Appendix B
NP 51-201 - Summary of Comment Letters

ISSUE AND COMMENTER	PUBLIC COMMENT	CSA RESPONSE
Timely Disclosure and Standards of Materiality CIRI (7/25/01) Shareholder Association for Research and Education J.D. Scarlett John Kaiser, Canspec Research McCarthy Tétrault	• Clearer guidelines should be provided to determine what is material, including more examples of what constitutes a material change versus a material fact, more guidance on how materiality might be applied to a volatile security versus a less volatile security, and examples of what is **not** a material change.	While recognizing that materiality judgments can often be difficult, attempting to create an exhaustive list of events that are always or never material is neither appropriate nor feasible. Deciding what is or is not material to an issuer is a fact-specific exercise; what is material for one issuer in one case may not be material for another issuer in another case. The definitions of material fact and material change provide flexible standards for determining materiality in fact specific circumstances through the application of the standards to the facts. In responding to similar comments suggesting a bright-line standard for purposes of Regulation FD, the SEC cited with approval the decision of the US Supreme Court in *Basic Inc.* v. *Levinson*, 485 U.S. 224, 236 (1988). The reasoning in this decision is equally applicable to the statutory standard of materiality in the Canadian context: “A bright-line rule indeed is easier to follow than a standard that requires the exercise of judgment in the light of all the circumstances. But ease of application alone is not an excuse for ignoring the purposes of the securities acts and Congress’ policy decisions. Any approach that designates a single fact or occurrence as always determinative of an inherently fact-specific finding such as materiality, must necessarily be over- or underinclusive.” The Policy has been amended to expand the list of examples of events or information that may be material. However, attempting to provide an exhaustive list of what are, and what are not, “material facts” and “material changes” would create a “checklist approach” to materiality judgments, which is precisely what the Policy cautions against. The Policy recommends that issuers monitor the market’s reactions to corporate information it publicly discloses. Ongoing monitoring and assessment of market reaction to this disclosure will help with future determinations of materiality.

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	• The CSA should consider a safe harbour provision and a due diligence defence to protect issuers who have not disclosed something because it has not yet been confirmed or is not yet sufficiently probable.	The CSA's view is that there is no need to provide a safe harbour in these situations because something that is not yet sufficiently probable is not considered material and is therefore not subject to the timely disclosure requirements. The definition of material change in provincial securities legislation includes a decision to implement a change made by an issuer's senior management who believes that confirmation of the decision by the issuer's board is probable. If confirmation is not probable, the decision to implement the change is not a material change and therefore does not need to be disclosed forthwith. In addition, the CSA cannot, in a policy statement, provide for a safe harbour or defence to a requirement contained in provincial securities legislation.
	• The CSA should provide a resource for guidance on issues of materiality.	In our experience, issuers and their counsel rarely want to consult with regulators on such matters. In the event that they do, staff of the provincial securities administrators is available for guidance.
	• Regulators should consider adopting the practice of issuing "no action" letters, on which issuers can rely.	Although such an approach may be appropriate in certain circumstances, albeit rare, the CSA does not see any demonstrable need to formally adopt this practice. Provincial securities administrators have not been revisiting issuers' materiality decisions to an extent that would warrant adopting the practice.
	• The CSA should update and provide guidance on the filing of confidential material change reports.	The Policy provides guidance on the filing of confidential material change reports in paragraphs 2.2 and 2.3 of Part II. Further, as indicated in the Notice to the Policy, the Ontario Securities Commission proposes to withdraw Ontario Securities Commission Notice *Confidential Material Change Reports*, effective the date the Policy comes into force.

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	• The difference between a material fact, material change and material information should be clarified. The policy should clarify that a material fact must be generally disclosed if it has been selectively disclosed. It should also clarify that the timely disclosure obligation does not require the immediate disclosure of all market sensitive or predictive information, such as material facts.	The Policy sets out the different obligations that attach to material changes and material facts. In paragraph 2.1 and footnote 1, the Policy reiterates the definition of material change and the timely disclosure obligation that goes with it. Paragraph 3.1 and footnotes 6 and 7, set out the tipping provisions and the definitions of material fact and privileged information. Paragraph 3.1(1) and footnote 8 have been amended to clarify that material facts and material changes are collectively referred to as material information. Paragraph 3.1(4) has also been amended to clarify that the timely disclosure obligations do not apply to material facts. Paragraph 3.5 indicates that the tipping provisions prevent an issuer from informing anyone of material information that has not been generally disclosed. Paragraph 3.5 and footnote 20 also state that not all material information has to be released into the marketplace.

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	• The commenter objects to the hindsight aspect to the definition of materiality. Materiality should not encompass changes to the market price or value of the security that were not reasonably foreseeable.	Two commenters objected to the retrospective aspect of the definition of "material fact" in provincial securities legislation, whereby a fact in relation to an issuer's securities is deemed material if it, in fact, significantly affects the market price or value of such securities. The Policy cannot change existing law. The measures recommended in the Policy are not, and cannot be, prescriptive. "Material change" and "material fact" are defined in the legislation and it is beyond the authority of the Policy to change those definitions. However, as part of its proposed legislation to enact a statutory civil remedy for continuous disclosure violations, the CSA has proposed a change to the definition of "material fact" which would remove the retroactive aspect of the current definition. The definition, as proposed, would be: "**"material fact,"** when used in relation to securities issued or proposed to be issued, means a fact that would reasonably be expected to have a significant effect on the market price or value of the securities." (See CSA Notice 53-302 – Proposal for a Statutory Civil Remedy for Investors in the Secondary Market and Response to the Proposed Change to the Definitions of "Material Fact" and "Material Change" (2000) 23 OSCB 1). The commenter suggested that a material change should only extend to information regarding the business and affairs of an issuer that would reasonably be expected to result in a significant change in the market price or value of the issuer's securities. In fact, only the definition of material fact contains this retrospective element, so no change to the definition of material change is necessary to address this concern.
	• The requirement to disclose a material change if Board approval is probable should be changed to when the Board formally approves the event. Technology is now better able to quickly disseminate information, so there is no need to build in the lead-time provided by imminent Board approval.	The Policy cannot change the existing requirements of provincial securities legislation. Further, the purpose of this section is not just to allow for sufficient lead-time to disseminate a material change that appears imminent. It also prevents an issuer from delaying disclosure of a material change that is sufficiently likely to happen on the basis that the issuer's Board has not formally approved such change.

