

Notice of Rule
51-102 *Continuous Disclosure Obligations*,
Form 51-102F1, Form 51-102F2, Form 51-102F3,
Form 51-102F4, Form 51-102F5, Form 51-102F6, and
Companion Policy 51-102CP *Continuous Disclosure Obligations*

Amendments to National Instrument 44-101 *Short Form Prospectus Distributions*
and Revocation of Form 44-101F1 *AIF* and Form 44-101F2 *MD&A*

Amendments to and Revocation of National Instrument 62-102 *Disclosure of Outstanding*
Share Data

Amendments to National Instrument 62-103 *The Early Warning System and Related Take-*
Over Bid and Insider Reporting Issues

and

Amendment of
National Policy 31 *Change of Auditor of a Reporting Issuer* and
National Policy 51 *Changes in the Ending Date of a Financial Year and in Reporting Status*

Introduction

We, the Canadian Securities Administrators (CSA), have developed a nationally harmonized set of continuous disclosure (CD) requirements for reporting issuers, other than investment funds. The CD requirements are set out in National Instrument 51-102 *Continuous Disclosure Obligations* (the Rule), Form 51-102F1 *Management's Discussion & Analysis*, Form 51-102F2 *Annual Information Form*, Form 51-102F3 *Material Change Report*, Form 51-102F4 *Business Acquisition Report*, Form 51-102F5 *Information Circular*, Form 51-102F6 *Statement of Executive Compensation* (collectively, the Forms), and Companion Policy 51-102CP *Continuous Disclosure Obligations* (the Policy). The Rule and the Forms are together referred to as the Instrument.

The Instrument has been made or is expected to be made by each member of the CSA, and will be implemented as

- a rule in each of British Columbia, Alberta, Manitoba, Ontario and Nova Scotia;
- a commission regulation in Saskatchewan and Québec; and
- a policy in all other jurisdictions represented by the CSA.

We also expect the Policy will be adopted in all jurisdictions.

We have also published a nationally harmonized set of exemptions from certain CD and other requirements for foreign reporting issuers. The Notice of Rule - National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* provides information about the rule (the Foreign Issuer Rule).

The Instrument will be implemented in British Columbia, subject to obtaining the requisite ministerial approval. The British Columbia Securities Commission (BCSC) has decided that reporting issuers in British Columbia will be exempted from Parts 8, relating to business acquisition reports, Part 10, relating to restricted share disclosure, and Part 12, relating to filing certain documents.

In Ontario, the Instrument and the consequential amendments set out in Appendices C and D have been made. Also, in Ontario, the Policy and the amendments to National Policies 31 and 51 described below have been adopted. The Instrument, consequential amendments, and other required materials were delivered to the Minister of Finance on December 19, 2003. If the Minister does not approve or reject the Instrument and the consequential amendments or return them for further consideration, they will come into force on March 30, 2004.

In Québec, the Instrument is a regulation made under section 331.1 of the Act and must be approved, with or without amendment, by the Minister of Finance. The Instrument will come into force on the date of its publication in the Gazette officielle du Québec or on any later date specified in the regulation. It must also be published in the Bulletin.

Provided all necessary ministerial approvals are obtained, the Instrument and consequential amendments will come into force on March 30, 2004. The Policy and the amendments to National Policies 31 and 51 will come into effect at the same time as the Instrument.

The requirements in the Instrument concerning

- annual and interim financial statements, except change in year-end, change in corporate structure and change of auditor requirements,
- MD&A,
- AIFs, and
- filing of documents under Part 12,

will apply for financial years beginning on or after January 1, 2004. The requirements relating to business acquisition reports (BARs) apply to significant acquisitions if the agreement was entered into after March 30, 2004. The requirements relating to proxy solicitation and information circulars, will apply from and after June 1, 2004. All other requirements will apply as of March 30, 2004.

Substance and Purpose

The Instrument

- harmonizes CD requirements among Canadian jurisdictions;
- replaces most existing local CD requirements;
- enhances the consistency of disclosure in the primary and secondary securities markets; and
- facilitates capital-raising initiatives such as an integrated disclosure system (IDS).

