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Securities Commission**

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BC Notice 2003/04

**Republication for Comment of Proposed National Instrument 51-101 –  
*Standards of Disclosure for Oil and Gas Activities and Related Documents***

The Commission, together with the other members of the Canadian Securities Administrators (CSA), is republishing for comment proposed National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* (NI 51-101). The CSA Notice requesting comments follows.

Appendix C to the CSA Notice lists a number of proposed consequential amendments to securities legislation that would be implemented in all jurisdictions when NI 51-101 comes into effect. When the CSA first published NI 51-101 for comment on January 24, 2002, the Commission published an additional list of proposed consequential amendments, including amendments that would affect BC securities legislation only. We are not republishing those proposed consequential amendments. However, a proposed amendment to Form 41-601F – *Information Required in a Prospectus*, which was not published last January, follows the CSA Notice.

In line with the Commission's general streamlining and simplification initiative, we are looking at NI 51-101 to see if we can achieve the same objectives in a less prescriptive and burdensome way. We invite you to provide comments on this point directly to the Commission. You can deliver comment letters in hard copy, by fax or by e-mail. Please address your submission to:

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We will be sharing comment letters with the other jurisdictions and therefore cannot keep submissions confidential.

The CSA Notice describes where you can direct comments and questions on NI 51-101 generally. All comments received by March 31, 2003 will be considered.

January 24, 2003

Douglas M. Hyndman  
Chair

Ref: BCN 2002/06  
NI 51-101  
CP 51-101  
Form 51-101F1  
Form 51-101F2  
Form 51-101F3  
Form 41-601F

*This Notice may refer to other documents. These documents can be found at the B.C. Securities Commission public website at [www.bcsc.bc.ca](http://www.bcsc.bc.ca) in the Commission Documents database or the Historical Documents database.*

**CANADIAN SECURITIES ADMINISTRATORS  
NOTICE**

**Proposed National Instrument 51-101  
*Standards of Disclosure for Oil and Gas Activities***

**Proposed Repeal of National Policy Statement No. 2-B  
and Proposed Consequential Amendments**

**January 24, 2003**

**REVISED PROPOSAL**

The Canadian Securities Administrators (the “CSA”) invite public comment on a revised proposal for new standards for public disclosure by reporting issuers in the oil and gas sector. **We request comments by March 31, 2003.**

The proposed standards are set out in the following documents (together referred to in this Notice as the “Instrument”):

- National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* (“NI 51-101”)
- Form 51-101F1 *Statement of Reserves Data and Other Oil and Gas Information*
- Form 51-101F2 *Report on Reserves Data by Independent Qualified Evaluator and Auditor*
- Form 51-101F3 *Report of Management and Directors on Oil and Gas Disclosure*
- Companion Policy 51-101CP (the “Policy”)

The Instrument and proposed consequential amendments to other instruments are being published concurrently with this Notice. These documents can be obtained on websites of CSA members, including the following:

- [www.albertasecurities.com](http://www.albertasecurities.com)
- [www.osc.gov.on.ca](http://www.osc.gov.on.ca)
- [www.bcsc.bc.ca](http://www.bcsc.bc.ca)
- [www.ssc.gov.sk.ca](http://www.ssc.gov.sk.ca)
- [www.msc.gov.mb.ca](http://www.msc.gov.mb.ca)

## **Substance and Purpose of the Instrument**

The Instrument will establish a regime of continuous disclosure for reporting issuers engaged in exploring for, developing or producing oil or gas. It will supplement disclosure requirements that apply to reporting issuers generally, and will replace National Policy Statement No. 2-B *Guide for Engineers and Geologists Submitting Oil and Gas Reports to Canadian Provincial Securities Administrators* (“NP 2B”).

The purpose of the Instrument is to enhance the quality, consistency, timeliness and comparability (among reporting issuers, and over time) of public disclosure by reporting issuers concerning their upstream oil and gas activities. The Instrument should enhance the ability of investors to make informed investment decisions, and in so doing enhance confidence in Canadian capital markets and facilitate the raising of new capital by oil and gas reporting issuers.

## **Background**

### **(a) Current Oil and Gas Disclosure Requirements**

Current requirements for disclosure concerning upstream oil and gas activities apply principally in connection with prospectus filings.

- NP 2B deals with the preparation and content of engineering reports submitted in connection with a prospectus filing, and sets out information relating to oil and gas reserves that is to be included in a prospectus.
- Current prospectus forms require disclosure of specified information about an issuer's oil and gas properties, wells, production, estimated reserves and related cash flow and plans for exploration and development.

Current oil and gas continuous disclosure requirements are largely limited to annual information forms (“AIFs”), which are not filed by all reporting issuers. AIF oil and gas disclosure requirements are drawn from the prospectus requirements.

### **(b) Shortcomings of the Current Oil and Gas Disclosure Regime**

The CSA no longer consider the reserves definitions and the specific disclosure requirements set out in NP 2B to be sufficiently clear or comprehensive to meet the needs of market participants.

We do not believe that the prospectus focus of the current requirements adequately serves the secondary capital markets in which the vast majority of securities trading activity takes place.

The CSA share the concern expressed by some market participants that the shortcomings of current oil and gas disclosure standards could impair public confidence in our capital markets, to the detriment of all oil and gas issuers and investors.

### **(c) Consultative Process**

The Instrument is the product of extensive industry and public consultation and advice.

The Instrument responds to the recommendations of the Oil and Gas Taskforce (the “Taskforce”) established by the Alberta Securities Commission (the “ASC”) in 1998. The Taskforce was comprised of representatives from a wide variety of professions and sectors of the oil and gas

industry and capital markets. The Taskforce was asked to assist the CSA in reformulating NP 2B (part of the CSA's broader program of policy reformulation) by developing recommendations for updated oil and gas disclosure requirements for public oil and gas issuers, taking into account the interests of investors, issuers, analysts, advisers, regulators and exchanges.

The work of the Taskforce coincided with the development of new oil and gas reserves definitions by the Petroleum Society of the Canadian Institute of Mining, Metallurgy & Petroleum (the "CIM"). The Taskforce recommended mandatory adherence to the new CIM reserves definitions, which were finalized in 2002 following the CIM's own consultative process.

The Taskforce also recommended mandatory adherence to reserves evaluation standards developed by the Calgary Chapter of the Society of Petroleum Evaluation Engineers ("SPEE"). Those standards, and the CIM reserves definitions, are set out in the Canadian Oil and Gas Evaluation Handbook (the "COGE Handbook") prepared by SPEE and the CIM, Volume 1 of which was released in June 2002. (The COGE Handbook can be obtained from the CIM at [www.petsoc.org](http://www.petsoc.org).)

The CSA welcomed the Taskforce recommendations, and the work of the CIM and SPEE. In formulating our response to the recommendations, we also considered industry and public comment on those recommendations and on the then-draft CIM definitions. These considerations were reflected in the original proposed Instrument (the "January Proposal"), which the CSA published for comment on January 25, 2002. (The January Proposal can be obtained from the CSA websites noted above.)

The CSA received 27 written comments on the January Proposal. The comments were thorough and extensive, and of great assistance to us. Most commenters supported the CSA's objectives. At the same time, almost all commenters offered some criticism. Appendix A to this Notice summarizes the public comments and our responses.

We believe that the revised Instrument addresses the majority of the concerns raised by commenters, while remaining consistent in substance with both the January Proposal and the Taskforce recommendations.

## **Summary of the Revised Instrument**

### **(a) General Approach**

The Instrument<sup>1</sup> reflects the view of the CSA that information about oil and gas reserves and activities may be as important as financial statement disclosure for investors making an investment decision concerning securities of an upstream oil and gas issuer. The Instrument would establish disclosure standards somewhat akin to those that apply to financial disclosure:

- annual reporting of independently-verified estimates of reserves volumes and related cash flow ("future net revenue") and other information about a reporting issuer's oil and gas activities; and
- adherence to professional- and industry-developed evaluation standards and terminology.

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<sup>1</sup> In Ontario, paragraphs 143(1) 22, 24 and 39 of the *Securities Act* provide the Ontario Securities Commission with authority to make proposed NI 51-101.

**(b) Overview of the Instrument**

An outline of key aspects of the Instrument follows:

Annual disclosure

- a statement by the reporting issuer of its estimated reserves and future net revenue (“reserves data”) and other oil and gas information (Form 51-101F1)
- a report of an independent qualified reserves evaluator or auditor on the reserves data (Form 51-101F2)
- a report of the reporting issuer’s management and directors on the issuer’s oil and gas disclosure (Form 51-101F3)

Role of directors

- oil and gas disclosure to be considered at board level
- reserves evaluators and auditors to report to and meet with directors
- directors to review and approve annual oil and gas filings
- majority-independent “reserves committees” encouraged

Standards apply to all disclosure

- to ensure quality and consistency for all public disclosure:
  - consistency with current annual oil and gas filings
  - adherence to CIM reserves definitions and COGE Handbook
  - more information to accompany any disclosure about the value of “prospects”

Material change disclosure

- material change reports to include discussion of the effect on filed reserves data

Prospectuses

- current disclosure requirements and NP 2B technical reports replaced by NI 51-101 disclosure

Materiality standard

- prescribed disclosure not required if unlikely to influence a reasonable investor’s investment decision

Possible discretionary exemptions

- SEC-registered issuers could be permitted to provide information in annual NI 51-101 filings consistent with US practice, provided that it is clearly explained
- senior producing issuers could be permitted to rely on in-house evaluations
- issuers could be permitted to rely on certain foreign reserves evaluators or auditors

## **Changes from the January Proposal**

The discussion that follows provides an overview of the changes from the January Proposal that are reflected in the revised Instrument. More detail about the changes can be found in Appendix B to this Notice.

### **(a) Scope of Changes**

Although the Instrument incorporates a considerable number of changes from the January Proposal, we do not consider that the changes represent a material departure from the objectives, principles or substantive effect of the January Proposal. However, the CSA believe that market participants may welcome the opportunity presented by this second comment period to consider the revised Instrument in light of the changes and the COGE Handbook that is now publicly available.

The Instrument maintains the key principles and elements of the January Proposal:

- annual disclosure
- role of directors
- involvement of independent qualified evaluators or auditors
- consistency in certain voluntary public disclosure
- expanded material change disclosure
- materiality standard

The principal changes to the Instrument are:

- eliminating mandatory use of US disclosure standards
- revisions of text to improve clarity and user-friendliness of the documents
- a more flexible approach, through discretionary exemptions, for cross-border issuers

### **(b) Purpose and Reason for Changes**

#### **(i) NI 51-101 and Forms**

We have made a number of changes in terminology, largely to reflect the terminology used in the COGE Handbook.

The January Proposal mandated certain US standards that we considered very similar in substance to the alternative recommended by the Taskforce. (These US standards related principally to “proved reserves” estimated using “constant” or unescalated prices.) In response to public comments from Canadian domestic issuers critical of this approach, we have withdrawn those US standards from the Instrument and substituted explicit and generally comparable standards applying the CIM reserves definitions.

We responded to criticism of certain specific provisions by adding a degree of flexibility (for example, the option of providing supplementary alternative disclosure accompanied by explanations and cautions when disclosing “finding and development” costs or when using BOEs or other conversion ratios, and permitting disclosure by “foreign geographic area” rather than country-by-country for areas such as the North Sea).

With a view to making the Instrument easier to use, we have reordered certain provisions and have extensively rewritten the primary reporting form, Form 51-101F1.

**(ii) The Policy**

The most extensive changes in the Policy pertain to possible discretionary relief from the Instrument.

To address concerns about the disclosure burden for cross-border issuers (potential duplication, overlap, and confusion arising from two sets of constant-case proved reserves estimates), new section 8.3 of the Policy indicates that discretionary relief would likely be available to allow applicants that have securities registered with the SEC to satisfy their disclosure obligations by using the US standards that had been incorporated in the January Proposal. This would put a cross-border issuer in the same position as it would have been under the January Proposal.

