold true for mutual fund unitholders. These investors and their advisers rely on the daily net asset value of the fund in respect of their purchase, sell or hold decision and only a small number (less than 2%) even ask to receive interim financial statements. Therefore, we submit that these proposed changes will significantly increase the fees paid by each individual mutual fund to auditors (approximately 25% to 30%), but provide no material benefit to unitholders.

We would like to thank the CSA for the opportunity to provide these comments on the proposed changes. Please feel free to contact Reena S. Lalji at 416-955-7826 or Frank Lippa at 416-974-0609 if you have questions or would like to discuss any of the matters raised in this letter.

Yours truly,

"Reena S. Lalji"

Reena S. Lalji
Senior Counsel, RBC Law Group

"Frank Lippa"

Frank Lippa
Chief Financial Officer &
Chief Operating Officer

Dear Mesdames:

I have been practicing securities law for 21 years. In my view the requirement for "substantial beneficiary" to sign a prospectus certificate in Part 5 makes some sense in the case of non-arms length transactions but it makes no sense at all in the case of arms length transactions. Quite clearly, it will put public companies at a relative disadvantage to private purchasers in acquiring assets for cash consideration. As such, it will inflate the prices that a public company will be required to pay for assets to the detriment of current and future shareholders, including those persons purchasing securities under the prospectus.

Jay Sujir

Anfield Sujir Kennedy & Durno

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April 2, 2007

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To Whom It May Concern::

Re: Borden Ladner Gervais LLP RE: Comments on Proposed Changes to National Instrument 41-101 *General Prospectus Requirements*

The following comprises our comments to the members of the Canadian Securities Administrators (the "CSA") on proposed National Instrument 41-101 *General Prospectus Requirements* ("NI 41-101"), and its correlating Forms and Companion Policy. The members of CSA have assembled a very comprehensive list of documents and have provided an impressive array of information for the industry. We note that the proposal includes amendments to a significant number of other National Instruments, related Companion Policies and forms. Given the volume of the proposed additions and alterations to various National Instruments, we have chosen to focus on addressing certain questions outlined in the Canadian Securities Administrators Notice and Request for Comment dated December 21, 2006 (the "Notice and Request for Comment"). For ease of reference, those questions addressed have been incorporated into this letter, and precede each corresponding comment.

Our comments have been compiled with input from various lawyers in our Securities and Capital Markets Group from multiple Borden Ladner Gervais LLP offices, and therefore represent our firm's opinions and perspectives nationally.

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Our comments do not necessarily reflect the opinions of, or feedback from, our clients, however, we have had an opportunity to discuss the proposed amendments with certain clients to gain a better understanding of potential consequences to the industry.

General Comments

In general, we are supporters of a proposed NI 41-101 which purports to provide consistency and harmonization to the filing of long form prospectuses in Canada. Many issuers, both senior and junior, are filing prospectuses in more than one jurisdiction on a regular basis and this initiative of the CSA addresses that market reality. However, the new proposals will not achieve complete uniformity as certain jurisdictions, most notably Ontario, are excluded from various significant aspects of a long form prospectus. This diminishes the anticipated goal of consistency and harmonization in the marketplace. Notable examples include (i) certification and the requirement for a "substantial beneficiary" to sign a certificate except in Ontario; and (ii) the delivery of a personal information form for every "substantial beneficiary" except in Ontario.

Certificate requirements

1. *Except in Ontario, Proposed NI 41-101 includes a new certificate requirement for "substantial beneficiaries of the offering". Does a person or company that controls the issuer or a significant business have the best information about the issuer or significant business? Should a person or company who also receives proceeds from the distribution be liable for any misrepresentations in the prospectus about the issuer or a significant business? Are the definitions of substantial beneficiary of the offering and significant business broad enough to cover this class of persons and companies?*

2. *The definition of "significant business" in Section 5.13 of Proposed NI 41-101 is based on the significance tests for acquisitions. Are these tests the most appropriate measure of significance for the purposes of determining prospectus liability?*

3. *Control of a significant business and direct or indirect receipt of 20% of the proceeds of an offering are both required to bring a person or company within the definition of substantial beneficiary of the offering. Is this dual threshold too limited?*

4. *Is receipt of 20% of the proceeds of the offering the appropriate threshold for paragraph 5.13(2)(b) of Proposed NI 41-101?*

We would submit that the answer to the question "does a person or company that controls the issuer or a significant business have the best information about the issuer or significant business?" is neither "yes" or "no", but "maybe, depending on the circumstances". The problem with establishing a "bright line" threshold is that it catches all the circumstances in which the answer would clearly be "no".

The Notice and Request for Comment states that the introduction of the new concept "substantial beneficiaries of the offering" is because "…a person or company that controls the issuer or a significant business has the best information about the issuer or significant business. Such a person who also receives proceeds from the distribution should be liable for any misrepresentations in the prospectus about the issuer or a significant business". While this new concept certainly has theoretical merit, certain issues arise when applied to industry practice. In theory, the concepts of knowledge and control can be inclusive of each other. This is particularly the case for a non reporting issuer completing its initial public offering. However, knowledge and control are not strictly equatable, and can certainly be disparate in particular circumstances. For instance, where an ongoing reporting issuer is conducting business in the ordinary course or carrying out an aggressive acquisition strategy, a certification requirement which captures historical relationships going back a year and is not simply limited to the current structure of the issuer, would create a situation where prior control does not equate contemporary knowledge.

We note that NI 41-101 will require that a prospectus contain a certificate of any "substantial beneficiary of the offering" if the issuer intends on filing a prospectus and has or is contemplating acquiring a "significant business". The definition of "substantial beneficiary of the offering" as proposed in section 5.13 of NI 41-101 means "...any person or company that, (a) whether individually or in conjunction with one or more persons or companies acting in concert by virtue of an agreement, arrangement or commitment or understanding, directly or indirectly, **holds or held, within the year preceding the date of the prospectus** [emphasis added], or following the completion of any transaction or series of transactions disclosed in the prospectus is reasonably expected to acquire (i) control of the issuer or a significant business of the issuer, or (ii) voting securities carrying 20% or more of the voting rights attached to any class of voting securities of the issuer or a significant business of the issuer; and (b) together with its affiliates and associates, is reasonably expected to receive, **directly or indirectly, 20% or more of the proceeds of the offering of securities under the prospectus** [emphasis added]...".

The question above asks "Control of a significant business and direct or indirect receipt of 20% of the proceeds of an offering are both required to bring a person or company within the definition of substantial beneficiary of the offering. Is this dual threshold too limited?". Our response is that this may be too broad rather than too limited and that it may not be an appropriate threshold in all circumstances, which could result in undue hardship. In the event that the concept of "substantial beneficiaries of the offering" remains in NI 41-101 it is imperative that a "stepped" percentage threshold be applied. As noted above, there are many junior issuers, particularly in the natural resource sector, where the application of the 20% threshold could create an artificial level of materiality within the industry and as a result may potentially prohibit a junior issuer from successfully negotiating an acquisition. Junior issuers will be faced with a material disadvantage during the negotiation of an acquisition if the potential vendor is required to subsequently execute a certificate in a long form prospectus of the junior issuer. Any potential vendor, and particularly a larger sized vendor, will not be willing to undertake the necessary due diligence and other steps to facilitate the regulatory requirements of a junior company. Therefore, a junior issuer must decide whether to pursue the acquisition and finance it by alternate means or forego the acquisition entirely. The very nature of a junior company often requires the completion of several acquisitions which, because of the need for financing and the application of the 20% threshold, could be caught. Although of particular concern to junior issuers, these same concerns are of course applicable to a wide range of issuers.

In addition, we are concerned with the application of the "one year" to certain aspects of the "substantial beneficiaries of the offering". Again in the context of junior issuers, a junior issuer can look significantly different within a one year period and a vendor or party to a transaction that was "significant" at the time may be *di minimus* in current ownership or not involved in any meaningful way to the junior issuer a year later. From a review of the proposed amendments, we believe that the purpose of this amendment is to have relevant parties with full knowledge of the issuer be held responsible for the contents of the prospectus. This intention is laudable, however, we respectfully submit that the application of a mathematical threshold will not achieve those results. The "one year look back" provision may have the result of capturing parties that have no knowledge of the current status of an issuer (whether junior or senior). The ability of an issuer to subsequently involve a party that has no continued relationship with the issuer will be time consuming, at best, with a realistic consequence of being unable to obtain the certificate. For instance, where it is unknown at the time of sale whether an offering of securities will be undertaken to finance the deal within the next year, there would be no way for an issuer to know if confirmation from the vendor will eventually be required, and obtaining certification from the vendor a year subsequent to the completion of the sale may be impossible.

Material contracts

5. *Should each type of contract listed in subsection 9.1(1) of Proposed NI 41-101 be excluded from the exemption to file contracts entered into in the ordinary course of business? Are there other types of contracts not listed that should be excluded from the exemption to file contracts entered into in the ordinary course of business? If so, please identify the type of contract and explain why they should be excluded.*

6. *Is the list of provisions that are "necessary to understanding the contract" set out in subsection 9.1(2) of Proposed NI 41-101 appropriate?*

The current definition of material contracts permits the issuers to make a determination of the "ordinary course of business" and to consider the industry in which they carry on business in making this assessment. We feel that there is a difference between making a contract "not a contract entered into in the ordinary course of business" for purposes of a prospectus and amending the very definition of material contracts, such that the determination of "materiality" is removed from the issuer. We note that the Summary of Significant Provisions in the Proposed Rule provided by the CSA states that further to proposed amendments to NI 51-102 "…to address inconsistency in filings and confusion about what is in the ordinary course of business, we will develop further guidance for the companion policy in conjunction with a project to harmonize the long form prospectus requirements". We would suggest that the section on material contracts (and the subsequent amendments to NI 51-102) be broadened to permit some determination of "materiality" by the issuer, or at a minimum, have some dollar value threshold attached.

Personal information form and authorization

7. *Subparagraph 9.2(b)(ii) of Proposed NI 41-101 will require an issuer to deliver a completed personal information form and authorization for every individual described in this subparagraph with the first preliminary prospectus filed by the issuer after the Proposed Rule becomes effective. Are there significant practical difficulties an issuer may have in complying with this requirement?*

We are uncertain as to the policy reason for establishing another filing for issuers to be obligated to obtain and file if the issuer is already a reporting issuer and is listed on a Canadian exchange (or filing an initial public offering with an application to be listed on a Canadian exchange).

The participants required to provide a personal information form is also broader than required by a Canadian exchange. Particularly, the requirement to have personal information forms for each "substantial beneficiary" of an offering or the directors and executive officers of each "substantial beneficiary" is extremely onerous and in most cases, completely outside the control of an issuer. As noted in the introductory paragraph, we are unclear as to the practicalities of having these personal information forms required everywhere but in Ontario.

Distribution of securities under a prospectus to an underwriter

8. *Section 11.3 of Proposed NI 41-101 permits compensation options or warrants to be acquired by an underwriter under the prospectus where the securities underlying such compensation options or warrants are, in the aggregate, less than 5% of the number or principal amount of the securities distributed under the prospectus. Is 5% an appropriate limit?*

We are of the opinion that this constraint is likely unnecessary. Limiting issuers' ability to remunerate underwriters in options or warrants to the 5% threshold, may have the unintended consequence of causing issuers to pay more compensation in cash. We view these limitations on issuer payment flexibility negatively.

2 years' financial statement history

9. *We are proposing to harmonize the requirements between the short form and long form prospectus systems for reporting issuers. Do you agree that reporting issuers using the long form system should only have to provide the same number of years financial history they would normally provide under the short form system?*

We feel that this is an excellent modification, which amounts to a significant improvement, and commend the CSA in its attempt to harmonize the requirements between the short form and long form prospectus systems for reporting issuers.

We hope that our comments in regards to NI 41-101 have been of assistance to the CSA. If further discussion concerning these comments would be useful, please contact either Melinda Park at (403)-232-9795 or Dan Kolibar at (403)-232-9559.

Yours truly,

BORDEN LADNER GERVAIS LLP

Daniel Kolibar

for MELINDA PARK

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April 3, 2007

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Dear Mesdames:

Re: Request for Comments on Proposed National Instrument 41-101 – *General Prospectus Requirements* ("NI 41-101")

This letter is in response to the general request for comments on proposed NI 41-101 and Related Amendments published by the Canadian Securities Administrators

("CSA") on December 22, 2006 (the "Proposals"). The following comments are from Fidelity Investments Canada Limited ("Fidelity"). Our comments will be limited to that portion of the Proposals relating to consequential to amendments to National Instrument 81-101 - *Mutual Fund Prospectus Disclosure* ("NI 81-101"), which are set out in Appendix I of the Proposals (the "NI 81-101 Proposals").

Who is Fidelity?

Fidelity is one of the largest managers of mutual funds in Canada, with approximately $40 billion in mutual fund assets under management in Canada. We are part of a group of companies known as Fidelity Investments, which is headquartered in Boston, Massachusetts.

Fidelity Investments is an international provider of financial services and investment resources that help individuals and institutions meet their financial objectives. The Fidelity Investments group manages more than $1.3 trillion in assets in more than 300 mutual fund portfolios and other institutional accounts around the world. Fidelity Investments has been in business for more than sixty years and has grown to become one of the largest mutual fund companies in the world.

General Comments

We support the efforts of the CSA to harmonize prospectus filing requirements across the country. More specifically, we welcome the further harmonization of the form and filing requirements for mutual fund simplified prospectuses ("SP") and annual information forms ("AIF"), through the NI 81-101 Proposals.

Notwithstanding our general support of these changes, we do have concerns regarding some of the elements of the NI 81-101 Proposals. Our comments are focused on two parts of the NI 81-101 Proposals: **Review of Unaudited Financial Statements**, and **Short Term Trading Policy Disclosure**.

Review of Unaudited Financial Statements

Under the NI 81-101 Proposals, the proposed addition of s. 2.7 to NI 81-101 ("section 2.7") states:

2.7 Review of Unaudited Financial Statements – Any unaudited financial statements included in or incorporated by reference in a simplified prospectus must have been reviewed in accordance with the relevant standards set out in the Handbook for a review of financial statements by the mutual fund's auditor or a public accountant's review of financial statements.

If this change is adopted, it would create a new obligation for a mutual fund that issues a SP under NI 81-101 to have its interim financial statements reviewed by the fund's auditor, since National Instrument 81-106 *Investment Fund Continuous Disclosure* ("NI 81-106") currently does not require auditor review for interim financial statements.

It is our submission that if proposed section 2.7 were enacted, this new requirement would seriously impact the ability of mutual funds to file interim financial statements on time.

When NI 81-106 was enacted in mid-2005, the CSA chose not to shorten the filing deadline for interim financial statements from the 60 day period that was already in place (even though it had initially recommended shortening the timeline from 60 to 45 days). In doing so, the CSA was responding to concerns raised by many in the industry about the difficulties in complying with the already compressed filing timelines, especially in light of the addition of the Management Reports of Fund Performance and other reporting requirements introduced under that Instrument. At the time of NI 81-106's enactment, the CSA also chose not to make auditor review of interim financial statements mandatory.

If the auditor review requirement becomes mandatory, then the addition of this extra step in the financial statement preparation and delivery process will further squeeze an already very tight filing timeline. The extra time that will need to be set aside for auditor review will leave far less time to actually prepare the statements and will jeopardize the ability of funds to file interim financial statements within the 60 day timeline. All of these same issues and concerns that arose during the NI 81-106 consultation process will surface again.

In addition, the increased costs associated with a mandatory auditor review will have an impact on fund expenses through higher management expense ratios ("MERs"). Higher MERs ultimately harm investors, since they act as a drag on a fund's rate of return. It is our submission that these additional costs to investors would not be offset by any benefits derived from an auditor review.

In light of these concerns, we recommend that the CSA eliminate the proposed section 2.7.

Short Term Trading Fee Disclosure

Fidelity is generally in agreement with the CSA's proposals to amend Item 6 of Part A of Form NI 81-101F1 (the "Form") to add additional disclosure regarding short term trading policies to a fund's SP and AIF (the "Short Term Trading Disclosure" or the "Disclosure")). That said, we wish to express our concerns regarding certain aspects of the Short Term Trading Disclosure that we believe require further consideration by the CSA. Our concerns are with the following parts of the proposed Disclosure:

- Describe the restrictions, if any, that may be imposed by the mutual fund to deter short term trades, <u>including the circumstances, if any, under which such restrictions may not apply or may otherwise be waived.</u> (emphasis added);

- If applicable, stat that the annual information form includes a description of all agreements, whether formal or informal, with any person or company, to permit short-term trades of securities of the mutual fund

Exceptions to Short Term Trading Policies

It is our submission that specific disclosure of circumstances in which a short term trading restriction or fee may be waived, may have the unintended adverse consequence of serving as a roadmap for "how to beat the system" and to circumvent the restrictions and penalties set forth in those policies, which exist to protect investors. This in turn could make it easier for persons to engage in excessive short term trading and avoid detection, or the application of any penalties and restrictions set out in a fund's short term trading policies, by simply conducting trades in a way that is exempted from the policy, or by offering one of the enumerated reasons for waiver, all as described in the SP. While we agree it is appropriate for investors to be told about any fees or other penalties that could be assessed for excessive short term trading, we don't believe it serves the best interests of investors to in effect be provided with instructions on how to engage in excessive short term trading and avoid penalties or restrictions put in place for doing so. The harm of this disclosure being misused, in our opinion, outweighs the benefits to investors from having this disclosure. To that end, we recommend eliminating this requirement.

Description of Agreements Permitting Short Term Trading

We're also concerned with the provision requiring a description of agreements the fund manager has with others that "permit" short term trading – it's not necessary and could be misleading to investors. To the extent that a fund manager may have agreements in place which provide that for legitimate reasons, short term trading restrictions will not be actively enforced in regards to certain transactions, they are typically "fund on fund"-type agreements with institutional investors or other mutual fund managers. These clients often require a degree of flexibility regarding their ability to buy and sell bottom fund units, in order to meet purchase and redemption requests in the top fund. These agreements typically include specific representations regarding market timing or excessive short term trading, and where it includes specific waivers of parts of the bottom fund's short term trading policies, it is only where the bottom fund manager is satisfied that such client has suitable policies of its own to police that practice in their top funds.

It is our submission that this kind of "alliance relationship" is not the type of relationship that the short term trading policies are intended to restrict, and we do not believe there would be a material benefit to investors from disclosure of these types of agreements in the AIF. This disclosure could even be misleading in that it may give a false impression of different treatment for different investors. As such, we recommend the elimination of this proposed portion of the Disclosure.

Conclusion

Notwithstanding the concerns raised in this letter, we support many of the changes proposed in the NI 81-101 Proposals and support the principles behind those changes. We urge you to consider the concerns we have raised in this comment letter and our proposals for addressing those concerns. We appreciate the opportunity to comment on the Proposals and look forward to a continuing dialogue regarding the implementation of these changes in a way that best serves the interests of investors.

Yours very truly,

Christopher Bent
Legal Counsel

Hugh L. Hooker
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PETRO-CANADA

April 3, 2007

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Alberta Securities Commission
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Authorité des marchés financiers
Nova Scotia Securities Commission
New Brunswick Securities Commission

Patricia Leeson, Co-Chair of the CSA's Prospectus Systems Committee
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Re: Notice and Request for Comment dated December 21, 2006 (the "Notice") on Proposed National Instrument 41-101 General Prospectus Requirements and Companion Policy 41-101 CP General Prospectus Requirement

Petro-Canada is providing the following comments pursuant to the Canadian Securities Administrators (the "**CSA**") request dated December 21, 2006 relating to Proposed National Instrument 41-101 (the "**Proposed Rule**") and Companion Policy 41-101 CP (the "**Proposed Companion Policy**").

Petro-Canada is one of Canada's largest oil and gas companies. It has operations in both the upstream and the downstream sectors of the industry in Canada and internationally. Petro-Canada's shares are listed on the Toronto Stock Exchange in Canada (PCA) and the New York Stock Exchange in the United States (PCZ).

Petro-Canada is continually active in the Canadian oil and gas acquisition and divestiture market. In 2006 and 2007, we actively marketed a number of our non-core properties to industry.

Petro-Canada has concerns with certain aspects of the Proposed Rule, particularly the proposed amendments to section 4.1(b) of National Instrument 44-101 *Short Form Prospectus Distributions* ("**NI 44-101**") that require personal information forms from all directors and executive officers contemporaneously with the filing of a preliminary short form prospectus.

We understand the fundamental rationale for the short form prospectus system is to offer qualified issuers an alternative method of seeking financing that, when compared to the long form prospectus process, is less time consuming and less expensive. This allows Canadian issuers the opportunity to more effectively compete in the capital markets with their foreign counterparts where those competitors are active in the Eurobond markets or the U.S markets. The time and expense involved in accessing Canadian markets as opposed to accessing foreign markets originally gave rise to the concern that unless issuers had rapid and cost effective access to Canadian markets, issuers would choose to distribute securities outside of Canada.

We fail to see any added benefit to investors that this proposal would have. Under the current requirements of NI 51-102F2 *Annual Information Form*, directors and executive officers already must disclose bankruptcies, cease trade orders, securities-related violations, settlement agreements and *any other penalties or sanctions imposed by a court or regulatory body that would likely be considered important to a reasonable investor in making an investment decision.* Other information contained in the proposed Personal Information Form requirement is generally already required by the Toronto Stock Exchange at the time of listing of the securities in question.

Further, the process of completing Personal Information Forms, particularly for a large issuer with international operations, can be quite time consuming. Such an issuer's directors and executive officers will constitute a large number of individuals who are geographically dispersed around the world. Requiring qualified issuers to collect Personal Information Forms for all directors and executive officers in order to file such forms concurrently with the filing of the preliminary short form prospectus could lead to the undesirable consequence of defeating the intended purposes of NI 44-101 described above, namely, quick, inexpensive and competitive access to Canadian capital markets.

We view the proposed requirement as unnecessarily impeding the stated objectives of the short form prospectus system, while adding little if any benefit for investors.

In light of the above, we would request that the CSA reconsider the implementation of section 4.1(b) of NI 44-101 for the reasons stated above.

Yours truly,

Ralph L Hooke

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April 4, 2007

BY E-MAIL

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

Request for Comments on Proposed National Instrument 41-101, Companion Policy 41-101CP and Related Amendments

We are writing in response to the request of the Canadian Securities Administrators (the "**CSA**") for comments (the "**Request For Comments**") in respect of the proposed National Instrument 41-101 *General Prospectus Requirements* (the "**Instrument**"), Companion Policy 41-101CP (the "**Policy**") and the related amendments, all as published on December 22, 2006.

We strongly support the CSA's objectives of consolidating and harmonizing the general prospectus requirements in a single national instrument and integrating such requirements with those related to the continuous disclosure regime and distributions through alternate forms of prospectus. We appreciate the opportunity to provide comments on the Instrument and Policy and note that, other than as set out below, we are generally supportive of the substantive changes that the CSA has proposed in connection with the harmonization initiative.

1. <u>Part 4: Financial Statements and Related Documents</u>

We agree that harmonization of the financial statements requirements of a long form prospectus to the two years required under a short form prospectus is sufficient for the protection of investors. However, we note that in the case of certain reporting issuers that do not currently file electronically on SEDAR, investors may not have ready access to the earlier financial statements that have been filed (but are not included in the long form prospectus). We submit that the CSA should consider whether to make the relief in section 32.4 of proposed Form 41-101F1 (the

"**Form**") contingent on such financial statements being made available on SEDAR at the time the preliminary prospectus is filed.

2. <u>Part 5: Certificates</u>

(a) General

While we appreciate that certain of the "opt-outs" in the Instrument are required as a result of differing rule-making authority across jurisdictions and that certain of the requirements are otherwise provided for in applicable provincial securities legislation, we have some concerns regarding "opt-outs" in what is purportedly a harmonized rule. As Canadian prospectus offerings typically extend beyond a single jurisdiction, we are concerned about the interaction of the applicable regimes created by the "opt-outs" under the mutual reliance review system. This possibility may become particularly problematic where a non-principal regulator has a discretionary ability to require certification of a prospectus by an additional party. If a non-principal regulator indicates that it will require an additional certificate at the comment letter stage, there would arise serious timing considerations relating to the offering as, for the offering to be completed on its previously anticipated timelines, those executing the certificate would be required to perform appropriate diligence on a severely time limited basis. We are further concerned that, as such certificate requirements would not be addressed by the principal regulator, there is the potential that an issuer would have to engage all of the other regulators in separate discussions, defeating the goals of the mutual reliance review system. We submit that if the substantive "opt-outs" are maintained in the final version of the Instrument, the CSA should provide guidance clarifying process where a prospectus is filed in multiple jurisdictions and the principal regulator has "opted-out" of a relevant provision.