The Rule sets out the obligations of reporting issuers, other than investment funds, with respect to financial statements, management's discussion and analysis (MD&A), annual information

forms (AIFs), material change reporting, information circulars, proxies and proxy solicitation, restricted share disclosure, and certain other CD-related matters. It prescribes the Forms, most of which are derived from existing forms but with some enhancements.

The Rule does not address non-issuer filing obligations, except in the case of persons who solicit proxies from securityholders of reporting issuers, and exemptions from insider reporting in certain circumstances. The Rule also does not address CD obligations for investment funds. We have previously published proposed National Instrument 81-106 *Investment Fund Continuous Disclosure* for comment. That instrument will prescribe the CD obligations of investment funds.

The substance and purpose of the Policy is to state our views on the interpretation and application of the Instrument.

Background

We first published the Instrument for comment on June 21, 2002. After considering the comments, we revised the Instrument and Policy and published the revised versions for comment on June 20, 2003 (the 2003 Proposals). The comment period expired in August, 2003. For additional background and the summary of comments received during the first publication period, please refer to the notice we published on June 20, 2003.

Summary of Written Comments Received by the CSA

During the second comment period, and shortly after the expiry of the comment period, we received submissions from 23 commenters on the Instrument. We have considered the comments received and thank all the commenters. The names of the 23 commenters and a summary of the comments on the Instrument, together with our responses, are contained in Appendix B to this notice.

We received additional comments significantly after the expiry of the comment period. Those comments are not summarized in Appendix B. To the extent possible, we considered those comments, and, where appropriate, made changes to the Instrument. If the changes were noteworthy, they are described in Appendix A, referred to below.

After considering the comments, we have made amendments to the Instrument and the Policy. However, as these changes are not material, we are not republishing the Instrument or the Policy for a further comment period.

Summary of Changes to the Proposed Instrument/Policy

See Appendix A for a description of the noteworthy changes made to the 2003 Proposal.

Consequential amendments

National Amendments

Amendments that have been made to National Instrument 44-101 *Short Form Prospectus Distributions* (NI 44-101) to replace Forms 44-101F1 *AIF* and 44-101F2 *MD&A* are set out in Appendix C to this Notice. As the AIF and MD&A requirements in the Instrument apply only for financial years starting on or after January 1, 2004, the amendments include transitional provisions.

Amendments that have been made to National Instrument 62-102 *Disclosure of Outstanding Share Data* and National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues* are set out in Appendix D to this Notice. As the financial statement and MD&A requirements in the Instrument apply only for financial years starting on or after January 1, 2004, the amendments include transitional provisions.

In the notice we published on June 20, 2003, we indicated that National Policy No. 31 *Change of Auditor of a Reporting Issuer* and National Policy No. 51 *Changes in the Ending Date of a Financial Year and in Reporting Status* would be rescinded. Instead of rescinding these policies, we are revising them so they apply only to reporting issuers that are investment funds. The amendments are set out in Appendix E to this Notice. The policies may be rescinded in the future when new disclosure rules are implemented for investment funds.

Local Amendments

We are amending or repealing elements of local securities legislation and securities directions, in conjunction with implementing the Instrument. The provincial and territorial securities regulatory authorities may publish, or may have published, these local changes or proposed changes separately in their local jurisdictions.

The members of CSA may also publish local changes in Appendix F to this Notice.

Questions

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National Instrument

The text of the Instrument follows or can be found elsewhere on a CSA member website.