Section 8.4 of the Policy contains an expanded discussion of broader discretionary relief that addresses concerns raised in public comments by larger cross-border issuers. The public consultation process has helped the CSA to understand better the concerns of those issuers, and in particular the importance to them of being able to provide disclosure of a type to which US capital markets are accustomed (such as estimates of probable reserves that are not included in SEC filings but are disclosed in other ways in the US).

While the grounds and main principles of the discretionary relief that staff would be prepared to consider and recommend are little changed from those discussed in the January Proposal, we are now proposing fewer restrictions on “voluntary” disclosure of information of a type typically released in the US outside SEC filings (such as estimated probable reserves volumes), provided that the disclosure is reflected in the annual NI 51-101 filings and departures from NI 51-101 standards are clearly explained.

**Timing and Transition**

The CSA propose to implement NI 51-101 effective on September 30, 2003. However, that date would have little immediate consequence for most reporting issuers. Transitional provisions built into the revised Instrument, and in consequential amendments to other instruments, would phase in mandatory application issuer by issuer. This will give reporting issuers, their reserves evaluators and auditors and other market participants time to become familiar with the changes and with the COGE Handbook.

The first mandatory filings under the Instrument would apply in respect of the financial year that ends on, or includes, December 31, 2003. The filing deadline would be the same as the deadline for filing audited annual financial statements for that financial year – in May 2004 for most reporting issuers under current financial statement requirements. Somewhat earlier compliance (not before April 2004 except in rare cases) would be required by reporting issuers that file a prospectus early in 2004.

Voluntary early compliance with the Instrument would be accepted.

NP 2B will be fully phased out in June 2005, by which time all reporting issuers should have converted to NI 51-101.



### **Consequential Amendments to Other Instruments**

In conjunction with implementation of the Instrument, the CSA propose to repeal NP 2B.

We also propose to amend other securities legislation and securities directions including national and local prospectus requirements and the SEDAR rule. These amendments would eliminate references to NP 2B. In some cases those references would be replaced by references to the Instrument. In other cases, the conversion to a continuous disclosure regime under NI 51-101 would eliminate the need to make specific reference to oil and gas disclosure.

The consequential amendments to other instruments will be phased in as discussed above under “Timing and Transition”.

#### **(a) National and Multilateral Instruments**

The texts of proposed consequential amendments to the following national and multilateral instruments are set out in Appendix C to this Notice:

- NP 2B (to be repealed)
- National Instrument 13-101 *SEDAR*
- National Instrument 44-101 *Short Form Prospectus Distributions*
  - Form 44-101F1 *AIF*
  - Form 44-101F3 *Short Form Prospectus*
- National Instrument 45-101 *Rights Offerings*
- Multilateral Instrument 45-102 *Resale of Securities*

#### **(b) Local Instruments**

Securities regulatory authorities may also publish consequential amendments to local instruments including those governing prospectus requirements.

### **Interim Use of CIM Reserves Definitions**

Pending the application of NI 51-101 to a particular reporting issuer, NP 2B will continue to apply to that issuer.

During this period, CSA staff will accept the use of the CIM reserves definitions set out in the COGE Handbook for purposes of NP 2B, rather than the reserves definitions set out in NP 2B. An issuer that wishes to exercise this option should advise the regulator in a covering letter accompanying the preliminary prospectus or other document being filed. Each document in which the CIM definitions are used should identify and describe the relevant reserves classifications.

Because the CIM definitions incorporate target certainty levels, CSA staff would not require an issuer using the CIM definitions to reduce reasonably estimated “probable reserves” by applying

an allowance for risk as currently required under NP 2B. When estimating reserves and related future net revenue using constant prices and costs, an issuer that uses the CIM definitions should use prices as at the end of the issuer's financial year.

### **Costs and Benefits**

The CSA developed the Instrument in part in response to concerns expressed by market participants about the quality and consistency of public oil and gas disclosure, and the resulting potential for harm to investors and Canadian oil and gas issuers generally.

The CSA expect that any incremental costs of compliance with NI 51-101 would likely (i) be one-time costs attributable to developing satisfactory internal information systems, or (ii) for reporting issuers that do not already do so, costs of retaining independent reserves evaluators or auditors to report on reserves data. The CSA view the COGE Handbook as largely a codification of current best practice standards, and understand that most oil and gas reporting issuers already retain independent qualified evaluators to satisfy regulatory requirements or demands from their lenders, investors or auditors. We expect that most reporting issuers will find that they do not need to generate new types of information to satisfy the requirements of the Instrument. Accordingly, the CSA do not anticipate that implementation of NI 51-101 would impose a significant financial burden on reporting issuers.

Some reporting issuers could see a reduction in effort and costs, because NI 51-101 would give formal recognition to the concept of reserves “audits” as a satisfactory alternative to a full “evaluation”.

For senior producing issuers with a demonstrated capability to generate their own satisfactory reserves evaluations, the revised Instrument (like the January Proposal) indicates our willingness to consider granting a discretionary exemption to permit them to rely on in-house rather than independent evaluations.

The revised Policy also contains an expanded description of discretionary relief from disclosure requirements for cross-border issuers to address concerns expressed in public comment about the potential costs of duplicative or differing disclosure standards in Canada and the US.

The CSA expect NI 51-101 to result in improved disclosure and to bolster market confidence and that the resulting benefits to all market participants will outweigh the compliance burden for issuers.

### **Request for Comment**

Publication of the January Proposal elicited thorough comments on broad principles of the Instrument. The CSA now invite comment on the following specific issues:

1. Conversion to CIM Reserves Definitions - The CIM reserves definitions, which are set out in the COGE Handbook and mandated under the Instrument, specify a level of certainty to be reflected in reported estimates of “proved reserves” (“P90”, a 90 percent probability of recovering at least the estimated volume) and “proved plus probable reserves” (“P50”, a 50 percent probability of recovering at least the estimated proved plus

probable volumes). The terms “proved reserves” and “probable reserves” were less clearly defined in NP 2B.

The CSA expect an estimate of proved plus probable reserves using the CIM definitions to be comparable to the similar estimate using NP 2B definitions (after applying a 50 percent “risk” discount to the NP 2B-defined probable reserves). The “risking” of probable reserves customary under the NP 2B regime should not be necessary when the CIM reserves definitions are used because they already incorporate target certainty levels.

- (a) Might there be a widespread and substantive difference between proved reserves estimated using the CIM definitions as compared to estimates made reasonably applying the NP 2B definitions?
- (b) Market participants (reporting issuers, analysts, investors, creditors) will need to become aware of and understand the new CIM definitions and the extent to which reported estimates can be expected to differ from those under NP 2B. How can the CSA help foster market awareness and understanding of the new CIM reserves definitions?

2. Mandatory disclosure of “constant case” reserves data

The CICA Handbook provides guidance, for users of the full cost method of accounting, concerning the maximum amount at which certain oil and gas assets can be recorded in financial statements. Accounting Guideline AcG-5 "Full Cost Accounting in the Oil and Gas Industry" applies a “ceiling test” under which the net book value of oil and gas properties is compared to an estimate, based on constant prices and costs, of undiscounted future net revenue attributable to proved reserves.

The Accounting Standards Board of The Canadian Institute of Chartered Accountants is considering a proposal to modify the AcG-5 ceiling test. The modified ceiling test would, among other things, no longer use an estimate of future net revenue using constant prices and costs.

Should the CSA reconsider the requirement in the Instrument for disclosure of constant case estimates of proved reserves and related future net revenue? In particular:

- (a) Are such estimates sufficiently important to investors to warrant mandatory disclosure?
- (b) Would the response to question (a) differ if the AcG-5 is modified as discussed above?

3. Disclosure by Product - Form 51-101F1 requires disclosure of certain reserves data and other information by “product type”. Such disclosure may require allocation among multiple product types attributable to a single well, reservoir or other reserves entity.

Would it be preferable instead to prescribe such disclosure only for “production groups” such as:

- light and medium crude oil and its by-products, including solution gas, natural gas liquids and sulphur
- heavy oil and its by-products
- natural gas (associated and non-associated gas) and its by-products including natural gas liquids and sulphur
- non-conventional reserves entities.

4. Professional Organizations - The terms "qualified reserves evaluator" and "qualified reserves auditor" as defined in the Instrument have several elements: a qualified reserves evaluator or auditor must (i) possess professional qualifications and experience appropriate for their tasks contemplated in the Instrument, and (ii) be a member in good standing of a "professional organization".

Are there particular Canadian or foreign professional associations for engineers and other geoscientists (in addition to the Canadian professional organizations identified in section 1.5 (a) of the Companion Policy) in which market participants have sufficient confidence that such associations should be accepted as "professional organizations" for the purposes of the Instrument?

In each case:

- (a) Does the association satisfy the criteria (other than acceptance, or Canadian statutory authority or recognition) set out in the definition of "professional organization" in the Instrument?
- (b) If it does not satisfy one or more such criteria, why is the unsatisfied criterion unnecessary or inappropriate for the particular association?

### **How to Provide Your Comments**

We invite your comments **by March 31, 2003**. We encourage commenters to identify the particular provisions of the Instrument to which your comments relate. Your comments cannot be held confidential.

Please address your comments to all of the CSA member commissions, as follows:

Alberta Securities Commission  
British Columbia Securities Commission  
Saskatchewan Securities Commission  
The Manitoba Securities Commission  
Ontario Securities Commission  
Commission des valeurs mobilières du Québec  
Office of the Administrator, New Brunswick  
Registrar of Securities, Prince Edward Island  
Nova Scotia Securities Commission  
Securities Commission of Newfoundland

Registrar of Securities, Government of the Northwest Territories  
Registrar of Securities, Government of the Yukon Territory  
Registrar of Securities, Nunavut

You need not deliver your comments to all of the CSA member commissions, but please deliver your comments to the Alberta Securities Commission and to the Commission des valeurs mobilières du Québec, at the addresses below.

If you send your comments by e-mail, please follow with a signed hard copy of your comments, to demonstrate that you are the sender (this is not always apparent in an e-mail). If you do send your comments by e-mail, please include, with the hard copy of your comments, a copy of your comments on a diskette, preferably in Word format.

- (i) Send one copy to:

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e-mail: [jo-anne.bund@seccom.ab.ca](mailto:jo-anne.bund@seccom.ab.ca)

and:

- (ii) Send one copy to:

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

e-mail: [consultation-en-cours@cvmq.com](mailto:consultation-en-cours@cvmq.com)

### **Further Information**

You can obtain further information from any of the following:

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**Appendices**

- (i) Appendix A - Summary of Public Comments on the January Proposal and CSA Responses
- (ii) Appendix B - Summary of Changes from January Proposal
- (iii) Appendix C - Proposed Consequential Amendments to National and Multilateral Instruments

**APPENDIX A**  
**to**  
**CSA NOTICE**

***Proposed National Instrument 51-101***  
**Standards of Disclosure for Oil and Gas Activities**

**Summary of**  
**Public Comments on the January Proposal**  
**and CSA Responses**

The CSA received written comments on proposed NI 51-101 and its three ancillary forms and Companion Policy (together, the “Instrument”) published in January 2002 (the “January Proposal”) from the following 27 commenters:

1. Adams Pearson Associates Inc. - April 29, 2002
2. Arthur Milne - April 19, 2002
3. BMO Nesbitt Burns Research - April 26, 2002
4. Bow Valley Energy Ltd. - April 29, 2002
5. Chase Management - June 6, 2002
6. Donahue LLP - April 30, 2002
7. Dr. David C. Elliott, P. Geol. [Geosgil Consulting Ltd.] - April 30, 2002
8. EnCana Corporation - April 30, 2002
9. Financial Executives International Canada (Calgary Chapter) - April 26, 2002
10. Fraser Milner Casgrain LLP - April 29, 2002
11. Gilbert Laustsen Jung Associates Ltd. - April 30, 2002
12. Imperial Oil Limited - April 29, 2002
13. John T. Postle, P. Eng. - May 6, 2002
14. John W. Essex, P.Eng. - April 20, 2002
15. Martin & Brusset Associates - April 30, 2002
16. Nexen Inc. - April 30, 2002
17. Osler, Hoskin & Harcourt LLP (Calgary) - May 3, 2002
18. Osler, Hoskin & Harcourt LLP (Toronto) - May 7, 2002
19. Petro-Canada - April 29, 2002
20. Petroleum Society of the Canadian Institute of Mining, Metallurgy & Petroleum, South Saskatchewan Section - April 30, 2002
21. Petroleum Society of the Canadian Institute of Mining, Metallurgy & Petroleum, Standing Committee on Reserves Definitions - April 30, 2002
22. Shell Canada Limited - May 3, 2002
23. SIGA Resources Limited - May 7, 2002
24. Society of Petroleum Evaluation Engineers (Calgary Chapter) - April 26, 2002
25. Sproule Associates Limited - April 30, 2002
26. Toronto Stock Exchange - May 13, 2002
27. TSX Venture Exchange Inc. - April 30, 2002



The CSA thank the commenters. The comments were thoughtful and thorough and they have been of great assistance to us.