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	• The policy should require the timely disclosure of all material information, including material facts and changes. Securities legislation should be amended to require this disclosure.	As indicated above, the Policy cannot change the existing requirements of provincial securities legislation to require the timely disclosure of material information. See a similar comment made by the TSX and the CSA response below.
	• The policy should provide more interpretive guidance on what constitutes material information and expand the list of examples of material information drawn from the exchange policies. The list should include as material political, economic or social events that relate directly to the affairs of the issuer.	As indicated in response to a similar comment above, we agree with the commenter's position and have amended the Policy to provide more examples of the kinds of things that could be material. The Policy has also been amended to clarify its guidance on the materiality of external political, economic, and social developments (see section 4.4 of the Policy). Issuers are not generally required to interpret the impact of external political, economic, and social developments on their affairs. However, if an external development will have or has had a direct effect on the business and affairs of an issuer that both satisfies the "market impact" test for materiality and is uncharacteristic of the effect generally experienced by other issuers engaged in the same business or industry, then the development would likely be material.
	• CSA should reconsider moving to the U.S. standard of materiality, the reasonable investor test. • The market impact test assumes that secondary trading will indicate whether or not information is material to an issuer. This is a faulty assumption in situations where securities are thinly traded or the market is inefficient, where price movement does not properly reflect the importance of the information. • The U.S. standard does not allow issuers to delay or avoid disclosure based on an assessment of after-the-fact market reaction.	Moving to a US standard of materiality was canvassed in the context of the CSA's proposed amendments to securities legislation creating a limited statutory civil liability regime for continuous disclosure (see CSA Notice 53-302 – Proposal for a Statutory Civil Remedy for Investors in the Secondary Market and Response to the Proposed Change to the Definitions of "Material Fact" and "Material Change"). In particular, the CSA considered amending the definitions of "material fact" and "material change" to reflect the "reasonable investor" standard of materiality used in Quebec and US securities legislation. However, some commenters who responded to the proposed amendments expressed concern that changing the materiality standard would raise too many issues of interpretation and introduce an unacceptable level of subjectivity and uncertainty into materiality determinations. Ultimately, the CSA decided not to proceed with the amendments to the definitions as part of its proposal for civil liability for continuous disclosure.

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	• The policy does not address the "mosaic theory." It should acknowledge that an analyst could use a non-material fact to complete a framework that, overall, may disclose material information.	The Policy addressed the "mosaic theory" in paragraph 5.1(1), footnote 28, of the version published for comment May 25, 2001. The Policy has been amended to move the guidance previously in footnote 28 into the body of the Policy at paragraph 5.1(4).
	• In Part V, the Policy indicates that issuers should not disclose significant data to analysts, such as sales and profit figures. This suggests that the CSA believes that such information is material, which has implications for insider trading as well. The guidelines should be careful not to "create a new standard for materiality." It therefore may be appropriate to clarify that the CSA's commentary is not intended to change the materiality standard.	The guidelines do not create a new standard of materiality. It should be noted that the guidance in question is included in the section of the Policy entitled "Risks Associated with Certain Disclosures." This section highlights those disclosure practices which the CSA believes are inherently more risky. The CSA's reference to the example of sales and profit figures is in keeping with the guidance offered by the exchanges' timely disclosure policies, which provide that significant changes in near-term earnings prospects are considered material. No new materiality standard is created by recognizing that sales and profit figures are generally considered to be material information by the marketplace.
Rescission of NP 40 TSX TSX Venture McCarthy Tétrault	• Rescinding NP 40 would fragment the timely disclosure regime, with the statutory requirement of timely disclosure of material changes different from the TSX policy of timely disclosure of material information. The Exchange would be isolated in its higher standard of timely disclosure.	The rescission of NP 40 does not result in a dual disclosure regime anymore than presently exists. To the extent that NP 40 purports to require immediate disclosure of all material information (both material facts and changes) it is beyond the authority of a policy statement. According to securities legislation, an issuer's timely disclosure obligations are confined to disclosing material changes and other disclosure specifically required under applicable rules. This does not prevent the exchanges from implementing and enforcing their own timely disclosure requirements for issuers who list on their facilities. The Policy has been amended to emphasize that it is not uncommon, or inappropriate, for exchanges to impose requirements on their listed companies in addition to those imposed by securities legislation (see paragraph 4.5(2) of the Policy).

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	• Without CSA guidance to follow the Exchange's policy, listed companies might be tempted to ignore the Exchange's higher standard and risk being suspended/delisted, knowing the Exchange is reluctant to resort to such a drastic remedy.	The proposed rescission of NP 40 should not be construed as a lack of support by the CSA for the exchanges' timely disclosure regimes. The Policy has been amended to emphasize that the CSA expects issuers listed on an exchange to comply with the exchange's requirements, including their timely disclosure requirements. Issuers who do not comply with these requirements could find themselves subject to an administrative proceeding before a provincial securities regulatory authority (see paragraph 4.5(2) of the Policy). The Policy has also been amended to refer to the settlement in *In the Matter of Air Canada.* There, the parties to the settlement agreed that by disclosing earnings information that had not been generally disclosed to 13 analysts, the company failed to comply with the TSX Company Manual and thereby acted contrary to the public interest (see footnote 32 of the Policy).
	• With the discretion not to disclose material facts, issuers could disclose positive news and withhold negative, reducing the overall quality of issuer disclosure. Issuers could also be confused by the two different standards.	Paragraph 2.1(2) of the Policy states that unfavourable news must be disclosed just as promptly and completely as favourable news. The Policy has been amended to state, in addition, that issuers who disclose positive news while withholding negative news could find their disclosure practices subject to scrutiny by provincial securities regulators.

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	• The commenter recommends that the CSA adopt a timely disclosure rule requiring the timely disclosure of material information. Alternatively, provincial securities legislation should be amended to achieve the same result.	The TSX's Committee on Corporate Disclosure (the "Allen Committee") canvassed this issue and ultimately did not recommend a timely disclosure requirement for material information in its final report (see *Responsible Corporate Disclosure, a Search for Balance*, March 1997). In its interim report, the Allen Committee recommended giving NP 40 legal effect, thereby creating a timely disclosure requirement for material information. However, as one Committee member pointed out, this recommendation was not without difficulty. Imposing it could narrow the application of the prohibition against insider trading, increase the number of confidential filings by issuers, and result in ongoing news releases over the course of a transaction to satisfy the requirement. The distinction in provincial securities legislation between material facts and material changes allowed disclosure to be delayed to such a point where a development constituted a change in the business, operations or capital of the issuer while recognizing that some information, without amounting to a change, could still affect the market price of the issuer's shares. People who knew this information should not be allowed to trade in the issuer's securities unless the information was generally disclosed.
	• Rescinding NP 40 will create a dual disclosure regime. NP 40 harmonized the statutory requirement for timely disclosure with the TSX and TSX Venture requirements. This uniformity created greater certainty for issuers.	See above.
	• The Policy does not specify that issuers must comply with the exchanges' rules on timely disclosure. There is no reference to the exchanges' policies in paragraph 1.1(3) or paragraph 2.1 of the Policy. Part V does not adequately explain that the exchanges' disclosure obligations involve material information, not just material changes. Different standards for timely disclosure could result in more "negotiations" with listed companies as to what they must disclose.	Issuers enter into listing agreements with the exchanges they list on that require issuers to comply with exchange rules. As noted above, the CSA expects reporting issuers to honour their contractual obligations to comply with applicable exchange rules, which is a condition of listing. The requirements of the exchanges' disclosure policies are discussed in subsection 4.5(2) of the Policy.