December 19, 2003

Appendix A

Summary of Changes to the Proposed Instrument

Title

The Rule

Form 51-102F1 Management's Discussion & Analysis

Form 51-102F2 Annual Information Form

Form 51-102F4 Business Acquisition Report

Form 51-102F5 Information Circular

Form 51-102F6 Statement of Executive Compensation

The Policy

The Rule

Part 1 Definitions

- The definition of *acquisition of related businesses* has been moved to Part 8 of the Rule so it is proximate to the place it is used. The definition itself has not changed. We have deleted the definition of *significance tests*, as that term is explained in Part 8.
- We have defined *approved rating* and *approved rating organization*, as these terms are used in the credit supporter exemption referred to below, and, in the case of *approved rating organization*, in the AIF.
- The definitions of *equity security* and *equity share* have been deleted. *Equity security* is defined in National Instrument 14-101 *Definitions*.
- The definition of *executive officer* has been revised to delete the requirement that, to be an executive officer, a person must be the chair or vice-chair on a full-time basis. This provision was inconsistent with paragraph (f) of the definition, which deems a person that performs a policy-making function to be an executive officer whether or not they act on a full-time basis.
- We have deleted the definitions of *group scholarship plan* and *investee* as these terms are no longer used in the Rule or the Forms.
- We have removed the reference in the definition of *restricted security* to the security not being a common share. The reference was not required because it duplicated another part of the definition.
- As contemplated in the notice published on June 20, 2003 with the Instrument, we have revised the definition of *venture issuer* to replace the list of exchanges in the United States with a reference to exchanges registered as national securities exchanges under section 6 of the 1934 Act in the United States. This makes the definition flexible enough to apply to new exchanges that may be formed in the future.

Part 4 Financial Statements

- In response to comments, we have changed the location of the disclosure required if an issuer's auditor has not reviewed the interim financial statements. The financial statements must now be accompanied by a notice indicating that they have not been reviewed. This will ensure the disclosure is easy to find.
- We have removed the requirement for the audit committee to review financial statements before they are filed. The responsibilities of audit committees will be set out in other securities legislation.
- In response to comments, the Rule now permits either the board of directors or the audit committee to approve interim financial statements so issuers have the flexibility of giving this responsibility to their audit committee, subject to their corporate legislation.

- We have clarified the requirement to deliver copies of the financial statements on request as follows:
 - the requirement to deliver the annual request form applies to securityholders other than holders of debt instruments
 - the annual request form must be sent to beneficial owners of securities that have chosen under National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* to receive all securityholder materials
 - copies of the financial statements can be requested other than by returning the request form
 - issuers do not have to deliver copies of financial statements that were filed more than two years before the date of the request
 - the financial statements must be sent to the person or company requesting them, without charge; if a beneficial owner requests financial statements and MD&A through its intermediary, the issuer is only required to deliver the requested documents to the intermediary.

- The Rule now gives an exemption from the requirement to send an annual request form, and annual financial statements on request, if the issuer delivers a copy of the annual financial statements to all of its securityholders

- The restrictions on the length of a transition year and the first interim period after a change in year-end are now in Part 4 of the Rule, rather than in the definitions.

- We have revised the requirement relating to the notice of change in corporate structure so the notice is now filed, rather than delivered. This means the notice will be available on SEDAR for investors, and will be easier for issuers that must provide a copy of the notice to more than one securities regulatory authority. We have also clarified in what circumstances the notice must be filed, and now require the names of any continuing entities to be included in the notice.

- In response to comments, we have clarified the change of auditor provisions as follows:
 - consistent with the definition of *disagreement*, the definitions of *consultation* and *unresolved issue* contemplate review engagements
 - the definition of *reporting package* provides that, if the former auditor provides an updated letter, it is the updated letter, not the auditor's original letter, that forms part of the reporting package
 - if an updated letter is provided by the former auditor, it must be reviewed by the audit committee or board of directors as is required for the auditor's original letter
 - the news release issued when the successor auditor is appointed must describe the information in the reporting package or cross-reference the original news release issued, if there were any reportable events
 - the requirement for the successor auditor to report that the reporting issuer has not filed the notice under section 4.11 no longer applies in British Columbia, Alberta or Manitoba as the securities regulatory authorities in those jurisdictions do not have the authority to impose obligations on auditors of reporting issuers.

Part 5 MD&A

- Parts 5 and 6 have been reversed. Part 5 now deals with MD&A matters, so that it immediately follows the financial statement requirements. Part 6 deals with the filing of the annual information form.
- The requirement for venture issuers that have not had any significant revenues from operations in either of their last two financial years to provide a breakdown of material components of certain of their expenses has been clarified as to the information that must be provided and the periods it must be provided for.
- We have removed the requirement for the audit committee to review the MD&A before it is filed. The responsibilities of audit committees will be set out in other securities legislation.
- The Rule now permits either the board of directors or the audit committee to approve interim MD&A. This gives issuers the flexibility of giving this responsibility to their audit committee.
- The requirement to deliver MD&A has been revised to be consistent with the requirement to deliver financial statements, as described above.