A summary of the comments and our responses follows. The summary begins with comments of general application or concerning broad principles and then deals with more specific matters, grouped by topic.

## **1. General Comments on the Instrument**

### ***Public Comment***

Many of the commenters endorsed the intent and general approach of the Instrument.

One commenter urged "swift adoption" of the Instrument. Another commenter characterized it as "an improvement over current disclosure standards". Several commenters expressed support for the move to a continuous disclosure regime for reserves reporting, and for placing reserves reporting standards on a more equal footing with that of financial statement disclosure. Among the elements of the January Proposal singled out for praise were the clearer assignment of responsibility to directors, provisions requiring consistency in presentation, and provisions relating to voluntary disclosure of "fair value".

Most commenters provided constructive criticism of specific elements, or in some cases broad aspects, of the January Proposal. The grounds of criticisms were not consistent, reflecting striking differences of view among different capital market sectors. Broad or recurring criticisms included the following:

- The Instrument tilts too far in the direction of investor protection at the expense of capital market efficiency.
- It would impose stricter standards on the oil and gas industry than on other sectors.
- The burden of compliance would outweigh the benefits, particularly (depending on the commenter) for larger, or conversely for smaller, issuers.
- It does not adequately harmonize with United States regulatory standards and thereby imposes an excessive burden on issuers. Conversely, its incorporation of US standards makes for an unduly complicated and burdensome instrument.
- The exemptive relief contemplated in the Companion Policy of the January Proposal would go too far, undermining the Instrument. Conversely, it would not go far enough, failing adequately to address the needs of issuers.
- It would expose directors, management or evaluators to excessive liability.
- Because the Instrument applies only to "reporting issuers", they would be at a disadvantage in take-over contests and other transactions as compared to private companies or foreign non-reporting issuers.

### ***CSA Response***

The CSA weighed the divergent views expressed by the commenters against our regulatory objectives of protecting investors, fostering market confidence and facilitating capital-raising. We did so in light of the concerns expressed to us, and the concerns reflected in the deliberations of the Oil and Gas Task Force (the "Taskforce"), about market discomfort with the quality and

reliability of oil and gas disclosure and the risk that poses to market confidence and issuers' access to capital.

Throughout the process we have endeavoured to arrive at an appropriate balance of interests, benefits and burdens. The CSA remain of the view that continuous disclosure and a predictable cycle of annual reporting, adherence to identifiable standards, and a visible role for corporate management, directors and independent professionals, are reasonable and necessary foundations for market confidence and efficiency.

We believe that the revised Instrument addresses many of the concerns expressed to us while remaining consistent with our regulatory objectives, the substance of the January Proposal, and the recommendations of the Taskforce that had been incorporated into the January Proposal.

Disclosure requirements particular to the oil and gas industry are not new. The industry-specific disclosure standards recognize, among other things, the particular importance ascribed by investors and capital markets to oil and gas reserves data.

The nature of the information required under the Instrument is not necessarily new or materially different from what is routinely prepared by many public issuers. To some extent, the effect of the Instrument would be to give shareholders information that is already provided to other stakeholders such as creditors and directors. More importantly, the Instrument is designed to promote greater reliability and consistency for oil and gas disclosure, through the use of clearer industry-developed terminology and evaluation standards and a predictable annual reporting cycle paralleling that for financial disclosure.

The diametrically opposed comments on the use of the US disclosure standards illustrate the difficulty of developing a single regulatory approach suitable for the range of issuers active in the oil and gas industry. One size does not necessarily fit all. It is in recognition of this diversity that the Instrument contemplates discretionary relief for certain categories of issuers.

The application of the Instrument only to reporting issuers was deliberate. We consider higher disclosure standards a reasonable accompaniment to a reporting issuer's access to public capital markets. We do not necessarily consider it appropriate to impose similar standards on private companies that do not have the same market access. Concerning foreign non-reporting issuers, their sometimes-anomalous position is not unique to this Instrument.

## **2. The Documents**

### ***Public Comment***

Some commenters urged that the multiple documents comprising the Instrument be consolidated, and one commenter specifically urged that the Instrument be edited and written more clearly.

### ***CSA Response***

The CSA sets out mandatory requirements in rules and forms and policy and guidance in companion policies. For ease of use, each of the three forms included in the Instrument sets out

the detailed requirements applicable to a particular user group: the issuer; reserves evaluators and auditors; and management and directors.

While we are retaining these documents, we have revised and reordered provisions so that the Instrument reads more clearly. Reporting issuers will have considerable latitude in their presentation of the information required in their annual filings.

### **3. Compatibility with US Disclosure Standards**

#### ***Public Comment***

Many commenters expressed views on the use of US disclosure standards, generally taking one of two positions: either the January Proposal went too far in applying US standards, or it did not go far enough. The position taken seemed to depend on whether the commenter represented junior issuers or senior issuers.

Commenters in the first camp expressed concern that US standards – particularly the disclosure of proved reserves and related cash flow estimated using constant prices only, without accompanying disclosure of probable reserves or any estimates using forecast prices – can provide incomplete, even misleading information. A number of commenters specifically criticized the incorporation in the January Proposal of US (SEC and FASB) standards as it added complexity and unfamiliar terminology to the documents.

Commenters in the second camp argued that made-in-Canada standards that differ from US standards would impair the ability of Canadian issuers to compete with foreign issuers in the US and global capital markets. Some were critical of specific provisions in the January Proposal, or of the new reserves definitions developed by the Petroleum Society of the Canadian Institute of Mining, Metallurgy & Petroleum ("CIM"). A few commenters suggested that it was inappropriate to have made-in-Canada standards or definitions at all, given broader trends of capital market globalization and cross-border harmonization.

A number of critics suggested that larger issuers, or cross-border issuers, should at least be given the option of applying US oil and gas disclosure standards in full satisfaction of the Instrument's requirements. Some of these commenters criticized and made suggestions for the conditions of the discretionary exemptions contemplated in the Companion Policy; some stated that the exemption should be automatic. A number of commenters seemed (expressly or by implication) open to a formal "two-tier" regime with fully made-in-Canada standards for all but senior cross-border issuers, and US standards for that group.

Some proponents of the US standards argued that the January Proposal did not correctly apply those standards. Particularly criticized was paragraph 2.2(1)(g) of NI 51-101, which attempted to achieve consistency between FASB and CIM definitions by adding a "P90" target confidence level to the FASB standard of "reasonable certainty" for constant case proved reserves estimates.

#### ***CSA Response***

In all of our policy development work, the CSA take into account US or other foreign standards, as a source of ideas, as a benchmark against which to measure our proposals, and in order to

understand how the combination of foreign and Canadian policies could affect participants in both capital markets. We did the same in developing the January Proposal, and specifically considered SEC and FASB oil and gas disclosure standards. We understand that CIM and the Taskforce also considered US and other foreign standards.

We remain of the view that the substance of the January Proposal, using CIM reserves definitions and disclosure standards generally consistent with those recommended by the Taskforce, is appropriate for Canadian capital markets and the majority of Canadian public issuers. We agree that the incorporation of the FASB standards likely added complexity for domestic users disproportionate to the benefit it provided to cross-border issuers. We also agree that some of the proposed requirements could impose on some cross-border issuers a burden that outweighs the public benefit, and that it is appropriate to address those concerns through discretionary relief appropriate to the circumstances.

For these reasons:

- The revised Instrument no longer mandates FASB standards and instead applies CIM definitions for all reserves data. The removal of the FASB standards also eliminates the contentious paragraph 2.2(1)(g) of NI 51-101.

To address concerns about overlapping reporting requirements for cross-border issuers, the revised Companion Policy indicates that the CSA would consider granting discretionary relief to permit use of the FASB standard in their constant-case proved reserve and cash flow estimates (CIM definitions would apply to the other reserves data required under the Instrument). This would place cross-border issuers in the same position as they would have been under the January Proposal.

- We have expanded the discussion in the Companion Policy concerning broader possible discretionary relief that would permit a cross-border issuer to provide disclosure very similar to what their US peer issuers disseminate in the US, on conditions designed to ensure a reasonable degree of clarity, reliability and predictability.

As in the January Proposal, that discussion indicates that disclosure limited to what is required by the SEC could be accepted under NI 51-101. It also indicates that “extra” disclosure such as estimates of probable reserves (not mandated by the SEC but routinely disseminated by US issuers) need not jeopardize a discretionary exemption, provided that:

- clear explanations and cautions accompany the extra disclosure;
- information of the same type is included in annual filings under NI 51-101; and
- (in the absence of applicable SEC standards) the requirements of Part 5 of NI 51-101 concerning voluntary disclosure are complied with.

#### **4. CIM Reserves Definitions**

##### ***Public Comment***

Some commenters were critical of the CIM reserves definitions.

A recurring theme was the problem of "aggregation". The CIM reserves definitions incorporate confidence levels (P90 for proved reserves, P50 for proved plus probable reserves) for an aggregate of properties rather than for individual properties. An evaluation of multiple properties may lead to an estimate of reserves that differs from the result obtained by evaluating each of the properties in isolation and then adding the reserves estimated for the individual properties. In other words, reserves estimates using the CIM definitions cannot be readily aggregated or disaggregated, and it is conceivable that the reserves attributed to a particular property could differ as among the co-owners of the property. Some critics suggested that this would force issuers to do different evaluations for reporting and commercial purposes.

##### ***CSA Response***

We do not believe that the CSA should substitute our judgement for that of the CIM (and the expert deliberation that led to the new definitions) in such a complex area of scientific estimation that is not, by its nature, amenable to absolute precision. While acknowledging the arguments about the difficulties of aggregation, the CSA consider the issuer-level focus of the CIM definitions compatible with our objective of enabling investors to make better informed investment decisions about an issuer as a whole.

#### **5. Industry-Wide Reduction in Reported Reserves**

##### ***Public Comment***

Three commenters suggested that the move to the new CIM definitions would lead to significant reductions in reported proved reserves for much of the oil and gas sector. One commenter stressed the importance of public education on this point.

##### ***CSA Response***

The CSA consider that a reduction from previously estimated proved reserves would more likely be attributable to differing interpretations of the former NP 2B definition than to a clear difference between the NP 2B definition and the CIM definition.

We do agree that capital markets should be aware of the fact that estimates of "proved plus probable" reserves using the CIM definitions apply a P50 confidence level which in effect takes the place of the "risking" customarily applied to probable reserves estimated under NP 2B. This means that proved-plus-probable reserves estimated using the CIM definitions will likely be less than proved-plus-"unrisked"-probable reserves estimated using the former NP 2B definitions but comparable to proved-plus-"risky"-probable reserves estimated using the NP 2B definitions.

## **6. The SPEE Standards**

### ***Public Comment***

The SPEE Standards mandated by the Instrument had not been finalized or issued during the public comment period. This led to a number of expressions of concern and uncertainty.

### ***CSA Response***

The COGE Handbook (referred to in the January Proposal as the “SPEE Handbook” or “SPEE Standards”) was released in June 2002. In recognition of industry participants' need to become familiar with the COGE Handbook, compliance with NI 51-101 becomes mandatory only in 2004.

## **7. Junior Issuers**

### ***Public Comment***

A number of commenters made specific reference to junior or emerging issuers. The comments reflected widely differing perspectives:

- Some urged less onerous standards for junior issuers (for example, reporting every second year rather than annually).
- One writer commented that "some small Canadian companies do not have acceptable reserves reporting capabilities and practices", implying that more onerous standards might be appropriate for them.
- Others perceived bias against junior issuers (discretionary relief for senior or cross-border issuers) and called for uniform treatment.