In addition, in the interests of transparency, we believe that the CSA should consider indicating, whether in Policy or elsewhere in the Instrument, where a jurisdiction has "opted-out" because the applicable requirements are elsewhere in that jurisdiction's securities laws.

(b) Trust Issuers

The Instrument specifies that a certificate of an issuer that is a trust, if the trustee is a company, must be executed by, among others, the chief executive officer, chief financial officer and two directors of the trustee. We submit that where an issuer that is a trust has an independent trust company acting as its trustee, such certification requirements would not provide any additional benefits to investors and may impose additional costs upon the issuer surrounding prospectus offerings.

(c) Substantial Beneficiary of the Offering

We have serious concerns regarding the new requirement that a "substantial beneficiary of the offering" be required to sign a prospectus certificate and its potential effect on issuers and the Canadian business community in general. First, we do not agree with the stated premise that "a person or company that controls the issuer or a significant business has the best information about the issuer or a significant business". There are many examples of issuers where control persons have no additional information regarding the issuer beyond that which is available to the public. We submit that an issuer's management generally has the best information regarding the issuer or a significant business. Where a business has been recently acquired by an issuer, the issuer's management is best placed to synthesize past information regarding the acquired business (obtained from the vendor or from the issuer's due diligence) with current information about the issuer and management's intentions for the acquired business to provide disclosure regarding the acquired business in the context of the issuer as a whole.

We submit that the costs of this additional certification requirement would be significant. As the contemplated certificate is not limited in scope to the disclosure that is relevant to the significant beneficiary of the offering, but relates to the entire prospectus, the additional signatory will need to perform due diligence on the content of the entire prospectus. Also, the additional liability imposed by new certification requirement may act as a disincentive for vendors to sell businesses to Canadian issuers that will finance the acquisition by a public offering. As a result of this additional, a potential vendor will likely either require greater consideration from an issuer that plans to access the Canadian capital markets to finance the acquisition or choose to sell to a purchaser where no additional liability will be incurred. Accordingly, we submit that the substantial costs and potential detrimental effects of requiring a prospectus to include certificates of a substantial beneficiary of the offering do not justify the limited benefits that additional certifications would yield.

We also are concerned that where a substantial beneficiary of the offering owns part of the issuer, such person becomes be responsible for the disclosure in two different ways: directly, through its execution of the prospectus certificate, and indirectly, through its ownership of an interest in the issuer. We submit that this double liability is not a fair allocation of the risk associated with a public offering. In addition, such additional liability may act as a deterrent to *bona fide* intercompany transactions, such as refinancing indebtedness of a publicly traded subsidiary to its parent. Where the parent has provided temporary funds for an issuer, it should not incur double liability merely because of its ownership relationship with the issuer. We submit the outcome of this additional certification requirement will be to discourage valid and useful intercompany financing strategies that both benefit the issuer and provide increased financing flexibility to benefit the capital markets as a whole.

Although we are uncertain of the specific policy rationale behind this additional certification requirement, and are unaware of any abuses of the market against which this requirement is designed to protect, we suspect that it may be related to trust structures. We are unsure that instituting such a rule of general application is the best course of regulation, particularly where, as a result of other legislative changes, the issue may recede in importance.

(d) Discretionary Certificate Requirements

The Instrument provides regulators, except in Ontario, with discretion to require any selling security holder or control persons or other persons to execute a certificate in a prospectus. Our related concerns are threefold. First, in respect of the certificate requirements for selling shareholders and control persons, we submit that in the interests of transparency, guidance should be provided as to when regulators intend on requiring additional certificates. Second, we have concerns regarding the unfettered nature of the certificate obligations in these two sections. We understand that section 5.16 merely preserves the unfettered right that regulators in certain jurisdictions have to require a certificate; however we submit that it should be made clear in the instrument that regulators will not exercise that right unless it is in the public interest to do so. Finally, we believe that the unfettered and discretionary nature of such certification requirements reduces the transparency and certainty in public offerings that benefits all market participants.

3. <u>Part 6: Amendments</u>

In response to question 11 in the Request For Comments, we submit that the CSA should not make changes to the rules relating to the amendment of prospectuses. Specifically we do not believe that "continued accuracy of the prospectus" is an appropriate standard for requiring an amendment to either a preliminary prospectus or a prospectus. In respect of both preliminary prospectuses and prospectuses, we anticipate that such a new lower standard would dramatically increase the number of amendments that would be required, and impose upon issuers the associated increased costs. In addition, a lower threshold for amendments increases the uncertainty of timing relating to an offering, as presumably a period for review by the regulators of an amended document would still be necessary for each amendment. Such reduced threshold for amendments may also increase confusion of potential investors in situations where there are numerous amendments. We note that there is limited, if any, informational benefit of such a reduced threshold for amendments, particularly in the case of a prospectus, where the current regime requires amendments in response to a "material change" in respect of the issuer. The proposed new standard of "continued accuracy" would require amendments where there are changes in the affairs of the business, operations or capital of the issuer that would not affect the market price or value of the issuer's securities. We question whether such a exercise is helpful to investors. We submit that making an issuer incur such additional expense for unnecessary amendments is not justified by the additional information, which we believe will be of limited value to investors.

4. <u>Part 9: Requirements for Filing a Prospectus</u>

In respect of the filing of material contracts, we support the CSA's efforts to clarify the current regime. Specifically, we believe it is helpful that the CSA has provided some guidance as to the type of contracts that it considers not to have been entered into in the ordinary course of business and we would not add any other types of contracts to the list set out at section 9.1(1). However, we are uncertain as to how the test that is set out in section 9.1(1)(b) regarding what constitutes "a contract to sell the major part of the issuer's products or services or to purchase the major part requirements of goods, services or raw materials" would be applied as a practical matter due to the lack of a common understanding of what would constitute a "major part" in such context. We suggest that the test be changed to incorporate the materiality standard used later in the paragraph such that it would read, "any continuing contract to sell the issuer's products or services upon which the issuer's business depends to a material extent or to purchase goods, services or raw materials upon which the issuer's business depends to a material extent…".

We note that in regard to the provision of the Policy setting out permissible redaction of sensitive information from a material contract for the reasons that disclosure of such information would violate confidentiality provisions, that section 3.6(3) of the Policy states "[a] boilerplate blanket confidentiality provision covering the entire contract would not satisfy this condition". We are concerned that such a change has the effect of imposing retroactively a new standard that affects the ability of contracting parties to keep information confidential. While new contracts can incorporate provisions that address the approach of the Policy, contracts drafted prior to the introduction of the Instrument do not have similar flexibility. Accordingly, the new regime provides no protection to confidential information of a counterparty to a material contract of an issuer, as there is no test for redaction that relates to disclosure that may be prejudicial to such counterparty. Further, the counterparty may not have the ability to ensure that its contracts with public issuers will be renegotiated to include the necessary specific confidentiality provisions. We ask that the CSA consider that the guidance in the second paragraph of section 3.2(3)(b) be limited to those contracts entered into after the Instrument comes into force or that some other means of protecting the confidentiality of a counterparty's sensitive information be provided.

5. Form 41-101F1 - Item 1: Cover Page Disclosure

We support the CSA's initiative in the Instrument to require that an issuer disclose a *bona fide* estimate of the range in which the offering price or the number of securities being distributed is expected to be set. We believe that such information is important to an investor in making an informed investment decision, and that such initiative will be helpful to the marketplace. Further, we support the proposal whereby disclosure in the preliminary prospectus in the consolidated capitalization table, earnings coverage ratios and *pro forma* financial information would be required to be calculated and disclosed using the mid-point of the pricing range. We believe that such information is helpful to investors in understanding the effects that the offering will have on the issuer. We also support the concept that pricing outside the disclosed ranges may be a material adverse change in respect of the issuer, and that as such may require an amendment to the preliminary prospectus be filed. We believe that such potential will serve as an incentive to issuers to consider, with the help of their advisers, a realistic set of estimates regarding an offering's pricing terms.

6. <u>NI 44-102 – Shelf Distributions: "Novel" Specified Derivatives</u>

(a) General

In general, we have significant concerns regarding the proposed amendments to NI 44-102 that relate to "novel" specified derivatives. First, we believe that the expansion of the definition of "novel" would materially reduce certain issuers' ability to access the capital markets and to offer to investors the opportunity to diversify their portfolios and invest in innovative investment products designed to meet investors' needs. It will also reduce product innovation and further widen the gap between Canada and the US capital markets where there exists a deep, established public market for structured notes.

In Canada, prior to the advent of the shelf system which enabled structured notes to be offered off the shelf, very few public markets derivatives securities were distributed. This was so because the conventional wisdom at the time shared among issuers and their advisors was that the time and expense involved in clearing such a product through the commissions, educating staff about the nature of the product and overcoming inherent biases against derivative-like securities simply made these products uneconomic to offer. These conditions fostered the development of the private unregulated market in bank deposit notes linked to indices, stocks and commodities ("**linked bank-deposit notes**"). A return to that regime in the guise of forcing prospectus supplements through an onerous novelty pre-clearance process can be expected to have the same chilling effect.

Our concerns in this regard are amplified by the commentary in the proposed rule to the effect that the CSA views many structured products to be similar to investment funds. In its commentary, the CSA has indicated that "the CSA is also interested in having an opportunity, prior to distribution, to determine whether certain elements of the investment funds regulatory regime should apply to such offerings". It is our position that structured debt securities, or equity linked notes, of the type currently being offered by prospectus by Royal Bank or Merrill Lynch are not, in fact, similar to investment funds. The type of products currently being offered by Royal Bank and Merrill Lynch (referred to in this letter as "**Passive Linked Securities**") are linked to benchmarks such as reference indices, stocks or commodities and are not actively managed, in contrast to structured products that are linked to managed investments, such as mutual funds and closed end funds ("**Managed Linked Securities**"). It is essential for the CSA to recognize the distinction between Passive Linked Securities and Managed Linked Securities. Indeed, while we share some of the CSA's concerns about Managed Linked Securities and the disclosure issues that may arise regarding fees, "fees on fees", conflicts and governance, for example, in the Managed Linked Security context, we do not agree that the same issues arise regarding Passive Linked Securities for the simple reason that these products are not managed.

Passive Linked Securities differ significantly from investment funds in several fundamental ways. An investor in a mutual fund, for example, is entitled to receive on demand, or within a specified period after demand, an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets of the issuer. In contrast, a Passive Linked

Security is a debt obligation of the reporting issuer under which the noteholder is entitled to receive payments determined by reference to the performance of a certain benchmark. While the payout profile of a Passive Linked Security would be linked to the performance of underlying securities, commodities or reference indices, as the case may be, absent an express right to redeem the notes, a noteholder would not be entitled to receive any amount from the issuer on demand. Furthermore, the calculation of the amount to be paid to holders of such structured notes would not, unlike in a mutual fund, be based on the net asset value of the underlying securities or reference indices. Rather, it would be determined in a manner that is quantitative, formulaic and discretion free. Nor are these Passive Linked Securities akin to non-redeemable investment funds within the meaning of National Instrument 81-106, including section 1.2 of the Companion Policy, because, among other things, they do not involve the "management" of investors' funds.

For example, Merrill Lynch's global equity accelerator product was developed to address investors' desire for an investment product that would give them exposure to the Global Equity market without currency exposure and without the large management fees associated with managed global equity investment funds.

Accordingly, we have significant concerns regarding the suggestion that the regulators would use the pre-clearance process to apply investment fund-type requirements to issuers that are not investment funds. In addition to the fundamental differences between investment funds and issuers of Passive Linked Securities, we believe more generally that there is a risk that the proposed change would have the effect of exposing issuers of Passive Linked Securities to an uncertain, non-transparent and potentially uneven disclosure regime under which issuers could be subject to a "moving target" of disclosure obligations depending on the extent to which the regulators view such securities to be "like an investment fund" (a comparison which we believe is not helpful, for the reasons set forth above). It is not clear what it would mean practically for the regulators to consider the applicability of the investment fund regime to any given Passive Linked Security.

As a general principle, in any event, we believe that the Commission's determination of broad questions of general application, such as the type of regulatory regime that should apply to a particular type of offering, should occur in the policy development context and not within the context of a particular transaction-related filing. One of the cornerstones of securities law is the efficient functioning of the capital markets. In order for the capital markets to function efficiently, market participants must be governed by a transparent securities law regime. The proposed approach to pre-clearance processes would impose an unwritten regime on issuers of novel specified derivatives under which such issuers could be subject to certain aspects of the investment funds regime without being able to determine, in advance of a pre-clearance application, which aspects of the investment funds regime would be regarded by the regulators as applicable. This is not, in our view, an acceptable compromise. Moreover, it is our view that the CSA's concerns regarding Passive Linked Securities have already been addressed by the requirement that any prospectus include full, true and plain disclosure about the securities qualified thereby. However, if the CSA continues to believe that it should impose additional regulatory requirements on structured products in general, and Passive Linked Securities in particular, it is our view that any such additional rules should be plainly set forth in a rule, in respect of which market participants are consulted and have had an opportunity to comment, to ensure a level playing field among and a transparent regulatory regime applying to issuers of novel specified derivatives. We urge the CSA to consult further with market participants that issue derivative securities so that a more appropriate approach to pre-clearance applications can be developed.

(b) Definition of "novel"

We are of the view that the expansion of the definition of "novel" as proposed by the CSA is unnecessary because it would have the effect of requiring issuers to pre-clear supplements qualifying the issuance of types of securities that have been previously issued (in some cases, on a number of occasions) by different issuers. We believe that there is little rationale to support such a change; if the market is already familiar with a certain type of structured product, we see no reason to increase the time, costs and regulatory burden associated with offering such products on other issuers by imposing on such issuers a pre-clearance process.

In addition, the proposed change could, in fact, aggravate an inequality that may exist under the current regime. The rule currently in effect requires issuers to pre-clear prospectus supplements that qualify the issuance of specified derivatives that have not been publicly offered to date in Canada. As the CSA may be aware, a number of issuers issue a wide range of structured products to investors (i.e., linked bank deposit notes issued under Schedule III banks under *National Instrument 45-106 – Prospectus and Registration Exemptions*) pursuant to information statements. In contrast, reporting issuers that wish to issue derivatives under a shelf prospectus are subject to significantly more onerous disclosure requirements (in the form of prospectus-level disclosure) regarding the securities, as well as the pre-clearance regime, with respect to any type of product that has not been publicly issued to date. We understand that the rationale for pre-clearing novel specified derivatives is to allow the regulators to consider appropriate levels of disclosure in prospectus supplements in light of the fact that such securities may be unfamiliar to investors. However, we question the utility of the pre-clearance process with respect to structured products with which the market has already become familiar, such as linked bank deposit notes.

The proposed change to the definition of "novel" would create a similar problem in that the rule would give issuers that have already issued a certain type of derivative security easy access to the capital markets while imposing a burdensome pre-clearance process on issuers that have not to date offered such a product, even if the securities proposed to be issued are identical to a type of security that has already been publicly offered numerous times by other issuers. This would give issuers with a history of publicly offering derivatives a significant advantage over other issuers, with little apparent benefit to investors. We are of the view that, in light of the increasing familiarity of the market with structured products, there is no need to impose such an uneven regulatory regime on market participants. In fact, we would further suggest that the definition of novel be narrowed, rather than broadened, so that issuers would not be required to pre-clear prospectus supplements qualifying the issuance of derivatives that have been offered pursuant to an information statement under a prospectus exemption. Any issuers offering specified derivatives are required to include in their prospectus supplements full, true and plain disclosure regarding such securities; we are of the view that this basic requirement governing prospectus disclosure is sufficient to protect investors where the market is already familiar with the type of product being offered.

(c) Reduction of review period

We appreciate that the reduction of the review period from 21 days to 10 working days represents an attempt to address market concerns regarding the ability of issuers to take advantage of perceived market opportunities. However, we do not believe that the reduction in the review period would sufficiently address the concerns that market participants would have in this regard. First, the 10 working day period applies only to the initial comment letter of the regulators and would not, in fact, provide issuers with any certainty as to the time period within which they would be able to offer a novel specified derivative after submitting the relevant pricing supplement for pre-clearance.

Second, the rule as currently in effect does not set out the parameters that would govern the regulators' review under a pre-clearance application. We are of the view that the pre-clearance process should apply only to those aspects of a particular derivative security that are, in fact, novel. Because there is little guidance in the rule regarding the manner in which prospectus supplements will be reviewed, there is the possibility that the pre-clearance regime could be used to visit or revisit issues relating to aspects of the novel product that are not novel. It is our view that any review process that addresses aspects of a product beyond its novel features would be contrary to the spirit in which the pre-clearance procedure is intended. Therefore, we would suggest that the proposed rule be revised to provide that the review of any novel specified derivative would be limited to (i) the aspects of the securities that are novel and (ii) a consideration of the disclosure requirements directly applicable to the pricing supplement in question. In our view, the time periods should be no less favourable than those applicable to short form prospectus review under National Instrument 43-201. Furthermore, we would ask that the CSA consider adding an additional requirement that any comment letters beyond the initial comment letter sent to an issuer also be subject to a review period of 5 working days.

Please do not hesitate to contact Rob Murphy (416.863.5537) or Brooke Jamison (416.367.7477) if you wish to discuss any of our comments.

Yours very truly,

(signed) Robert S. Murphy

Davies Ward Phillips & Vineberg LLP

cc. Patricia Leeson
Alberta Securities Commission

Anne-Marie Beaudoin
Autorité des marchés financiers (Québec)

Heidi Franken
Ontario Securities Commission

IGM Financial Inc. One Canada Centre, 447 Portage Avenue, Winnipeg, Manitoba R3C 3B6

W. SIAN BURGESS LL.B.
Senior Vice-President and General Counsel

April 4, 2007

British Columbia Securities Commission,
Alberta Securities Commission,
Saskatchewan Financial Securities Commission,
The Manitoba Securities Commission,
Ontario Securities Commission,
Autorité des marchés financiers,
Nova Scotia Securities Commission
Securities Administration Branch, New Brunswick

Dear Sirs/Mesdames:

Re: Request for Comment
Proposed National Instrument 41-101 (General Prospectus Requirements)
and Companion Policy 41-101CP and associated Consequential Amendments

This letter is in response to the Canadian Securities Administrators ("CSA") request for comments on the proposed revocation and replacement of NI 41-101, issued on December 21, 2006 (the "Instrument"). We acknowledge that comments on the proposal are requested by March 31, 2007, and that the Notice indicates that the Instrument is not expected to become effective until December 2007.

Information about IGM Financial Inc.

IGM Financial Inc. ("IGM Financial") is a publicly traded company listed on The Toronto Stock Exchange ("TSX") with a market capitalization of approximately $13.0 billion as at December 31, 2006. We participate in the management of mutual funds in the Canadian mutual fund industry through 3 mutual fund managers, being Investors Group Inc., Mackenzie Financial Corporation and Investment Planning Counsel Inc. These companies also engage in mutual fund dealer activities through related companies. Please refer to the organizational chart attached as an Appendix to this letter. Each of Investors Group Inc., Mackenzie Financial Corporation and Investment Planning Counsel Inc. sponsors its own family, or families, of mutual funds that are distributed across

Canada. As at December 31, 2006, collectively we offer approximately 343 different investment funds (including the segregated fund versions of some of our own funds offered through The Great-West Life Assurance Company, London Life Insurance Company and The Canada Life Assurance Company) valued at approximately $107 billion, with over $119 billion in total assets under management.

General Comments on the Instrument

We commend the CSA's initiative to harmonize the prospectus disclosure requirements among Canadian jurisdictions, and to replace them with a uniform Instrument. In particular, we applaud the CSA's efforts to extend the application of the Instrument to all "investment funds", including mutual funds regulated under National Instrument 81-101 – Mutual Fund Prospectus Disclosure ("NI 81-101") through the accompanying Consequential Amendments associated with the Instrument. In this regard, we are hopeful that the continuing mandate of the Joint Forum of Financial Market Regulators (the "Joint Forum") to co-ordinate and streamline the regulation of products and services in the Canadian financial markets will result in the application of uniform prospectus disclosure requirements for all investment funds that are sold on a competitive basis to mutual funds.

IGM Financial fully supports any reasonable prospectus disclosure requirement that seeks to provide securityholders with relevant information they may reasonably desire in order to make a fully informed investment decision. In this regard we wish to note that the application of prospectus disclosure requirements should be done on a common sense basis, with the recognition that securityholders may become easily overwhelmed by the mountain of information contained in a prospectus. This reality was recently confirmed by the Report of the Task Force to Modernize Securities Legislation in Canada (the "Allen Report") issued in October 2006, which indicates that mutual fund securityholders found their prospectuses to be of "quite limited value" due primarily to the overwhelming amount of information presented in them. (Please see page 287 in Volume 2 of the Allan Report).

We wish to take this opportunity to provide you with our comments with respect to some of the questions posed by the CSA in the Notice, as well as other aspects of the Instrument of particular interest to Investors Group as discussed herein.

Our major comments are highlighted below, and are to be read in conjunction with additional comments that are provided in the schedule attached to this letter.

Auditor Review of Unaudited Financial Statements

The Consequential Amendments propose to add new section 2.7 to NI 81-101 requiring that any unaudited financial statements included (or incorporated by reference) in a simplified prospectus be "reviewed in accordance with the relevant standards set out in the Handbook for a review of financial statements by the mutual fund's auditor..". For the reasons discussed in greater detail in the attached schedule, the proposed additional auditor review requirement would, in our view, impose a significant and costly burden on the industry with little or no benefit to fund securityholders.

We also wish to express our concern that the CSA seems to be attempting to re-introduce a requirement through this Instrument that was thoroughly discussed and dismissed during the comment period for NI 81-106.

Personal Information Form and Authorization to Collect, Use and Disclose Personal Information

The Instrument will require Issuers to deliver a completed Personal Information Form and Authorization ("PIFA") for each director and executive officer of the Issuer, its manager (in the case of an investment fund) and promoter (and, except in Ontario, each beneficiary of the offering). For the reasons detailed in the attached schedule, this will result in a substantial increase in time and effort.

In Section 2.1 of 41-101CP (the "Companion Policy"), the CSA indicates that:

> "…a sufficient number of the directors and officers of the issuer should have relevant knowledge and experience so that a securities regulatory authority or regulator will not conclude that the human and other resources are insufficient to accomplish these purposes [of the issuer]. If the requisite knowledge and experience are not possessed by the directors and officers, a securities regulatory authority or regulator may be satisfied that the human and other resources are sufficient if it is shown that the issuer has contracted to obtain the knowledge and experience from others."

In our view, the CSA would be conferring upon administrative staff of a regulator the ability to make this assessment based solely upon the authority of the Companion Policy, and in the absence of any published proficiency requirements or other objective benchmarks. We believe that this kind of substantive regulation demands fulsome and clear delineation of the requirements upon which assessments of this nature are conducted, and is, in our view, not well-suited for purposes of an Instrument intended only to prescribe prospectus disclosure requirements.

The Registration Reform Project currently underway by the Canadian Securities Administrators is intended to focus proposals relating to the determination of whether the officers and directors of a fund, its manager or promoter are 'fit and proper' (including proficiency or experience requirements) pursuant to the proposed registration requirements contained in National Instrument 31-103 – Registration Requirements ("NI 31-103"). Accordingly, we believe that consideration of proficiency and experience should be considered more appropriately through the NI 31-103 review and comment process rather than through commentary in the Companion Policy to this Instrument.

Date of the Prospectus

Section 2.3(1) of the Instrument proposes that an issuer must file its final prospectus within 90 days after the date of receipt for its preliminary prospectus. It has been our experience that the time required to clear a final prospectus is sometimes beyond the control of the issuer, and that unique offerings can take more than 90 days to complete the review by regulators due to novel issues raised in the filings or the nature of required regulatory relief. Therefore, this requirement is likely to, in some cases, result in needless time and effort in seeking relief to extend the approval period. In view of the other requirements in the Instrument concerning amendments to the preliminary prospectus and delivery of the final prospectus to each recipient of the preliminary prospectus, as discussed in greater detail in the attached schedule, we suggest that the waiting period continue to be 180 days.