Part 8 Business Acquisition Report

- In response to comments, the exemption from the requirement to file a BAR has been extended so it now also applies to issuers
 - that file a filing statement under the policies of the TSX Venture Exchange, provided the filing statement contains the information that would be required by section 14.2 of Form 51-102F5, and
 - that are capital pool companies that prepare a filing statement or information circular in connection with their qualifying transaction and that comply with the policies and requirements of the TSX Venture Exchange.

Part 9 Proxy Solicitation and Information Circulars

- In response to comments, we have added an exemption from Part 9 for issuers that comply with the requirements of the laws of the jurisdiction in which they are incorporated or organized, provided the requirements are substantially similar to the requirements in Part 9. This will reduce duplication between corporate and securities requirements in the proxy solicitation area.

Part 10 Restricted Security Disclosure

- We have revised Part 10 so it applies to restricted securities, not just restricted shares.
- Restricted security disclosure obligations now only apply to the MD&A and financial statements to the extent that issuers must use the appropriate terms to describe the restricted securities. Restricted security disclosure is already required in other CD documents reporting issuers must prepare, such as the AIF.

Part 11 Additional Filing Requirements

- The requirement in section 11.1 for an issuer to file a copy of any document that it sends to its securityholders has been clarified. It now applies only to disclosure materials, so other administrative mailings do not have to be filed.
- In response to the comments we received, issuers will now be required to file a copy of any disclosure materials they send to their securityholders. We have removed the reference to 50% of the securityholders of a class of security held by more than 50 securityholders. This is consistent with the requirement currently in the securities legislation of some of the jurisdictions.

Part 12 Filing of Certain Documents

- In response to the comments we received, the requirement to file copies of documents has been revised as follows:
 - it no longer only applies to securities where the class of security is held by more than 50 securityholders
 - constating documents only have to be filed if they are not statutory instruments
 - shareholder or voting trust agreements only have to be filed if the issuer has access to them
 - contracts that create or can reasonably be regarded as materially affecting the rights or obligations of securities only have to be filed if they affect the securityholders generally
 - the documents are not filed as an attachment to the AIF or material change report, but are instead filed no later than when the AIF or material change report are filed.
- As contemplated in the notice published on June 20, 2003 with the Instrument, issuers must now file copies of all material contracts not entered into in the ordinary course of business. Particulars of these contracts were already required to be disclosed in the AIF. We have permitted issuers to remove portions of the contracts that would be unduly detrimental to the issuer to disclose, and to address confidentiality concerns. We have also grandfathered contracts entered into before January 1, 2002.

Part 13 Exemptions

- The exemption from the continuous disclosure requirements for exchangeable share issuers has been revised as follows:
 - it is only available to issuers whose parent issuers are listed on certain named stock exchanges or quotation systems in the United States, which is consistent with the circumstances that we have granted discretionary relief
 - we permit copies of the parent issuer's documents to be filed at the same time as, or as soon as practicable after, their filing with the SEC, as this is consistent with the requirements in the Foreign Issuer Rule
- We have added an exemption from the continuous disclosure requirements for issuers of credit-supported securities that follows the exemption for exchangeable share issuers. This exemption was contemplated when the Rule was first published for comment, and simply codifies the circumstances in which we have granted discretionary relief on a case-by-case basis.

Part 14 Effective Date and Transition

- We have specified when the proxy solicitation and information circular requirements apply, and the requirement in Part 12 to file documents applies, to give time for transition.