### ***CSA Response***

The CSA recognize the importance of junior capital markets and the need to ensure that disclosure burdens are not disproportionate to the benefits.

The Instrument reflects the key recommendations of the Taskforce which itself considered the perspective of junior issuers. The Taskforce made no distinction between junior and senior issuers in its key recommendations for annual public disclosure of reserves data reflecting consistent industry-developed standards (the COGE Handbook), independent evaluations, and management and board responsibility.

Disclosure using consistent reserves evaluation standards, terminology and content on a predictable reporting cycle should make disclosure more understandable, provide a more level playing field among issuers and put investors in a better position to compare competing issuers of all sizes and to follow the progress of individual issuers, thereby assisting them in making investment decisions. We believe that this will enhance market confidence in the industry, which in turn should benefit all issuers that seek public capital, a benefit that might be of particular value to junior issuers. We acknowledge that the Instrument may impose costs and other compliance burdens that may be proportionately greater for junior issuers, but we believe those burdens to be justified by the resulting benefit to the public, to market confidence, and thus to junior public issuers.

## **8. Independent Evaluations – Requirement and Exemption**

### ***Public Comment***

The January Proposal suggested a possible discretionary exemption from the requirement for independent evaluations for "senior producing issuers". This attracted considerable comment.

Proponents were largely from among issuers that expect to qualify as a "senior producing issuer". Some argued for automatic exemption or questioned the conditions to the exemption.

Opponents criticized the exemption as implying an unwarranted distinction between large and small issuers and for potentially undermining the new standards.

### ***CSA Response***

The CSA consider independent professional involvement to be a valuable component of public company disclosure. We are not proposing to depart from this principle.

We remain satisfied, though, that in appropriate circumstances as discussed in the Companion Policy (to be ascertained in considering an application for discretionary relief) an exemption from the independent report requirement for a senior producing issuer would be reasonable.

## **9. Responsibilities and Liabilities**

### ***Public Comment***

Many commenters expressed uncertainty or concern about the manner and extent to which the January Proposal assigned responsibility to reporting issuers and their management, directors and reserves evaluators, and about consequential liability and related defences. Other commenters, by contrast, expressed satisfaction with the assignment of responsibilities under NI 51-101, one commenter describing the proposed role of directors as "uncontroversial".

### ***CSA Response***

The January Proposal reflected the CSA's belief that directors and management have a crucial role in connection with public company disclosure and that this role should be clearly understood by them and by the investing public.

We do not believe that the Instrument, or the filing of annual reports under the Instrument, necessarily change the roles of or create new liability for management, directors or evaluators. We do believe that the Instrument will encourage them to give appropriate attention to public oil and gas disclosure. Because we do not believe that the Instrument creates new liability, we are not incorporating specific defences to liability.

## **10. Qualification of Evaluators**

### ***Public Comment***

A number of commenters urged that foreign evaluators be accepted for the purposes of NI 51-101, or urged that the Instrument set out the criteria for acceptance or include a list of approved foreign professional organizations. By contrast, other commenters questioned whether

evaluations conducted by foreign or even out-of-province evaluators should be accepted, or could be accepted under laws governing the relevant profession.

### ***CSA Response***

The CSA anticipate that there will be foreign professionals, and foreign professional organizations, that are acceptable for the purposes of the Instrument. The Companion Policy makes clearer our willingness to consider applications for this purpose, and offers more guidance as to the type of information that might be considered in connection with such an application.

In all cases, reserves evaluators and auditors remain responsible for complying with applicable local laws governing their professions.

## **11. Non-Conventional Oil and Gas Activities**

### ***Public Comments***

A number of commenters suggested that NI 51-101 was not sufficiently clear in its application to non-conventional oil and gas activities (such as oil sands and coal bed methane projects). One commenter suggested that SEC Industry Guide 7 (the source of certain standards set out in the January Proposal) uses out-of-date reserves definitions. We also understand there to be uncertainty as to the relevance of National Instrument 43-101 *Standards of Disclosure for Mineral Projects* to oil sands projects.

### ***CSA Response***

The Instrument applies to non-conventional oil and gas activities. We have made clarifying changes and additions to certain definitions (including relevant product types such as bitumen, heavy oil and synthetic oil). The Companion Policy now also makes reference to NI 43-101, suggesting that issuers whose non-conventional activities involve mining consult NI 43-101 and the CICA Handbook concerning disclosure that might usefully be provided to supplement the disclosure mandated by NI 51-101.

Technical and reporting aspects of non-conventional oil and gas activities are likely to evolve. The CSA, and CIM and SPEE, can be expected to respond to developments in that sector.

SEC Industry Guide 7 represents part of the US disclosure standards that may be relevant to discretionary relief for certain cross-border issuers, and is now referred to only in that context.

## **12. Specific Disclosure Requirements**

### ***Public Comment***

We received a number of comments critical of specific disclosure requirements in NI 51-101 or Form 51-101F1, including the prescribed ratio for BOEs (6 Mcf: 1 bbl) and the prescribed formulae for “finding and development” costs. Some commenters argued for more flexibility while others argued that disclosure of BOEs and finding and developments cost disclosure should be discouraged.



***CSA Response***

The CSA share some of the commenters' concerns about the usefulness of BOEs and finding and development cost disclosure. However, our primary objective is to ensure that the information provided to investors is clearly explained, and sufficiently consistent, to enable them to make their own assessment of its utility.

The revised Instrument therefore retains the standardized formulae, but offers flexibility for supplementary disclosure of alternative measures with appropriate explanation and cautions.

**13. Comments on Other Provisions of the January Proposal**

Additional comments on specific provisions of the January Proposal, and the CSA's responses, follow:

- Technical comments - We received a number of constructive suggestions concerning terminology used in the January Proposal.

*CSA Response:* We have made changes to definitions and provided guidance to address technical comments and resolve uncertainties identified by commenters. In addition, as a consequence of removing the FASB standards from the instrument we have defined terms that were previously defined only in the incorporated FASB standards.

- Materiality Standards - Some commenters questioned the materiality standard applied under the Instrument.

*CSA Response:* The materiality standard in Part 1 of NI 51-101 is used to help issuers determine what information prescribed in a form can be omitted. It does not add a disclosure burden.

Only information that is material in respect of a reporting issuer need be disclosed. Information is material if it would be likely to influence a decision by a reasonable investor to buy, hold or sell a security of the reporting issuer. This materiality standard was chosen in the belief that, for non-experts, it would be more understandable than some alternatives, and because it parallels (and was derived from) the CICA Handbook test that is already applied to some of the same information for financial disclosure purposes. It is also similar to the materiality standard used in connection with prospectus requirements.

- Multiple Evaluators - One commenter suggested that the January Proposal was unclear as to whether, and how, a reporting issuer could rely on multiple reserves evaluators or auditors.

*CSA Response:* A reporting issuer can satisfy its obligations by dividing its reserves evaluations and audits among multiple qualified reserves evaluators or auditors. We have made clarifying changes to the Instrument, including to Form 51-101F2.

- Change of Evaluator - One commenter recommended mandatory disclosure similar to that required by National Policy Statement No. 31 *Change of Auditor of a Reporting Issuer* for a change of a reserves evaluator or auditor.

*CSA Response:* We have not adopted this suggestion. We place considerable importance on the role of directors in satisfying themselves as to the reasons for any change of a qualified reserves evaluator or auditor (Part 3 of NI 51-101).

- Reservations in Reports - A number of commenters disagreed with the Instrument's emphasis on "unreserved" reports. Some suggested that compliance would be difficult or impractical, or at least impose a cost burden disproportionate to any benefit (particularly for junior issuers). In some cases the concerns related to the role of the evaluator and the extent to which an evaluator can rely on information from another source.

*CSA Response:* The CSA remain of the view that the value to public markets of "unreserved" opinions outweigh the potential costs. We share the concern (reflected in the Taskforce's similar recommendation) that an expert opinion that includes a reservation can be misunderstood or convey a higher degree of assurance than is warranted.

The revised Instrument and the COGE Handbook make clearer the respective roles and responsibility of the reserves evaluators and auditors and others. The degree to which a reserves evaluator or auditor relies on third party information will remain a matter of professional judgment.

- Independent Director - A commenter suggested that a 10 percent shareholding should not render a director "non-independent" for purposes of membership on a reserves committee.

*CSA Response:* The 10 percent threshold has been retained. It is widely used in securities legislation as an indicator of connection to, or practical influence over, a widely-held corporation.

- Income Taxes and A&R Costs - Concern was expressed about the estimation of future net revenue, particularly with respect to income taxes and abandonment and reclamation ("A&R") costs.

*CSA Response:* We have clarified the requirements. These costs are included in reserves data and also disclosed, as aggregates, separately. The separate disclosure of aggregate A&R costs must indicate the portion of the aggregate that is also reflected in the reserves data. Differences can arise depending on the extent to which an issuer includes in its reserves data A&R costs attributable not only to producing wells but also to non-producing wells and facilities.

- Funding of Development - One commenter criticized the requirement to disclose the estimated costs of obtaining funds required to develop reserves as potentially difficult to satisfy or prejudicial to commercial negotiations.

*CSA Response:* We have maintained the requirement for this disclosure by the issuer. (Item 5.3 of Form 51-101F1). Because the availability of funding is assumed by the evaluators in their estimation of reserves data, we consider information from the issuer about the cost and availability (or unavailability) of funding to be essential to ensure that the disclosure as a whole is complete and not misleading.

- Valuator/Evaluator - One commenter questioned the reference to “professional valuator” and queried whether a distinction from “qualified evaluator” was intended.

*CSA Response:* The term “professional valuator” (used in connection with provisions concerning disclosure of fair value) was chosen deliberately. A professional valuator may or may not also be a qualified reserves evaluator or auditor.

- Supporting Information - Part 7 of NI 51-101 should be more specific as to the scope of supporting information that might be requested by the regulator.

*CSA Response:* The principal purpose of Part 7 is to ensure that regulators are able to conduct an informed review of disclosure. The need for or scope of any request for supporting information will necessarily vary with the circumstances.

**APPENDIX B**  
**to**  
**CSA NOTICE**

**Proposed National Instrument 51-101**  
*Standards of Disclosure for Oil and Gas Activities*

**Summary of Changes from January Proposal**

The following discussion summarizes differences between the revised Instrument and the January Proposal. The summary first addresses changes of general application -- primarily, changes in terminology -- and then discusses changes in the individual documents that together comprise the Instrument. It concludes with a discussion of consequential amendments to other instruments.

**1. Changes of General Application**

**(a) Removal of FASB Standard**

The “reserves data” to be estimated and disclosed by a reporting issuer each year under the Instrument include estimates of proved reserves and related future net revenue, estimated using constant (unescalated year-end) prices and costs. Similar estimates are also called for by SEC disclosure requirements, which apply certain FASB requirements (the “FASB Standard”). The January Proposal prescribed the FASB Standard for these estimates.

In response to public criticism of the mandatory use of the FASB Standard (largely from domestic issuers unfamiliar with the FASB Standard), the FASB Standard has been removed from the Instrument (except for limited purposes in the Companion Policy).

**(b) “Proved plus Probable” Reserves**

Many of the references in the January Proposal to “probable reserves” have been changed to “proved plus probable reserves”, a term which ties more directly to the “P50” target level of certainty ascribed to the category in the reserves definitions that are included in the COGE Handbook. In many of these provisions, reference is also made to the “probable reserves” category. In all cases, supplementary disclosure of probable reserves would also be permitted.

**(c) Units of Measurement**

Although imperial units of measurement are widely used in the oil and gas industry and therefore also in the Instrument, the Instrument now makes clear that use of imperial units is not mandatory. New section 5.5 of the Companion Policy does, however, urge reporting issuers to be consistent in their use of whatever units of measurement they choose.