Lapse Date

The CSA proposes to introduce into NI 81-101 a new section that all distributions completed after the expiry of its lapse date may be cancelled at the option of the purchaser within 90 days of the purchaser's "first knowledge of the failure to comply with [the conditions prescribed in Section 2.5(4)] where any of the conditions to the continuation of a distribution under subsection (4) are not complied with." We are concerned that this 90-day cancellation privilege provides the purchaser with an inordinately long period of time during which they essentially have an option which he or she may choose to exercise at the end of the 90-day period once it is clear whether their mutual fund has increased or decreased in value since the date of their purchase. We suggest that this period be narrowed to no more than 10 days, and that notice may be provided in the same manner as allowed for material changes under National Instrument 81-106, i.e. through the prompt issuance of a press release followed within 10 days by the filing of a material change report.

Prospectus Amendments

The CSA has asked whether it should require amendments to be based on the continued accuracy of the information in the prospectus? In our view, an issuer should not be required to amend its prospectus as a result of inconsequential changes in the information that is disclosed in its prospectus. Accordingly, only changes that would be considered important to a reasonable investor when determining whether or not to purchase the securities of the fund should require the filing of a prospectus amendment, regardless of whether the “material change” is adverse in nature or not.

Also, as further discussed in greater detail in the attached schedule, we think that imposing a requirement to file a preliminary prospectus (rather than simply filing a prospectus amendment) when introducing a new series of an existing fund is unnecessary and needlessly expensive and time consuming.

Summary

Generally, we approve of the Instrument and the proposed Consequential Amendments to NI 81-101, except as otherwise noted herein, and commend the CSA’s efforts to harmonize the prospectus disclosure requirements across Canada. We are concerned that some of the proposed requirements may be redundant (or in conflict) with the pending registration requirements for mutual fund managers presently being considered pursuant to the Registration Reform Project and other CSA and Joint Forum initiatives. For example, it may serve no useful purpose to require a mutual fund to file a PIFA with respect to the officers and directors of its manager if there is a similar requirement with respect to the registration requirements of that manager.

We further understand that the CSA is working together with IFIC, and under the auspices of the Joint Forum, to substantially revise the point of sale disclosure documentation for mutual funds. In the accompanying Notice to this Instrument, the CSA itself advises that the Instrument and Consequential Amendments do not reflect the proposed rescission of National Policy Statement 48 (future-oriented financial information) and the accompanying amendment to National Instrument 51-102 (continuous disclosure). Obviously, changes in these other Rules may have a direct impact to the prospectus disclosure regime mandated under NI 41-101 and NI 81-101.

Contact Information

If you should have any questions with respect to this matter, we would be pleased to discuss them with you. Please feel free to contact myself (416-967-2011) or Mr. Doug Jones, Assistant Vice-President and Senior Counsel, Mutual Funds, in our Winnipeg Legal Department (204-956-8989). Thank you for providing us with the opportunity to respond to your request for comments.

Sincerely,

IGM FINANCIAL INC.

W. Sian Burgess

W. Sian Burgess
Senior Vice-President and General Counsel

Delivery to:

Ontario Securities Commission,
20 Queen Street West,
Suite 800, Box 55,
TORONTO, ON M5H 3S8

Attention: Heidi Franken, Co-Chair of the CSA's Prospectus Systems Committee

and to

Alberta Securities Commission,
4th Floor, 300 – 5th Avenue S.W.,
CALGARY, AB T2P 3C4

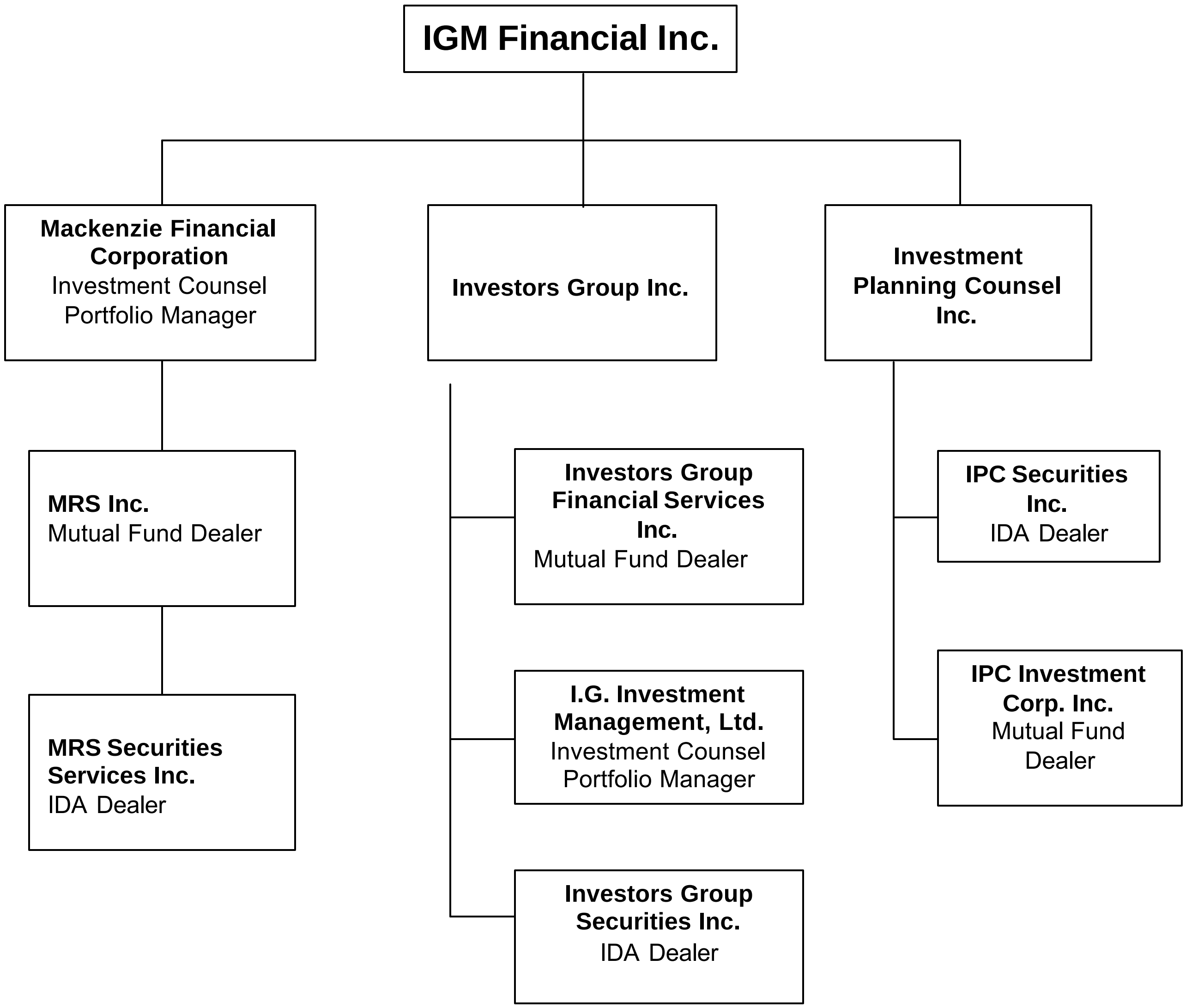
Attention: Patricia Leeson, Co-Chair of the CSA's Prospectus Systems Committee

and to

Autorité des marchés financiers,
800 Square Victoria,
22nd Floor,
P. O. Box 246,
Tour de la Bourse,
MONTRÉAL, QB H4Z 1G3

Attention: Anne-Marie Beaudoin, Directrice du secretariat

APPENDIX


IGM Financial Inc.
Mackenzie Financial Corporation
Investment Counsel
Portfolio Manager
Investors Group Inc.
Investment Planning Counsel Inc.
MRS Inc.
Mutual Fund Dealer
MRS Securities Services Inc.
IDA Dealer
Investors Group Financial Services Inc.
Mutual Fund Dealer
I.G. Investment Management, Ltd.
Investment Counsel
Portfolio Manager
Investors Group Securities Inc.
IDA Dealer
IPC Securities Inc.
IDA Dealer
IPC Investment Corp. Inc.
Mutual Fund
Dealer

SCHEDULE
Specific Comments on the Instrument

This Schedule provides more detailed discussion of the comments in our letter, as well as supplementary comments and observations on other aspects of the Instrument.

New Section 2.7 of NI 81-101: Auditor Review of Unaudited Financial Statements

We note that the Consequential Amendments associated with the Instrument propose to add several new provisions to Part 2 (Disclosure Documents) of National Instrument 81-101 – Mutual Fund Prospectus Disclosure ("NI 81-101"), including proposed new section 2.7 which requires that any unaudited financial statements included (or incorporated by reference) in a simplified prospectus must be "reviewed in accordance with the relevant standards set out in the Handbook for a review of financial statements by the mutual fund's auditor..". This requirement appears to be in addition to the current requirement pursuant to National Policy 43-201 (and to be formalized by the Consequential Amendments as sub-paragraphs 2.3(1)(b)(iv) and 2.3(2)(b)(vi) in NI 81-101) that a fund file with its preliminary prospectus and pro-forma prospectus, respectively, an auditor's 'comfort letter' prepared in accordance with the Handbook if the fund's financial statement(s) is accompanied by an unsigned auditor's report.

Currently, section 2.12 of National Instrument 81-106 – Investment Fund Continuous Disclosure ("NI 81-106") requires that a fund's interim financial statements be accompanied by a notice indicating when the interim statements have not been reviewed by an auditor. Section 3.4 of the Companion Policy ("81-106CP") further indicates that no positive statement is required when an auditor performs a review of the fund's interim financial statements and provides an unqualified communication. When a notice is required hereunder, it does not form part of the interim statements, but is a separate page that accompanies the interim financial statements in a manner similar to an audit report.

The proposed requirement to have a fund's interim financial statements reviewed by an auditor is more demanding than the existing requirement under NI 81-106 to simply provide notice if these statements are not so reviewed. Furthermore, given that NI 81-101 mandates that a fund's prospectus incorporate by reference any interim financial statements filed since the annual financial statements were filed, regardless of when the prospectus is dated, the auditor review requirement under proposed section 2.7 will effectively result in having all interim financial statements subject to auditor review. Our understanding is that this is <u>not</u> current industry practice, and it also goes beyond the intention of the present notice requirement found in NI 81-106. The requirement for review of all un-audited interim financial statements by an auditor imposes a significant obligation when considered in the context that funds have only 60 days to prepare, print, file and deliver their interim statements, as well as having to prepare, print, file and deliver an interim Management Report of Fund Performance within the same timeframe. Depending on the level of Auditor review mandated by the Instrument, our Auditors advise that such a review could entail double the time (or more) to complete in the case of a review under section 8100 of the CICA Handbook, at more than twice the cost per fund as compared to the current requirement to provide a comfort letter. This could result in an additional cost of as much as $2,000 per fund. (Although a review pursuant to section 7050 of the Handbook is less demanding than a review pursuant to section 8100, it would still be difficult for Auditors to perform this review within the 60 day period prescribed under NI 81-106, especially during periods when other funds have similar demands, and this problem is further exacerbated when a fund faces large delivery volumes which require more lead time to print and mail its interim statements.) Accordingly, Auditor review of interim financial statements imposes an onerous and costly requirement borne by fund securityholders that we strongly submit is unnecessary for daily valued open-end funds.

It also appears that this requirement imposes an extra burden on funds that file a prospectus after the deadline for filing their interim financial statements that is not imposed on similar funds that happen to file their prospectuses earlier in their fiscal year, without any apparent corresponding benefit to securityholders.

We also wish clarification with respect to the requirement to file expert consents under proposed new section 2.9 of NI 81-101, specifically as regards whether it is necessary to provide an auditor's consent letter (or a solicitor's consent letter with respect to the disclosure of their tax opinion, for example) with every prospectus amendment even when the amendment does not relate to the financial statements or information included in the simplified prospectus that has been derived from the financial statements or the tax opinion. As written, this provision could be read as meaning that consents of all experts whose opinions are disclosed in the simplified prospectus, or which appertain to a document included by reference in a simplified prospectus, must be filed with any amendment to that prospectus.

As an aside, we also question why it will continue to be necessary under proposed sub-paragraph 2.3(1)(b)(i) to file a copy of the audited financial statements of an existing mutual fund together with its preliminary prospectus when same has already been filed on SEDAR (albeit under a different project number)?

<u>Section 2.3(1)-(5) of NI 81-101: Personal Information Form and Authorization to Collect, Use and Disclose Personal Information</u>

We note that sub-paragraph 9.2(b)(ii) of the Instrument will require Issuers to deliver a completed Personal Information Form and Authorization ("PIFA") for each director and executive officer of the Issuer, its manager (in the case of an investment fund) and promoter (and, except in Ontario, each beneficiary of the offering). NI 81-101 will be amended to impose similar requirements on other investment funds.

Recently, it has been the practise of the securities regulators to request that mutual funds file a Notice of Collection of Personal Information Form (Form 41-501F2) ("NoC") for officers and directors of the Fund and its manager, when the NoC has not been previously filed. The NoC requires only the name, address, birth date and citizenship of the officer or director, and as it is a notice, it does not require that it be signed by the individual officer or director. It also need not be provided on behalf of the Fund's promoter. It is evident that the amount of information required for completion of each PIFA is substantially greater than that required currently, and that the PIFA must be signed by the issuer (i.e. fund), and also signed by the individual officer or director before a Notary Public. This will result in a substantial increase in time and effort.

In Section 2.1 of 41-101CP (the "Companion Policy"), the CSA indicates that:

> "…a sufficient number of the directors and officers of the issuer should have relevant knowledge and experience so that a securities regulatory authority or regulator will not conclude that the human and other resources are insufficient to accomplish these purposes [of the issuer]. If the requisite knowledge and experience are not possessed by the directors and officers, a securities regulatory authority or regulator may be satisfied that the human and other resources are sufficient if it is shown that the issuer has contracted to obtain the knowledge and experience from others."

We assume that the rationale for imposing the requirement to deliver a PIFA for each officer and director of a mutual fund, its manager and promoter, is *inter alia* to allow the securities regulator to pass judgement on the experience and competence of these individuals. In this regard, we are concerned about the security regulators' ability to make this assessment in the absence of published proficiency requirements or other objective benchmarks. We also question why this information is pertinent with respect to the officers and directors of a fund itself in circumstances where the fund has retained portfolio advisors (which are already registrants) and a manager (which is also expected to be a registrant under the initiative of the CSA's Registration Reform Project as discussed later below). Likewise, the knowledge and experience of the officers and directors of the promoter are seemingly irrelevant unless the promoter intends to take an active part in the day-to-day operations or affairs of the fund (in which case it would be captured by other requirements under the Instrument), or unless it is acting as an underwriter or dealer (in which case it too would be a registrant). Accordingly, the concerns with respect to the assessment of the knowledge and expertise of the directors and officers of an issuer do not usually apply to a mutual fund that relies on other persons who already are, (or who will likely be,) registrants. So the requirement to file the PIFA under these circumstances would appear to be either irrelevant or redundant.

If the CSA's only real interest for imposing the requirement to file a PIFA is to protect the public from fraud, (i.e. through the restriction of access to the capital markets by persons who are or have been bankrupt, or are currently or have been convicted of a criminal offence or subject to regulatory proceedings), this can be accomplished by performing a criminal background check on these individuals by filing Form 41-501F2 alone, or together with an RCMP GRC Form 2674 (Securities Fraud Information Centre – Records Request/Reply) without the need to file a PIFA.

As well, it appears that the PIFA is duplicative of the information on the National Registration Database (NRD) for registrants and their directors and officers – although we note that the PIFA is not the identical form used for NRD purposes. It is further our understanding that similar personal information disclosure requirements may be imposed on the directors and officers of mutual fund managers in the near future under the Registration Reform Project ("RRP"). Therefore, at a minimum, we urge that an exception be made from the requirement to file the PIFA pursuant to NI 81-101 where this information has previously been filed under NRD or the pending registration requirements for Managers under RRP.

We further suggest that it may be more practical to require that fund families update the PIFAs of their officers and directors at the same time once annually, rather than throughout the year depending upon the renewals of their respective prospectuses. As presently proposed, NI 81-101 may require related funds (or their manager) to contact the same officers and directors several times during the year (with each prospectus renewal or amendment) to determine whether there are any changes in the information contained in their respective PIFAs. Conceptually, allowing annual updates of the PIFA for each of these officers and directors (if and when necessary) would be similar to the requirement for filing annually the Compliance Reports pursuant to Part 12 of NI 81-102 which can be consolidated for all mutual funds in the same mutual fund family, based upon the year-end of their common principal distributor.

We also note that that the Instrument stipulates that issuers must file PIFAs upon the filing of their first preliminary prospectus after the effective date of the Instrument, and thereafter every 3 years (as indicated in Appendix A to the CSA's Notice which indicates that issuers will be expected to file a PIFA with respect to an individual if it has not been previously filed or previously delivered for that individual within three (3) years before the date of a prospectus). We ask the CSA to confirm that it will not be necessary for mutual funds to deliver a PIFA upon the first renewal of their simplified prospectuses after implementation of the Consequential Amendments, given that these mutual funds have not previously delivered a PIFA with respect to any of their directors and officers, nor those of their manager or promoter. We further ask the CSA to clarify that it will not be necessary for funds under NI 81-101 to deliver a PIFA annually, nor every 3 years (as proposed by the Instrument but not the Consequential Amendments) for each of their officers and directors, and those of their manager and promoter, if there is no significant change in the personal information since the prior filing of their PIFAs. In other words, we suggest that the Consequential Amendments to NI 81-101 specifically indicate the length of time that a PIFA remains valid for any particular officer and director, without the necessity to resubmit it, assuming that there are no changes to any material information.

Technically speaking, NI 81-101 will require a fund to deliver "any personal information for the mutual fund", (when filing a preliminary or pro forma simplified prospectus), or the details of any changes to "the personal information for the mutual fund" (with respect to the filing of a final simplified prospectus or an amendment to same). This is unclear, because the term "personal information for the mutual fund" is not defined. It may be helpful to clarify that this reference means the information contained in the PIFA for any director and officer of the fund, its Manager or Promoter. (In addition, we note that the Instrument refers to the term "executive officer", which is a term that is specifically defined in the Instrument, but that the Consequential Amendments to NI 81-101 use the term "officer", which is not defined.)

Section 13.3 of the Instrument: Advertising During the Waiting Period

Section 13.3 of the Instrument provides restrictions with respect to advertising of an investment fund during the waiting period that mirror to a large extent, but not completely, the similar requirements under Section 15.12 of National Instrument 81-102 (Mutual Funds) ("NI 81-102"). For example, the Instrument provides that an advertisement during the waiting period may disclose the name of the portfolio advisors of the fund whereas this is not expressly permitted under NI 81-102. Further, Part 16 of the Companion Policy to the Instrument (41-101CP) provides useful guidance with respect to advertising prior to the filing of a preliminary prospectus, as well as during the waiting period, whereas there is virtually no guidance in this regard contained in NI 81-102 nor its Companion Policy (81-102CP). We suggest that CSA consider including similar commentary in 81-102CP as part of the Consequential Amendments.

Section 2.1(1)(e) of NI 81-101: Date of the Prospectus

We note that Section 2.3(1) of the Instrument provides that an issuer may not file a final prospectus more than 90 days after the date of receipt for its preliminary prospectus. A similar requirement is proposed for Section 2.1 of NI 81-101. It is our understanding that, generally speaking, issuers must file a final prospectus within 180 days of the filing of the preliminary prospectus. In Section 3.1 of 41-101CP, the CSA explains that the purpose of imposing the 90-day period for the issuance of a final receipt is to ensure that securities are not being marketed by means of a preliminary prospectus containing outdated information. We find this odd in view of the fact that Section 6.5(1) of the Instrument requires that an amendment to a preliminary prospectus must be filed within 10 days of a material adverse change, and Section 6.4 requires such amendment to be delivered as soon as practicable to each recipient of the preliminary prospectus. Of course, these requirements are in addition to delivering the final prospectus to each recipient of the preliminary prospectus. Accordingly, we see no reason to truncate the waiting period to 90 days.

We also note that pursuant to Section 2.3(2) of the Instrument, the CSA stipulates that an Issuer must not file a prospectus more than 3 business days after the date of the prospectus. Section 1.3(2) of the Companion Policy provides a useful illustration in this regard. Similarly, Section 5.2 of the Instrument provides that the certificates in a prospectus must be dated within 3 business days before filing the prospectus. Given that a similar provision is proposed to be added as Section 6.3 of NI 81-101, similar guidance would be helpful in 81-101CP and should be considered as part of the Consequential Amendments.

New Part 6 of NI 81-101: Certificate of Trustee

Section 5.5 of the Instrument provides that if an issuer is a trust, and presumably this would include a mutual fund trust, the prospectus must be signed by the chief executive officer and chief financial officer of the trustee, and on behalf of the board of directors of the trustee by any two directors other than the CEO and CFO. Section 5.5(3) further provides that if the fund's declaration of trust delegates authority to do so, the fund's certificate may be signed by any individual to whom authority is delegated to sign the certificate on behalf of the fund. We note that a similar requirement is proposed for corporate mutual funds pursuant to new Section 6.8 of NI 81-101 (which itself mirrors Section 5.4 of the Instrument), but this is not required pursuant to Item 19 of Form 81-101F2. We wonder why the CSA appears to make execution of a unit trust investment fund more onerous under the Instrument than is the case under NI 81-101?

We also note with interest that the Consequential Amendments to NI 81-101 now make express reference to the filing of a signed copy of the preliminary annual information form (revised section 2.3(1)(a)(i)), and to the filing of a signed copy of any amendment to the annual information form (revised section 2.3(4)(a)(i)), but there is no similar express reference made to the filing of a signed annual information form with respect to a final prospectus under section 2.3(3). We assume that these insertions are not intended to change the current practice of filing a signed SEDAR Form 6 with CDS Inc. after the annual information form has been filed on SEDAR, but perhaps the purpose of these specific references should be clarified?

Further, from a more high level viewpoint, we find confusing the introduction of new Part 6 – Certificates, to NI 81-101, especially with respect to the requirement under new section 6.4 (and elsewhere) that the 'simplified prospectus' of a fund must be certified by the fund, each of its principal distributors, the manager and promoter. Given that there are no substantive changes being proposed to the wording of the certificates required under Item 19 of 81-101F2 (Annual Information Form) with respect to the already existing references to a fund's simplified prospectus, we are unsure of what is intended to be accomplished by adding these additional provisions to NI 81-101?

Item 6 of 81-101F1: Short-Term Trading Disclosure

We support the inclusion of additional disclosure in Part A of the simplified prospectus form in 81-101F1, and under "Fund Governance" in the AIF Form 81-101F2, with respect to short-term trading policies, procedures and fees of a fund. We wish to advise that our mutual fund prospectuses already comply (subject to relatively minor adjustments) with these new disclosure requirements. We suggest, however, that the CSA consider making an exception of these disclosure requirements in the case of money market funds where it is contemplated that investors may utilize them for short-term transactional purposes, and where for the most part a stable net asset value per unit is maintained that is not subject to manipulation through inappropriate short-term trading activities.

Section 2.5 of NI 81-101: Lapse Date

The CSA proposes to introduce into NI 81-101 a new section with respect to the lapse date of a prospectus. Proposed Section 2.5(6) will provide that all distributions completed after the expiry of its lapse date may be cancelled at the option of the purchaser within 90 days of the purchaser's "first knowledge of the failure to comply with [the conditions prescribed in Section 2.5(4)] where any of the conditions to the continuation of a distribution under subsection (4) are not complied with." We are concerned that this 90-day cancellation privilege provides the purchaser with an inordinately long period of time during which they essentially have an option which they may choose to exercise at the end of the 90-day period once it is clear whether their mutual fund has increased or decreased in value since the date of their purchase. We suggest that this period be narrowed to no more than 10 days, and that notice may be provided in the same manner as allowed for material changes under National Instrument 81-106, i.e. through the prompt issuance of a press release followed within 10 days by the filing of a material change report.

Section 2.2 of NI 81-101: Prospectus Amendments

Section 6.5(1) of the Instrument provides that an amendment to a preliminary prospectus must be filed as soon as practicable if there is a "material adverse change", however, an amendment to a final prospectus is required under Section 6.6(1) only if there is a "material change", not a "material adverse change". Similar changes are proposed under the Consequential Amendments as set out in Section 2.2 of NI 81-101. We submit that the use of this difference in terminology invites confusion. The CSA has asked whether it should instead be requiring an amendment based on the continued accuracy of the information in the prospectus? In our view, not all information in a prospectus is necessary in order for a purchaser to make an informed investment decision, and an issuer should not be required to amend its prospectus as a result of inconsequential changes in the information that is disclosed in its prospectus. Accordingly, we propose that both NI 41-101 and NI 81-101 make reference to the definition of a "material change" as referred to in Section 1.1 of NI 81-106, as being a "change in the business, operations or affairs of the issuer [or investment fund, as applicable] that would be considered important by a reasonable investor in determining whether to purchase or continue to hold securities of the issuer [investment fund]". Therefore, only changes that would be considered important to a reasonable investor when determining whether or not to purchase the securities of the fund should require the filing of a prospectus amendment, regardless of whether the "material change" is adverse in nature or not.