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	• The CSA should reconcile the different requirements for timely disclosure as between provincial securities legislation and the policies of the exchanges.	See responses above.
Best Practices OBA	• Concern that "best practices" will effectively become mandatory requirements, notwithstanding the intent that the policy not be prescriptive. Over time, the best practices will become the liability standard for judging the actions of directors and officers of public companies. They may be administrative burdens for smaller issuers, who will still feel compelled to adopt them out of concern for liability. • The CSA should be cautious about using "best practices" guidelines as a policy-making tool.	We understand the concern expressed in the comment. We reiterate that the "best practices" set out in the Policy are not prescriptive measures but satisfy the description of "Policy" found in provincial securities legislation. The CSA's view is that the "best practices" model is the best means of providing guidance in this important area. Other alternatives considered by the CSA included prescriptive rule making and offering no guidance at all.
Part II – Timely Disclosure McCarthy Tétrault	• To the extent that Part II proposes a general approach to timely disclosure, CSA should adopt Quebec's approach as the general CSA approach. The Quebec approach to timely disclosure allows a company the opportunity to decline to make disclosure where it would be prejudicial. There is also no requirement to make a regulatory filing.	We acknowledge the difference in what the law says in different jurisdictions. However, the Policy does not and cannot change the timely disclosure requirements provided for in provincial securities legislation and, in particular, the confidential material change report mechanism in jurisdictions other than Québec.

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3.2 Persons Subject to Tipping Provisions The tipping provisions generally apply to anyone in a “special relationship” with a reporting issuer. J.D. Scarlett	• There is no guidance with respect to the obligations of tippees who receive information from persons not in a special relationship with a reporting issuer. • An example is the investment dealer who, on behalf of an offeror proposing a take-over of the securities of a reporting issuer, consults a portfolio manager with respect to a lock-up of the reporting issuer’s securities, which the portfolio manager declines. Is the portfolio manager prohibited from trading in the securities of the reporting issuer?	We believe that the prohibition against tipping addresses the example given by the commenter. The offeror’s plan to make the take-over bid for the shares of the reporting issuer would in all likelihood be material with respect to the reporting issuer. News of a take-over bid, or a proposed bid, for the target reporting issuer would reasonably be expected to have a significant effect on the market price or value of the shares of the reporting issuer. Provincial securities legislation would prohibit the offeror from informing anybody of the proposed bid before news of it has been generally disclosed, unless the information is given in the necessary course of business to effect the transaction. The investment dealer looking to lock up shares on behalf of the offeror would also be prohibited from informing anybody of news of the bid prior to it being generally disclosed, unless the disclosure is made in the necessary course of business. The definition of “person or company in a special relationship with a reporting issuer” deems those engaged in professional activity on behalf of a company proposing a take-over bid for securities of a reporting issuer to be in a special relationship with that reporting issuer. Similarly, the portfolio manager would also be prohibited from informing anybody of news of the bid prior to it being generally disclosed. The definition also deems those who learn of material information with respect to a reporting issuer from someone they knew or ought to have known was in a special relationship with the reporting issuer to themselves be in a special relationship with the reporting issuer.

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3.3 Necessary Course of Business The "tipping" provision allows a company to make a selective disclosure if doing so is in the "necessary course of business." Shareholder Association for Research and Education Simon Romano McCarthy Tétrault	• The policy should confine the necessary course of business exception to the single communication, so that tippees cannot further inform persons or companies. Recipients of material information in the necessary course of business could further selectively disclose the information to the media or investors without repercussions, since, having received the information in the necessary course of business, these tippees would no longer be persons in a special relationship with the reporting issuer.	The CSA disagrees with the commenter's interpretation of how the tipping provisions work. Even where a selective disclosure is permitted by virtue of the "necessary course of business" exception, the persons or companies involved are still in a special relationship with the reporting issuer. Accordingly, there is no need to confine communications in the necessary course of business to the single instance to prevent further tipping, as the recipient continues to be subject to the prohibition by virtue of the operation of the legislation.
	• Securities legislation should be amended to extend the tipping provisions to anyone with material nonpublic information, not just those in a special relationship with a reporting issuer.	Provincial securities legislation does not need to be amended to make this change because the existing definition of "person or company in a special relationship with a reporting issuer" covers the situation described by the commenter. The definition includes, "a person or company that learns of a material fact or material change with respect to the issuer from any other person or company described in this subsection, including a person or company described in this clause, and knows or ought reasonably to have known that the other person or company is a person or company in a special relationship." The effect of this aspect of the definition is to cast a wide net over any person or company who learns of material information that has not been generally disclosed to bring them within the prohibition against tipping.

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	• Why is disclosure to credit rating agencies in the necessary course of business when disclosure to equity analysts is not? Credit rating agencies analyze issuers' debt for public consumption; equity analysts analyze issuers' equity for public consumption.	The CSA's view is that there is a fundamental distinction between disclosure to credit rating agencies and disclosure to equity analysts, which lies in the purpose for which the information is used. While research reports prepared by equity analysts can be targeted to an analyst's firm's clients, credit ratings are directed to a wider public audience. We also note that credit rating agencies are not in business to trade, as principal or agent, in the securities they are called upon to rate. This is distinguishable from the equity analyst who typically works for an investment bank whose activities include trading, underwriting and advisory services. As the SEC indicated in response to similar comments about the exclusion of rating agencies from the reach of Regulation FD, "[r]atings organizations…have a mission of public disclosure; the objective and result of the ratings process is a widely available publication of the rating when it is completed." The CSA adopts this analysis. In paragraph 3.3(2)(g) of the Policy, the CSA indicates that communications to credit rating agencies would generally be considered in the "necessary course of business," provided that the information is disclosed for the purpose of assisting the agency to formulate a credit rating and the agency's ratings generally are or will be publicly available. Further, securities legislation often affords companies or their securities status based on obtaining specified ratings from approved rating agencies. Consequently, ratings form part of the statutory framework of provincial securities legislation in a way that analysts' reports do not. We have amended the Policy to highlight this distinction (see subsection 3.3(7) of the Policy).