Form 51-102F1 Management's Discussion & Analysis

- The MD&A was revised to clarify its purpose. This was done as part of our review of the disclosure requirements in each of the AIF and MD&A to ensure the requirements are consistent with their stated purposes.
- The selected annual information disclosure that was in the AIF has been moved to the MD&A. This disclosure is primarily financial disclosure that shows investors trends in the issuer's operations. As such, it is disclosure more appropriate to the MD&A, not the AIF.
- Under the liquidity discussion, issuers must now also discuss lease payments, since this requirement has been removed from the AIF.
- In response to comments we received, we have added a description of what must be discussed as off-balance sheet arrangements. The description is consistent with the SEC's description of off-balance sheet arrangements.
- The MD&A has been revised to provide additional guidance for resource issuers when they are discussing the results of their operations.
- We have clarified the requirement in the interim MD&A to update the annual MD&A, if the interim MD&A is the first MD&A in Form 51-102F1 filed by the issuer.
- We have removed the option for issuers to disclose in the MD&A only if the auditor has not reviewed the interim financial statements. As discussed above, this disclosure is now provided in a notice accompanying the interim financial statements.

Form 51-102F2 Annual Information Form

- The AIF was revised to clarify its purpose. This was done as part of our review of the disclosure requirements in each of the AIF and MD&A so the requirements are consistent with their stated purposes.
- We have clarified that issuers cannot satisfy the disclosure requirements by incorporating a previous AIF by reference. The form also now provides that the issuer must have filed the incorporated information under its SEDAR profile, otherwise the issuer must file the information with its AIF.
- We have deleted certain disclosure requirements in the AIF that are more appropriately dealt with in the MD&A, or that overlap with the MD&A. In particular, we have removed the requirements in the AIF to discuss,
 - leases and mortgages
 - selected consolidated financial information, except dividend disclosure.

- We have deleted certain disclosure requirements in the AIF that overlap with requirements in other forms, or that are duplicated within the AIF itself. For example, we have removed the requirements in the AIF to provide a detailed description of significant acquisitions, as this information is already provided in the BAR.
- We have revised the requirement to disclose social or environmental policies so it is limited to policies that are fundamental to the company's operations. We have also given some examples of social and environmental policies. This was in response to comments that the disclosure as originally proposed would add clutter to the AIF.
- In response to comments, we have added instructions to the disclosure of ratings to clarify some of the disclosure that must be provided under this item.
- We have revised the disclosure relating to promoters to require three years of disclosure rather than two. This is consistent with the disclosure required of transactions with informed persons or promoters relating to mineral projects, and the disclosure of interests of management and others in material transactions.
- In the disclosure relating to the interest of management and others in material transactions, we no longer refer to *principal shareholders*, since this term is not defined in the CD context. Instead, we now refer to 10% securityholders, which is consistent with how *principal shareholder* is defined in the prospectus context.
- In response to comments, we have added guidance on when a contract has been entered into in the ordinary course of business. We have also revised the requirement relating to disclosure of material contracts so
 - the contracts no longer have to be available for inspection, since they must be filed under Part 12 of the Rule
 - only contracts entered into within the last financial year, or contracts entered into before the last financial year but which are still in effect, must be disclosed; this is subject to a limit that contracts entered into before January 1, 2002 do not have to be disclosed.
- In response to comments, we have added a reference to the Form 52-110F1 *Audit Committee Information Required in an AIF* in the AIF. This will remind issuers that, if applicable, they will have to include the disclosure contemplated in that form.

Form 51-102F4 Business Acquisition Report

- We now permit the BAR to incorporate by reference a news release or material change report filed in respect of the acquisition. If the relevant information has already been filed in another document, it is sufficient for that disclosure to be incorporated by reference, rather than repeated.
- Issuers will now be required to disclose, if applicable, if the auditors have not consented to the inclusion of their audit report in the BAR.

Form 51-102F5 Information Circular

- The requirement for issuers to provide copies of any document incorporated by reference into the information circular before the meeting has been removed. The requirement is now simply for the issuer to provide a copy *promptly*. As commenters pointed out, the requirement for copies to be delivered before the meeting could be unreasonable, if the request is received very close to the time of the meeting. The requirement for copies to be delivered *promptly* is sufficient.
- We have clarified that, if a document is incorporated by reference into the information circular, the document must be filed with the information circular, if the document has not been previously filed.
- In the requirements relating to equity compensation plans, we have clarified that issuers must disclose plan information for each class of securities separately.
- We have increased the amount of routine indebtedness that does not have to be disclosed from \$25,000 to \$50,000.
- In response to comments, we have re-inserted the requirement for issuers to disclose how securityholders may request copies of the financial statements and MD&A.