Similarly, we believe that imposing under paragraph 2.2(4) of NI 81-101 a requirement for a fund to file an amendment to its preliminary prospectus during the 'waiting period' prior to the issuance of a receipt for the final prospectus is a needless exercise in light of the current practice (which works well) of filing a 'black-lined' copy of the prospectus prior to, or in conjunction with, the filing of the fund's final simplified prospectus and AIF. In this regard we note that it is unusual for a fund manager or promoter to solicit expressions of interest in a fund prior to the receipt being issued for the final prospectus and, even if this were the case, the existing requirement to provide any person who has received a copy of the preliminary prospectus with a copy of the final prospectus prior to purchase should ease any concerns about whether there have been any material changes to the preliminary prospectus.

We also seek clarification about whether it is necessary to file a preliminary prospectus, instead of just a prospectus amendment, when an existing fund wishes to add a new series or class? In this regard we note that proposed new paragraph 2.2(6)(b) of NI 81-101 indicates that a fund need only file a prospectus amendment if it wishes to distribute securities in addition to those previously disclosed in its simplified prospectus, which is the current practice. Proposed sub-section 2.7(5) of the Companion Policy, however, suggests that a preliminary prospectus may be necessary if a fund adds a new class or series to a simplified prospectus that is referable to a new separate portfolio of assets. As you know, funds sometimes use multiple simplified prospectuses to distribute their securities within distinct sales networks, where different series or classes are offered through separate simplified prospectuses. We submit that a fund which has previously offered its securities under a simplified prospectus used in one distribution network should be able to add classes or series of that fund in another prospectus of the same fund manager by means of an amendment without having to file a new preliminary prospectus for that new class or series, on the basis that the fund itself is already qualified, but just not under the same prospectus.

Section 2.3(1) of NI 81-101: Articles of Incorporation

Section 1.4 of the Consequential Amendments propose as a requirement under new section 2.3(1)(a)(iii) of NI 81-101 the filing of an incorporated mutual fund's articles of amendment as a material contract, and further propose amending Item 16(1)(a) of the annual information form to require disclosure of the particulars of the articles of incorporation, continuation, or amalgamation of the fund. We submit that it is inappropriate and unnecessary to view a fund's articles of incorporation as being a material contract, and note that much of the powers and authorities are derived from the statute under which the fund is established, which is a public document. Further, we note that Item 3 of 81-101F2 already prescribes that the annual information form provide disclosure pertaining to a fund's date and manner of formation, including the laws under which it is formed and identifying the constating documents of the fund. In addition, Item 5 of 81-101F2 further provides that the description of the securities offered by the fund, including such things as any dividend or distribution rights, voting rights, conversion rights and liquidation rights, also be disclosed in the annual information form. Therefore, we see no reason for filing a fund's articles of incorporation, or the duplication involved in restating the particulars of same under Item 16 of 81-101F2, and accordingly, we strongly encourage that these changes be reconsidered by the CSA.

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Toronto, April 3, 2007

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Dear Mesdames:

RE: Comments on Proposed National Instrument 41-101 – *General Prospectus Requirements* ("Proposed NI 41-101") and Companion Policy 41-101CP – *General Prospectus Requirements* ("Proposed CP 41-101) and Related Amendments

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 these important proposals.

Our comments are as follows:

1. ***Harmonization of General Prospectus Requirements***

We welcome a harmonized instrument setting out the general prospectus requirements applicable across Canada. We are, however, disappointed that complete harmonization has not been fully achieved in Proposed NI 41-101 as a result of Ontario not participating in certain requirements.

The lack of harmonization in securities legislation in general and in particular, the certification requirements for prospectuses in Proposed NI 41-101 undermines the MRRS system and may result in investors in different jurisdictions having varying rights and opportunities. This is not an enviable result. For example, where an issuer files a prospectus under National Policy 43-201 *Mutual Reliance Review System for Prospectuses and Annual Information Forms* and Ontario is designated as its principal regulator, Ontario is directed by National Policy 43-201 to review the prospectus in accordance with its local requirements. Depending on the circumstances of the offering, it may not require enhanced certification as set out in Proposed NI 41-101. Other jurisdictions in light of the enhanced certification requirements will, in the same circumstances, require such certification. If the enhanced certification provided is addressed to investors in provinces and territories other than Ontario, investors in Ontario will not be provided with the same rights. In addition, the lack of uniform liability may result in Ontario being a favoured forum for offerings to avoid the enhanced certification requirements with the result that investors in other jurisdictions will not be provided with similar investment opportunities other than through the secondary market. We would urge the adoption of uniform rules to avoid such anomalies arising.

2. ***Certification***

Subsection 5.13(5) requires that a prospectus contain a certificate signed by each "substantial beneficiary of the offering". A "substantial beneficiary of the offering" is defined in subsection 5.13(2) to be any person or company, acting alone or in concert with others, that, directly or indirectly, holds or held within the year preceding the prospectus a) control of the issuer or a significant business of the issuer; or b) 20% or more of the voting securities of the issuer; <u>and</u> who is expected to receive, directly or indirectly, 20% or more of the proceeds of the offering of securities under the prospectus, whether as consideration for property or services, payment of debt or otherwise, other than by virtue of its ownership of voting securities of the issuer. The basis of requiring a substantial beneficiary of the offering to certify the contents of the prospectus is the CSA's views that people in such a position have knowledge of the business of the issuer and should take responsibility for any misrepresentations contained in the prospectus.

While we recognize the need to address the certification issues arising in income trust offerings and in spin-offs of businesses by an initial public offering both as described in the Request for

Comments, we are concerned that the definition of "substantial beneficiaries of the offering" may be too broad and will inadvertently require certification by parties who enter into arm's length transactions with the issuers and who may not be invested with particular knowledge of the affairs of the issuer as of the date of the offering.

Subsection 2.6(3) of the Proposed Companion Policy states that the first part of the definition of substantial beneficiary, namely the requirement to control a significant business or own 20% or more of the voting securities of the issuer, is intended to preclude the inclusion of *bona fide* arms-length commercial lenders to an issuer. However, one can envision other circumstances, including a *bona fide* arms-length commercial vendor of assets to an issuer being required to certify a prospectus by virtue of the operation of the broad definition of beneficiary who does not have knowledge of the whole business of the issuer. For example, a vendor who enters into an agreement to sell certain assets to an issuer within the year prior to an offering could potentially have held control of what is now a significant business of the issuer. If such vendor has negotiated a deferred purchase price, could the rule be interpreted to mean that such vendor was being paid "indirectly" from the proceeds of the offer? That vendor would not, however, be involved in the day-to-day business of the issuer and, as such, should not be required to take responsibility for the contents of the whole prospectus to third party investors. The vendor will have given negotiated representations and warranties in the original agreement and will be responsible to the issuer if such representations and warranties are not correct in respect of the business assets in question.

While the Proposed Companion Policy states that an application for relief from the certification requirements can be made, we believe it is more appropriate to be specific in the rules and state the circumstances which the certification is required to address, namely non arms-length transactions which result in a vendor receiving direct profits from the offering. We would suggest, in the alternative, amending the definitions contained in subsection 5.4(1) *Corporate Issuer* and subsection 5.5(2) *Trust Issuer* to delineate the circumstances in connection with an income trust prospectus offering and a spin-off of a business by way of initial public offering, rather than inserting a broad new category of substantial beneficiary. In the alternative, if the certification by a substantial beneficiary of the offering is to remain in the final version of Proposed NI 44-101, we would suggest that the guidance set out in subsection 2.6 of the Proposed Companion Policy provide further guidance, in addition to that of *bona fide* arms-length commercial lenders, on its application to arm's length transactions. This would be in line with the rationale behind Rule 61-501 (Ontario) and Regulation G-27 (Québec) which address related party transactions. In addition, if the certification requirement is included in the final rule, we would suggest increasing the threshold from 20% of the proceeds to 25% of the expected market capitalization of the issuer.

As a general comment, we are of the view that the CSA should consider the appropriateness of amending the primary offering civil liability regime which is based upon certification to more closely reflect the secondary market civil liability regime recently introduced in Ontario and certain other provinces for continuous disclosure misrepresentations. The CSA should consider the appropriateness of joint and several liability in the primary market to a proportionate liability scheme especially given the fact that the substantial beneficiary certification is tied to receiving a percentage of the proceeds of the offering. In the US, the civil liability regime applies regardless of whether the purchase is made in the primary or secondary market.

3. *Material Contracts*

Part 9 of the Proposed NI 41-101 requires an issuer to file with its preliminary long-form prospectus any material contract, other than a contract entered into in "the ordinary course of business". Subsection 9.1(1) sets out certain contracts which will be considered not to be contracts entered into in the ordinary course of business. The list of contracts is broad and includes credit agreements. We are of the view that including all material credit agreements will result in many contracts being filed which will not provide a corresponding benefit to securityholders. Corresponding changes are being proposed to Part 12 of National Instrument 51-102 – *Continuous Disclosure.*

As a starting point, we are of the view that contracts are generally negotiated in the context of particular circumstances (i.e. between two or more commercial parties) and the representations and warranties are specifically negotiated in that context and are not disclosure documents that can be read by an investor in isolation. An investor should be receiving the necessary information regarding an issuer's material contracts through the requirements to make true, plain and full disclosure in its prospectus regarding such contracts.

The term "ordinary course of business" is generally understood to mean a contract of the type that may generally be entered into by a particular business or industry from time to time. In section 3.6(1) of the Proposed Companion Policy it is stated that whether a contract is entered into in the ordinary course of business is a question of fact which must be considered in the context of the issuer's business and industry. While a credit agreement may be in respect of a material amount of debt, it may also be a standard contract for the business carried on by an issuer. It would not, in the absence of unusual provisions, normally be filed under NI 51-102 as it would be made in the ordinary course. To now consider any credit agreements of a material amount to be out of the ordinary course of business and require them to be filed may represent significant work for issuers in meeting the disclosure obligations, including the necessity to redact certain information contained in the agreement, without a corresponding benefit to shareholders.

Subsection 9.2 provides that certain provisions of the contract may be omitted or redacted if an executive officer has reasonable grounds to believe the disclosure would be seriously prejudicial to the interests of the issuer <u>and</u> the redacted provisions do not contain information relating to the issuer or its securities that would be "necessary to understanding the contract". You have requested comments on whether the provisions that are delineated in subsection 9.1(2) as being "necessary to understand the contract" are appropriate. We note that the definition is non-definitive and therefore creates uncertainty for an issuer as to the meaning of the term. Investors could argue that in order to have a full understanding of the contract, no provisions could be omitted. Therefore, we would suggest that the definition in subsection 9.1(2) be amended to delete the words "include the following" and replace those words with the meaning "means".

With respect to the appropriateness of the delineated provisions, we note by way of comparison that the required line item for disclosure of material contracts set out that in item 27.1 of Form 41-101 F1 provides that the particulars of contracts should include "the dates of, parties to, considerations provided for in, and general nature of, the contracts". This is the disclosure that the CSA has deemed appropriate for investors in an initial public offering to rely upon with respect to material contracts. However, for the purposes of redaction, the delineated provisions the CSA considers necessary to "understand the contract" are broader and, in some circumstances, may result in the provision of information which may be seriously prejudicial to the interests of the issuer, or which could violate confidentiality provisions. Again we would stress that the more meaningful disclosure on material contracts for securityholders should come from the disclosure provided by the issuer in the prospectus.

4. ***Amendments to a Preliminary or Final Prospectus***

The *Securities Act* (Ontario) provides that a preliminary prospectus must be amended when there has been a material adverse change. An amendment to a final prospectus must be filed upon the occurrence of a material change. You have requested our comments on whether an amendment should be based upon the "continued accuracy" of the information in the prospectus. We are of the view that the appropriate triggers for an obligation to amend a preliminary or final prospectus are appropriately set out in the *Securities Act* (Ontario). An amendment based on continued accuracy of the information in the prospectus is an inappropriate trigger in that it has no criteria of materiality and will result in unnecessary work and updating for issuers without benefit to securityholders.

5. ***Distribution of Warrants under a Prospectus to an Underwriter***

Proposed NI 41-101 permits a compensation option or warrant to an underwriter where securities which are the subject of such option or warrant is less than 5% of the securities distributed under the prospectus. We note that the TSX Venture Rules (section 1.9 of Policy 4.2 – *Prospectus Offerings*) provide for a limit of up to 25% and that the market practice is to allow up to 10%. We are of the view that the limit should be extended to 10% for such issuers to facilitate fund raising for smaller issuers.

6. ***Bona Fide Estimate of Range of Offering Price***

We are of the view that requiring disclosure in the preliminary prospectus of a bona fide estimate of the range within which the offering price is expected to be set would not be appropriate in the case of smaller issuers as it (i) may effect the ultimate price at which the securities would go to market, and (ii) adversely impact the valuation of such issuers if pricing of the deal falls below such range.

*   *   *   *   *   *

This letter has been prepared by the Securities Law Group of Ogilvy Renault LLP. If you have any questions concerning these comments, please contact either Tracey Kernahan (direct line (416) 216-2045), by e-mail at tkernahan@ogilvyrenault.com or by fax at (416) 216-3930 or Christine Dubé (direct line (514) 847-4829), by e-mail at cdube@ogilvyrenault.com or by fax at (514)286-5474.

Yours very truly,

Ogilvy Renault LLP

OR/na

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April 5, 2007

VIA EMAIL

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Dear Sirs/Mesdames:

Re: Proposed National Instrument 41-101 General Prospectus Requirements and Related Amendments – Comments of Borden Ladner Gervais LLP

We are pleased to provide our comments on proposed National Instrument 41-101 *General Prospectus Requirements* and the related amendments made to various instruments as published by the Ontario Securities Commission (OSC) and the other members of the Canadian Securities Administrators (CSA) for comment on December 22, 2006. Our comments primarily focus on the portions of proposed NI 41-101 and the

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related instruments that relate to investment funds, although we also comment on several more general aspects of the proposals.

Before we provide you with our specific comments, we would like to emphasize our support for the CSA's work to harmonize the regulation of reporting issuers. Given that most reporting issuers distribute their securities on a national basis, it is imperative that regulation regarding such distributions is the same (identical) in each province and territory. We are also strongly in support of comprehensive national rules, as opposed to narrower, more focused, rules (whether or not they are national). One comprehensive rule is significantly more cost-effective from a compliance perspective than several more focused regulations or rules each dealing with different aspects of a distribution (particularly where those regulations are found in different places - legislation, regulation, rules and/or policies). We note, however, that the OSC intends to maintain much of the regulation of securities distributions within the *Securities Act* (Ontario). While it would be preferable for the legislation of Ontario to be conformed with the legislation and regulation of the other provinces, we understand the position of the OSC. Given that this position will likely not change in the foreseeable future, we strongly urge the CSA to retain the notes and explanations contained throughout NI 41-101 that describes the situation in Ontario. These notes and explanations will be of assistance in the future when new readers attempt to comply with proposed NI 41-101.

We also are in favour of consolidated national rules that are tailored to the specific characteristics of investment funds, as reporting issuers, and we strongly support the approach of the CSA in preparing and proposing NI 41-101 as it relates to investment funds.

We congratulate the CSA for publishing proposed NI 41-101 and for the proposed repeal of the rules noted in the December publication. We hope that the CSA consider our comments in finalizing the instruments. We would be pleased to discuss our comments with you further. We note that many of our comments are designed to ensure additional national consistency of the applicable rules as well as additional tailoring of the specific rules to the unique characteristics of investment funds, including the various types of investment funds.

Please note that we comment on the proposed instruments in the order of the instruments. Where applicable, we note which comments are of more significance (as opposed to our more technical comments).

Comments on Proposed NI 41-101

1. *Section 1.1 – Definition of "derivative".* We note that this definition is largely the same as the definition of 'specified derivative" contained in National Instrument 81-102 *Mutual Funds*, but it is missing some of the concepts provided for in that National Instrument. In the interests of national consistency of rules, we urge the CSA to consider ensuring that the term as defined in NI 41-101 is consistent with the term as defined in NI 81-102, including the CSA policy discussion of that term provided for in the companion policy to NI 81-102.

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2. *Section 4.3(1) Review of unaudited financial statements.* We have two comments on this section – one technical and one substantive. From a substantive, policy perspective, we understand that many investment fund industry participants are strongly opposed to any mandatory requirements for auditor review of interim financial statements. As you know, National Instrument 81-106 (section 2.12) takes a disclosure approach to this issue. Interim financial statements must either be accompanied by a notice that explains that no auditor has reviewed the statements or, if they have reviewed the statements, then the interim statements must be accompanied by a written review report. There is no explanation given by the CSA for this policy change (to make review reports of interim statements mandatory, if those interim statements are "included" with, or incorporated by reference into a prospectus of an investment fund) and we respectfully submit that the CSA needs to outline a strong case for this policy change if, indeed, this change is intentional. We understand that reviews of interim statements are costly and require time to complete (a minimum of 10 days is needed from the date that the fund's manager has completed the interim statements and delivered them to the auditor). In effect, this means that the 60-day time frame for finalizing and filing interim financial statements (from the fund's interim financial period end) is compressed to 50 days, which we understand is an extremely short time frame and one that is close to impossible to meet. We also understand that even auditors of investment funds do not believe that reviews of interim statements provide benefits for investors that would justify the additional costs.

   From a technical perspective, section 4.3 speaks of interim statements that are "included" in a long form prospectus. Form 41-101F2 allows most investment funds to not "include" financial statements in the prospectus – rather these statements are incorporated by reference into the prospectus. The language of section 4.3 is not clear as to the CSA's intent and we would submit that the language would reasonably support an interpretation that financial statements incorporated by reference into a long form prospectus are not "included" with the prospectus and therefore do not need to be reviewed by an auditor.

   In any event, we recommend that the CSA revert to the disclosure regime provided for in NI 81-106 concerning auditors' review of interim financial statements. This means that section 4.3 would need substantive amendments.

3. *Section 4.4(2) Approval of financial statements and related documents*. We recommend that the CSA provide further clarity around its intentions in using the words "included in the long form prospectus" as they relate to financial statements. Given the ability to incorporate financial statements by reference into the prospectus contained in Form 41-101F2, it is not clear to us whether those financial statements are "included" in the filed long form prospectus.

4. *Subsection 6.6(5) and (7) Amendment to a final prospectus.* We agree with the reference to LSIFs, commodity pools and scholarship plans in subsection (7), but we recommend this exclusion be made more general – that is, applicable to every investment fund (or other issuer) that is distributing securities under a prospectus on a continuous offering basis. We believe the same justification that underpins

subsection (7) for the named categories of investment funds also would apply to other issuers that are distributing securities on a continuous basis.

5. *Section 12.1(2) Application and definitions.* Part 12 is not applicable to mutual funds. We do not understand why this reference is included and recommend that all investment funds be exempted from this Part on the same policy reasoning as why mutual funds are exempted from this Part.

6. *Section 13.3 Advertising for investment funds during the waiting period.* We do not understand why this provision (which we note has been adopted from section 15.12 of NI 81-102) has been included in proposed NI 41-101 and we recommend it be deleted and investment funds be subject to the general policy of the CSA described in the Companion Policy, like other issuers. Investment funds, as reporting issuers, should not be subject to such different and restricted regulation on advertising. Investment funds do not pose any greater concern regarding advertising during the waiting period than other issuers and the rules should be the same. We understand that the CSA may wish to continue with section 15.12 of NI 81-102 for mutual funds (given the CSA's views on the nature of mutual fund investing), but the fact that mutual funds have this more restrictive regulation should not be extrapolated for other types of investment funds unless there is a established and justifiable policy reason.

   Please see our comment (29) below which sets out our views on Part 6 of the Companion Policy to NI 41-101.

7. *Part 14 – Custodianship of Portfolio Assets of an Investment Fund.* We do not comment on whether or not the CSA should include this Part in proposed NI 41-101, which we note is identical to Part 6 of NI 81-102. We urge the CSA to correct some of the difficulties and out-dated regulation that is contained in Part 6 of NI 81-102, which are particularly enhanced when considered in the context of investment funds other than mutual funds.

   (a) The custodian provisions for investment funds do not take into account the fact that many investment funds have the ability to borrow and have loan facilities in place. Generally under the terms of these loan facilities, the investment fund is required to grant a security interest over its assets in favour of the lender. In order to perfect a security interest over assets that are securities or other financial assets, these assets need to be held in a "securities account" under the *Securities Transfer Act*. The custodian provisions in NI 41-101 need to accommodate the fact that investment funds will grant security interests over their assets and that their securities and other financial assets will need to be held by a securities intermediary in a securities account that is governed by a control agreement, all as required under the *Securities Transfer Act* and the PPSA.

   (b) Many investment funds enter into OTC derivatives and grant security interests in favour of counterparties. Although subsection 14.8(3) of proposed NI 41-101 allows an investment fund to deposit with a counterparty portfolio assets over which it has granted a security interest,

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this is only in connection with a particular specified derivatives transaction. However, the ISDA regime that governs derivatives is based on a master ISDA agreement and credit support agreement, under which a number of derivative transactions may be outstanding at any given point in time. It is not practical nor administratively feasible to require each security interest and its related collateral to be held in connection with only one particular derivative transaction, as the fund and the counterparty, as well as the underlying documents, all work on an aggregate basis.

(c) We recommend that subsection 14.6(3) be deleted as out-dated regulation. This provision was written for mutual funds originally when the predecessor instrument to NI 81-102 was first amended to provide for custody rules for mutual funds. The filing was deemed necessary to ensure regulatory oversight over compliance with the new rules. Given that those changes are well over 10 years old and the regulators have complete discretion to review custodial arrangements as part of their compliance review functions, we submit that this provision is out-dated and adds to the regulatory burden without any justifiable regulatory need.

8. *Section 15.1(1) Incorporation by reference*. We strongly urge the CSA to mandate that scholarship plans incorporate financial statements (current and subsequent) by reference into their prospectuses, as is required for other investment funds, including mutual funds subject to NI 81-101. We do not understand the policy rationale for excluding scholarship plans from this requirement. Scholarship plans are commonly distributed to the most "retail" of investors; investors who one can reasonably assume are simply overwhelmed by the amount of disclosure given to them on account opening (including mandatory tax information for scholarship plans). We fail to see the need for scholarship plan investors to receive financial statements on their initial investment considering the average investor's difficulty in comprehending financial statements and understanding their relevance, when other retail products (such as mutual funds) were given the ability to exclude these statements from prospectuses many years ago. If investors do not need to receive financial statements on a continuous disclosure basis (NI 81-106), we fail to see the relevance of financial statements on an initial investment.

From an investor protection perspective, it is better, in our view, for continuous disclosure documents to be included by reference in a prospectus, since then the statutory liability scheme that applies to prospectuses would apply continuously to these documents.

9. *Section 17.1(3) Pro Forma Prospectus*. We are concerned that this subsection is "buried" in Part 17 and we recommend that it be moved to Part 9 Requirements for Filing a Prospectus so as to facilitate ease of reference and compliance.

10. *Section 20.1*. We strongly recommend that this transition provision be amended to include a reference to a pro forma prospectus, since many investment funds in

continuous distribution may wish the reduced regulatory burden of complying with the new disclosure format in their next renewal cycle.

11. *Appendix A Personal Information Form*. We recommend that NI 41-101 be clarified to provide that if any individual has filed a personal information form in the three years previous to the applicable filing, he or she does not have to complete the new Form. As the rules are drafted, it is unclear whether any individual who completed an "old" personal information form would have to complete a "new" personal information form upon the coming into force of proposed NI 41-101. We believe it would be most appropriate to include a positive statement in the transition section indicating that no "new" form needs to be filed if an "old" form was submitted during the applicable period before the relevant filing. We note that the "new" form is significantly more detailed than the older form, which in our view, will significantly increase the regulatory burden on issuers in having to ensure the appropriate individuals complete the form. For this reason, we believe that the above-noted transition clarification is very important for investment funds that are in continuous distribution.