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	• It is doubtful that the *George* decision is authority for the proposition that an issuer's disclosure to analysts is not in the necessary course of business. The relevant remarks in the decision were *obiter*. There was no discussion of significant issues like whether asking analysts, on a confidential basis, to hold off issuing new reports until a development is clarified is appropriate or not.	Footnote 16 of the Policy expressly points out that the Ontario Securities Commission's guidance on this issue was provided in *obiter*. However, this does not detract from the relevance or usefulness of the guidance as an indication to the marketplace as to how the Commission would regard such conduct if it were directly in issue before the Commission. In the *George* decision, the Commission addressed, in *obiter*, the disclosure by an issuer's chief executive officer to an analyst material information about the issuer's projected earnings that had not been generally disclosed. The analyst in turn communicated this information to other members of his firm. Although neither the chief executive officer nor the analyst were respondents in the proceeding, the Commission specifically said: "We would like to make it absolutely clear that such conduct is both illegal and improper, and that if, in proceedings commenced against an officer of an issuer or an analyst, such conduct was proved, we would regard it most seriously." Regarding the communication of material information that has not been generally disclosed by an analyst to other members of their firm, the Commission said, "it…may be seen by some analysts as being in the "ordinary" course of business, but in our view it is not in the "necessary" course of business."
	• In appropriate circumstances, disclosures to controlling shareholders should be considered in the "necessary course of business." In many cases, strategic sensitive information must be shared with a controlling shareholder and this should be permitted with the appropriate safeguards referred to in paragraph 3.4 of the Policy.	We agree with the point made by the commenter and amended the Policy to reflect that communications with controlling shareholders may, in certain circumstances, fall within the "necessary course of business" exception, subject to the guidance in sections 3.3(4) and 3.4 of the Policy.

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	• One commenter expressed concern at the way the Policy associated the media with analysts, institutional investors, and other market professionals, as entities to whom disclosure of material undisclosed information would not be considered in the "necessary course of business." The commenter felt that, by associating the media with these other market professionals, the Policy ignores the important role the media plays in communicating information to the marketplace. The reach of the news media can, in some respects, be broader than other methods of dissemination that satisfy the "generally disclosed" requirement, particularly in terms of the average retail investor.	We recognize the importance of the media's public disclosure function and the role it can play in keeping the marketplace well informed. The Policy does not suggest that issuers stop communicating with the media. The Policy emphasizes that provincial securities legislation prohibits issuers from selectively disclosing material information that has not been generally disclosed, except when it is in the necessary course of business. Selectively communicating material information to the media that has not been generally disclosed is not likely to be in the "necessary course of business." Also, while the media can play an important role in disseminating information to the marketplace, it is not a proxy for satisfaction of an issuer's general disclosure obligations. We have amended the Policy to say that it does not prevent issuers from speaking to the media. However, if issuers do communicate with the media, they should be mindful of selectively disclosing material information that has not been generally disclosed (see subsection 3.3(8) of the Policy).

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3.4 Necessary Course of Business Disclosures Disclosures by a company to a lender or in connection with a private placement, merger or acquisition are typically made in the "necessary course of business." AIMR-Canadian Advocacy Council CIRI (7/25/01) Simon Romano OBA John Kaiser, Canspec Research TSX TSX Venture McCarthy Tétrault	• Disclosure of material nonpublic information by an issuer to a private placee should not be considered disclosure "in the necessary course of business." Allowing selective disclosure to private placees would undermine the fair treatment of other investors who are not privy to this information.	Six commenters commented on this issue and the views expressed were mixed. Two commenters supported the CSA's statement that disclosure of material information to private placees might generally be considered in the necessary course of business. One commenter was more neutral but took this position provided that the material information should be disclosed at the earliest opportunity. The CSA agrees with this proviso. Two of the commenters were concerned that the ability to disclose material information to private placees would give the placees an informational advantage. However, the CSA has carefully weighed this concern against the competing interests and determined that the approach taken in the Policy is appropriate. Specifically, the CSA considered whether there would be harm done to the integrity of the marketplace by disclosing material information to private placees. As recipients of material information that has not been generally disclosed, private placees would be caught by the prohibitions against tipping or trading, subject to the availability of any exemptions (for example, section 175 of the Regulation to the Ontario Act or comparable provisions of other provincial securities legislation). Consequently, they would be constrained by the legislation in the use they could make of such information. Further, the CSA recognizes that it is important to facilitate these kinds of transactions and that such communications may be necessary in order to effect the private placement. Provincial securities legislation already contemplates that selective communication of material information that has not been generally disclosed may be in the necessary course of business to effect take-over bids, certain business combinations, and significant acquisitions. Finally, we note that an outright prohibition of this disclosure could put issuers offside their obligations with respect to the content of Offering Memoranda.

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	• Section 76 of the Ontario Act does not support the interpretation that informing private placees is "in the necessary course of business." Section 76(2) deals with disclosures in the context of "relationships not involving securities transactions." Section 76(3) deals with disclosures in connection with certain securities transactions. Since private placements are not mentioned in section 76(3), they were not meant to be considered as "in the necessary course of business."	The CSA does not agree with this interpretation, which effectively reads into the subsections limitations not apparent on their face. Subsection 76(2) is a general prohibition. Subsection 76(3) specifically addresses particular types of transactions and emphasizes that selective disclosure in the context of these transactions is only permissible if it is "given in the necessary course of business to effect the take-over bid, business combination or acquisition." There is nothing to suggest that subsection 76(3) was intended as an exhaustive list of "necessary course of business" communications.
	• The defence in section 76(4) is solely a defence to the statutory civil liability provisions in section 134 and not a defence to the prohibition itself.	Subsection 76(4) is not solely a defence to statutory civil liability under the Ontario Act. Subsection 76(4) specifically references all of the prohibitions in sections 76(1), (2) and (3).
	• The scope of the parties and circumstances under which communications will be considered in the necessary course of business should be expanded. Issuers should be able to sound out significant shareholders on their receptiveness to major proposals. They should also be able to get written commitments from parties receiving material information to keep the information confidential until it has been generally disclosed.	As noted in response to a similar comment above, we amended the Policy to reflect that communications with controlling shareholders may, in certain circumstances, fall within the "necessary course of business" exception. Nothing in the Policy should be construed to prevent issuers from using confidentiality agreements. The CSA understands that this is a fairly common practice. However, there still needs to be a determination that the disclosure in the first instance was in the "necessary course of business." While obtaining a confidentiality agreement is a good practice to follow where possible, it is not a statutorily recognized defence to a selective disclosure. It is, therefore, not a proxy for determining that such a defence is also available.
	• Private placees should be able to receive material nonpublic information in the necessary course of business. Receipt of this information may be essential to raise financing.	See the responses above.