**(d) Terminology**

The Instrument incorporates a number of changes in terminology that are intended to ensure consistency with terminology used in the COGE Handbook, to respond to specific public comments, or simply to enhance clarity. Among the more important changes in terminology are the following:

- The January Proposal made frequent reference to the reserves evaluation standards then in development by “SPEE”, the Society of Petroleum Evaluation Engineers (Calgary Chapter), and the “SPEE Handbook” in which the reserves evaluation standards were expected to be set out.

Those standards, and the new reserves definitions developed by The Canadian Institute of Mining, Metallurgy & Petroleum (Petroleum Society), can now be found in the Canadian Oil and Gas Evaluation Handbook, which was released in June 2002. The Instrument now substitutes reference to this “COGE Handbook” for the January Proposal's references to the SPEE Handbook.

Unlike the January Proposal's definition of “SPEE Handbook”, the new definition of “COGE Handbook” includes amendments and supplements to the current Volume 1 (First Edition). SPEE have already begun work on a second volume of guidance on applying the new reserves definitions. SPEE can also be expected, from time to time, to issue additions to or corrections of the current Volume 1. Including all such material in the term “COGE Handbook” should remove a potential source of uncertainty within the reserves evaluation profession or among reporting issuers.

This change should facilitate consistency between the COGE standards and the Instrument without depriving the CSA of the ability to respond differently if and when the public interest demands. The CSA will actively monitor any changes to the COGE Handbook. In the unlikely event that the CSA do not agree with a change made or proposed by SPEE, the CSA would likely urge SPEE to reconsider the change or proposal or publish a CSA notice to the effect that the change would not apply for purposes of the Instrument.

- As noted above under “Removal of FASB Standard”, the Instrument no longer prescribes adherence to the FASB standard. In consequence, most FASB-derived terminology has been removed from the Instrument, including the terms “proved oil and gas reserves quantities” and “standardized measure” (the equivalents of the “Canadian” terms “proved reserves” and “future net revenue” estimated using constant prices and costs).

Some FASB terminology remains in the Glossary appended to the Companion Policy, for use in connection with Part 8 of the Companion Policy.

- The new term “foreign geographic area”, which refers to geographic areas outside North America (such as the “North Sea”), is used in the Instrument in connection with disclosure requirements as an acceptable alternative (if and when appropriate) to disclosure that would otherwise be required “by country”.
- The terms “effective date” and “preparation date” have been modified slightly to make clearer the different meanings of the terms in respect of disclosure required under the Instrument.

- The term “oil and gas activities” has been expanded, beyond the conventional activities included in the definition in the January Proposal, to include non-conventional activities such as oil sands and coal bed methane projects. With this change, a number of cumbersome references to non-conventional activities have been removed from the Instrument.
- The definition of “product type” now distinguishes between products derived from conventional oil and gas activities and products relevant to non-conventional oil and gas activities.
- The COGE Handbook makes a distinction between the attributes of a reserves evaluator and the somewhat more extensive attributes appropriate to the audit function. To reflect that distinction, the Instrument replaces the single term “qualified evaluator” (used in the January Proposal) with the following:
  - the new terms “qualified reserves evaluator” and “qualified reserves auditor” apply to the distinct professions;
  - the term “qualified reserves evaluator or auditor” is used where the reference does not distinguish between the professions; and
  - the term “professional organization”, relevant to all three definitions, is now defined separately.
- The Glossary in Appendix 1 to the Companion Policy has been expanded to explain a number of terms that had been defined in the January Proposal only indirectly via reference to the FASB Standard, if at all. These include:
  - development costs
  - development well
  - exploration costs
  - exploratory well
  - field
  - operating or production costs
  - production
  - property
  - property acquisition costs
  - proved property
  - reservoir
  - service well
  - support equipment and facilities
  - unproved property
- Revised definitions of “bitumen”, heavy oil” and “synthetic oil” should reduce uncertainty and overlap, and enhance consistency with the COGE Handbook. The new

definition of “heavy oil” applies the definition (if any) already used by reporting issuers for royalty purposes where their reserves are located.

- The terms “constant prices and costs”, “forecast prices and costs” and “future income tax expense” now appear in the Glossary, unchanged in substance from the meanings given to them in the January Proposal's versions of NI 51-101 and Form 51-101.
- The terms “gross” and “net” have been redefined to clarify their meanings, which differ depending on the context.
  - In respect of gross and net “reserves”, the terms are consistent with the COGE Handbook. Among other things, this now makes clear that “gross reserves” exclude royalty interests and obligations (i.e., they generally refer to working interests only) whereas “net reserves” are calculated by including the reporting issuer's royalty interests and deducting its royalty obligations.

## **2. Changes to Particular Documents**

### **(a) NI 51-101**

#### Parts Reordered

NI 51-101 has been reorganized to reflect the order of presentation more typical of CSA rules, to minimize cross-referencing, and to present matters likely of greatest interest to readers earlier in the document. More specifically:

- Definitions have been moved from an Appendix to the beginning of NI 51-101.
- The annual filing requirements have been moved from Part 5 to Part 2.
- Requirements and restrictions concerning “measurement” have been moved from Part 2 to Part 4, and former Part 4 (requirements and restrictions concerning certain types of voluntary disclosure) has been renumbered as Part 5.

#### Changes by Part

The annual filing requirements, now in Part 2, are unchanged in substance. Form 51-101F3 is now more clearly identified as a report of both management and directors.

Part 3, concerning corporate and director responsibilities, is unchanged in substance.

Part 4, dealing with technical aspects of measurement and estimation, has been simplified by the removal of references to the FASB Standard and FASB terminology.

Part 5, which deals with requirements applicable to all public disclosure by a reporting issuer, incorporates non substantive changes in wording, most of which are intended to clarify the provisions. Certain provisions are reorganized, expanded or new:

- New section 5.3 provides that public disclosure of reserves or resources, whether or not included or required under Form 51-101F1, must apply the definitions in the COGE Handbook. A similar requirement had been implicit in subsection 5.2(a) (formerly subsection 4.2(b)) but it did not clearly apply to non-mandatory disclosure such as “possible reserves” or “resources”. The new section mandates the COGE Handbook definitions for such disclosure.
- The text of section 5.9 (formerly section 4.8) has been reordered to correspond to section 10.4 of the COGE Handbook.
- Sections 5.14 and 5.15 (formerly sections 4.13 and 4.14) have been expanded to permit reporting issuers to provide supplementary disclosure, using alternative methods of calculation of their choosing (with cautionary statements), in addition to disclosure applying:
  - the prescribed equivalency ratios (for example, BOEs in the ratio of 6 Mcf:1bbl) under section 5.14; or
  - the two prescribed formulae for calculating “finding and development” costs under section 5.15.
- Part 6, which requires expanded discussion in certain material change disclosure, has been simplified by eliminating former subsection 6.1(2), and replacing that provision with a clearer statement of the CSA's interpretation in new subsection 6.2 of the Companion Policy.
- Part 9 of the Instrument now specifies a coming-into-force date of September 30, 2003. It also provides for transitional application of the Instrument to reporting issuers tied to their financial year-ends. The first annual filings under Part 2, and compliance with other provisions of the Instrument, would be required by the deadline for the filing of annual financial statements for the financial year ended on (or including) December 31, 2003. Earlier voluntary compliance would be permitted.

Consequential amendments to other instruments (notably, prospectus requirements), discussed in more detail below in this Summary, may require somewhat earlier compliance with the Instrument.

**(b) Form 51-101F1 (Statement of Reserves Data and Other Oil and Gas Information)**

This form has undergone extensive revision, but the information required is not materially different. Most of the revisions are intended either:

- to set out a requirement that, in the January Proposal, had applied indirectly via the incorporation of the FASB Standard; or
- to present the requirements in a more logical and user-friendly sequence, minimizing duplication and cross-references.



New General Instruction 6 provides that disclosure required “by country” may instead be provided by “foreign geographic area” (for regions outside North America) as appropriate in the circumstances.

The Instructions to Part 1 discuss “effective date” and “preparation date”. The modified, discussion is meant to make clearer the substance of the terms as used in the Instrument, and in public disclosure made pursuant to the Instrument, without prescribing particulars of professional practice and judgement.

Part 2 of the January Proposal, a summary of aggregate reserves and related estimates, has been removed. Some of the information called for in former Part 2 was duplicated elsewhere in the form, and the requirement for a separate summary was inconsistent with the general flexibility in presentation intended by the CSA.

Form 51-101F1 prescribes the minimum information that must be presented without constraining reporting issuers in developing a presentation format of most use to their investors, subject to general securities law prohibitions of misleading disclosure. Issuers remain free, pursuant to the General Instructions, to provide summary information and to repeat information in different parts of their disclosure, but a summary is no longer required; nor is minimum or maximum content prescribed for any summary that is provided.

New Part 2 brings together elements of former Parts 2, 3 and 4, and sets out material derived from the FASB Standard that was incorporated indirectly in former Part 4. Part 2 now prescribes more clearly and logically the minimum reserves data required in a reporting issuer's annual filing.

- The required reserves data continues to include both “constant-case” estimates (proved reserves and related future net revenue) and “forecast-case” estimates (proved, and proved plus probable, reserves and related future net revenue), including breakdowns by country (or foreign geographic area), gross and net, by product type and by specified reserves subcategories.
- Constant-case estimates of future net revenue are required to be calculated without discount and using a discount rate of 10 percent. Forecast-case estimates are to be calculated without discount and using discount rates of 5 (new), 10, 15 and 20 percent. (NP 2B currently requires estimates calculated without discount and using discount rates of 10, 15 and 20 percent.)
- Section 3 of Item 2.1 and section 3 of Item 2.2 require disclosure of components of future net revenue (e.g., future revenue, royalties, operating costs, development costs, abandonment and reclamation costs, future income tax expenses) by year for ten years and grouped thereafter. These sections also require disclosure of the net present value of the aggregate of each of development costs, abandonment and reclamation costs, future net revenue before income taxes and future net revenue after income taxes.

- Items 2.3 and 2.4 (formerly Part 3), pursuant to which certain aspects of reserves estimation and future net revenue disclosure vary according to accounting methods followed by the reporting issuer, are unchanged.

Part 3, which calls for disclosure of both constant and forecast prices used in estimating the reserves data, has been revised (the corresponding former provisions were items 4.4 and 4.5) to make clear that the disclosure of benchmark reference prices (and, in the case of forecast-case estimates, the inflation rates assumed for each of the first ten years of the estimate) will generally satisfy this requirement. (A new Instruction reminds users of the principle, reflected in the definitions of “constant prices and costs” and “forecast prices and costs”, that contractually committed prices, if any, override benchmark prices for purposes of the Instrument.)

Part 4 deals with “reconciliation” of year-over-year changes in estimated reserves and future net revenue. Reconciliations had been required under the January Proposal, but they had been incorporated indirectly from the FASB Standard. It was not entirely clear how the reconciliations corresponded to the reserves data (constant-case and forecast-case, proved and probable reserves) required under Form 51-101F1 or to the recommendations of the Oil and Gas Taskforce in respect of reconciliations.

- New section 4.1 provides that reserves reconciliations are required for both proved reserves and proved plus probable reserves, but that either constant-case or forecast-case estimates may be used, with the case identified. An Instruction addresses the difficulty of allocating amounts among multiple product types derived from a single well, reservoir, or other reserves entity by permitting the disclosure to be made in respect of the principal product type attributable to the well, reservoir or other reserves entity.
- Because of the complexity of computing and presenting changes in forecast-case estimates of future net revenue, and because constant-case estimates of probable reserves are not mandated, new section 4.2 limits the mandatory reconciliation of future net revenue estimates to the constant case for proved reserves.

New Part 5 sets out requirements drawn from former Part 4, including requirements incorporated indirectly from the FASB Standard. Section 5.1 expands on former subsection 4.2(3) by requiring disclosure concerning undeveloped reserves in both the “proved undeveloped” and “probable undeveloped” categories.

Section 5.3 requires a discussion by the reporting issuer of its expectations concerning the costs of funding future development. The availability of financing costs is to be assumed in the estimation of reserves and future net revenue. The disclosure in section 5.3 is meant to assist readers in assessing the reporting issuer’s capability, and expectations, concerning the funding of future development. The disclosure has been broadened from former subsection 4.6(2) to apply not only to cases in which external financing would be needed, but also if the reporting issuer expects to fund such costs from internally-generated cash flow. Because the cost of capital is not necessarily reflected in the estimation of reserves, the reference in the January Proposal to possible reclassification of reserves in light of financing costs has been removed.