Comments on Proposed Form 41-101F2

12. While we agree that one form, tailored to the unique characteristics of investment funds, is a very important step, we believe Form F2 does not go far enough in distinguishing between the various types of investment funds, many of which are quite distinct and different from each other. The fact that Form F2 was developed based on the simplified prospectus and AIF forms of NI 81-101 means that it is biased towards "mutual fund-like" investment funds. We urge the CSA to expand instructions (5) and (8) to clarify that all investment funds must determine whether or not a particular disclosure item is relevant, material or even applicable to their business. If the investment fund reasonably concludes that the disclosure item is not, then it need not include the heading or anything about that disclosure item. Many of our comments on the Form simply result from our being unclear as to the CSA's intentions for including (or not) the relevant disclosure.

Similarly, all investment funds should be given the flexibility to include specific information that is applicable to their business necessary to make the disclosure in the prospectus "full, true and plain". Instruction (8) refers to "investment funds that are special purpose vehicles". In our view this reference should be deleted and made applicable to all investment funds. For example, there is much in Form F2 that will need modification to reflect the very unique structure and distribution mechanisms of scholarship plans and, without this instruction, scholarship plans may find it very difficult to use this Form.

13. We do not believe that it is necessary that investment fund prospectuses follow a prescribed order of disclosure (instruction 11). The very specific ordering for simplified prospectus of mutual funds was mandated for very different reasons - to ensure consistent drafting of simplified prospectuses for products that have many of the same characteristics and to allow investors to easily compare these very similar products. The same cannot be true of the diverse universe of other investment funds and we believe that this instruction is unwarranted and should

be deleted. We note that other reporting issuers may tailor the prospectus form as they see fit.

14. *Section 1.3 Basic Disclosure about the Distribution*. The mandated disclosure indicates in brackets that an investment fund must describe what kind of investment fund it is. While we do not disagree with this concept, we do believe that investors will be confused with funds being described using legalistic words that will have not much meaning for them – “non redeemable investment fund” is a regulatory phrase and one that is not used in the ordinary course in the investment community, including by sales representatives. We recommend that labour sponsored investment funds, scholarship plans, and perhaps commodity pools be named as such (since the marketplace generally uses those terms), but that closed end funds or exchange traded funds be permitted to use commonly used terminology to describe such funds.

15. *Section 1.4 Distribution*. We recommend that the CSA clarify what kind of disclosure in response to this item is to be provided by scholarship plans, commodity pools and LSIFs, as well as other investment funds being distributed on a continuous offering basis. Subsection 1.4(1) “if the securities are being distributed for cash” would appear to require those funds to include the mandated table, much of which is not applicable to funds being distributed at a price equal to their net asset value next determined or for a fixed unit price (scholarship plans).

16. *Section 1.9 Market for Securities*. Will funds that are distributed continuously at NAV and are redeemable on demand have to include this disclosure? We believe this would be inappropriate and we recommend this point be clarified.

17. *Section 1.15 Documents incorporated by reference*. Please see our comment (8) above.

18. *Section 6.1 Management Discussion of Fund Performance.* We do not understand the reason for this section, which appears to require the repetition of the disclosure provided in the documents referenced, given that it would appear that all investment funds will either have these documents incorporated by reference or “included” with the prospectus.

19. *Section 7.2 Returns and Management Expense Ratio*. Not all investment funds calculate returns and MERs in the same way as mutual funds. If they do not do this, will they required to artificially include this disclosure? The term “MER” has meaning for investment funds (and for these products, must be calculated in a very specific way in accordance with NI 81-106, if it is to be disclosed). How should investment funds approach these concepts if they do not otherwise disclose or refer to MER? We recommend that the CSA clarify that this section does not apply to investment funds that do not calculate or disclose MER.

20. *Section 11.2 Short-Term Trading*. This disclosure would appear to be mostly relevant to funds that are redeemable on demand, which would lead us to conclude that scholarship plans, exchange traded funds and other non redeemable

investment funds will not have to include any disclosure. Given our comment (12) above, we believe an explanation in this section to this effect would be warranted, given that Form F2 does not define what "short-term trading" is and why it is not considered appropriate for funds.

21. *Section 13.1 Prior Sales*. Why are labour sponsored investment funds and commodity pools specifically excluded from having to provide this disclosure? This would lead a reader to believe that scholarship plans and other funds that are redeemable on demand and distributed on a continuous basis would have to include this disclosure, which we submit would be highly irrelevant to these vehicles.

22. *Section 15.1(5) Cease-Trade Orders and Bankruptcies of the Investment Fund*. The heading does not fit with the disclosure required. One would anticipate that an investment fund that has been cease traded or gone bankrupt would not be filing a prospectus. The disclosure required by this item would require an investment fund to consider bankruptcies of its material controlling shareholders. We do not believe this is a practical or reasonable requirement given the nature of most investment funds and the shareholders in those funds.

23. *Section 15.1(6) Conflicts of Interest of the Investment Fund* and *(9) Conflicts of Interest of the Manager*. The heading of (6) does not fit with the disclosure required. Investment funds do not commonly have "conflicts of interest" – although their managers may. We recommend that (6) be deleted in favour of (9). We also recommend that the term "conflicts of interest" be defined by reference to the same term in NI 81-107 to provide for consistent usage of terminology.

24. *Section 16.1 Independent Review Committee*. The reference to "appropriate summary" in item (a) should be simply a "summary" to be consistent with the rest of the Form. We do not understand why the prospectus of an investment fund does not list the members of an independent review committee (paragraph d would appear to be an error). We also believe that the disclosure of fees (paragraph e) should be conformed with NI 81-107. There is no concept of "main components of fees" payable to IRC members and we recommend some clarity and consistency with Form F2 and NI 81-107.

25. *Section 23.3 Reporting of Net Asset Value*. The drafting of this section suggests that the CSA believe that mandatory reporting of net asset value is important. We recommend that the CSA clarify whether or not this is intended. If the fund does not propose to communicate NAV in the manner suggested in this item, may it state this? There may be investment funds where this information is not as relevant, particularly where NAV is not calculated often. Scholarship plans should be specifically excluded from this section, as has been done in section 23.2.

26. *Section 26 Use of Proceeds*. We recommend that the CSA either clarify that this section does not need to be complied with when the fund is in continuous distribution or by funds that are investing "net proceeds" in accordance with a stated investment objective or revise this section to delete irrelevant concepts.

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The concept of "principal purpose" for net proceeds or "acquiring assets" is not particularly relevant for investment funds.

27. *Item 40 Documents Incorporated by Reference*. Please see our comment (8). If all financial statements and other continuous disclosure documents are incorporated by reference into a prospectus that qualifies continuously offered securities, then no financial documents will need to be included in a prospectus which will significantly reduce the amount of information that is delivered to an investor, allowing the investor to concentrate on the important information provided in the prospectus.

28. *Item 40 Financial Statements*. It is not clear to us what the CSA intend for newly established investment funds – what financial statements are required – and are they required to be "included" in the prospectus or "incorporated by reference into the prospectus"? We recommend that this point be clarified, and subsection 41.1(3) expanded upon for investment funds that are required to incorporate by reference all financial disclosure.

Comments on proposed Companion Policy to NI 41-101

29. We urge the CSA to re-consider their policy pronouncements contained in Part 6 – in particular section 6.5, 6.6, 6.7. 6.8, 6.9. 6.10, in light of the developments in the securities marketplace generally since these policy statements were first formulated. Given the difficulties inherent in reviewing and easily comprehending a preliminary prospectus, including a preliminary prospectus for an investment fund, in our view, additional flexibility should be given to issuers, including investment funds, to outline the material information about a particular issue during the waiting period in documents that are not the preliminary prospectus. We do not believe these policy statements are regularly and consistently applied given their out of date nature and somewhat anachronistic stature.

Comments on Amendments to NI 81-101

30. *Section 1.3 amending section 2.2 of NI 81-101*. We know that the CSA take the position that a mutual fund can add new classes or series of units to its capital (where those classes or series are not referable to a separate portfolio) via an amendment, which we do not disagree with. However, we understand that the CSA also take the position that if these new classes are added at the time of the pro forma filing of the simplified prospectus, then a preliminary prospectus must be filed to qualify these new classes or series. In our view, this different approach to essentially the same issuer and regulatory activity is not justified. If it is possible to amend a prospectus to add new classes or series, then it should be legally possible (using the same interpretation of the applicable legislation) to add new classes or series to a pro forma filing. We strongly recommend that this issue be clarified as we suggest.

31. *Subsection 1.4(2) amending section 2.3 of NI 81-101.* We are unclear about the CSA's intentions with subparagraph (ii). We assume that you mean "personal

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information for directors, officers of the mutual fund and its manager"? We strongly urge the CSA to clarify in the rules that where a fund manager has filed personal information forms (including, as we recommend in comment (11) above, the "old" forms) for a director or officer within the last three years in connection with another mutual fund filing (of the funds it manages), then it does not have to refile these with any new fund. We know that staff of the CSA take different (sometimes conflicting) positions on this issue, and we strongly recommend that this matter be clarified and the regulatory burden significantly reduced.

32. *Subsection 1.4(4) amending section 2.3 of NI 81-101.* Please see our comment (30) above concerning subparagraph (iv) (please note that this comment is applicable to other changes proposed to NI 81-101 – all provisions that refer to "personal information of the mutual fund" and filing requirements).

We also urge the CSA to delete subparagraph (vi). This represents a change from current practice. A pro forma prospectus is, in essence, a "draft" prospectus, which means that no financial statements can be incorporated by reference into it. There are significant costs in obtaining an auditors' comfort letter and this cost is not justified by having to provide an auditors' comfort letter in connection with a pro forma filing.

33. *Section 1.5 adding section 2.7 to NI 81-101.* This is a substantive and very important comment. Please see our comment (2) above. The comments made above are particularly apt in the context of mutual funds. In the view of many auditors, the review of mutual fund interim financial statements is of little or no value and investors will bear the associated additional costs for no benefit.

Comments on OSC Rule 81-103

34. It is not clear to us why these rules are provided for in a separate instrument. We were unable to find similar proposed rules for the other provinces published with the main package of proposed rule amendments. We recommend that these rules be incorporated in proposed NI 41-101 and in NI 81-101 for ease of reference and compliance. We agree with the content of the proposed rules, but feel that it would serve the CSA's main objective (harmonization and simplification) if they were more centralized and readers understood these rules were national rules.

Other Comments

35. We understand that section 5.13 of proposed NI 41-101 does not apply to investment funds (including mutual funds) – we note however, that it would beneficial for the CSA to state this directly in the proposed rule if the CSA decide to retain this rule. We strongly recommend that this rule be abandoned for reporting issuers and support the comments provided by the Securities Law Subcommittee of the Business Law Section of the Ontario Bar Association in their letter of March 30, 2007. Please see the OBA comments on the certification requirements.

36. We strongly support the OBA's comments with respect to the CSA's question 10 on eliminating the minimum waiting period. The minimum waiting period is particularly of little value to investment funds, many of which conduct little or no marketing from the preliminary prospectus.

We hope that the CSA find our comments to be of assistance in finalizing the proposed prospectus regime, particularly as it relates to investment funds. Please feel free to contact Rebecca Cowdery at 416-367-6340 and rcowdery@blgcanada.com if you have any questions with respect to our comments.

Yours very truly,

"Borden Ladner Gervais LLP"

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April 5, 2007

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission - Securities Division
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Nova Scotia Securities Commission
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Dear Sirs/Mesdames:

Request for Comment – Proposed National Instrument 41-101 *General Prospectus Requirements*, Form 41-101F1, Form 41-101F2 and Companion Policy 41-101CP, Proposed Repeal of National Instrument 41-101 *Prospectus Disclosure Requirements*; Proposed Amendments to certain other National Instruments and Companion Policies

We are pleased to respond to the above-referenced Request for Comment of the Canadian Securities Administrators.

Request for Comments

1. *"Substantial Beneficiary" Rules*

We submit that the proposed new "substantial beneficiary" rules will adversely affect Canadian public issuers and have a disproportionate economic effect on growth industries including the energy and technology sectors which are acquisition intensive. Acquisitions in growth sectors of the Canadian economy typically involve multiple transactions for junior and mid-sized companies as they grow their businesses.

We are concerned that the proposed certificate requirements for "substantial beneficiaries of an offering" will create an uneven playing field in the acquisitions market, which will prefer private buyers to junior or mid-cap Canadian reporting issuers by making it almost universally inadvisable for vendors of assets to sell to entities who rely on the proceeds of public financing to fund their acquisitions.

In an environment where private equity and foreign issuers already enjoy a lower cost of capital, the imposition of prospectus liability on vendors who sell assets to Canadian issuers who use public financing proceeds to fund acquisitions would further impair such Canadian issuers from successfully competing for opportunities.

These proposed rules will severely impact whether vendors will even consider potential buyers who have to finance the acquisition through public funds. If vendors are willing to accept such purchasers (likely in either a distressed asset context where there are no other buyers, or where a significant premium is being offered), the cost of additional due diligence and the risk of potential liability will be added into (and will inflate) the total acquisition cost for Canadian issuers. This inflation will be exacerbated by the fact that the proposed new rules would impose liability on the "substantial beneficiary" for all disclosure in the prospectus and not just the disclosure relating to the acquired business or assets.

Since the "substantial beneficiary" is often a passive investor without the same access to information as a director or officer, this person or entity may be faced with having to perform full due diligence on the issuer even if the sale of the “substantial beneficiary’s” business only represents a portion of the issuer’s business. The “substantial beneficiary” may also face challenges attempting to obtain indemnification from the issuer due to enforceability issues and the financial position of the issuer. In our view this requirements goes too far. It will have an appreciable impact on the economy by favouring certain bidders (and reducing the number of competitive bidders), slowing transactions and imposing prospectus liability on vendors of assets.

In the commentary surrounding the implementation of National Policy 41-201, the CSA agreed with a comment that the proposed requirements for prospectus liability in NP 41-201 did not make any clear distinction between arm’s length and non-arm’s length transactions. The CSA responded by stating that their concern was primarily with vendors that negotiate the terms of the purchase of a business by the trust, and are also involved in the negotiation of the terms of the public offering with the underwriters. Where the transaction is a bona fide arm’s length transaction these concerns do not generally arise. The guidance provided in NP 41-201 was therefore amended to address this issue. We are unclear as to why the same principles do not apply in this circumstance, specifically if the sale of the “significant” asset requires that proceeds be raised from the public, but the vendor is an arm’s length vendor and not involved in the offering process, no liability should be imposed on such vendor. The proposed new rule should, at a minimum, be modified to impose the “substantial beneficiary” requirement only in those circumstances where the vendor is a non-arm’s length party. Further, such a vendor should only be responsible for the disclosure relating to the asset/business being sold to the issuer, not the issuer’s disclosure in its entirety.

We are also concerned about the proposed requirement for issuers to deliver a personal information form and authorization form of a substantial beneficiary or each director and officer of the substantial beneficiary if it is not an individual. This requirement is unnecessary and cumbersome for the issuer and will, at a minimum, be a nuisance for the substantial beneficiary.

2. ***Material Contracts***

We submit that the proposed categories of material contracts which must be filed, notwithstanding that they are entered into in the ordinary course of business, is too broad. In particular, we believe that the requirement to file all material credit agreements and management or administration agreements is inappropriate, as these are agreements entered into the ordinary course of business by most issuers. We also submit that the requirement to file any contract to which substantial beneficiaries are parties is inappropriate for the same reasons.

We also submit that there should be a similar time limitation for the filing of material contracts as imposed in Section 12.2(1) of National Instrument 51-102, limiting the filing to contracts entered into within the last financial year, or before the last financial year but still in effect. Contracts entered into prior to that time, unless still in effect, should not be considered material in any circumstances.

Further, we submit that specifically listing the provisions that are "necessary to understanding the contract" is unnecessary. There are significant variations between types of contracts and the provisions that would be relevant to an understanding of the contract. If there is to be a requirement not to redact provisions "necessary to understanding the contract", the determination of what terms fall into that category, in the specific facts and circumstances, should be left to the issuer and its counsel. In addition, many terms "necessary to understanding the contract" may in fact be competitively sensitive information, disclosure of which would be prejudicial to the issuer's business. We submit that issuers should be able to redact commercially sensitive information, either as of right or through the process of applying for confidential treatment of such information.

3. ***Distribution of Securities Under a Prospectus to an Underwriter***

We submit that the proposed limitation set forth in Section 11.3(b) of the proposed rule will unduly limit the flexibility of underwriters in establishing their compensation structure for certain transactions. The division between cash and equity compensation of underwriters is established by negotiation between the issuer and the underwriter, and is fully disclosed in the prospectus. We submit that regulation of the equity component of the compensation is unnecessary and should be left to the marketplace. Particularly for junior to mid-cap companies, the issuance of compensation options to their underwriters in return for a reduction in the cash compensation paid is a beneficial term of the transaction, enabling more cash to flow to the issuer. We understand that practice among underwriters varies between a full cash commission and a split cash:equity commission where compensation options typically range between three and, unusually, ten percent of the securities offered under the prospectus. It is common for the compensation options to constitute no more than five per cent of the securities offered under a prospectus but we submit that the imposition of a limit of five per cent is unduly restrictive and unnecessary given the competitive market among underwriters.

4. ***Waiting Period***

We support the CSA's proposal to vary the minimum waiting period to less than ten days. Investors have withdrawal rights which provide them with a cooling off period prior to making an investment decision. Therefore, a minimum waiting period is not necessary to ensure investors have sufficient time to properly assess an investment.

5. ***Amendments to a Preliminary or Final Prospectus***

We submit that a requirement to file an amendment based on the continued accuracy of information in the prospectus is inappropriate. The lower standard of "accuracy of information" would result in due diligence being conducted until closing. It would also result in either accelerated closings or an increased number of amendments to the final prospectus delaying closing, both of which would have a chilling effect in the marketplace.

While investor protection is a primary objective of securities regulation, we disagree with imposing on issuers an ongoing obligation to disclose material facts as an essential means to achieving this objective. The financial and time burdens that are generated by providing transitory information to the marketplace outweighs the advantage of providing investors with that information. More transitory information is not necessarily good for the marketplace. The Ontario Court of Appeal in *Kerr v. Danier Leather Inc.* found this reasoning persuasive in holding that the issuer had no duty to disclose material facts which occur after the date of a final prospectus.

In *Danier*, the Ontario Court of Appeal also cited three Ontario Committee reports which considered the distinction between "material facts" and "material changes": the Merger Report of 1970, the Allen Report of 1997, and the Crawford Report of 2003. The reports recognized that Canadian securities legislation accommodates the fact that the materiality of corporate intentions and business plans develops with their progress and implementation. The legislation correctly requires timely disclosure only after such plans have developed to the point where they are sufficiently firm that they may be characterized as a change in the issuer's business, operations or affairs. To impose a standard of material facts would cause practical difficulties by increasing filing obligations and requiring ongoing press releases. As stated in the Crawford Committee report, without the benefit of hindsight, issuers would have difficulty in determining whether to disclose material information and issuers would face a significant burden of continually monitoring matters external to them.

6. ***Bona Fide Estimate of Range of Offering Price of Number of Securities Being Distributed***

We submit that the requirement to provide a range within which the offering price or the number of securities being distributed is expected to be set would not be appropriate in Canada. In the United States, where the requirement does exist to insert a price range, an issuer now typically files a registration statement initially containing a preliminary prospectus without the range to begin the process of clearing the registration statement with the Securities and Exchange Commission ("SEC"), and then files one or more amendments to the registration statement prior to printing the preliminary prospectus, one of which would add a price range. The commercial copy of the preliminary prospectus filed and printed prior to the roadshow would contain the price range. In the cross-border context, imposing a price range requirement in Canada would likely have the effect of delaying filings of preliminary prospectuses in Canada until after the price range has been added in the United States filing. If this range requirement is adopted in Canada, we submit that issuers should only be required to insert the range in the amended and restated preliminary prospectus that is being printed prior to the roadshow for consistency with the United States approach.

We also submit that the instrument should clarify that the range requirement would only apply to an initial public offering, and not a follow-on offering (even if filed using the long form prospectus rules) given that a follow-on will be priced in the context of the market price.

7. ***Two Years Financial Statement History***

We support the CSA's proposal to reduce the number of years for financial statements in a long form prospectus to two years as the historical financial information is publicly available. However, we note that not many reporting issuers would use the long form prospectus.

Additional Comments

In addition to the foregoing responses to the specific items in respect of which the CSA has solicited comments, we have the following comments in respect of the identified sections of NI 41-101:

1. Form 44-101 F1 Item 7A is unnecessary as that information is already publicly available.

2. We also want to comment on a related point to NI 41-101, specifically the use of electronic roadshow materials in the cross-border initial public offering context. The current state of Canadian securities law is that, absent relief, access to the electronic roadshow must be password-restricted, and the password only be made available to Canadian institutional investors (and not retail investors).

   However, in the United States, changes to the 1933 Act, which came into effect in December 2005, require an issuer to either file the electronic roadshow materials with the SEC or make them "available without restriction by means of graphic communication to any person..." in an initial public offering. The SEC's position is that any password restriction, for residents anywhere in the world, means that a bona fide version is not generally available to the public, and therefore it must be filed.

This inconsistency between Canadian and United States securities laws has required underwriters who want to utilize electronic roadshow materials as part of the marketing of an offering to seek exemptive relief from the Canadian securities regulators. The exemptive relief granted in Canada to date has required the issuer and the Canadian underwriters to provide purchasers with a contractual right of action equivalent to the statutory rights under section 130 of the Ontario *Securities Act* for the contents of a prospectus, applicable to any misrepresentation in the electronic roadshow materials. These exemption orders have not specified as of what date or time such liability attaches to the contents of the roadshow (that is, are the contents required to be true and correct when first made available by the issuer, or do they speak at the time of each viewing, or at the time of closing of the offering?). The exemption orders issued to date also do not contain any provision for updating or correcting the information to which liability attaches after the completion of the roadshow. We suggest that NI 41-101 should contain express provisions allowing for the use of an electronic roadshow, without password protection, in a cross-border initial public offering. We submit that, if contractual rights of action are required, the electronic roadshow materials and the prospectus should be considered as a whole, so that the "information package", including information in the electronic roadshow materials, can be updated or corrected through amendments to the preliminary prospectus or through the final prospectus, if necessary.

Thank-you for the opportunity to respond to this Request for Comment. Please call Craig Wright (613-787-1035) or Elizabeth Walker (613-787-1060) if you have any questions concerning our comments.

Yours very truly,

OSLER, HOSKIN & HARCOURT LLP

Thursday April 5, 2007

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Dear Members of the Canadian Securities Administrators:

Re: Proposed National Instrument 41-101 *General Prospectus Requirements* (NI 44-101) and Related Companion Policy & Other Affected Instruments and Policies

TSX Group Inc. welcomes the opportunity to comment on behalf of both Toronto Stock Exchange (TSX) and TSX Venture Exchange (TSX Venture) (collectively, the Exchanges) on NI 41-101, as published by the Canadian Securities Administrators (CSA).

I. GENERAL COMMENTS

The Exchanges support the CSA's efforts to further harmonize the overall prospectus regime with that of the current continuous disclosure regime. Harmonization of the long form prospectus rules is the next logical step towards doing so. However, we are concerned with the exclusion of Ontario from the application of various provisions in NI 41-101 and the impact that exclusion may have on achieving true harmonization and its resulting benefits. Any opportunity to improve the ability of issuers to access equity markets on a more timely and cost efficient basis, while maintaining appropriate investor protections, should be taken advantage of.

We understand that there may be certain rule making authority limitations under the *Securities Act* (Ontario) (OSA) which prevent the implementation of various provisions in NI 41-101. If that is the only obstacle to achieving full harmonization, we would encourage the Ontario Securities Commission (OSC) to move forward with making the necessary amendments to the OSA in order to obtain the rule making authority required to eliminate exclusions from the application of NI 41-101 in Ontario. However, to the extent that the exclusions are based on policy reasons, which justify Ontario's lack of rule making authority in those areas, we would encourage the CSA to work towards harmonization in such a manner that allows for full participation of all jurisdictions.

II. REQUEST FOR COMMENTS ON THE PROPOSED INSTRUMENT

Certificate Requirements

The Exchanges generally support the rationale for expanding the class of persons subject to liability under a prospectus offering where there is a demonstrated need for such expansion and where it is done within reason. Demonstrated accountability is necessary to promote investor confidence in equity offerings in our capital markets.

The CSA believe that a person or company that controls the issuer or a significant business has the best information about the issuer or significant business. In addition, if they receive proceeds from the distribution, they should be liable for any misrepresentations. They have defined the term "substantial beneficiary of the offering" for this purpose, which basically covers anyone who, directly or indirectly, holds or held within the one year preceding the offering, or after the offering is reasonably expected to acquire: (a) "control" of the issuer or significant business, or 20% or more voting rights, and (b) receives, directly or indirectly, 20% or more of the proceeds of the distribution.