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	• Concern expressed about communications to private placees being considered in the necessary course of business, especially as this would involve communication of material nonpublic information to potential investors. There may be situations where it is in the necessary course of business to disclose material nonpublic information to private placees but in the normal course, material nonpublic information disclosed to private placees should be generally disclosed at the earliest opportunity.	We agree with the comment and have amended the Policy to provide that even though there may be situations where it is in the "necessary course of business" to communicate material information to private placees that has not been generally disclosed, this information should be generally disclosed at the earliest opportunity (see subsection 3.3(4) of the Policy). See the responses above.
	• It is patently unfair to consider communication to private placees in the necessary course of business. Participating in a private placement is already a privilege and it would be unfair to give a placee an extra informational advantage over the marketplace.	See the responses above.
	• Opposes disclosure of material information to shareholders or potential shareholders, which would give an investment advantage to placees over others, especially in a junior market. This is offside TSX Venture Policy 3.3.	See the responses above.
	• The Policy should acknowledge that use of a confidentiality agreement would generally be regarded as a sufficient safeguard for the purposes of maintaining the confidentiality of material information disclosed in the "necessary course of business."	The CSA recognizes that for disclosures that are in the "necessary course of business," a confidentiality agreement could be relied on to safeguard the confidentiality of the information disclosed. However, the CSA cautions, as it does more fully in response to comments made with respect to paragraph 5.3 of the Policy, that there is no exception to the tipping provisions for disclosures made pursuant to a confidentiality agreement.

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3.5 Generally Disclosed The tipping provisions prohibit a company from disclosing material nonpublic information to anyone before the company generally discloses the information. Shareholder Association for Research and Education CIRI (7/25/01) Simon Romano TSX TSX Venture McCarthy Tétrault	• Reporting issuers should be required to make their timely disclosure through each of a widely circulated news release, SEDAR and the issuers' Web site. This way, investors without print or Internet access will not be discriminated against and investors will have confidence that all of an issuer's disclosure will be available in one place.	Most of the commenters who expressed a view on this matter believe the Policy should acknowledge a news release as the only means of ensuring that material information is generally disclosed. In the absence of any definition of the term "generally disclosed" in securities legislation, the CSA begins with the principles expressed in the Policy at paragraph 3.5(2) that, pursuant to insider trading case law, material information is considered to be "generally disclosed" if: (a) The information has been disseminated in a manner calculated to effectively reach the marketplace; and (b) Public investors have been given a reasonable amount of time to analyze the information. We have decided not to amend the Policy to provide that news release disclosure is the only means of satisfying the "generally disclosed" requirement. We want to preserve flexibility for issuers in determining the most appropriate means of public dissemination. We also believe that the case law supports such a flexible approach. However, we acknowledge the strong views of the commenters on this issue and agree that disclosure through a widely circulated news release remains the safest and surest means of satisfying the "generally disclosed" requirement. We continue to recommend a disclosure model where material information is first disclosed in its entirety through a news release, to be followed by an open and accessible conference call (for which proper notice has been given) to discuss it. We have amended the Policy to make this recommended model a separate "best practice" (it had previously formed part of the guidance on analyst conference calls and industry conferences at section 6.5). In our discussion of the "generally disclosed" requirement, we have included a cross-reference to this recommended model, emphasizing the need for effective dissemination.

ISSUE AND COMMENTER	PUBLIC COMMENT	CSA RESPONSE
	• A news release should be the only acceptable means of generally disclosing material information. The policy says that "one or a combination of" news releases, press conferences or conference calls is acceptable, suggesting that a conference call by itself is sufficient. However those unable to access the call will be disadvantaged. They will not have access to the full text of the disclosure, since the notification of the call requires only a general description of the matter to be discussed. The guidance on the notification for a call is fine but nothing material should be discussed in the call that has not been generally disclosed in a news release.	See the response above. We have also amended subsection 3.5(4)(b) of the Policy to clarify that a replay and/or transcript of the conference call should also be made available to the public.
	• The policy should expressly provide that the time parameters for "generally disclosed" found in the case law may be excessive, given modern communications technology.	We have amended the Policy to acknowledge that the case law is dated in this respect and that the time parameters set out in the case law may not be appropriate today (see footnote 21 of the Policy).
	• Only a full-text news service with broad dissemination should satisfy the "generally disclosed" requirement. This is consistent with the TSX's own timely disclosure guidelines. Open-access conference calls should be supplements only to dissemination by full-text news release in satisfying the "generally disclosed" requirement.	See the response above.
	• It is inconsistent, on the one hand, to say that an open conference call accessible by the Internet satisfies the "generally disclosed" requirement while, on the other, saying that a posting to an issuer's Web site does not.	We do not believe the Policy is inconsistent in this regard. The case law says that, for information to be considered "generally disclosed," it must be "disseminated in a manner calculated to effectively reach the marketplace." Effective dissemination implies the act of "disseminating" information. We feel this distinction is apparent between open and accessible conference calls and simple postings to a company's Web site. For material information disclosed through a conference call to be considered "generally disclosed," the call itself must be held in an open manner and be preceded by a broadly circulated news release containing particulars of the call and the matters to be discussed. The notice requirement for the call helps to push the information to the marketplace whereas there is no such active dissemination to a Web site posting.

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	• Provision that the "generally disclosed" requirement may be satisfied by either a news release or an open announcement is inconsistent with the TSX Venture requirement that dissemination must be by electronic news disseminator, whether or not a conference/call is held. Dissemination should be by news release, supplemented if necessary by accessible conference/call. The Policy's statement that a web posting alone is not sufficient dissemination does not mention the fact that the Internet does not "push" the information out to the recipient; rather the recipient must go look for it. This is the key element to dissemination. The CSA approach to the use of the Internet is inconsistent. The provision that a web posting alone is insufficient disclosure but that a conference/call accessible through the Internet is sufficient is inconsistent.	We deal with this comment above. We have amended the Policy to explain and reflect the distinction (see subsection 3.5(6) of the Policy).
	• The Policy should be rephrased to say that the notice announcing a conference call should contain a description of what is expected to be discussed during the call, not what will be discussed. Often, the Q&A portion of a call will lead into new areas of discussion. It would be problematic if the notice were seen to restrict what was to be discussed in the call.	The function of the notice is to indicate what is to be discussed in the call, so investors and analysts can determine if they want to access it. If there is no notice of what will be discussed during the call, analysts and investors have no basis on which to determine whether or not to access the call. Similarly, if a call leads into discussion of matters for which no notice was given, there is the risk that some analysts and investors will not have accessed the call but might have otherwise done so had they known what would be discussed. This compromises the open nature of the call itself.
	• Posting information to a company's Web site should be considered "generally disclosed." Technology can alert interested parties as to when information was posted to an issuer's Web site.	The CSA has not ruled out the possibility that at some point, a posting to an issuer's Web site could satisfy the "generally disclosed" requirement. The Policy says that the CSA will revisit this guidance as technology and practices evolve. Further, the Policy recognizes that a company's Web site is an important tool in making corporate information available and encourages issuers to make use of their Web sites accordingly. This is consistent with the position adopted by the SEC in Regulation FD.