Form 51-102F6 Executive Compensation Form

- We have replaced the references to *restricted stock* with *shares or units that are subject to restrictions on resale*. This avoids the use of technical terms from the Handbook that may not be understood generally.
- In response to comments, we have revised the definition of NEO as follows:
 - chief financial officers are now included, regardless of the amount of compensation they receive, as these officers serve a significant function for the company but, particularly for smaller issuers, may not receive compensation above the threshold
 - we reduced the number of other executive officers that disclosure must be provided for from four to three so that the total number of officers captured by the definition remains the same
 - we have increased the threshold for disclosure for other executive officers from \$100,000 to \$150,000 to reflect increases in executive salaries and inflation
- We have clarified that disclosure in the summary compensation table should include disclosure of contributions to assist the NEO in purchasing shares, unless the contributions were available to employees generally. This was already contemplated in the instructions, but was unclear as formerly drafted.
- We have clarified that the compensation committee members do not have to sign the compensation report in the executive compensation form. The members of the committee must be named, and, if a member disagrees with the content of the report, certain information must be provided.

The Policy

- The Policy has been amended to reflect some of the changes to the Rule described above. For example,
 - the discussion of the disclosure of auditor involvement in the interim financial statements has been updated
 - the discussion relating to the approval of interim financial statements has been updated to reflect that the audit committee may approve the interim financial statements.

- We have added a reference to Multilateral Instrument 52-109 *Certification of Disclosure in Companies' Annual and Interim Filings* as a reminder to issuers that are subject to that instrument.

- We have noted in the Policy that financial statements, and certain operating statements and financial information required to be filed under the Rule, must comply with National Instrument 52-107 *Acceptable Accounting principles, Auditing Standards and Reporting Currency* (NI 52-107). The Policy also notes that disclosing financial information in a news release without disclosing the accounting principles used is inconsistent with NI 52-107.

- The Policy confirms that, in most circumstances, the Rule requires that the auditor's report filed with the annual financial statements cover both the most recently completed financial year, and the comparative period presented in the financial statements.

- The Policy has been updated to reflect the clarifications made to the requirements in the Rule relating to the delivery of financial statements and MD&A. The Policy also clarifies that, if a securityholder does not request the financial statements and MD&A, this will override a beneficial securityholder's standing instructions given under NI 54-101, to the extent those instructions relate to the delivery of financial statements.

- The Policy notes that issuers are not required to send an annual request form under Part 5 of the Rule, since the request form sent under Part 4 relates to both the financial statements and the MD&A applicable to those financial statements.

- The Policy now provides guidance as to how an issuer should interpret the requirements relating to filing financial statements after a reverse takeover.

- In response to comments, the Policy notes that the requirement to file a notice of change in corporate structure may be satisfied by filing a copy of the material change report or news release relating to the change. The material change report or news release must contain all the information required in the notice.

- Guidance has been provided relating to the disclosure in the AIF of asset-backed securities. The disclosure is consistent with the guidance that was provided in Companion Policy 44-101CP.

- The Policy notes that SEC issuers may satisfy the requirement to file a BAR by filing copies of their filings with the SEC, if those filings contain all of the information, including financial statements, required in the BAR.
- In response to comments, we have added guidance on when a contract has been entered into in the ordinary course of business.
- In response to comments, guidance has been added regarding the documents that must be filed under Part 12 of the Rule.

Appendix B

Summary of Comments and CSA Responses

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Summary of Comments and CSA Responses

Part I Background

On June 20, 2003 the CSA published for comment revised versions of the Rule and the Foreign Issuer Rule. The comment period expired on August 19, 2002. The CSA received 23 submissions from the commenters identified in Schedule 1.

The CSA have considered the comments received and thank all commenters for providing their comments.

The questions contained in the CSA Notice to the Rule (the 2003 Notice) and the comments received in response to them are summarized below. The item numbers below correspond to the question numbers in the 2003 Notice. Below the comments that respond to specific questions in the 2003 Notice, we have summarized numerous other comments on the Rule.