Part 6 (formerly Part 5) prescribes disclosure concerning oil and gas activities that is not directly related to or reflected in the reserves data. Changes are limited:

- Paragraph 6.4(d) (formerly 5.4(d)) has been revised for clarity and a new Instruction explains its purpose, which the CSA believe will facilitate compliance.
- New Item 6.6 sets out a requirement that had formerly been incorporated indirectly via the FASB Standard. This Item requires disclosure of certain costs incurred during the most recent financial year, and corresponds to a specific recommendation of the Oil and Gas Taskforce.
- The new Instruction to Item 6.9 addresses the complexity of allocating amounts among multiple product types derived from a single well, reservoir, or other reserves entity by permitting the disclosure to be made in respect of the principal product type attributable to the well, reservoir or other reserves entity.

**(c) Form 51-101F2 (Report of Independent Reserves Evaluator or Auditor)**

No substantive changes have been made to this Form.

Some wording has been revised for clarity. In particular, in the case of multiple reserves evaluators and auditors, revised wording makes clear that they may provide a consolidated report in which each expresses an opinion only in respect of his or her individual evaluation or audit identified in paragraph 4. Changes in terminology are consistent with those made throughout the Instrument.

**(d) Form 51-101F3 (Report of Management and Directors)**

This form is little changed except for changes in terminology consistent with those made throughout the Instrument. We have added “directors” to the title to better identify the persons providing the report.

In response to public comment to the effect that reporting issuers do not in all cases have a “senior officer” with specific responsibility for reserves, Form 51-101F3 is now to be executed by the chief executive officer and one other senior officer whose responsibilities are no longer specified, as well as by two directors (who need not be members of the reserves committee, if any).

**(e) Companion Policy**

The Companion Policy has been reorganized so that each of Parts 1 to 6 corresponds to the same Parts of NI 51-101.

Section 1.3 has been modified to explain the coming-into-force and transitional application of the Instrument.

Section 1.4 has been simplified to identify the COGE Handbook which, as now defined, automatically includes amendments and supplements.

Former section 1.5 dealing with the FASB Standard has been deleted because that standard no longer applies to the Instrument (except as discussed in Part 8).

Section 1.5 has been expanded, primarily to respond to public comment concerning the use of foreign reserves evaluators.

- The list of current professional organizations has been revised to include a newly formed organization in Ontario.
- The section also confirms that, although the definition of “qualified reserves evaluator or auditor” requires membership in a “professional organization” and no acceptable foreign organization is identified, the CSA do expect that there will be foreign professionals, and foreign professional organizations, that are acceptable for the purposes of the Instrument. Section 1.5 makes clearer the CSA's willingness to consider applications for acceptance or exemption for this purpose, and offers more guidance on the type of information that might be considered in connection with such an application.

Section 1.6 is new. Designed in part to respond to public comments and questions, it makes clear that oil and gas reserves reporting and evaluation standards under the Instrument apply to both conventional and non-conventional activities (the latter including oil sands and coal-bed methane projects).

- With a view to oil sands mining projects, which by their nature have similarities to hard-rock mining activities, the section encourages reporting issuers, in preparing public disclosure, to consider mining standards under the CICA Handbook and NI 43-101 as well as the oil and gas standards set out in the Instrument.

Section 2.3 (formerly section 5.3), concerning the flexibility given to reporting issuers in presenting their annual disclosure, has been modified slightly, notably to remove reference to the mandatory summary of reserves data that has been removed from Form 51-101F1.

Section 2.4 (formerly section 5.4), dealing with the use of annual information forms to satisfy filing requirements under NI 51-101, has been revised for clarity only.

Section 2.5 (formerly section 5.5), dealing with “reservations” in evaluation and audit reports, has been expanded to address some of the difficulties inherent in reserves evaluators’ and auditors’ use of information obtained from financial auditors or reflecting the financial auditor’s report. The section urges parties to follow specified procedures and guidance in the COGE Handbook and, in that fashion, to avoid a potential cause of reservation.

Section 2.6 (formerly section 5.6), setting out the CSA view on “negative assurance”, has been expanded to better illustrate what is meant by the term, and to note that the CSA view could change as the COGE Handbook is expanded to deal with reserves “reviews”.

New sections 2.7 and 2.8 deal with particular compliance problems -- restrictions on access to information or freedom to disclose -- in a manner consistent with US practice under the FASB Standard.

New section 2.9 makes clear that Form 51-101F1 sets out only minimum disclosure requirements, and that reporting issuers are free to provide (and, in some cases in order to prevent a misrepresentation by omission, they must provide) additional information.

New section 2.10 refers to Appendix 2, also new, which contains sample tables illustrating how some of the reserves data could be presented.

Section 3.2 has been modified in response to concerns expressed by public commenters (notably, senior reporting issuers) concerning liability. The section omits the comment that was included in the January Proposal to the effect that the engagement of an independent qualified reserves evaluator would not by itself constitute or demonstrate “reasonable investigation”. Such a conclusion, which could be relevant to a defence against liability, would be a matter to be determined by a court in light of the facts of a particular case before it.

Part 4 (formerly Part 2) omits former sections 2.1 and 2.4, which dealt with use of the FASB Standard.

New section 4.3 comments (with reference to the COGE Handbook) on how an estimate of reserves, consistent with the levels of certainty incorporated in the reserves definitions, can be arrived at using “deterministic” methods.

Section 4.4 (formerly section 2.5) deals with the requirement, under subsection 4.2(2) (formerly subsection 2.2(2)) of NI 51-101, that events or transactions be reflected for the same period in both reserves data and financial statement disclosure. The expanded commentary in section 4.4 of the Companion Policy substitutes, for the fact-specific examples previously provided, a broader emphasis on communication and cooperation among reserves evaluators and auditors, financial auditors and company directors

Section 5.3, which deals with similar subject matter to section 2.6 (negative assurance), has undergone some of the same revisions.

New section 5.5 makes clear that the Instrument does not mandate the use of imperial, or any other, units of measurement, but urges consistent application of whatever choice a reporting issuer makes.

New sections 5.6 and 5.7 provide additional guidance concerning the requirements of sections 5.14 and 5.15 of NI 51-101. Those provisions set out requirements that apply if a reporting issuer makes public disclosure using units of equivalency (e.g., BOEs) or public disclosure of “finding and development” costs.

Part 6, dealing with material change disclosure and the requirements of Part 6 of NI 51-101, has been modified to clarify the CSA view previously reflected in subsection 6.1(2) of NI 51-101.

That view (which is unchanged but which is now more properly and more clearly set out in the Companion Policy) is that the requirement, under section 6.1 of NI 51-101, for expanded disclosure in a material change report concerning the effect of the material change on reported reserves data, would not apply to reserves data based on constant case estimates, insofar as the material change relates only to a change in future prices and costs.

Section 7.1, which discusses the “independence” of a qualified reserves evaluator or auditor, has been abbreviated because the subject is dealt with at some length in the COGE Handbook.

Part 8 has undergone the most extensive and substantive revisions, largely in response to public comment, particularly on the part of cross-border issuers.

Part 8 deals exclusively with discretionary exemptions, and sets out CSA expectations as to what staff would likely recommend in response to an application. It does not commit the CSA to respond in a particular way to any particular application; nor does it constrain reporting issuers or others as to their ability to apply for these or other types of relief. Instead, Part 8 sets out how CSA staff would likely respond, in the absence of unusual circumstances, to specified types of application, and what they would likely recommend to the regulatory decision-maker. As such, the changes to Part 8 do not alter the Instrument as a whole, and do not at all affect the mandatory elements of the Instrument.

The nature of the discretionary relief contemplated in Part 8, and most of the conditions that would likely attach to such relief, remain consistent with the January Proposal.

- Section 8.2 discusses possible discretionary relief for “senior producing issuers” from the requirement to engage “independent” qualified reserves evaluators and auditors. The CSA's views on such relief, and the substance of section 8.2, are unchanged from the January Proposal. Non-substantive changes have been made:
  - The suggested alternative forms of report have been revised to parallel changes to Forms 51-101F2 and 51-101F3.
  - The reference to an annual “in-compliance” certificate has been removed, on the principle that compliance, whether certified or not, would be required.

The January Proposal's suggestion that any independent reserves report obtained by an exempted issuer might have to be disclosed has been replaced by a suggestion that, if any independent report indicates that disclosed reserves data are misleading, a correction must be published. The CSA's objective is not to deter the involvement of independent reserves evaluators and auditors, merely to ensure that public disclosure is not misleading.

- Section 8.3 is new. The relief described in this section would leave cross-border issuers in the same position as they were under the January Proposal.

The January Proposal required that all reporting issuers disclose constant case estimates of proved reserves and related future net revenue using the FASB Standard. That

approach was largely intended to relieve cross-border issuers of the burden of preparing two sets of very similar information using different standards.

The removal of the FASB Standard from NI 51-101 and Form 51-101F1 raises, again, that potential burden, and the potential for confusion among recipients of such overlapping disclosure. To address these problems, new section 8.3 indicates that relief would likely be available for a cross-border reporting issuer that wishes to substitute constant-case estimates using the FASB Standard for the constant-case estimates mandated under Form 51-101F1. This exemption by itself would not affect the reporting issuer's other obligations under the Instrument.

- Section 8.4 (formerly section 8.3) discusses a broader type of discretionary relief that might be granted to cross-border issuers that wish to match disclosure standards applied in the United States. The potential relief discussed in section 8.4 would likely be of interest to only a limited group of reporting issuers. Most of the public comment on the subject originated with large, interlisted cross-border issuers.

Section 8.4 suggests that the CSA would consider permitting a cross-border issuer, of any size, to satisfy its NI 51-101 obligations by filing only the information required by the SEC. This would eliminate a potential disclosure burden, and disclosure confusion, for issuers that focus on and compete largely with other issuers in US capital markets. This aspect of section 8.4 is not substantively different from the January Proposal.

Changes to section 8.4 largely involve greater flexibility concerning disclosure that is not filed with the SEC but that is routinely provided by US issuers in unfiled disclosure. Section 8.4 indicates that the CSA would likely be willing to allow exempted issuers to provide similar “extra disclosure” (for example, estimates of probable reserves) without jeopardizing their exemption, provided that clear explanations and cautions accompany the extra disclosure; information of the same type as the extra disclosure is included in annual filings under NI 51-101; and Parts 4 and 5 of NI 51-101 apply to the extra disclosure in the absence of applicable SEC standards.

Such conditions are set out in the more detailed discussion of possible undertakings that would likely be expected of an applicant reporting issuer. Omitted from the discussion is the former reference to an annual “in-compliance” certificate, again on the principle that compliance is required whether or not a certificate is also provided.

New section 8.5 makes a rather obvious, but in our view, important point: discretionary relief permitting the application of foreign disclosure standards is not tantamount to an exemption from regulatory oversight. Reporting issuers must comply with whatever disclosure standards they are subject to, and reporting issuers that are permitted to apply US standards will still be subject to CSA review and enforcement to the same extent as their competitors that are required to adhere strictly to NI 51-101.

Appendix 1 to the Companion Policy retains an extensive glossary of terms, including many terms that had applied for purposes of the Instrument via the incorporation of the FASB Standard

but which had not been explicitly set out in the Glossary. As a convenience to readers, Part 2 of the Appendix reproduces the oil and gas reserves evaluation definitions (the reserves categories) as they appear in the COGE Handbook.

Appendix 1 no longer includes the January Proposal's "Schedules" that reproduced the FASB Standard and other US standards.

Appendix 2 is new. It contains sample tables illustrating how some of the reserves data required by NI 51-101 and Form 51-101F1 might be presented. As emphasized in the Appendix, and in section 2.10 of the Companion Policy, adherence to the format of these sample tables is not mandatory. The sample tables may, however, be helpful to those who are unfamiliar with reserves reporting for public companies and may help alleviate concerns about the extent of changes in presentation required by the new Instrument.