ISSUE AND COMMENTER	PUBLIC COMMENT	CSA RESPONSE
3.6 Unintentional Disclosure McCarthy Tétrault	• There is no provision in the Policy for a safe harbour for the unintentional disclosure of material information, as there is with Regulation FD. There should be a comparable degree of protection for issuers under the Policy	Paragraph 3.6 of the Policy makes it plain that there is no safe harbour in provincial securities legislation for the unintentional disclosure of material information that is not generally disclosed. The CSA cannot create such a safe harbour by means of a policy statement. However, paragraph 3.6 does give clear guidance as to what issuers should do when faced with a situation where material information has been inadvertently selectively disclosed. Paragraph 3.7 of the Policy says that the CSA will consider as mitigating factors whether any selective disclosure was intentional and what steps were taken to disseminate material information that had been unintentionally disclosed.
Part V – Risks Associated with Certain Disclosures TSX Venture	• References to material undisclosed and material nonpublic information should be clarified, since, according to exchange policies, all material information must be generally disclosed.	According to provincial securities legislation, material changes and other information prescribed by law must be disclosed. As a result, there will be situations where a person or company in a special relationship with a reporting issuer may be in possession of material information that has not been generally disclosed. However, provincial securities legislation prohibits anyone in this situation from trading in the securities of the reporting issuer until the information has been generally disclosed.
5.1 Private Briefings with Analysts, Institutional Investors and other Market Professionals CIRI (7/25/01)	• This paragraph should be reworked (and paragraph 5.2 eliminated) to reemphasize that private meetings can be held, so long as no material nonpublic information is disclosed. A suggested text for the paragraph is included on page 7 of the comment letter.	We have compared the commenter's suggested text with Part V of the Policy, and paragraph 5.1 in particular, and believe that all the content proposed by the commenter is already reflected in that part. Therefore, no change to the Policy is needed.
5.2 Draft Analyst Reports CIRI (7/25/01)	• This paragraph should be clearer and broader to cover the risks of reviewing the entire analyst draft report and earnings model, not just the earnings projection. It should emphasize the risk in selectively disclosing material **non-financial** information.	Paragraph 6.8 of the Policy, which addresses the reviewing of draft analyst reports, specifically addresses the concerns identified. The purpose of paragraph 5.2 of the Policy is to highlight those particular practices that pose a high degree of risk. This is why the review of earnings projections is emphasized. We have amended the Policy to cross-reference paragraphs 5.2 and 6.8 and have included a reference in paragraph 6.8 addressing risks of disclosing material non-financial information.

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5.3 Confidentiality Agreements with Analysts McCarthy Tétrault Scotia Capital	• The Policy fails to address the dilemma faced by a corporation where analysts' estimates are wildly off the mark. Do issuers have a duty to correct materially misleading forward-looking information being fed to investors by the analyst community? If so, there should be a safe harbour to protect issuers from liability if their cautions subsequently turn out to be off the mark.	We acknowledge the dilemma faced by issuers in this situation. We have amended the Policy to indicate that one way companies can try to bring analysts' estimates in line with company expectations is to ensure the timeliness and quality of their own disclosure (see subsection 5.2(3) of the Policy). Companies take on a high degree of risk when they confirm or steer analysts' estimates through selective guidance. We are not aware of any duty on a company to correct misleading forward-looking information prepared and disseminated by an analyst.
	• Permitting meetings between issuers and analysts pursuant to a confidentiality agreement would allow for free and open communications between the two and allow the analyst to assemble and analyze information the average investor could not otherwise interpret. The investing public would benefit by having more information, thoroughly analyzed and available immediately following an announcement by the issuer.	The comment does not address the concern that meetings with select analysts pursuant to a confidentiality agreement still provides certain analysts with a head start in analyzing the information. While this positions the analyst to release their report immediately following the announcement, the report itself may be available only to a particular firm's clients and not to the marketplace as a whole. Consequently, the benefit of having an analyst expedite the process of interpreting the information may not necessarily accrue to investors in the marketplace generally, on an equally accessible basis.
	• A limited exception to the tipping provisions should be provided for the selective disclosure to analysts of material information that has not been generally disclosed, pursuant to a confidentiality agreement.	The Policy cannot create an exception to the requirements in provincial securities legislation, which do not provide for the use of confidentiality agreements. However, we have amended sections 3.4 and 5.3 of the Policy to recognize that using a confidentiality agreement when disclosing material information can be a good practice.
5.5 Earnings Guidance Some companies have begun to voluntarily disclose in press releases or on their Web sites their own "financial outlooks." CIRI (7/25/01) McCarthy Tétrault	• It is not clear why the policy differentiates between MD&A that includes forward-looking information and "voluntary or optional forward-looking disclosure." A proper outlook section of annual MD&A should address key performance benchmarks based on current trends, just as voluntary forward-looking disclosure would. Differentiating between MD&A and voluntary disclosure could create confusion.	The requirement for and the content of MD&A is prescribed in securities legislation and rules. As clearly outlined in footnote 38, the difference between MD&A and voluntarily provided forward-looking information lies in the nature of the forecasts being made. Prescribed MD&A is based on presently known trends, whereas other forward-looking information involves estimates of future results.

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	• The US approach has been to create a safe harbour with respect to forward-looking information, provided it is accompanied by suitable cautionary language. There is no indication of how the CSA will approach this.	The safe harbour in the US is a result of the proliferation of class action litigation there. There has not been, to date, a similar issue in Canada. However, paragraph 5.5(3) of the Policy recommends the use of similar cautionary language when disclosing forward-looking information. Finally, the CSA has recommended the inclusion of a safe harbour as part of its proposal for legislative amendments to introduce statutory civil liability for investors in the secondary market (see footnote 39 of the Policy).
5.6 Application of National Policy Statement 48 TSX Venture McCarthy Tétrault	• Paragraphs 5.5 and 5.6 do not account for the restrictions on the dissemination of FOFI in the course of a distribution, contained in section 4.4 of NP 48. The Policy should clarify either that paragraphs 5.5 and 5.6 must be read with the restrictions in section 4.4 of NP 48 in mind or that NP 48 does not apply in these situations.	We acknowledge the points made by the commenters and recognise the interplay between the Policy and NP 48. The guidance in NP 48 continues to apply except to the extent indicated in the Policy. A separate CSA committee is currently reviewing NP 48.
	• The CSA should reconcile those elements of the Policy which encourage forward-looking information with the regulatory burdens created by NP 48. There are situations where voluntarily provided forward-looking information would trigger the provisions of NP 48.	See the response above.