Except in Ontario, NI 41-101 will now require all "substantial beneficiaries of the offering" to certify the prospectus. In addition, and except in Ontario, regulators will have the discretion to require control persons, selling security holders and other persons to certify a prospectus in certain circumstances. Such circumstances have not been described.

With respect to the substantial beneficiaries proposal, the proposed definition of "substantial beneficiary of an offering" is extremely broad and will affect persons who may not be in the best position to be giving such assurances to investors. Specifically, the one year retroactive application of the definition is unnecessary and could, in fact, increase uncertainty for those investors who wish to take significant ownership positions in issuers. While we understand the intention behind this proposal, we encourage the CSA to find an alternative way of expanding liability to those who may have been responsible for any misrepresentations.

In addition, giving the regulator discretion to require control persons, selling security holders and other persons to certify a prospectus may also affect persons or entities who are not in a position to be doing same. In many cases, these persons or entities will only be significant security holders who may not have had board representation and were not employees or members of management. When combined with the substantial beneficiaries proposal, this may have the effect of blurring lines of independence, governance and corporate law separateness of entities.

The potential, yet unintended, result may be the creation of a barrier to accessing equity capital in Canada – either through increased time and costs required to provide such certification, or by encouraging issuers to find other ways to access capital privately. We trust that the CSA will consider whether this level of liability exists in other jurisdictions, and whether adding this proposal would reduce Canada's competitiveness in global capital markets.

Personal Information Form and Authorization

Except in Ontario, NI 41-101 is proposing to require a form of personal information form (CSA PIF), in the form provided under Schedule 1 to Appendix A of NI 41-101, to be completed and filed for directors, officers, promoters and directors & officers of an investment fund manager, and except in Ontario, substantial beneficiaries of the offering, at the time of filing the preliminary prospectus.

The Exchanges have required certain individuals and persons associated with their listed issuers to complete personal information forms (Exchange PIF) upon initial listing of an issuer, or to assess the continued listing of an entity or suitability of a person.

The Exchanges understand that certain CSA members currently require that the Exchange PIF be used for their own purposes in connection with prospectus offerings, and to that extent, the Exchanges have accommodated such CSA members, at their request.

Specifically, the Exchanges have the following comments and concerns on the CSA PIF proposal:

- The CSA PIF proposed in NI 41-101 is substantially similar to the Exchange PIF, with some minor differences; for example, the CSA PIF does not require a criminal record information consent. Given the similarities in the form of PIF, the Exchanges question the need for individuals to potentially be required to submit two forms of PIF in connection with a prospectus offering. This could result in unnecessary duplication and confusion, adding to the costs and time required to raise equity in Canada. As such, the CSA may want to reconsider the extent of the CSA PIF and whether it is necessary in its current form for the purposes, it is required. In the alternative, the CSA could consider relying on the submission of the Exchange PIF to the CSA members, subject to our other comments in this letter regarding the Exchange PIF. In addition, the Exchanges question the need for such frequency in filing of the CSA PIF, particularly for issuers and individuals actively engaged in prospectus offerings.
- The Exchanges would like to confirm that, subject to the ordinary course rule review protocols for each of TSX and TSX Venture, the Exchanges will continue to have the discretion to amend their respective Exchange PIFs from time to time, with no implications as to how such changes may affect the CSA PIF.
- We also ask for confirmation that, regardless of whatever action taken or decision made by the CSA as a result of their review of a CSA PIF, it will not affect nor prevent any actions or decisions made by the Exchanges on the same individual. The Exchanges must continue to have the discretion to find an individual unsuitable, notwithstanding that no determination or a different determination is made by a CSA member based on their own CSA PIF review. In addition, the Exchanges seek clarification on how detrimental information relating to an individual will affect that issuer or any other issuer that individual is associated with.
- The Exchanges recommend that additional clarification be added for the filing requirements for delivery of a CSA PIF by an issuer. For example, as currently drafted,

there is no stated time limit on the age of a previously filed CSA PIF or Exchange PIF, when filed with a statutory declaration with a CSA member. Based on our experience, this type of procedural detail is required in order to minimize confusion and to prevent delays with filings by issuers.

- On the first page of Schedule 1 to Appendix A of NI 41-101, the references to TSX and TSX Venture as divisions of TSX Inc. and TSX Venture Exchange Inc., respectively, are unnecessary and should be removed. The CSA should refer to each of the Exchanges as they normally do in other instruments under securities laws.

Distribution of Securities Under a Prospectus to an Underwriter

NI 41-101 will now require that compensation options or warrants to an underwriter be limited to, in the aggregate, less than 5% of the number or principal amount of securities distributed under the offering.

While the Exchanges support any increased certainty with respect to fees and expenses associated with a prospectus offering, we recognize that market forces play an important role in the fees and expenses associated with equity offerings. The Exchanges ask that the CSA be cognisant of the built-in limits applied by market forces to underwriter compensation, particularly in connection with smaller issuers like those in the TSX Venture market. We trust that the CSA members will complete sufficient analysis on this particular proposal, particularly on TSX Venture equity offerings, prior to moving forward with such a limit. Any analysis should consider the effect such a limit may have on the cash portion of underwriter compensation, and on compensation securities that may be issued privately outside of the prospectus. In addition, we suggest that this issue may be better dealt with by the Investment Dealers Association.

We would very much welcome the opportunity to discuss any of the foregoing with you in more detail. Please do not hesitate to contact us.

Sincerely,

TSX Inc.

"Rik Parkhill"

TSX Venture Exchange Inc.

"Linda Hohol"

Delivered

April 6, 2007.

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

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Dear Sirs / Mesdames,

Re: Comments on Proposed National Instrument 41-101 *General Prospectus Requirements* ("NI 41-101").

We submit the following comments in response the Notice and Request for Comments published on December 22, 2006 ((2006) 29 OSCB (Supp-3)) on NI 41-101. Section A consists of our general comments on NI 41-101 and Section B consists of specific comments relating to specific provisions of NI 41-101.

This letter represents the general comments of certain members of our securities practice group (and not those of the firm generally or any client of the firm) and are submitted without prejudice to any position taken or that may be taken by our firm on its own behalf or on behalf of any client.

SECTION A. GENERAL COMMENTS

We support the efforts of the Canadian Securities Administrators (the "**CSA**") to harmonize prospectus requirements and related matters across the country and encourage the CSA to continue with these efforts in a manner that enhances the competitiveness and integrity of Canadian capital markets. As options for Canadian and global capital continue to grow, we underscore the importance for our domestic regulation to be clear, streamlined and responsive to the needs to the capital markets, in the interests of both investors and other market participants.

We note the report commissioned by U.S. Senator, Charles E. Schumer, and New York City Mayor, Michael R. Bloomberg, published in January 2007 entitled "Sustaining New York's and the U.S.'s Global Financial Services Leadership" which concludes that, absent a shift in public policy, New York runs the risk of losing its status as a global financial market. The report underscores the need to remove impediments to financial services competitiveness, which impediments include a complex and unresponsive regulatory framework. Citing reduced barriers to the flow of capital on a global scale (on account, in part, of improved markets and technology abroad), the report highlights the risk of losing capital market activity to foreign markets due to the complexity and cost of doing business in the domestic market. Similarly, a report commissioned by the London Stock Exchange dated June 2006 entitled "The Cost of Capital: An International Comparison" highlights that a transparent, responsive and proportionate regulatory regime, along with supportive public policy, are among the leading factors that support and will continue to ensure London's leading position among capital markets, even in the face of increased global competition. We encourage the CSA to review the findings and recommendations cited in these reports as being informative, if not persuasive, as Canadian regulators take this opportunity to make significant changes to the prospectus regime.

Our comments are presented below in reference to the specific sections of NI 41-101, proposed Form 41-101F1, Form 41-101F2 and the Companion Policy to NI 41-101 to which they relate.

SECTION B. SPECIFIC COMMENTS ON PROPOSED NI 41-101

PART 1: DEFINITIONS AND INTERPRETATION

In respect of the definitions contained in NI 41-101, we suggest the following amendments and/or clarifications:

1. The definition of "business day" should be amended to take into consideration the fact that not all jurisdictions have the same statutory holidays. We understand this is meant to be clarified by s. 1.3 of the Companion Policy but would suggest that the definition in NI 41-101 be amended to avoid any ambiguity. We also submit that the interpretation in the Companion Policy would effectively penalize issuers in the jurisdiction that observed a statutory holiday in that it abridges the time period available to them while affording an extra day to all others. Where a statutory holiday in any jurisdiction falls during a relevant time period, the time period should be extended by one day in all jurisdictions to minimize the impact on those in the jurisdictions that are affected.

2. The definition of the term "derivative" is overly broad, and as drafted could be interpreted to include securities such as convertible debt, floating rate notes or exchangeable securities, etc. We do not believe that the definition is or should be intended to encompass these types of securities and would recommend that the term be more narrowly defined.

3. The term "executive officer" should be amended to include a full-time chair or vice-chair only.

4. The definition of "IPO venture issuer", should be clarified to set out clearly whether:

   (a) reference to "U.S marketplace" includes an issuer trading on the OTC Bulletin Board or the Nasdaq Small Cap Market; and

   (b) reference to "a marketplace outside of Canada" includes issuers listed and posted for trading on the Regulated Unofficial Market of the Frankfurt Stock Exchange or the Unofficial Regulated Market of the Berlin-Bremen Stock Exchange.

   Also, the market known as "OFEX" should be referred to by its new name, the PLUS MARKET.

5. In the definition of "junior issuer", the requirement to make adjustments for acquisitions should be limited to <u>significant</u> acquisitions or <u>significant</u> probable acquisitions of a business only, and additional guidance should be

given on how these adjustments are to be made, i.e. at the beginning of the relevant period or otherwise.

6. The term “material contract” is overly broad in that it references “any contract….” and should perhaps contain some guidance on how materiality is to be determined, for example, by reference to the effect of the contract on the market price or value of the securities of the issuer.

7. The term “principal security holder” should contain a carve-out or exception for underwriters and for those holding securities as collateral. The definition might also be better defined similar to the definition of “insider” in the *Securities Act* (Ontario) in that the ownership of 10% of more of the voting rights should be determined based on the voting rights attached to “all voting securities” of the reporting issuer as opposed to 10% of “any class” of voting securities as the definition currently reads.

8. In the definition of “probable reverse takeover” reference to “acquisition” should be changed to “probable reverse takeover”.

9. The definition of “special warrant” should be narrowed:

   (a) to apply under paragraph (a) of the definition to situations where the terms of the security oblige the issuer to file a prospectus to qualify the distribution <u>by the issuer</u>;

   (b) to apply under paragraph (b) of the definition to situations where the terms of the security entitle or require the holder to acquire another security without payment <u>from the issuer</u>; and

   (c) to clarify that it does not apply to secondary offerings.

The following comments are presented in reference to the section numbers of NI 41-101 to which they relate.

1. s. 1.5 – Query how this provision would apply to payments where the amount is discretionary. Also, credit support for subordinated debt should be allowed to be given on a subordinated basis.

PART 2: REQUIREMENTS FOR ALL PROSPECTUS DISTRIBUTIONS

1. s. 2.2(3) – Please clarify to indicate that in Quebec the documents must be in French, or two separate versions, one in French and one in English; as the provision currently reads it appears to imply that one document in both languages may have to be filed.

PART 4: FINANCIAL STATEMENTS AND RELATED DOCUMENTS IN A LONG FORM PROSPECTUS

1. s. 4.2(1) and (2) – Pro forma financial statements should be specifically carved out of these provisions as they are not audited.

2. s. 4.4(1) – This section should perhaps indicate what type of approval is required where the issuer does not have a board of directors.

3. s. 4.4(2) – This section should take into consideration delegation by other means than by constating documents of the fund, for example, through a contract or agreement such as a management agreement.

PART 5: CERTIFICATES

1. s. 5.5(2) – The requirement for the certificate to be signed by the individuals set out in section 5.5(2)(b), where the trustee is a company, should not apply to a regulated trust company acting as trustee of a trust as in those circumstances requiring the certificate to be signed by the CEO and CFO and by or on behalf of the board of directors of a trust company would be inappropriate.

2. s. 5.5(3) – The carve-out in section 5.5(3) should apply equally to any form of trust, including an income fund or a securitization trust, and the carve-out should apply where the delegation is contained in either the declaration of trust, trust indenture, trust agreement <u>or other agreement of the trust</u>. These types of trusts often have arrangements similar to those of investment funds whereby such authority is delegated to another entity, such as a management company, by way of the declaration of trust or other agreement, such as a management agreement.

3. s. 5.13– We submit that it would be unfair to impose prospectus liability on a party that is receiving proceeds as consideration for the sale of assets or repayment of debt. Imposing such a certification requirement will discourage parties who may be caught by this section from entering into bona fide sale or debt transactions on account of the liability attached to signing the certificate. These are parties for which there is no policy or other reason to impose a certification requirement or prospectus level liability. We are concerned that the requirements of Section 5.13 are overbroad. A goal of Section 5.13 would seem to be to better ensure full, true and plain disclosure relating to the "significant business". The certificate in question, however, would relate to the purchaser as a whole. Since a "significant business" can be substantially less than all of the business of the purchaser, this potentially exposes a vendor to substantially more liability than would seem to be warranted by the stated

goals of Section 5.13. A vendor who was willing to provide such a certificate would of necessity be placed in the very difficult position of having to do complete due diligence on the purchaser. This requirement would greatly complicate any proposed transaction and related financing, particularly any transaction where the purchaser proposed to do a “short-form” prospectus offering based on its existing public disclosure record. The need for a vendor to do due diligence would also, in our view, impose difficult burdens on potential purchasers, as they would be required to allow vendors to conduct thorough due diligence on their business and operations; a practical requirement that in our view many purchasers would be unwilling to comply with.

This issue is compounded by the fact that Section 5.13 would only apply to a transaction if the business was a “significant business” to the purchaser, and if the purchaser determined, for one reason or another, to finance the purchase price through a public equity offering. As a result, it is the characteristics of the purchaser that would be determinative; not the characteristics of the vendor. In an auction or other competitive situation, therefore, purchasers who would be subject to Section 5.13 would be at what we expect would be a disqualifying disadvantage, since these purchasers would have to in effect make allowance in the purchase price for the economic cost of the increased liability of the vendor under Section 5.13, assuming that the vendor would even be willing to accept this liability. This would in our view greatly impair the ability of Canadian public companies to make acquisitions. We also make the following specific comments with respect to this section:

(a) The definition of “control” for the purposes of section 5.13 (2)(a)(i) should be provided.

(b) The threshold of 20% for a party that does not control the issuer under section 5.13(2)(ii) is too low a threshold for the purposes of imposing certification requirements and prospectus level liability.

(c) The term “indirectly” as used in section 5.13(2)(b) is vague and therefore subject to interpretation and should be clearly defined.

(d) The determination of control as set out in section 5.13(3) is not appropriate given the policy reason for imposing certification requirements on substantial beneficiaries.

(e) If you intend to keep s. 5.13(3), to avoid problems similar with those encountered in interpreting s. 101 of the *Securities Act* (Ontario), we would recommend that if securities described in Section 5.13(3) are to be deemed to be outstanding (see s. 5.13(4)) then all such securities (regardless of whether they are held by the person or company referred to in s. 5.13(3)) should be deemed to be outstanding. Leaving the provision as it currently reads would result in an inaccurate calculation of concentration of ownership where, for example, the person or company held exchangeable or convertible securities which formed part of a larger group or pool of outstanding exchangeable or convertible securities. Including part of the issue in the numerator while not including the entire issue in the denominator would not result in an accurate calculation.

(f) Despite the Ontario carve-outs contained in section 5.13(5) and (6) and in Section 5.14 and 5.16, on account of section 130(1)(e) of the *Securities Act* (Ontario), anyone who signs a certificate will be subject to prospectus liability in Ontario as well. Practically, to avoid this application in Ontario the issuer would have to file one prospectus in Ontario and one prospectus in all other Canadian jurisdictions. This runs counter to the goal and stated purpose of streamlining the financing process, achieving greater national harmony and creating uniform rules for securities offerings. This also differentiates between investors living in different Canadian jurisdictions and creates additional regulatory burdens for issuers.

4. s. 5.14 – See our comments in paragraph 3(f) above.

5. s. 5.15(2) - This section should state that the certificate must be signed by the operating entity, and then specify who is to sign on behalf of the operating entity, since the obligation is that of the operating entity itself, and not of its CEO or CFO.

6. s. 5.16 – See our comments in paragraph 3(f) above.

PART 6: AMENDMENTS

1. s. 6.2 (d) – We would suggest that, similar to s. 6.2 (c), consent letters be required to be filed again with an amendment only where the original consent letters are no longer correct as of the date the amendment to the prospectus is filed.

2. s. 6.3 (a) and (b) – Use of the term “relates to an auditor’s comfort letter” is vague and subject to interpretation. We suggest this be revised to apply where the amendment “affects” the auditor’s comfort letter.

3. s. 6.6(2) – This provision should clearly state that an amendment is required to be filed only where "securities in addition to the securities previously disclosed… are to be distributed by the issuer".

4. s. 6.6(5) – This provision effectively seems to make a prospectus distribution illegal where a material change has occurred, even where the material change occurred on account of circumstances outside the control of the issuer and/or where the issuer is not aware of the material change while it is in the process of distribution. This may result in a disproportionate and unfair impact on underwriters and issuers which, we submit, is likely not the intended effect.

PART 7: NON-FIXED PRICE OFFERINGS AND REDUCTION OF OFFERING PRICE UNDER A FINAL PROSPECTUS

1. s. 7.2(1) – This section is tighter than under current rules as section 1.5 of NI 41-501 sets out requirements for non-fixed price distributions but there is no requirement to distribute at a fixed price. The current rules seem preferable. Query as well how this may affect the issuance of debt securities on an accrued interest basis.

PART 8: BEST EFFORTS DISTRIBUTIONS

2. S. 8.2 (b) – This section should perhaps state that funds should be returned to subscribers without any deductions or interest.

PART 9: REQUIREMENTS FOR FILING PROSPECTUS

1. General Comments

   While we appreciate the attempt to clarify what is meant to be excluded from contracts entered into "in the ordinary course of business" and by the term "necessary to understand the contract" we would submit that many of the types of contracts and provisions which NI 41-101 suggests must be disclosed will not be of interest or importance to securityholders and may be highly sensitive and confidential. Imposing these requirements will subject issuers to the additional cost and burden of ensuring that the documentation enables them to keep these contracts and/or provisions confidential. From the perspective of the average investor, the requirement in the annual information form to describe the material terms of material contracts should be enough to provide investors with the information they require about the business of the issuer. Disclosure of the nature contemplated by s.9.1(1) will only serve to aid competitive interests and may prove detrimental to issuers, particularly those in highly competitive and/or sensitive business sectors. Overall, this section seems to imply a much broader obligation with respect to disclosure of contracts than currently imposed by prospectus or continuous disclosure rules. We would recommend that the CSA undertake a cost-benefit analysis to determine if the imposition of such broader obligations is warranted.

2. s. 9.1(1)(a) - Reference in this section to "any contract to which …." is overly broad and as currently worded would include many types of contracts which we submit are in the ordinary course of business. Additionally, Employment contracts should be specifically excluded under Section 9.1(1)(a). We submit that these also are in the ordinary course, to the extent there are important disclosure features they likely are already required to be disclosed in the information circular (by the disclosure mandated under Form 51-102F5 and F6) and that disclosure of these may run contrary to applicable privacy and protection of personal information principles.

3. s. 9.1(1)(b) – This section is overly broad and as drafted would potentially include a number of contracts that will be subject to significant confidentiality restrictions and/or that would be otherwise detrimental to the issuer and/or its business if disclosed. The threshold of "…upon which the issuer's business depends to a material extent" is vague and subject to interpretation and should be clarified. In determining whether a contract or agreement requires disclosure, the first hurdle would be to determine if it is material. Under the proposed clarifications in s. 9.1(1)(a) through (f), many of these provisions introduce further thresholds that are undefined or do not have a common meaning. It is also unclear how these thresholds are to be interpreted in comparison to the initial materiality threshold. For example, please clarify how thresholds such as "major part", "upon which an issuer's business depends to a material extent" and "upon which an issuer's business is substantially dependent" may differ from one another and how they are to be interpreted in light of the fact that only "material contracts" are required to be disclosed.

4. s. 9.1(1)(c) – This provision should stipulate how an issuer is to account for a contract that contemplates non-cash consideration and whether fixed assets are to be valued at fair market value or book value.

5. s. 9.1(1)(d) and (e) - Reference to "any" credit agreement is overly broad and should be limited to "material credit agreements" only. The term administration agreement could encompass a wide range of agreements that are not of interest or important to securityholders, especially without any materiality threshold, and could require an issuer to file a large number of agreements that should not need to be disclosed to the public. This provision is also inconsistent with s. 9.1(2)(g) in that use of different terms in these provisions seems to imply that while "any credit agreement" is required to be

filed, only the financing covenants in "material financing or credit agreements" are prohibited from being redacted.

6. s. 9.1(2) –We would suggest adding change of control clauses as "provisions that are necessary to understand the contract".

7. s. 9.1(2)(a) – The name of a material customer or material supplier will, in many cases, be highly confidential information. We would submit that while the terms of an important contract may be of interest to securityholders the issuer should not have to disclose the name of the supplier or customer.

8. s. 9.1(2)(b) – We note that it may be difficult to determine or calculate the applicable interest rate of an agreement on account of complex formulas.

9. s. 9.1(2)(e) – Please clarify what type of disclosure regarding related party transactions is contemplated by this section.

10. s. 9.1(2)(f) – Please clarify what is meant by "material contingency" clauses. It may also be difficult to determine which clauses are "material" at the time of disclosure. For example, indemnification provisions may not be material at the time of entering into a contract, but may become material at a later point in time on account of a change in circumstances or underlying facts.

11. s.9.2(a)(iii)(B) – This provision states that provisions which do not contain "information relating to the issuer or its securities that would be necessary to understanding the contract" may be redacted. However, s. 9.1(2), which sets out a description of such provisions, is not limited by the additional limitation of "information relating to the issuer or its securities" that would be necessary to understanding the contract, and we submit that such provisions go well beyond information relating to the issuer or its securities.

12. s.9.2(b)(ii)(C) – Requiring each promoter of the issuer to deliver a PIF is an extremely tedious undertaking and will require a significant amount of additional paperwork and resources which, we submit, will not, in ordinary circumstances, amount to any added protection or information for investors. Also, a promoter may not be an individual.

13. s. 9.3(a)(xi)(b) –The undertaking should not be required of operating entities that are consolidated with the issuer.

14. s. 9.3(a)(xiii) – This provision should also be subject to the same definition of "non-voting security" as set out in s. 12.1(1).

15. s. 9.3(b)(ii) – This requirement should only apply where application has been made to list securities on a Canadian exchange. It may be difficult or

impossible to obtain such a communication from exchanges outside of Canada that do not have a practice of providing them.

PART 10: CONSENTS AND LICENSES, REGISTRATIONS AND APPROVALS

1. s. 10.2 – Consider whether this paragraph should specify that the trustee must return the funds without deduction or interest. This provision as drafted is also quite broad and may inadvertently cause significant problems for issuers that are not intended to be covered by this. For example, mining exploration or research/development companies may often be considered to be in more than one "business". On a narrow view, the business of a mining exploration company could be "exploration". If so, then a movement to "production" could be a movement to a new business. If an exploration company raises money to try and advance a project to production, then we query whether it would be raising money to fund a new business under this provision. If so, then it will almost never be able to do this by prospectus, since the timeframe for advancing a project is generally years, and they typically would not have all material licenses, etc., for the operation of the new business until late in the process. The same concern would apply to research and development companies (e.g., query about the treatment of funds raised under a prospectus to fund a clinical trial for a new medical product).

PART 11: OVER-ALLOCATION AND UNDERWRITERS

1. s. 11.1(3) – We note that this provision uses the term "closing of the distribution" where as other references in NI 41-101 are to the "completion of the distribution".

2. s. 11.3 (b) – Counting compensation securities together with underlying securities results in double counting the same securities as effectively once the compensation security is exercised and the underlying security is issued the compensation security will not longer exist. As well, comparing compensation securities and imposing a limit on such securities based on a percentage of the securities issued in the base offering will be difficult to determine if the securities are in different forms, such as warrants or other exchangeable or convertible securities.