### **3. Consequential Amendments to Other Instruments**

In conjunction with the implementation of NI 51-101, consequential changes will be made to other instruments. In most cases, the purpose of these changes is to substitute disclosure consistent with NI 51-101 for the disclosure and technical reports previously required under NP 2B. Once an issuer has become subject to NI 51-101, it is no longer subject to NP 2B.

#### **(a) Conversion Triggered by Financial Statement Filing**

Consistent with the transitional application of NI 51-101, the conversion from NP 2B reporting to NI 51-101 disclosure will generally apply to a reporting issuer when it files, or is required to file, its audited financial statements for its first financial year that ends on or after December 31, 2003.

Applying the 140-day filing deadline for audited annual financial statements, which currently applies to most reporting issuers, this means that the conversion from NP 2B to NI 51-101 would generally apply in or before May 2004 for a reporting issuer with a calendar financial year. For reporting issuers with financial years that do not coincide with the calendar year, the conversion could occur later in 2004 or early in 2005. NP 2B will be fully repealed on June 30, 2005.

#### **(b) Voluntary Early Conversion**

Voluntary earlier conversion to NI 51-101 is also permitted. Once a reporting issuer has filed a statement and reports under Part 2 of NI 51-101, it is fully subject to NI 51-101 and no longer subject to NP 2B.

#### **(c) Conversion Triggered by Prospectus**

Prospectus rules and forms are being amended to require disclosure in a prospectus of the same information as is required in the annual NI 51-101 filings. In some cases, the filing of a prospectus will trigger earlier conversion to NI 51-101 disclosure than would be the case for an issuer that does not file a prospectus.

- A prospectus must generally include audited financial statements for a financial year completed more than 90 days (not 140 days) before the prospectus date. In other words, filing a prospectus can accelerate the financial statement deadline. The consequential



amendments will provide that, if a prospectus includes audited financial statements for a year ended on or after December 31, 2003, then it will also have to include NI 51-101 information for the same year. Thus, the accelerated financial statement deadline for a prospectus can also trigger accelerated NI 51-101 disclosure.

Using the example of a reporting issuer with a calendar financial year and a 140-day annual financial statement filing deadline, it would ordinarily have to make its first annual NI 51-101 filing for the year ended December 31, 2003, by May 19, 2004. However, a prospectus filed by the reporting issuer more than 90 days after the year-end - - after March 30, 2004 --would require both annual financial statements and NI 51-101 disclosure for 2003, even if the prospectus is filed before May 19, 2004.

- A prospectus filed by a new issuer after December 31, 2003 -- as an initial public offering, or during the issuer's first financial year -- could also require NI 51-101 disclosure even before the annual financial statement filing deadline. In these cases, the trigger for NI 51-101 disclosure would generally be the inclusion in the prospectus of financial statements -- annual or interim -- for a period ending on or after December 31, 2003.

**(d) Prospectus and Other Instruments Amended**

*The transition provisions described above are included in consequential amendments to national and local prospectus rules and forms.*

Consequential amendments to other disclosure and distribution rules and forms (such as those pertaining to annual information forms, rights offerings and the resale of securities distributed under a prospectus exemption) will phase out existing references to NP 2B as and when reporting issuers become subject to NI 51-101 disclosure requirements.

**(e) NI 13-101 SEDAR**

A consequential amendment to National Instrument 13-101 *SEDAR* makes clear that, unlike NP 2B engineering reports, NI 51-101 disclosure is to be filed electronically, not in paper form. Full engineering reports will no longer be provided to securities regulatory authorities unless they request.

**APPENDIX C**  
**to**  
**CSA NOTICE**

**Proposed National Instrument 51-101**  
*Standards of Disclosure for Oil and Gas Activities*

**Proposed Consequential Amendments**  
**to National and Multilateral Instruments**

In conjunction with NI 51-101, the CSA or individual member jurisdictions of the CSA intend to make amendments to a number of existing national, multilateral and local instruments and forms.

The purpose of these consequential amendments is, generally, to phase out the application of NP 2B and to substitute the application of the Instrument.

In each case, this transition from an NP 2B disclosure regime to an NI 51-101 disclosure regime will apply to an issuer, at the latest, when it files (or is required to file) audited financial statements for a year that ends on or includes December 31, 2003.

The transition to NI 51-101 will apply earlier to a reporting issuer that makes a voluntary filing under Part 2 of NI 51-101 earlier than required. It may also apply somewhat earlier to an issuer that files a prospectus after December 31, 2003, to ensure that NI 51-101 disclosure is provided together with audited financial statements for the financial year (prospectuses currently require financial statements 90 days after the year-end, whereas the current annual filing period is generally 140 days). In the case of an initial public offering of securities by prospectus, disclosure consistent with NI 51-101 would generally be required if the preliminary or final prospectus is filed after March 30, 2004.

The texts of the proposed consequential amendments to the following national and multilateral policy statements, instruments, forms and companion policies follow:

- NP 2B (repeal on June 30, 2005)
- National Instrument 13-101 *SEDAR*
- National Instrument 44-101 *Short Form Prospectus Distributions*
  - Form 44-101F1 *AIF*
  - Form 44-101F3 *Short Form Prospectus*
- National Instrument 45-101 *Rights Offerings*
- Multilateral Instrument 45-102 *Resale of Securities*

**PROPOSED RESCISSION  
OF  
NATIONAL POLICY STATEMENT NO. 2-B  
GUIDE FOR ENGINEERS AND GEOLOGISTS SUBMITTING OIL AND GAS REPORTS  
TO CANADIAN PROVINCIAL SECURITIES ADMINISTRATORS**

**PART 1 DEFINITION**

- 1.1 Definition** - In this document, "NP 2-B" means National Policy Statement No. 2-B Guide for Engineers and Geologists Submitting Oil and Gas Reports to Canadian Provincial Securities Administrators.

**PART 2 NP 2-B CEASES TO APPLY**

- 2.1 Does Not Apply to Issuer** - NP 2-B does not apply to an issuer on or after the earliest date on which the issuer files, or is required to file or to disclose in a filed document, the statement referred to in Item 1 of section 2.1 of National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*.
- 2.2 Effective Date** – Section 2.1 takes effect on September 30, 2003.

**PART 3 RESCISSION**

- 3.1 Rescission** – NP 2-B is rescinded.
- 3.2 Effective Date** – This rescission takes effect on June 30, 2005.

**PROPOSED AMENDMENT  
TO  
NATIONAL INSTRUMENT 13-101  
*SYSTEM FOR ELECTRONIC DOCUMENT ANALYSIS AND RETRIEVAL (SEDAR)***

**PART 1 AMENDMENT**

**1.1 Amendment** – National Instrument 13-101 *SEDAR* is amended by:

- (a) adding to Item 2.3(1)3 the words ", provided that this paragraph 3 does not apply to a statement or report referred to in section 2.1 of National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*"
- (b) adding the following to Appendix A, under the heading "II. Other Issuers (Reporting/Non-Reporting)" "B. Continuous Disclosure" "(a) General Filings":

Oil and Gas Annual Disclosure (NI 51-101)

**PART 2 EFFECTIVE DATE**

**2.1 Effective Date** – This amendment comes into force on September 30, 2003.

**PROPOSED AMENDMENT  
TO  
NATIONAL INSTRUMENT 44-101  
*SHORT FORM PROSPECTUS DISTRIBUTIONS***

**PART 1 AMENDMENT**

**1.1 Amendment** – National Instrument 44-101 *Short Form Prospectus Distributions* is amended by:

(a) deleting Item 5 of paragraph 10.2(a) and substituting the following:

5. **Oil and Gas Reports** - Any technical report or certificate relating to oil and gas properties prepared in accordance with National Policy Statement No. 2-B *Guide for Engineers and Geologists Submitting Oil and Gas Reports to Canadian Provincial Securities Administrators* that the regulator requests be filed and that was not previously filed, if the preliminary short form prospectus is filed on or before June 30, 2005, the issuer is engaged in oil and gas activities (as defined in National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*) and:

- (i) the issuer has not filed and is not required to have filed (alone or in the preliminary short form prospectus or as part of another filed document) the statement referred to in Item 1 of section 2.1 of National Instrument 51-101;
- (ii) the preliminary short form prospectus does not include and is not required to include audited financial statements for a financial year ended on or after December 31, 2003;
- (iii) if the preliminary short form prospectus is filed on or before March 30, 2004 for an initial public offering of securities, it does not include financial statements for a financial year or interim period that ends on or after December 31, 2003; and
- (iv) if the preliminary short form prospectus is filed after December 31, 2003 and during the issuer's first financial year, it does not include financial statements for an interim period that ends on or after December 31, 2003.

(b) deleting Item 9 of paragraph 10.3(a) and substituting the following:

9. **Other Oil and Gas Reports** - Any technical report or certificate relating to oil and gas properties prepared in accordance with National Policy Statement No. 2-B that the regulator requests be

filed and that was not previously filed, if the short form prospectus is filed on or before June 30, 2005, the issuer is engaged in oil and gas activities (as defined in National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*) and:

- (i) the issuer has not filed and is not required to have filed (alone or in the short form prospectus or as part of another filed document) the statement referred to in Item 1 of section 2.1 of National Instrument 51-101;
  - (ii) the short form prospectus does not include and is not required to include audited financial statements for a financial year ended on or after December 31, 2003;
  - (iii) if the short form prospectus is filed on or before March 30, 2004 for an initial public offering of securities, it does not include financial statements for a financial year or interim period that ends on or after December 31, 2003; and
  - (iv) if the short form prospectus is filed after December 31, 2003 and during the issuer's first financial year, it does not include financial statements for an interim period that ends on or after December 31, 2003.
- (c) deleting Item 10(i) of paragraph 10.3(a) and substituting the following:
- (i) deals with a mineral project or oil and gas activities of the issuer; and

## **PART 2 EFFECTIVE DATE**

**2.1 Effective Date** – This amendment comes into force on September 30, 2003.

**PROPOSED AMENDMENT**

**TO  
FORM 44-101F1 AIF**

**PART 1 AMENDMENT**

**1.1 Amendment** – Item 4 of Form 44-101F1 is amended by:

(a) adding the following after "operations," in the preamble to section 4.4:

unless section 4.5 applies,

(b) adding the following after section 4.4:

**4.5 Issuers with Oil and Gas Activities**

This Item 4.5 applies if the issuer is engaged in oil and gas activities (as defined in National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*) and:

- (a) has filed or is required to have filed (or has included or is required to have included in another filed document) audited annual financial statements for a financial year that ends on or after December 31, 2003;
- (b) has, prior to the date on which it is required to file audited financial statements for a financial year that ends on or after December 31, 2003, filed under Part 2 of National Instrument 51-101 (or included in another filed document) the statement referred to in Item 1 of section 2.1 of National Instrument 51-101; or
- (c) is including in this Form the statement referred to in Item 1 of section 2.1 of National Instrument 51-101, whether or not for the purpose of satisfying its filing obligations under National Instrument 51-101.

Disclose the following:

**1. Reserves Data and Other Information**

- (a) In the case of information that, for purposes of Form 51-101F1 *Statement of Reserves Data and Other Oil and Gas Information*, is to be prepared as at the end of a financial year, disclose that information as at the issuer's most recent financial year-end.

- (b) In the case of information that, for purposes of Form 51-101F1, is to be prepared for a financial year, disclose that information for the issuer's most recent financial year.
- (c) To the extent not reflected in the information disclosed in response to paragraphs (a) and (b), disclose the information contemplated by Part 6 of National Instrument 51-101, in respect of material changes that occurred after the issuer's most recent financial year-end.

## **2. Report of Qualified Reserves Evaluator or Auditor**

Include with the information disclosed under section 1 the report of one or more qualified reserves evaluators or qualified reserves auditors, referred to in Item 2 of section 2.1 of National Instrument 51-101, on the reserves data included in the disclosure provided under paragraph 1(a) of this Item.

## **3. Report of Management and Directors**

Include with the information disclosed under section 1 the report of management and directors, referred to in Item 3 of section 2.1 of National Instrument 51-101, relating to that information.