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5.7 Duty to Update Once a company discloses forward-looking information, the timely disclosure requirements might require the company to "update" the information by issuing a news release and filing a material change report. Ogilvy Renault CIRI (7/25/01) OBA	• This interpretation of the timely disclosure requirements goes beyond what a plain reading of the statute requires. The legislation requires the timely disclosure of changes in the business, operations or capital of the issuer. There is no obligation to disclose predictive information like earnings guidance and the legislation does not create a continuous duty to update such information in response to subsequent developments. The *Re Royal Trustco Limited* decision is distinguishable on its facts from the CSA's interpretation.	We received comments from three commenters on this issue. Each commenter said that the "duty to update" purportedly created by the Policy exceeded the current requirements in provincial securities legislation. Accordingly, we have amended the Policy to remove the suggestion that an issuer's obligation to disclosure "material changes" might require it to update any forward-looking information it discloses. However, we have amended the Policy to recommend that, as a matter of "good practice," companies should update earnings estimates. We also emphasize that whatever a company's practice is, the company should explain its update policy to investors when making a forward-looking statement (see section 6.9 of the Policy). We have included in a footnote to section 6.9 the decision of the Ontario Securities Commission in *Re Royal Trustco Limited* regarding the duty to update and the fact that some provinces have provisions in their securities legislation that prohibit a person, while engaging in investor relations activities or with the intention of effecting a trade in a security, from making a statement that they know, or ought reasonably to know, is a misrepresentation.
	• The Policy does not provide guidance as to when the duty to update guidance would be triggered. The timing of issuers' decisions to update could be judged in hindsight, which is inappropriate.	See the response above.
	• A statutory duty to update would prevent an issuer from disclaiming responsibility for updating financial guidance, which could be an important condition of the "notional agreement" by which the issuer shares the information with the marketplace.	See the response above.
	• A statutory duty to update would also result in increased exposure to liability for failure to make timely disclosure. It could discourage issuers from making statements about future earnings, thereby weakening the quality of information in the marketplace.	See the response above.

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	• Recognizing a statutory duty to update is also more onerous than the U.S. position, where the courts have recognized a duty to correct misleading information but not a duty to update financial information that subsequently becomes inaccurate.	The existence of a "duty to update" in the US is the subject of ongoing debate. The SEC has stated that Regulation FD does not create such a duty where it does not otherwise exist at law.
	• Financial guidance should not be subject to the same timely disclosure obligations as material changes.	See the responses above.
	• Current legislation does not provide for a duty to update voluntary disclosure of predictive information.	See the responses above.
	• Disclaiming responsibility for updating voluntarily disclosed predictive information is part of the "notional agreement" by which an issuer discloses such information.	See the responses above.
	• Such a duty to update would result in the second-guessing of an issuer's decision when to update guidance, when such decision is a fluid, evolutionary one.	See the responses above.
	• A duty to update would increase the risk of an issuer's liability for forward-looking information, since there is no safe-harbour provision.	See the responses above.
	• A duty to update goes beyond the current statutory requirements for timely disclosure.	See the responses above.
	• An extension of the duty to update to previously issued forward-looking information is inconsistent with the objective of promoting disclosure of this information, as it would increase an issuer's exposure to allegations of misrepresentation in the original disclosure and therefore act as a disincentive.	See the responses above.
	• Support expressed for the approach in the CIRI Model Disclosure Policy, which recommends an explanation that forward-looking information is a snapshot of an issuer and that any responsibility for updating the information is disclaimed.	See the responses above.

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6.2 Establishing a Corporate Disclosure Policy CIRI (7/25/01)	• The commenter supports the recommendation that issuers adopt a corporate disclosure policy but disagrees with the suggestion that directors, officers and employees be trained in its application. It is impractical for large organizations with many employees to train them in the application of the policy. NP 51-201 should instead emphasize that issuers adopt a well-worded and clearly understood policy, communicate it to directors, officers and employees and obtain a written commitment from **appropriate** individuals within these groups to adhere to it.	We have amended paragraph 6.2 to clarify that those directors, officers and employees who are, or may be, directly involved in making disclosure decisions should be trained in the application of the disclosure policy. We agree that issuers should adopt a well-worded and clearly understood policy and communicate it to directors, officers and employees. We leave it to individual issuers to decide whether they want to obtain written commitments from appropriate individuals to adhere to it.
6.3 Overseeing and Coordinating Disclosure Establish a committee of company personnel or assign a senior officer to be responsible for “monitoring the effectiveness and compliance with [the] disclosure policy. CIRI (7/25/01)	• Monitoring the effectiveness and compliance with the disclosure policy could, practically, be difficult to achieve. Can the CSA recommend any procedures that can determine effectiveness and compliance with the policy in a reasonably structured and reliable way?	Companies should monitor their day-to-day disclosure decisions to determine the effectiveness of and compliance with their disclosure policy.
6.4 Authorizing Company Spokesperson Limit the number of people who are authorized to speak on behalf of the issuer. CIRI (7/25/01)	• The commenter strongly disagrees with the comment in footnote 45 that, in some circumstances, a company’s designated spokesperson will not be informed of developing mergers and acquisition until necessary, to avoid leakage of information. So long as an issuer has adopted a policy of not commenting on market rumours, the spokesperson can rely on this in responding to rumours. But the spokesperson needs to be able to evaluate the rumour. The suggestion is inconsistent with the guidance that the spokesperson be a member of senior management. The suggestion is also inconsistent with the TSX guidelines, which say that the responsible person should be kept up to date on all material developments.	The CSA is not advocating for or against the practice but simply recognizing that it may, in fact, be the case in some situations.

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6.5 Analyst Conference Calls and Industry Conferences Hold analyst conference calls and industry conferences in an open manner allowing any interested party to listen either by telephone and/or through a Web cast. CIRI (7/25/01)	• Provide additional guidance on a "reasonable period of time" for replaying conferences or calls. The commenter suggests a replay be available for a minimum of 30 days afterwards.	The disclosure model recommended in the Policy says that issuers should make replays of Web casts and conference calls available for public access for a reasonable length of time following the original Web cast or calls. We believe issuers should have the flexibility to determine what length of time is reasonable in their circumstances. This is consistent with the approach taken by the SEC and the Australian Securities & Investments Commission to this issue.
6.7 Quiet Periods Observe a "quiet period" between the end of the quarter and the release of a quarterly earnings announcement. Canada Life Howson Tattersall Investment Counsel CIRI (8/22/01)	• Stopping **all** communications during the quiet period is impractical and undesirable. Road shows, "one on one" meetings, conferences and speaking engagements are not within the issuer's control and can occur during the quiet period.	We understand that issuers' adoption of quiet periods is a fairly widespread practice to avoid not just the potential for selective disclosure but the perception of selective disclosure as well. However, we understand the concerns expressed by those commenters who indicated that stopping all communications during the quiet period would not benefit the marketplace either. We agree that the draft Policy was too broadly cast in this regard. We have amended it to emphasize that the focus of the quiet period should be on communicating with analysts and investors regarding quarterly earnings and other financial information during the time when this information is being prepared but has not yet been generally disclosed. An issuer's quiet period need not restrict or inhibit its normal course communications with analysts and investors. Issuers can maintain contact with analysts and investors during the quiet period, provided that any communication is limited to discussing publicly available or non-material information (see section 6.10 of the Policy).
	• The proposed duration of the quiet period could amount to 40% of the year with no investor relations activity. The duration of the quiet period is not as important as observing good disclosure practices at all times.	The CIRI Model Disclosure Policy recommends that issuers adopt a quiet period beginning on the first day of the month following the end of the quarter and ending with the issuance of a news release disclosing the quarterly results. We have adopted this recommendation.