PART 12: RESTRICTED SECURITIES

1. s. 12.1(1) - Under the definition of "restricted security reorganization" we would suggest carving-out an increase in the restricted class of securities itself from the list of items that will be considered a restricted security reorganization under paragraph (b), specifically subparagraph (b)(ii). We

suggest this provision should be similar to subparagraph (b)(i) under the definition of "reorganization" in OSC Rule 56-501 *Restricted Shares*.

2. s. 12.1(1) - Under the definition of "restricted voting security", in paragraph (a), after permitted or prescribed by statute we would recommend adding, "or regulation or policy" which would take into account, for example, a CRTC directive.

3. s. 12.1(1) - Under the definition of "restricted voting security" and s. 12.1(2), in paragraph (b), the reference to securities that may be "voted" should conform to the wording of "voted or owned" in s. 12.1(2)(b).

4. s. 12.1(2)(c) – We would suggest changing the phrase "…imposed by any law <u>governing</u> the…" to read "…imposed by any law <u>applicable to</u> the…" for clarity.

5. Section 12.3(1)(a) - We suggest that:

   (a) the reference in the first line should be to prior majority approval of the "voting" security holders;

   (b) the phrase "in accordance with applicable law" does not indicate whether it would include requirements imposed by stock exchanges outside of law; and

   (c) the term "control person" should be defined.

6. Section 12.3(1)(b)(i) – The phrase "in accordance with applicable law" does not indicate whether it would include requirements imposed by stock exchanges outside of law.

7. Section 12.3(1)(b) (iii) – The term "or business reason" should be deleted so the sentence is consistent to apply to no <u>purposes</u> for the creation of the restricted securities were disclosed that are inconsistent with the <u>purposes</u> of the distribution.

8. Section 12.3(2)(a) and (c) – Similar to subparagraph 12.3(1)(b), both (a) and (c) should also be limited by "to the extent known by the issuer after reasonable inquiry."

PART 13 ADVERTISING AND MARKETING IN CONNECTION WITH PROSPECTUS OFFERINGS

1. s. 13.1(1) and s. 13.2(1) – Reference to communication that is "permitted or not prohibited" is vague and unclear; we note in this respect that it also not clear

as to exactly what type of information is permitted or not prohibited under s. 65(2)(a) of the *Securities Act* (Ontario).

2. s. 13.1(1)(2) and s. s. 13.2(2) – We would suggest stating that the language be set out in "prominent bold face type as large as that used generally in the body …." in order to clarify that the size of text used in headings is not contemplated under these requirements.

3. s.13.3 - This section should clarify that it applies to an "advertisement used in connection with a prospectus offering during a waiting period".

PART 14 CUSTODIANSHIP OF PORTFOLIO ASSETS

1. This part (Part 14) should state that it applies only to investment funds that are reporting issuers.

2. s. 14.1(1) appears to limit the application of s. 14.2 to the custodian of an investment fund that files a long form prospectus using Form 41-101F2. It is not clear how the remaining provisions of this part will apply to investment funds that have filed a prospectus under another form or investment funds that are not reporting issuers. Please clarify whether investment funds that have not filed a long form prospectus using Form 41-101F2 (such as those that are currently reporting issuers) will be exempt from these provisions. If these requirements are to apply to such investment funds, please provide transition provisions as compliance with certain provisions may require significant changes to current practices and processes as well as to pre-existing contracts.

PART 15 DOCUMENTS INCORPORATED BY REFERENCE BY INVESTMENT FUNDS

1. s. 15.1(2) and s. 15.1(4) should be worded similarly to s. 15.1(1) and (3) in that they should apply only to an investment fund that is in continuous distribution, as the applicable requirements meant to be imposed by those provisions only apply to such funds.

PART 17 LAPSE DATE

1. s. 17.2(2) – This provision should refer to " with reference to the distribution of a security that has been qualified under a prospectus, the date that is …."

2. s. 17.2(4) – In light of the interpretation of the term "prospectus" provided under s. 1.2(1), we submit that s. 17.2(4)(b) and (c) should expressly state whether the reference is to a preliminary prospectus or a final prospectus.

PART 19 EXEMPTION

1. s. 19.3(2)(a)(ii) – We recommend that in the circumstances described in this subparagraph the letter and acknowledgement be required to be filed on SEDAR in the interests of disclosure.

PART 20 TRANSITION, REPEAL AND EFFECTIVE DATE

1. Please provide transition provisions for all areas to be governed by NI 41-101 in addition to those referred to in s. 20.1 For example, please clarify how NI 41-101 would apply to a distribution that was qualified by a prospectus prior to NI 41-101 becoming effective that has not been completed at the time NI 41-101 comes into force or to provisions relating to custodianship of portfolio assets, etc.

APPENDIX A PERSONAL INFORMATION FORM

1. We submit that 10 years of residential address history is an onerous requirement for many people (especially younger people in their student year) who may move frequently and that this information may not be readily available to them. We would suggest a shorter period balancing the need or importance of this information against the significant difficulty associated with tracking it.

2. We note that the requirement to have a personal information form notarized or commissioned may not be feasible for short form or other offerings which are completed on a time sensitive basis.

3. We would recommend not requiring PIFs generally, as they should only be required for IPOs or where there is other good reason for the regulator to need them.

SECTION C: SPECIFIC COMMENTS ON FORM 41-101F1 – INFORMATION REQUIRED IN A PROSPECTUS

1. General Instructions, paragraph (9) – Please clarify how significance is to be determined as it is used in this paragraph.

2. S. 1.1 and 1.2 – We submit that the requirement should be to state language substantially similar to that which is set out in these provisions (as opposed to requiring the exact language) **[to accommodate multi-national and/or cross border offerings.]**

3. s. 1.4(2) – This section would, if it applies to securities acquired in the secondary market, and an interim misrepresentation results, impose damages

or rescission rights against an issuer who had received no proceeds. This seems inappropriate.

4. s. 1.1 – We note that Form 41-501F1 has a specific requirement regarding disclosure of underwriter compensation options under s. 1.4(8), and that there appears to be no such equivalent in Form 41-101F1.

5. s. 1.7 – We generally disagree with the proposed new requirement to include a bona fide price range in the preliminary prospectus. While there is a similar requirement in the U.S., in the U.S. a number of amendments are typically filed and a price range it typically not inserted until later in the process. Query how issuers would be able to comply with this unless a similar process (i.e. of filing a number of amendments to the preliminary) is contemplated, since presumably the only way that a "bona fide" price range can be established is if some degree of marketing has been done. However, under our prospectus rules pre-marketing is not permitted. Typically, while issuers and underwriters will have an idea of what they are going to price at, they will not know what the "bona fide" range is until they have taken the offering on the road. Disclosure of a price range prior to this will be meaningless and may result in issuers and underwriters tipping their hand in advance, thereby reducing their bargaining strength when it comes to the actual pricing of the deal. If the price range is provided after a market check (i.e., as an amendment instead of in the preliminary), then this concern is mitigated. In such circumstances we question however whether any benefit would result for investors. This would result in higher costs and more time (as issuers would be required to print and re-circulate the amendment(s)) without any tangible benefit to investors. If the CSA are intending on including this type of requirement we urge that a cost-benefit analysis be undertaking to ensure that the added costs are justified.

6. s. 1.9(1) –This section should clarify whether the requirement is to disclose Canadian exchanges and quotation systems only or otherwise.

7. s. 1.9(3) – This section should be similar to s. 1.7(3) of Form 41-501F1 in that it should also contemplate the required disclosure where no market for the securities currently exists.

8. s. 1.11(6):

   (a) The second column should read "maximum size or number of securities "available" and not "held".

   (b) In the first column, disclosure relating to any option granted by the issuer or insider of the issuer, total securities under option and other compensation securities should be limited to those that are issuable "to the underwriters" and this should be clarified in the column headings themselves.

9. s. 1.13(1) – As per s. 2.3(2) of OSC Policy 56-501 *Restricted Shares*, and s. 12.2(1) the issuer should be able to describe the restricted securities by the term used in the constating documents to the extent it differs from the required restricted security term, at least once on the prospectus.

10. What is the "source" of the financial information in s. 3.1(2)(5).

11. s. 3.1(3) – This provision should also account for information that is included by reference in the prospectus.

12. s. 4.2(2)(c) – This provision should also account for subsidiaries that may not be corporate entities by also referring to the jurisdiction pursuant to which they may be "formed or organized."

13. s. 4.2(4) – The carve-outs contained in this provision for certain subsidiaries should not only apply if the applicable thresholds are satisfied as at the most recent financial year end but should also be available where, prior to filing the prospectus, there has been a restructuring or other transaction that would result in a subsidiary not being required to be disclosed if these thresholds are calculated as of a more recent date.

14. s. 5.1(2) and (3) – The disclosure required by these provisions should be limited to the extent it is material.

15. s. 5.2(3) – In our view, issuers should not be required to disclose forward-looking information of the nature that is contemplated by this provision unless defences for forward-looking disclosure, similar to those available for documents that are not prospectuses, are made available. This provision in effect forces issuers to disclose forward-looking information, which by definition is speculative, without affording them the appropriate defences.

16. s. 5.3(1), s.5.4 and s. 5.5(1) – The disclosure required by these provisions should only be required where the interests of the issuer are material.

17. s. 6.2(b)(i) – The disclosure required by this provision, in the final prospectus only, should be the "estimated" net proceeds of the securities offered.

18. s. 6.2(b)(ii) – If the prospectus if filed in the beginning of the month, for example, on the first or second day of the month, requiring disclosure as at the month end will in most cases be information that is too recent and is not readily available.

19. s. 6.3(1)(a) and (b) – Reference in this section should be to the purposes for which the net proceeds and the funds available "are expected to" be used.

20. s. 6.5(1) – We question whether the disclosure contemplated by this section is meant to include securities where the assets consist of securities and suggest this be clarified in the provision.

21. s. 6.9 – The disclosure required by this section should be limited to apply to the extent it is applicable. It should not apply to most issuers.

22. s. 8.4(1) – We question whether this disclosure is appropriate or necessary where the offering consists of securities that are not voting or equity securities, such as non-convertible debt securities, preferred shares asset-based securities, etc.

23. s. 8.8(1) – We note that there is no definition of the term "significant equity investee" in either NI 41-101 or the Form.

24. s. 10.5 – We note that the disclosure contemplated by this provision apparently creates a legal remedy for a holder of special warrants in certain circumstances and question whether the CSA have the jurisdiction to create legal remedies through disclosure required in the prospectus form.

25. s. 10.9 – This section should require disclosure only where the issuer "has asked for and has received" any other kind of rating, including a provisional rating, so that the issuer is not responsible for disclosure of ratings which are unsolicited and/or of which it may not be aware.

26. s. 12.1(1) – Consistent with s. 12.1 of Form 41-501F1, paragraphs (a) through (e) should clearly state that the disclosure is required "without naming" the individuals.

27. s. 13.1 – The disclosure required by this provision should expressly carve-out disclosure regarding prior sales of compensation securities, such as stock options. While we do not believe this section is intended to include compensation securities, however, this is not clear on the plain reading of the wording.

28. s. 13.1 – The disclosure should be required of the prices at which the securities have been sold and the number of securities sold at each price, not every trade.

29. s. 13.1 – Similar to s. 13.1 of Form 41-501F1, s. 13.1(a) should include reference to securities that are to be sold by the issuer or the selling securityholder.

30. s. 14.1(1) –Contractual restrictions should only be required to be disclosed with respect to the securities offered by the prospectus and imposed by the issuer or selling securityholder. We also suggest that the contractual restrictions on transfer required to be disclosed should expressly carve-out certain restrictions, such as those existing under pledges made to lenders.

31. s. 16.3 – This disclosure should be limited to existing or potential conflicts of interest which are known to the issuer.

32. 16.4(a) – We suggest that the age of each member of management should be kept confidential and not be required disclosure and question whether such disclosure would be appropriate under privacy and protection of personal information principles.

33. s. 16.4 – Instructions – We suggest that the instructions should clarify that disclosure is required only of "executive directors", and that including employees and contractors is well beyond what is commonly understood to be the management group. We suggest eliminating reference to "entrepreneur" in the instructions as the principal occupation of some individuals will in fact be best described as "entrepreneur". This restriction in the instructions will cause difficulties for those people whose occupation is best described in this manner.

34. Item 19 – We submit that it is not appropriate to require corporate governance and audit committee disclosure in a prospectus and to subject all of those signing the certificate (e.g. underwriters, etc.) in the prospectus to prospectus liability for such disclosure.

35. s. 20.6 – The anticipated size of any over-allocation position and the effect on the price of securities may not be known at the time that this disclosure is required to be included in the prospectus.

36. s. 20.7 (b) – This provision should state that "the trustee must return the funds to subscribers <u>without deduction</u>" and perhaps also without interest.

37. s. 20.7 – This is inappropriate. Issuers should be able to apply funds to seek required approvals (e.g. a mining permit). 90 days may also be too short. See also our similar comment above under Part 10.

38. s. 20.10 – The term "conditional listing approval" is a Canadian term. Query how it will be applied to foreign markets.

39. s. 21.1(2) – The risk disclosure contemplated by this provision will be difficult for trust and partnership issuers to comply with, as issues relating to trust beneficiary and partnership liability are unclear in some jurisdictions.

40. s. 22.1(1) – The comparative disclosure currently relates to a person or company that has been a promoter of the issuer or subsidiary of the issuer within the past 2 years. We do not see any need to expand this requirement and suggest that it should remain at 2 years instead of 3 years. This information may not be readily available or be able to be confirmed by the issuer where it predates 2 years prior to filing the prospectus.

41. s. 22.1(1) – If it is to be maintained, the disclosure relating to a substantial beneficiary of the offering should contain a carve-out for Ontario as a certification of a substantial beneficiary is not required in Ontario.

42. s. 22.1(1) (d) – This disclosure required should be for the 2 years prior to the date of the preliminary prospectus, for the same reasons set out in comment 39 above.

43. s. 22.1(1) (d) (ii) – The disclosure required by this section should be required to be included only to the extent it is applicable.

44. s. 22.1(4)(b) – This section should expressly exclude penalties or sanctions imposed by securities regulatory authorities relating to late SEDI filings. We do not believe that these are meant to be caught by the disclosure under this provision, but may be required upon a plain reading of it.

45. s. 23.1(3) – The term "current" assets is limiting and a bit random (i.e. it varies on a daily basis), and we suggest reference should be to assets.

46. s. 23.2 – The disclosure required by this provision should only be required to the extent it is material (see also comment #43 above).

47. s. 24.1 – We suggest amending the wording to provide that the information required to be disclosed is that which has materially affected "or is reasonably expected to materially affect…" in both instances in this provision as this issuer will not be in a position to know what will materially affect the company or a subsidiary.

48. s. 24.2 – We question whether this disclosure is necessary as it would be included in s. 1.4.

49. s. 27.1 – The disclosure required by this provision should be limited to material contracts entered into in the 2 years immediately proceeding the date of the preliminary prospectus.

50. s. 31.1 – This section should require an issuer to list <u>all provisions</u> of the Instrument and Form 41-101F2 <u>or Form 41-10F2, as applicable,</u> in respect of which the issuer has been granted an exemption. We also query whether the

issuer would be required to list exemptions granted to other parties governed by the instrument, such as underwriters, custodians, substantial beneficiaries, etc.

51. s. 34.2(a) – We note that in some cases subordinated indebtedness may be secured by a subordinated guarantee. We do not believe that these circumstances are meant to be excluded by reference to "full and unconditional credit support" in this provision, however, that is not clear upon a plain reading of the provision.

SECTION D: FORM 41-101F2

1. We re-iterate of the comments made on Form 41-101F1 to the extent the provisions of Form 41-101F2 are the same.

2. s. 40.2 – Similar to s. 40.1 this provision should also be limited to apply to "an investment fund that is in continuous distributions, except for a scholarship plan…."

SECTION E: SPECIFIC COMMENTS ON THE COMPANION POLICY TO NI 41-101

1. s. 2.3 – We note that reference to "controlling shareholder" in the third bullet of the second full paragraph should be to "controlling person".

2. s. 3.2 – An issuer that has filed a confidential material change report prior to filing a prospectus should be able to file a prospectus once the material change is generally disclosed <u>or the decision to implement the change has been rejected and the issuer has so notified the regulator of each jurisdiction where the confidential material change report was filed.</u> This is consistent with the guidance provided later in the same paragraph where a confidential material change report is filed during the distribution period of securities under prospectus.

3. s. 3.6(2) – We submit that it is not appropriate to require disclosure of the types of plans and arrangements listed in this section on account of privacy concerns and in order to protect the personal information of individuals.

Thank you for the opportunity to comment on these proposals.

Submitted on behalf of members of the Securities Practice Group at Stikeman Elliott LLP by,

Simon A. Romano

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April 11, 2007

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

Patricia Leeson, Co-Chair of the CSA's Prospectus Systems Committee
Alberta Securities Commission
4th Floor, 300 – 5th Avenue SW
Calgary, AB T2P 3C4

Re: Notice and Request for Comment dated December 21, 2006 (the "Notice") on Proposed National Instrument 41-101 General Prospectus Requirements and Companion Policy 41-101 CP General Prospectus Requirements

Please accept this letter as our response relating to proposed National Instrument 41-101 (the "**Proposed Rule**") and the corresponding Companion Policy 41-101 (the "**Proposed Companion Policy**") outlined in the Notice.

Nexen Inc. is Canada's fourth largest independent oil and gas company headquartered in Calgary, Alberta with operations throughout the globe and a market capitalization of approximately CDN $18 billion. Our shares are listed for trading on both the Toronto Stock Exchange and New York Stock Exchange under the symbol "NXY".

In general, we welcome all attempts to harmonize the rules among the various jurisdictions applicable to long form prospectus offerings. We are concerned, however, with the requirement, in all provinces except Ontario, for a certificate from "substantial beneficiaries" of a prospectus offering (the "Certificate Requirement") to be filed within a previous year of a significant acquisition or where a prospectus proceeds will be used to acquire a significant business or assets.

We are concerned with the potential impact of this particular aspect of Proposed Rule and the negative consequences it may, unintentionally, have on future transactions involving the sale of oil and gas properties. In many instances, large cap majors such as Nexen dispose of non-core assets to junior issuers. What may be material to a junior issuer is likely not to be material for Nexen. In addition, in a typical transaction whereby a nexen

company such as Nexen disposes of oil and gas properties to a junior company, along with the purchase and sale, we provide all documents and records in our possession relating to the properties. If the purchaser was then to conduct a public offering, we would no longer be in possession of the materials and it would require significant due diligence on our part to ensure accurate disclosure by the purchaser seeking to raise capital. It is our submission that this Proposed Rule could result in a significantly reduced incentive for companies like ours to sell assets to junior issuers which may, in turn, have a trickle down effect on junior issuers in the oil and gas industry.

We also have concerns that the Certificate Requirement significantly alters the legal risks typically associated with a purchase and sale transaction that may translate into higher purchase prices, increased due diligence costs and significant delays of subsequent offerings by purchasers.

In light of the above, we would request that the Canadian Securities Administrators reconsider the implementation of section 5.13 of the Proposed Rule as it is our submission that such a rule will have unintended negative consequences on future transactions and potentially impair market efficiency and curtail dispositions by major oil companies to junior issuers.

Yours truly,

NEXEN INC.

John B. McWilliams, Q.C.
Senior Vice President, General Counsel
and Secretary

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THE INVESTMENT FUNDS INSTITUTE OF CANADA
L'INSTITUT DES FONDS D'INVESTISSEMENT DU CANADA
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April 11, 2007

Sent via Email: patricia.leeson@seccom.ab.ca; hfranken@osc.gov.on.ca; consultation-en-cours@autorite.qc.ca;

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

In care of:

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Dear Sirs/Mesdames:

Re: Proposed NI 41-101 *General Prospectus Requirements and Related Amendments*

We are writing to provide the comments of the Members of The Investment Funds Institute of Canada ("IFIC")[1] on the CSA Notice, on Proposed National Instrument 41-

[1] Founded in 1962, IFIC is the national association of the Canadian investment funds industry. Membership comprises mutual fund management companies, retail distributors and affiliates from the

101 *General Prospectus Requirements and Related Amendments* and the accompanying Appendices describing the proposed amendments to related instruments, published for public comment by the Canadian Securities Administrators ("CSA") on December 22, 2006 (respectively, the "Notice" and "Proposed Instrument"). We understand that several of our Members have also submitted individual comment letters.

General Comments:

We applaud the CSA's efforts, reflected in the Proposed Instrument, to harmonize the prospectus disclosure rules and requirements across all jurisdictions of Canada and, where appropriate, across various reporting issuers. Of specific value to our Members is the intent of the Proposed Instrument to make NI 81-101 a complete, stand-alone rule with respect to prospectus disclosure for mutual funds, eliminating the current need to refer to multiple instruments for such rules. [But we shouldn't treat them the same if it makes no sense to treat them the same.]

We recognize that the Proposed Instrument deals primarily with long and short-form prospectus issuers (non-NI 81-102 mutual funds). Appendix I of the Proposed Instrument enumerates specific amendments that are proposed to be made to NI 81-101 *Mutual Fund Prospectus Disclosure* and related Forms F1 *Contents of Simplified Prospectus* and F2 *Contents of Annual Information Form*. Our comments are limited to the implications of these specific amendments and we do not comment on those aspects of the proposals that do not apply to NI 81-102 mutual funds.

Our Members have several, significant concerns with the Proposed Instrument. These concerns include:

(a) the lack of true harmonization achieved among Canadian jurisdictions;
(b) the imposition of impractical and redundant requirements concerning financial statements; and
(c) the imposition of proposed requirements that our Members believe to be inappropriate in the context of mutual funds.

In addition, there are some provisions that are unclear, on which our Members request clarification, as well as some technical drafting issues. These concerns are discussed below.

Harmonization among Canadian jurisdictions:

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legal, accounting and other professions from across Canada, who work in an open, consultative process to ensure all views are considered and met. Members' assets under administration – the amount Canadians have invested in the mutual fund industry – currently stand at over $679 billion.

Several proposed requirements in Appendix I, namely certificate, lapse date, amendment, statement of rights, obligation to deliver prospectus during waiting period and other requirements, are expressly stated to apply to all jurisdictions *except* Ontario. The rationale is that Ontario already has similar provisions within the Securities Act (Ontario).

We note that many Canadian jurisdictions, other than Ontario, already currently have such provisions in their legislation [examples are BC, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island, Quebec and Saskatchewan in the case of amendments]. Nevertheless, all of these jurisdictions are agreeing to adopt the Proposed Instrument to replace their legislative provisions.

Without Ontario's committed participation, taking into account the size of the industry resident in Ontario, true harmonization is not achieved, and therefore the benefits of harmonization will not be realized. We believe it is imperative the Ontario participates by amending its legislation in line with all other jurisdictions.

Imposition of Redundant and Impractical Requirements:

Proposed section 2.6 expressly confirms that financial statements, other than interim financial statements, included in or incorporated by reference in a simplified prospectus must meet the audit requirements in Part 2 of National Instrument 81-106. Proposed section 2.8 requires, as a precondition to the filing of a simplified prospectus, that each financial statement and each Management Report of Fund Performance included in or incorporated by reference in the simplified prospectus be approved by management, also as required by Part 2 of NI 81-106.

Proposed section 2.7 requires any unaudited interim financial statements included or incorporated by reference in a simplified prospectus to be reviewed in accordance with the relevant standards set out in the CICA Handbook for a review of interim financial statements by the fund's auditor. Unlike the requirements in proposed sections 2.6 and 2.8, which harmonize with an existing requirement in NI 81-106, the review of such interim financial statements is a significant deviation from the requirements of NI 81-106.

Section 2.12 of NI 81-106 currently requires that a fund's interim financial statements, if not reviewed by an auditor, be accompanied by a notice advising that they have not been so reviewed. When such statements have been so reviewed, and the auditor provides an unqualified report, NI 81-106 currently requires no positive statement to be provided (section 3.4). The proposal in section 2.7 is therefore more burdensome than, and goes far beyond the intent of, the current requirement. Other than imposing consistent requirements on mutual funds as those in place for certain other issuers, no satisfactory policy basis has been provided for this significant change to current requirements.

In addition, this proposal imposes significant timing difficulties for managers, possibly impairing their ability to comply with their obligations under NI 81-106. Mutual funds have 60 days in which to prepare, file and deliver their interim statements and their Management Reports of Fund Performance. Our audit firm members advise it will be difficult to complete the work required by the proposed review requirement within this 60 day period, especially as the work will be required to be performed at a time when many other fund complexes are in the midst of this same process. This can only result in significantly higher auditor costs, costs which will be borne by fund investors, with little indication of any added tangible benefit to those investors. In light of these concerns and difficulties, and the assurances concerning financial statements already afforded by the provisions in NI 81-106, we encourage the CSA not to proceed with the requirement proposed in section 2.7 with respect to mutual funds.