### *INSTRUCTIONS*

- (1) *Disclosure in this Form must be consistent with National Instrument 51-101.*
- (2) *Unless the information presented under paragraph 2 is included in the Form in satisfaction of the issuer's filing obligations under Part 2 of National Instrument 51-101, the issuer may require the written consent of a qualified reserves evaluator or qualified reserves auditor to disclose information in this Form, pursuant to section 5.7 of National Instrument 51-101.*

## **PART 2 EFFECTIVE DATE**

**2.1 Effective Date** – This amendment comes into force on September 30, 2003.



**PROPOSED AMENDMENT**  
**TO**  
**FORM 44-101F3 SHORT FORM PROSPECTUS**

**PART 1 AMENDMENT**

**1.1 Amendment** – Form 44-101F3 Short Form Prospectus is amended by:

- (a) adding to the initial instructions the following:
  - (12) *Disclosure in a preliminary short form prospectus or short form prospectus must be consistent with National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities if the issuer is engaged in oil and gas activities (as defined in National Instrument 51-101) and:*
    - (a) *has filed or is required to have filed (or has included or is required to have included in another filed document) audited annual financial statements for a financial year that ends on or after December 31, 2003;*
    - (b) *has, prior to the date on which it is required to have filed audited financial statements for a financial year that ends on or after December 31, 2003, filed or is required to have filed (or has included or is required to have included in another filed document) the statement referred to in Item 1 of section 2.1 of National Instrument 51-101;*
    - (c) *is filing a preliminary short form prospectus or short form prospectus:*
      - (i) *that includes or is required to include audited financial statements for a financial year ended on or after December 31, 2003;*
      - (ii) *after March 30, 2004 for an initial public offering of securities, and the prospectus includes financial statements for a financial year or interim period that ends on or after December 31, 2003; or*
      - (iii) *after December 31, 2003 and during the issuer's first financial year, and the prospectus includes financial statements for an interim period that ends on or after December 31, 2003; or*

(d) *indicates in the preliminary short form prospectus or short form prospectus that information disclosed therein is presented in accordance with National Instrument 51-101.*

(b) amending Item 10 by:

(a) deleting the heading and substituting the following:

**Item 10: - Resource Issuers**

(b) deleting the heading of section 10.1 and substituting the following:

**10.1 - Issuers with Mineral Projects**

(c) deleting from section 10.1, each time it occurs, the phrase "or 4.4, as appropriate";

(c) adding the following after Item 10.1:

**10.2 - Oil and Gas Activities**

(1) Unless paragraph (2) applies, if a material part of the proceeds of a distribution is to be expended on a particular oil and gas property and if the current AIF does not contain the disclosure required under Item 4.4 of Form 44-101F1 for that property or the disclosure is inadequate or incorrect due to changes, disclose the information required under that Item 4.4.

(2) (a) This paragraph applies to an issuer that is engaged in oil and gas activities (as defined in National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*) and that:

(i) has filed or is required to have filed (or has included or is required to have included in another filed document) audited annual financial statements for a financial year that ends on or after December 31, 2003;

(ii) has, prior to the date on which it is required to file audited financial statements for a financial year that ends on or after December 31, 2003, filed (or included in another filed document) the statement referred to in Item 1 of section 2.1 of National Instrument 51-101;

(iii) is filing the short form prospectus:

- (A) including audited financial statements for a financial year ended on or after December 31, 2003;
  - (B) after March 30, 2004 in respect of an initial public offering of securities, and the prospectus includes financial statements for a financial year or interim period that ends on or after December 31, 2003; or
  - (C) after December 31, 2003 and during the issuer's first financial year, and the prospectus includes financial statements for an interim period that ends on or after December 31, 2003; or
  - (iv) indicates in the preliminary short form prospectus or short form prospectus that information disclosed therein is presented in accordance with National Instrument 51-101.
- (b) To the extent not included in the current AIF or in a material change report filed subsequent to the filing of the current AIF, provide:
- (i) the information that would be required under Item 4.5 of Form 44-101F1 if the AIF were being filed on the date of the preliminary short form prospectus or short form prospectus; and
  - (ii) any other information required in the statement referred to in Item 1 of section 2.1 of National Instrument 51-101:
    - (A) as at the end of, or for, the most recent financial year for which the short form prospectus includes an audited balance sheet of the issuer; or
    - (B) in the absence of a completed financial year referred to in clause (A), as at the most recent date as at which the short form prospectus includes an audited balance sheet of the issuer, and for the greatest portion of a financial year that includes the date of that balance sheet and for which the short form prospectus includes an audited income statement of the issuer.

**PART 2 EFFECTIVE DATE**

**2.1 Effective Date** – This amendment comes into force on September 30, 2003.

**PROPOSED AMENDMENT  
TO  
NATIONAL INSTRUMENT 45-101  
*RIGHTS OFFERINGS***

**PART 1 AMENDMENT**

**1.1 Amendment** – Subsection 3.1(1) of National Instrument 45-101 *Rights Offerings* is amended by:

- (a) deleting from Item 4 the words after "Projects"; and
- (b) adding after Item 4 the following, and renumbering the former Item 5 accordingly:

- 5. If the issuer is engaged in oil and gas activities (as defined in National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*) and the rights offering circular is sent to the reviewing authority on or before June 30, 2005, an oil and gas report prepared in accordance with National Policy Statement No. 2-B *Guide for Engineers and Geologists Submitting Oil and Gas Reports to Canadian Provincial Securities Administrators*, unless the issuer has filed or is required to have filed (or has included or is required to have included in another filed document) the statement referred to in Item 1 of section 2.1 of National Instrument 51-101.

**PART 2 EFFECTIVE DATE**

**2.1 Effective Date** – This amendment comes into force on September 30, 2003.

**PROPOSED AMENDMENT  
TO  
COMPANION POLICY 45-101CP**

**PART 1 AMENDMENT**

**1.1 Amendment** - Section 1.5 of Companion Policy 45-101CP is amended by:

(a) deleting from the heading the words after "43-101" and substituting the following:

", National Policy Statement No. 2-B or National Instrument 51-101";  
and

(b) deleting the words after "Mineral Projects" and substituting the following:

, National Policy Statement No. 2-B or National Instrument 51-101  
Standards of Disclosure for Oil and Gas Activities.

**PART 2 EFFECTIVE DATE**

**2.1 Effective Date** – This amendment comes into force on September 30, 2003.

**PROPOSED AMENDMENT TO  
MULTILATERAL INSTRUMENT 45-102  
RESALE OF SECURITIES**

**PART 1 AMENDMENT**

**1.1 Amendment** – Section 1.1 of Multilateral Instrument 45-102 *Resale of Securities* is amended by:

(a) adding the following after the definition of "NI 44-101":

"NI 51-101" means National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities;

(b) deleting the definition of "NP 2-B";

(c) deleting paragraph (e) of the definition of "qualifying issuer"; and

(d) adding the following after paragraph (e) of the definition of "qualifying issuer":

(e.1) that has filed a current oil and gas report consistent with National Policy Statement No. 2-B Guide for Engineers and Geologists Submitting Oil and Gas Reports to Canadian Provincial Securities Administrators, if the issuer

(i) is engaged in oil and gas activities (as defined in NI 51-101),

(ii) is not qualified to file a short form prospectus under NI 44-101,

(iii) has not filed and is not required to have filed audited annual financial statements for a financial year that ends on or after December 31, 2003, and

(iv) has not, prior to the date on which it is required to file audited financial statements for a financial year that ends on or after December 31, 2003, filed under Part 2 of NI 51-101 or included in another filed document the statement referred to in Item 1 of section 2.1 of NI 51-101,

**PART 2 EFFECTIVE DATE**

**2.1 Effective Date** – This amendment comes into force on September 30, 2003.

**Additional proposed consequential amendment that would affect  
BC securities legislation only**

The Commission proposes the following additional consequential amendment in conjunction with NI 51-101:

**PROPOSED AMENDMENT  
TO  
BRITISH COLUMBIA SECURITIES COMMISSION FORM 41-601F  
INFORMATION REQUIRED IN A PROSPECTUS**

**PART 1 AMENDMENT**

**1.1 Amendment** – British Columbia Securities Commission Form 41-601F *Information Required in a Prospectus* is amended by:

- (a) adding to the initial instructions the following:
  - (11) *Disclosure in a prospectus must be consistent with National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities if the issuer is engaged in oil and gas activities (as defined in National Instrument 51-101) and:*
    - (a) *has filed or is required to have filed (or has included or is required to have included in another filed document) audited annual financial statements for a financial year that ends on or after December 31, 2003;*
    - (b) *has, prior to the date on which it is required to have filed audited financial statements for a financial year that ends on or after December 31, 2003, filed or is required to have filed (or has included or is required to have included in another filed document) the statement referred to in Item 1 of section 2.1 of National Instrument 51-101;*
    - (c) *is filing a preliminary prospectus or prospectus:*
      - (i) *that includes or is required to include audited financial statements for a financial year ended on or after December 31, 2003;*
      - (ii) *after March 30, 2004 for an initial public offering of securities, and the prospectus includes financial statements for a financial year or interim period that ends on or after December 31, 2003; or*



- (iii) *after December 31, 2003 and during the issuer's first financial year, and the prospectus includes financial statements for an interim period that ends on or after December 31, 2003; or*
    - (d) *indicates in the prospectus that information disclosed therein is presented in accordance with National Instrument 51-101.*
  - (b) amending Item 6 as follows:
    - (A) adding after "operations," in the preamble to Item 6.4:

unless Item 6.5 applies,
    - (B) adding after Item 6.4 the following:

#### **6.5 Issuers with Oil and Gas Activities**

This Item 6.5 applies if the issuer is engaged in oil and gas activities (as defined in National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*) and:

- (a) has filed or is required to have filed audited annual financial statements for a financial year that ends on or after December 31, 2003;
- (b) has, prior to the date on which it is required to file audited financial statements for a financial year that ends on or after December 31, 2003, filed (or has included or is required to have included in another filed document) the statement referred to in Item 1 of section 2.1 of National Instrument 51-101;
- (c) is filing the prospectus:
  - (i) including audited financial statements for a financial year ended on or after December 31, 2003;
  - (ii) after March 30, 2004 for an initial public offering of securities, and the prospectus includes financial statements for a financial year or interim period that ends on or after December 31, 2003; or

- (iii) after December 31, 2003 and during the issuer's first financial year, and the prospectus includes financial statements for an interim period that ends on or after December 31, 2003; or
- (d) indicates in the prospectus that information disclosed therein is presented in accordance with National Instrument 51-101.

**1. Reserves Data and Other Information**

- (a) Disclose the information prescribed by Form 51-101F1 *Statement of Reserves Data and Other Oil and Gas Information*:
  - (i) as at the end of, and for, the most recent financial year for which the prospectus includes an audited balance sheet of the issuer; or
  - (ii) in the absence of a completed financial year referred to in clause (i), as at the most recent date for which the prospectus includes an audited balance sheet of the issuer, and for the greatest portion of the financial year that includes the date of that balance sheet and for which the prospectus includes an audited income statement of the issuer.
- (b) To the extent not reflected in the information disclosed in response to paragraph (a), disclose the information contemplated by Part 6 of National Instrument 51-101, in respect of material changes that occurred after the applicable balance sheet date referred to in paragraph (a).

**2. Report of Qualified Reserves Evaluator or Auditor**

Include with the information disclosed under section 1 the report of one or more qualified reserves evaluators or qualified reserves auditors, referred to in Item 2 of section 2.1 of National Instrument 51-101, on the reserves data included in the disclosure provided under paragraph 1(a) of this Item.

**3. Report of Management and Directors**

Include with the information disclosed under section 1 the report of management and directors, referred to in Item 3 of section 2.1 of National Instrument 51-101, relating to that information.

*INSTRUCTION*

*The issuer may require the written consent of a qualified reserves evaluator or qualified reserves auditor to disclose information in this Form, pursuant to section 5.7 of National Instrument 51-101.*

**PART 2 EFFECTIVE DATE**

**2.1 Effective Date** – This amendment comes into force on September 30, 2003.

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