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	• Restricting communications with analysts, institutional investors and other market professionals would be unfair if an issuer could communicate with retail investors and the media during the quiet period.	We agree with this comment. Communications with investors should also be caught by the quiet period.
	• Guidance on quiet periods should be dropped in favour of a simple statement that management should not disclose material nonpublic information during private meetings at any time of year.	See the responses above.
	• The recommended quiet period amounts to a total of approximately 4 months per year during which management could turn away requests for information. This would not be conducive to an efficient market.	See the responses above.
	• A quiet period of this overall length would create logistical difficulties with scheduling investor relations presentations and hamper the ability of small-cap issuers to generate a profile in the investment community.	See the responses above.
	• Based on the timing and duration of the quiet periods proposed in the Policy, issuers could conceivably go for between 50% to 100% of the quarter without communicating with those seeking information. With many companies on the same reporting schedule, scheduling investor meetings could be problematic.	The timing and duration of the quiet periods proposed in the Policy is based on the recommendation in CIRI's Model Disclosure Policy.
	• Any self-imposed restrictions on communication by issuers should not unduly limit their normal course communications with investors. A quiet period should not prevent issuers from speaking to analysts or investors on matters not related to financial results.	We agree with the comment. The Policy has been amended to say that companies need not restrict their normal course communications with investors and that is appropriate to maintain contact with analysts and investors during the quiet period, provided that any communication is limited to factual, publicly available, or non-material matters (see section 6.10 of the Policy).

ISSUE AND COMMENTER	PUBLIC COMMENT	CSA RESPONSE
6.8 Insider Trading Policies and Blackout Periods Your insider trading policy should prohibit purchases and sales at any time by insiders who are in possession of material nonpublic information. CIRI (7/25/01) Simon Romano McCarthy Tétrault	• No director, officer or other insider, including senior employees, should trade in the issuer's securities without clearing the proposed trade with a designated officer.	We have amended the Policy to include senior employees along with insiders and officers as those whose trading should be subject to approval (see section 6.11 of the Policy).
	• Any prohibition on trading should be limited to those with access to material nonpublic information. Blackout periods are restrictive and could result in losses for shareholders in volatile markets.	We have amended the Policy to say that company policies should permit employees to apply for approval to trade the company's securities during the "blackout period" (see section 6.11 of the Policy).
	• A "release valve" should be provided for based on prior approval of trades.	Provincial securities legislation provides, in some cases, for exemptions from the prohibition against insider trading for purchases or sale of securities pursuant to automatic plans entered into before the person knew of material information. See, for example, section 175(2)(b) of the Regulation made under the Ontario Act.
	• The Policy could usefully address the impact of blackout periods on share purchase plans and share option plans. The SEC's Rule 10b5-1 provides for a safe harbour for purchases made pursuant to a share purchase plan entered into prior to becoming aware of material nonpublic information.	See above response.
6.9 Electronic Communications CIRI (7/25/01) John Kaiser, Canspec Research	• Provide guidance on what is a reasonable period of time for archived information to remain available. The commenter recommends a minimum retention period of 2 years for archived information on an issuer's Web site.	We believe that issuers should consider archiving their corporate disclosure on their Web site for a reasonable period of time. We believe that issuers should have the flexibility to determine what length of time is reasonable in their circumstances. We note that the TSX's *Electronic Communications Disclosure Guidelines* suggest that a company's disclosure policy should establish minimum retention periods for information posted to the company's Web site. These retention periods may vary depending on the kind of information posted. We think this approach is sensible and have amended the Policy to reflect it (see section 6.12(1) of the Policy).

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	• The policy should encourage the “passive publication” of detailed, non-material information on an issuer’s Web site. This would encourage disclosure to analysts without fear that non-material information could become material when plugged into an analyst’s framework.	The Policy acknowledges, in subsection 5.1(4), that a company is not prohibited from disclosing non-material information to analysts, even if that information forms part of the analyst’s “mosaic” which, taken together, is material information about the company that has not been generally disclosed. Subsection 6.12(2) of the Policy also encourages companies to use current technology to improve investor access to company information.
6.10 Chat Rooms, Bulletin Boards and e-mails CIRI (7/25/01)	• Issuers should get a written commitment from employees to an internal written disclosure policy prohibiting the discussion of corporate information in these forums.	We believe issuers should have the flexibility to decide whether a written commitment from employees is necessary. We note that the issuer’s corporate disclosure policy, which contains this prohibition, should be widely circulated to employees.
	• The commenter strongly disagrees with the suggestion that employees notify a designated official of any discussion they find on the Internet. This is impractical in large organizations with many employees and impliedly sanctions employees accessing these sites. Monitoring services are available for this function.	We believe this is a sound practice and do not agree that it is impractical in large organizations.
OSC Staff Survey CIRI (7/25/01)	• The statistics from the OSC Staff Survey are now dated and possibly misleading. These statistics should be either updated or eliminated.	We acknowledge that the statistics from the OSC Staff Survey may now be out of date and that a current survey might yield different results. The OSC’s Continuous Disclosure Team intends to publish a report of the results of its various continuous disclosure reviews, which will assess the range of corporate disclosure practices among the issuers reviewed.
	• The CIRI Corporate Disclosure Survey 2001 suggests that the incidence of selective disclosure is not as prevalent as the CSA implies.	We have included the results from the CIRI Corporate Disclosure Survey 2001 in the Notice accompanying publication of the Policy.
“company’s securities” CIRI (7/25/01)	• In situations where confidentiality must be maintained during the period before a material change is disclosed, references to activity involving a “company’s securities” should be changed to “the company’s securities or the securities of any other related issuer.” This reflects the fact that many transactions may directly or indirectly involve the securities of other issuers. (e.g. Part 2.3(2))	We have amended the Policy to include a footnote to section 3.1(2) noting that, for the purposes of the prohibition against illegal insider trading, a “security of the reporting issuer” is deemed to include a security, the market price of which varies materially with the market price of the securities of the issuer (see subsection 76(6)(b) of the Ontario Securities Act).

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"advisors" CIRI (7/25/01)	• References to "advisors", as including lenders, legal counsel, auditors, financial advisors and underwriters should be broadened to "financial and other professional advisors, including suppliers who have access to material information." (e.g. Part 3.3(2))	We note that a supplier is not an "adviser." However, we have amended subsection 3.3(2)(c) of the Policy to include "lenders, legal counsel, auditors, underwriters, and financial and other professional advisors to the company."