Several of our Members did discuss these concerns with Mark Mulima of the OSC in a conference call on March 23. We had initially believed this new requirement to have been an unanticipated result of the CSA's desire to harmonize the disclosure among non-NI 81-102 funds. Mr. Mulima assured us that the application of this requirement to mutual funds is intentional. To ensure the CSA receives good empirical data on the impact of this requirement, Mr. Mulima has agreed to allow us to file a supplementary letter to demonstrate the real impact of this provision on our Members' funds.

Another new requirement, which we believe to be redundant is contained in proposed section 2.3(1)(a) which would require, with respect to corporate funds, the filing on SEDAR of the articles of incorporation, bylaws and any amendments to these documents. Initially, we believe it is inappropriate to characterize articles of incorporation as "material contracts" - they are part of the constating documents of a corporate fund. In any event, articles of incorporation are already in the public domain, as they must be filed under the corporate laws of the applicable jurisdiction upon creation of such a fund. As well, the annual information form already must contain disclosure of mandated essential information about the formation of the fund. We see no additional benefit in a requirement to file another copy of the articles for corporate mutual funds on SEDAR. If the concern is that an investor cannot otherwise locate a copy of those materials, we believe it would be much more useful to investors who wish such information to be provided a link or reference to the corporate constating documents of a fund, rather than duplicating the filings on SEDAR.

Imposition of Inappropriate Requirements for Mutual Funds:

Proposed section 2.2.(4), regarding amendments to a preliminary simplified prospectus, is not applicable in the context of most mutual funds as they are typically not sold on the basis of a preliminary prospectus, although we acknowledge it is simply putting into rule what is already in the legislation in many jurisdictions.

Very often the manager/promoter will make changes in the proposed structure or operations or objectives of a new fund between the time of filing of a preliminary and final prospectus. The industry practice is not to file an amendment to the preliminary prospectus, but rather to file final materials with the changes.

The proposed rule should accommodate the ways in which mutual funds are offered, not simply track the requirements for prospectuses of other issuers, for which the filing process is often very different than for mutual funds. Non-mutual funds securities are often marketed on the strength of a preliminary prospectus, whereas mutual fund units are rarely if ever marketed in that manner. Accordingly, we believe there should be no requirement to file an amendment to a preliminary prospectus unless the fund actually is marketing its units based on the preliminary prospectus and annual information form.

Depending on the degree of change, the manager will sometimes pre-file a blacklined version, highlighting the changes made to the preliminary prospectus, in order to bring changes to the attention of the regulators before filing the final versions, which will always include a full blacklined copy highlighting all changes that have been made to the preliminary document. Again, Provided fund units are not being sold on the basis of the preliminary prospectus, there are no adverse consequences to (as no one is affected by) such intervening changes, even if the changes might theoretically be considered "material [adverse]" (for example, a change in the fees to be charged to the fund which could be considered important in making an investment decision).

The proposed rule should not reinforce provisions which are inappropriate in the mutual fund context, just to ensure consistency with the requirements for other issuers.

Similarly, several of the proposed new filing requirements for supporting documents are not applicable to mutual funds, and appear to have been included because they have been added as requirements for non-mutual funds. Specifically, subsections 2.3(1)(a)(iii)(C) - requiring the filing of securityholder or voting trust agreements - and 2.3(1)(a)(iii)(E) – requiring the filing of “any other contract of the issuer or a subsidiary that … materially … affects the rights or obligations of the issuer’s securityholders generally” – have no practical application to the mutual fund context. We prefer the current broad requirement to file “any other supporting documents”; we believe it works correctly, and the greater specificity in the proposals adds little and causes such inapplicable references as above. Once again we recommend that the requirements in NI 81-101 not mirror word-for-word similar requirements for non-mutual fund issuers simply to apply consistency, when the context of those requirements would not arise, and therefore the requirements would never be applicable, in the fund context.

Issues Requiring Clarification:

1. Proposed subsections 2.3(1)(b)(ii), 2.3(2)(b)(iv), 2.3(3)(b)(iii), 2.3(4)(b)(iii) and 2.3(5)(b)(i) all make reference to the phrase “personal information of the mutual fund”.

There is no definition provided in the current rule or the Proposed Instrument for the phrase “personal information of the mutual fund”. For greater certainty as to what is intended here, we recommend that a clear definition be provided.

2. In proposed section 2.5, it is not clear what is meant by the phrase at the beginning of subsection 2.5(3), "Subject to subsection (2)”.

3. In subsection 2.5(4) there is a reference to "previous prospectus" which we believe should be a reference to "previous simplified prospectus". Similarly, the reference in subsection 2.5(6) to "extension granted under subsection (5)” should be changed to read “extension granted under subsection (6)”. Finally in this section, we believe that subsection 2.5(7) should make reference to a "mutual fund" and not a "reporting issuer". Although the proposed language tracks section 62 of the Securities Act (Ontario), it should be adapted to the mutual fund rules.

4. With respect to the proposed amendments to NI 81-101CP we believe that a fund which has previously offered its securities under a simplified prospectus should be able to add classes/series of securities of the fund by inclusion in another prospectus of the same fund manager (as some fund managers have multiple prospectuses for certain of their funds) by way of an amendment to the second prospectus without having to file a preliminary simplified prospectus for that new class/series. The fund itself will have been previously qualified, just not under the same prospectus. In this situation current practice is more efficient and should be maintained.

5. With respect to the proposed amendments to NI 43-201, the proposed language for the reminder in Item 10.9 is essentially a requirement to cease distribution until a receipt for an amendment has been issued. This change will be administratively very difficult for mutual funds which are in continuous distribution. The industry experience is that some regulators who require a cessation of distributions are unwilling to review pre-filed amendments so as to ensure that a receipt can be issued on the same day as the documents are filed. We would suggest that in place of the proposed language which is unworkable in a mutual fund context, the CSA has an opportunity at this time to change the rule so it properly applies to the mutual fund context.

Technical Drafting Issues:

1. In the proposed amendments to NI 81-101, rather than making reference throughout to “Appendix A to NI 41-101”, we suggest it would be clearer to simply attach Appendix A to NI 41-101 as an appendix to NI 81-101?

2. In proposed section 6.3 we submit that the references should correctly be to "preliminary simplified prospectus”, “simplified prospectus” and “amendment to the simplified prospectus" (and perhaps "amendment to the annual information form") rather than the current language in the proposal, namely "a prospectus or an amendment to a

prospectus" to make this section consistent with all other references in 81-102. These changes would also recognize the scenario that there might only be an amendment to an annual information form.

3. In the proposed provisions in Item 19(1)(c) concerning the annual information form, we believe that the reference in the fourth line to "simplified prospectus" should be to the "amended and restated simplified prospectus".

4. With respect to the proposal concerning OSC Rule 81-101, in subsection 3.1(1) we recommend that this section also refer to the certificate requirements in the proposed new NI 81-101.

…*…*…*…

We thank you providing our Members with the opportunity to comment on the Proposed Instrument. Please contact the undersigned directly or Ralf Hensel, Senior Counsel, at (416) 309-2314 or rhensel@ific.ca, should you have any questions or wish to discuss these comments.

Yours truly,

THE INVESTMENT FUNDS INSTITUTE OF CANADA

"ORIGINAL SIGNED BY JOANNE DE LAURENTIIS"

By: Joanne De Laurentiis
President & Chief Executive Officer

JDL/rh

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April 16, 2007

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

c/o Ms. Heidi Franken
Co-Chair of the CSA's Prospectus Systems Committee
Ontario Securities Commission
20 Queen Street West
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Dear Sirs/Mesdames,

Re: Proposed Amendments to National Instrument 41-101,
CSA Notice and Request for Comments dated December 21, 2006

The Canadian Bankers Association ("CBA") appreciates this opportunity to provide comments on the proposed amendments National Instrument 41-101 - Prospectus Requirements and related amendments. Our comments focus on three provisions: (1) section 5.13, which introduces a certificate requirement for "substantial beneficiaries of the offering"; (2) Material Contracts, and (3) the definition of "novel" in section 1.1 of NI 44-102 - Shelf Distributions

"Substantial Beneficiaries Of The Offering"
The amendments would appear to require persons and companies that are "substantial beneficiaries of the offering", as defined in section 5.13, to certify that the prospectus (and all material incorporated by reference in the prospectus) "constitutes full, true and plain disclosure of all material facts relating to the securities offered."

We are particularly concerned that the definition of "substantial beneficiaries of the offering" could unfairly subject banks to the certificate requirement in circumstances where issuers use the proceeds of an offering to repay a bank loan. It is conceivable that 20% of the voting shares of an issuer could be held by a subsidiary of a bank, and that the bank could receive 20% or more of the proceeds of an offering from an issuer as repayment for a debt held by such bank. It is also conceivable that, due to deemed beneficial ownership of securities owned by affiliates, the threshold level of holdings may represent aggregated holdings of a number of separate entities within the financial institution's group and reflect a variety of diverse activities and purposes, including among others, merchant banking, passive investment, and hedging activity. It appears that in these circumstances, the bank or affiliate (it is not clear which entity from section 5.13) would be required to sign a prospectus certificate as a "significant beneficiary of the offering" even though this was not contemplated when the bank initially provided the loan to the issuer.

If the rule is intended to require the bank or its subsidiaries to sign the prospectus certificate in such circumstances, we respectfully submit that neither party would be in a position to certify that the prospectus contained "full, true and plain disclosure". As a lender, in the case of the bank, or as a securities holder or lender, in the case of the subsidiary, such party would not be in possession of the requisite knowledge of operations and affairs to enable it to sign such a certificate. Such parties would be required to undertake significant due diligence on the issuer in order to be in a position to sign such a certificate. Consequently, such a provision would necessarily have a significant negative impact on the cost and availability of financing.

We submit that the definition of "substantial beneficiary of the offering" is overly broad and potentially places unfair burdens on banks, particularly in the circumstances that we have outlined. As well, the inclusion of past holdings of up to a year prior, which are no longer held, is overly broad.

We believe that securities legislation correctly places the principal burdens of prospectus disclosure on issuers and selling security-holders, and it would not be appropriate to extend the same burdens on banks through the proposed "substantial beneficiary of the offering" certificate requirement. While banks do have access to a certain level of information with respect to their borrower clients, the amount of information provided by a borrower and the manner in which it is reviewed is principally driven by the bank's credit and legal analysis, and is often not as comprehensive as a due diligence investigation that would be conducted in connection with a prospectus offering.

The proposed certification would make the substantial beneficiary responsible for the entire content of the prospectus and would not be subject to any knowledge qualifier. This would mean that a bank that is deemed to be a "substantial beneficiary of the offering" would need to conduct a costly and comprehensive due diligence investigation. Such a requirement would significantly increase the cost of bank financing and would place Canadian banks at a substantial competitive disadvantage with their international competitors. In our view, the significant extra costs that this requirement would impose on bank financing outweigh any unproven potential for enhanced disclosure.

We would ask the CSA to review the certificate requirement in light of these concerns, and clarify the language so that neither the bank nor its subsidiary is required to sign a prospectus certificate in the circumstances described above.

Material Contracts
We do not think it is clear in the wording of subsections 9.1(1) of Proposed NI 41-101 and 3.6 of Proposed 41-101 CP that contracts that are not material to the issuer do not have to be filed, even if they fall within the exclusions from the exemption to file material contracts entered into the ordinary course of business. While we believe this is the CSA's intention that only material contracts be filed even if they are of the type listed in subsection 9.1(1), we suggest it is important to clarify this in order to avoid a large volume of non-material filings that might obscure the truly significant information for the marketplace.

We have the following comments about the types of contracts listed in subsection 9.1(1) of Proposed NI 41-101 to be excluded from the exemption to file contracts entered into in the ordinary course of business:

1. Regarding paragraph (a) of subsection 9.1(1), we do not believe it is appropriate to include contracts with substantial beneficiaries of the offering for the reasons above.

2. Also regarding paragraph (a), we do not understand why material contracts with directors, officers and similar parties for the "purchase and sale of current assets at fair value" may still be considered in the ordinary course of business and therefore not filed, but other contracts with the same parties that also provide the issuer with "fair value" cannot be considered in the ordinary course and therefore must be filed. All material contracts with directors, officers and similar parties on market terms and conditions should continue to be part of the exemption from filing if the issuer concludes they are in the ordinary course of business. We believe this change would focus the filing requirement on information that is valuable to investors who wish to understand the impact of related party contracts on the issuer. In particular, banks provide banking services to their directors and officers in the ordinary course of business, and these agreements should not be required to be filed.

3. In addition, we believe it is overly broad to require filing of material contracts with all officers and that paragraph (a) of subsection 9.1(1) should refer only to Named Executive Officers consistent with the definition of "management or administration agreements" in subsection 3.6(2) of 41-101CP.

4. Regarding paragraph (d) of subsection 9.1(1), we do not understand on what basis material "credit agreements" should be excluded from being eligible to be considered in the ordinary course of business. Banks enter into credit agreements in the ordinary course of business. Further, we believe it is an ordinary part of most businesses conducted in Canada to have credit and other financing arrangements, and the relevant information about these arrangements would be described in the financial statements and MD&A of the issuer. We do not see how filing of the actual contracts, even if material to the issuer, would help investors. There may be certain specific negotiated and/or fact-specific terms and margins recited in credit agreements, viewed as confidential and which could reveal competitive information, which lenders would not wish arbitrarily subject to publicly disclosure.

5. Finally, regarding the disclosure of management and administration contracts in paragraph (e) of subsection 9.1(1), we query whether this is necessary given the CSA's current proposal to enhance executive compensation disclosure. We believe proxy disclosure of management contracts and compensatory plans is an effective way of providing the key information to the marketplace about such contracts and plans. In light of the robust executive compensation disclosure, we do not see what also filing the contracts would add. We also note that the definition in subsection 3.6(2) of 41-101CP includes any management contract related to options, warrants or rights, pension, retirement or deferred compensation or bonus, incentive or profit sharing in which any director or named executive officer participates. This could lead to the filing of a great number of contracts such as personal agreements between issuers and named executive officers that are typically executed for each grant of options or other equity compensation. We do not believe this should be required, in light of the extensive disclosure that would be provided in the proxy circular on the specifics of individual grants and the Plan descriptions in the Human Resources Committee report (or CD&A).

We are also concerned that the provisions prescribed in subsection 9.1(2) of Proposed 41-101 are vague and overbroad. These provisions are deemed "necessary to understanding the contract" and may not be redacted or omitted from the filed version of the applicable material contract under subsection 3.6(3)(a) of 41-101CP. Terms used in subsection 9.1(2) such as "concession" and "take-or-pay" do not have well understood meanings and could cause confusion. "Contingency" and "financial covenant" could apply to a great number of provisions in any contract. Because the CSA is proposing to prescribe that these provisions cannot be omitted or redacted from a material contract, this could potentially require issuers to make disclosure of provisions that an executive officer of the issuer would have reasonable grounds to believe would be seriously prejudicial to the issuer or breach confidentiality provisions.

We recognize that the CSA has added a "materiality" qualifier to certain paragraphs of subsection 9.1(2). This is a step in the right direction, and we would encourage this for all paragraphs in the subsection as applicable. However, to fully address the concerns stated above, we suggest that the provisions listed in subsection 9.1(2) should be identified as examples of clauses potentially necessary to understanding the contract, but not specifically prescribed. For example, a particular provision (such as "anti-assignability" or "take-or-pay") could be neutral or positive to an issuer from a commercial risk mitigation perspective. Such a provision should not be ineligible for redaction or omission only because it is of the type on the list in subsection 9.1(2) if the issuer has confidentiality or other appropriate concerns about the disclosure. This approach would recognize that issuers are best placed to make the assessment of what is actually necessary to understanding the contract in the broader context of the issuer's business and financial condition, and can make this assessment appropriately with additional guidance from the CSA."

Definition of "novel" in section 1.1 of NI 44-102 - Shelf Distributions

We also are concerned about the effect that the proposed amendments to the definition of "novel" in section 1.1 of National Instrument 44-102 - Shelf Distributions could have on the structured note business. The proposed amendments would require reporting issuers to pre-clear the initial shelf prospectus supplement for each new type of specified derivative or asset-backed security, regardless of whether another reporting issuer has previously distributed a similar specified derivative or asset-backed security under a prospectus receipted by securities regulators. Requiring each issuer to pre-clear will make it more difficult for banks to respond in a timely fashion to market opportunities. Moreover, such a process would not be transparent to other issuers of similar types of securities.

We have appreciated the opportunity to express our views regarding the proposed National Instrument 41-101. We would be pleased to answer any questions that you may have about our comments.

Yours truly,

DI/sh

Computershare

Via Electronic Correspondence
to Addresses Indicated in Schedule A

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26 April 2007

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

Dear Sirs:

Re: Comments on Proposed National Instrument 41-101 *General Prospectus Requirements* ("Proposed NI 41-101")

Further to your notice and request for comment dated December 21, 2006, we would like to comment on Proposed NI 41-101, in particular on section 5.5 regarding the signing of prospectus certificates where the trustee of the issuer is a corporate trustee.

Many public income trusts and energy trusts have been established with a corporate trustee, such as Computershare Trust Company of Canada. The current wording in subsection 5.5(2) of Proposed NI 41-101 could require the CEO and CFO of the trust company and two of its directors to sign the prospectus certificate. As currently worded, this requirement will be impractical.

Most of the declarations of trust for energy trusts provide that the trustee will be a licensed corporate trustee appointed by unitholders. These declarations of trust delegate, among other things, the authority to make all decisions relating to public offerings, including the responsibility for executing prospectus certificates, to the board of directors of the primary operating entity of the trust. Generally, the board of directors of the primary operating entity oversees all operations of the trust's controlled entities and all public reporting by the trust. The corporate trustee's primary responsibilities are typically to hold the assets of the trust and to manage the cash distributions to unitholders. Computershare Trust Company of Canada, as a trustee for many of these public energy trusts, does not believe that its senior officers and directors are in any appropriate position to execute such a prospectus certificate. We suggest that you consider, in the alternative, (i) amending paragraph 5.5(1)(b) to read: "on behalf of the trustees of the issuer by any 2 trustees of the issuer <u>or by any two individuals who perform functions for the issuer similar to those performed by the directors of a company.</u>"; and (ii) deleting or modifying paragraph 5.5(2)(b) accordingly.

We note that subsection 5.5(3) of Proposed NI 41-101 provides an exemption from the requirement of subsections 5.5(1) and (2) in specified circumstances, where the issuer is an investment fund. We would submit that a similar exemption should be provided for issuer trusts that meet the same criteria.

If no such exemption is provided, we would submit that a reasonable transition period should be provided so that each trust affected by this provision can call a meeting of unitholders to reorganize the trust in order that it may have continued access to the public markets. A transition period would also permit trust companies such as Computershare to make a considered determination as to whether or not they could continue to act as trustees on existing or future trust mandates, given the significant practical impediments to fulfilling the requirements of section 5.5 of Proposed NI 41-101.

Thank you in advance for your consideration of our comments.

Yours truly,

COMPUTERSHARE TRUST COMPANY OF CANADA

Stuart Swartz
Vice-President, Corporate Trust

SCHEDULE A

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CIBC Mellon Global Securities Services Company
CIBC Mellon Trust Company

May 22, 2007

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

Dear Sirs/Mesdames:

Re: Proposed National Instrument 41-101 *General Prospectus Requirements* (the "proposed NI 41-101")

We are responding to your request for comments on the proposed revocation and replacement of NI 41-101 issued on December 21, 2006. We appreciate that comments were requested by March 31, 2007 but request your indulgence in this matter given that our comments are limited to subsections 5.5 (1) and 5.5 (2) of the proposed NI 41-101, which concern the signing of prospectus certificates by the trustee of the issuer.

A number of income or royalty trusts have appointed CIBC Mellon Trust Company ("CIBC Mellon") as trustee. In all cases, CIBC Mellon has in turn delegated the responsibility of governing and managing the business to another entity that is a wholly-owned subsidiary of the fund (the "Administrator"). The officers and directors of the Administrator govern and manage the business of these income and royalty trusts. CIBC Mellon's responsibilities are limited to holding the assets of these income or royalty trusts and managing cash distributions to unitholders and the fees associated with this business reflect CIBC Mellon's limited role. CIBC Mellon therefore submits that requiring its senior officers and directors to execute prospectus certificates would require that it become substantially more involved in the operations of the trusts so that the prospectus certifications could be informed. The costs to issuers would rise commensurately. However we submit that any such requirement could impose these substantial additional costs upon issuers while providing no additional benefits to investors beyond that which could easily be obtained by requiring that the directors and officers of the Administrator provide the required certification. It is these individuals whose certificate would be of most benefit to investors.

Subsection 5.5(3) of the proposed NI 41-101 provides an exemption from the requirements of subsections 5.5(1) to issuers that are investment funds. We submit that such circumstances are similar to those in which CIBC Mellon acts as trustee for income

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or royalty trusts. We submit that a similar exemption should be provided to income or royalty trusts.

We are aware that the proposed NI 41-101 is not expected to become effective until December 2007. We suggest however that if an exemption similar to the one contained in subsection 5.5(3) is not provided to income and royalty trusts, there should be a reasonable transition period for unitholders to hold meetings to reorganize the trusts in order to have continued access to public markets. This would also provide CIBC Mellon with additional time to assess its ability to continue to act as a trustee for these issuers given the significant impediment posed by the requirement for CIBC Mellon's senior officers and directors to sign prospectus certificates.

We hope that you will consider the comments above and invite you to contact the undersigned to discuss them at your convenience.

Yours truly,

Mark R. Hemingway
Senior Vice President, General Counsel & Chief Compliance Officer
CIBC Mellon Trust Company

MRH:cf

Securities Transfer Association of Canada

Robert Mackenzie
Secretary-Treasurer

May 22, 2007

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

Dear Sirs:

Re: Comments on Proposed National Instrument 41-101 General prospectus Requirements ("proposed NI 41-101)

Further to your notice and request for comment dated December 21, 2006, we would like to comment on Proposed NI 41-101, in particular on section 5.5 regarding the signing of prospectus certificates where the trustee of the issuer is a corporate trustee. We apologise for the delay in providing our comments. Unfortunately, the proposed requirements did not come to our attention until recently.

The Securities Transfer Association of Canada (STAC) represents all exchange-approved Transfer Agents in Canada. While the issue at hand would not normally be dealt with by STAC, many of our members, acting in a trustee capacity on behalf of many public income trusts and energy trusts, are vitally interested in this issue.

Our concern derives from the current wording in section 5.5(2) of Proposed NI 41-101 which could require the CEO and CFO of the trust company acting as a corporate trustee and two of its directors to sign the prospectus certificate. As currently worded, this requirement will be impractical.

Most of the declarations of trust for energy trusts provide that the trustee will be a licensed corporate trustee appointed by unitholders. These declarations of trust delegate, among other things, the authority to make all decisions relating to public offerings, including the responsibility for executing prospectus certificates, to the board of directors of the primary operating entity of the trust. Generally, the board of directors of the primary operating entity oversees all operations of the trust's controlled entities and all public reporting by the trust. The corporate trustee's primary responsibilities are typically to hold the assets of the trust and to manage the cash distributions to unitholders. STAC's members, when acting in this capacity, do not believe that their senior officers and directors are in any appropriate position to execute such a prospectus certificate. We suggest that you consider, in the alternative (i) amending paragraph 5.5(1)(b) to read: "on behalf of the trustees of the issuer by any 2 trustees of the issuer <u>or by any two individuals who perform functions for the issuer similar to those performed by the directors of a company"</u> and (ii) deleting or modifying paragraph 5.5(2)(b) accordingly.

We note that subsection 5.5(3) of Proposed NI 41-101 provides an exemption from the requirement of subsections 5.5(1) and (2) in specified circumstances, where the issuer is an investment fund. We would submit that a similar exemption should be provided for issuer trusts that meet the same criteria.

If no such exemption is provided, we would submit that a reasonable transition period would be necessary so that each trust affected by this provision can call a meeting of unitholders to reorganize the trust in order that it may have continued access to public markets. A transition period would also permit our members who act in this capacity to make a considered determination as to whether or not they should continue to act as trustees on existing or future trust mandates, given the significant practical impediments to fulfilling the requirements of section 5.5 of Proposed NI 41-101.

Thank you for your consideration of our comments.

Yours Truly

The Securities Transfer Association of Canada

William J. Speirs
President