The section references in this summary are to the sections in the Rule as published. The section numbers in square parentheses are the corresponding section references in the current version of the Rule.

The comments and responses relating to the Foreign Issuer Rule are set out as an appendix to the Notice relating to on the Foreign Issuer Rule. Comments that related to other CSA projects, such as proposed Multilateral Instrument 52-109 *Certification of Disclosure in Companies' Annual and Interim Filings* (MI 52-109) and Multilateral Instrument 52-110 *Audit Committees* (MI 52-110) have been forwarded to the appropriate committees.

Part II National Instrument 51-102 *Continuous Disclosure Obligations*

Comments in response to questions in 2003 Notice

1. Filing documents

Question: Part 11 of the Rule requires reporting issuers to file copies of any materials they send to their securityholders. Part 12 of the Rule requires reporting issuers to file copies of contracts that create or materially affect the rights of their securityholders.

(a) We propose to limit these requirements to instances in which securities of the class are held by more than 50 securityholders. This is to prevent issuers from having to file documents that relate to isolated securityholders, such as a bank holding security in connection with a business loan, if the bank is the only holder of that class of security. Is this the correct approach, or should copies of all materials sent to securityholders and all agreements that affect the rights of securityholders, regardless of the number of securityholders, be required to be filed?

Three commenters said the requirement should apply regardless of the number of securityholders in the class.

One commenter said all information sent to securityholders of reporting issuers, other than purely promotional or marketing information, should be required to be filed, as the current proposal could be considered a form of regulatory sanctioned selective disclosure. The commenter suggested that the cost to the reporting issuer of filing the information is relatively cheap, while the benefits to the market are high from having this information. The commenter would be less concerned if there was clear evidence that the changes affecting one class of securities were not going to affect the other classes of securities.

One commenter said copies of all materials sent to at least 50% of a class of securityholders should be filed, regardless of the number of securityholders in the class.

One commenter said the Rule should not require that copies of materials sent to banks and controlling shareholders be filed. The commenter suggested that only documents sent generally to securityholders should be filed. The commenter questioned if the requirement was even necessary, as existing securities legislation provisions may already address the issue. Alternatively, the commenter supported the 50%/50 securityholder approach.

One commenter agreed with limiting the requirement to circumstances where the class of securities is held by more than 50 securityholders.

One commenter asked if annual reports, if distributed to more than 50% of securityholders of a class of securities, would have to be filed under section 11.1(1).

One commenter said venture issuers should not be required to file materials sent to securityholders, as this would add further cost for venture issuers, who are generally the least able to afford increased costs.

Response: The CSA disagree that the requirement, as proposed in the 2003 Notice, would be sanctioned selective disclosure, as it does not override any of the existing provisions relating to tipping or trading on undisclosed information. However, the CSA agree that the 50%/50 securityholder formulation does not achieve the desired result. The Rule has been revised to reflect the requirement currently in securities regulations, that is, to require the filing of copies of all material sent by the reporting issuer to its securityholders.

The Rule is intended to encompass all of the current CD requirements. As such, it will replace the current local requirements.

Two commenters suggested the 50 securityholder test should be clear as to whether it is referring to registered or beneficial holders. One of the commenters said it should apply to both registered holders and beneficial owners.

Response: The Rule has been revised to delete the reference to 50 securityholders, so this clarification is no longer required.

One commenter said this requirement would require every document, no matter how immaterial, to be filed, if the document is sent to securityholders. For example, issuers would have to file the

return envelope for completed proxies, or letters to securityholders regarding registering for electronic document delivery. If the intention is for these documents not to be filed, the requirement should be limited to disclosure materials only.

Response: We have revised the Rule as suggested by the commenter.

Question: *(b) Should we expand the requirement in Part 12 to require filing of all contracts that are material to the issuer? These contracts are required to be filed with an annual report on Form 10-K, in the US.*

One commenter said that the filing requirement should not be expanded to apply to all material contracts of the issuer.

One commenter supported the current requirement in the rule - filing of contracts that create or materially affect the rights of securityholders.

Two commenters said the requirement should be expanded to include all contracts material to the issuer. One commenter said this requirement should be in addition to the requirement to file materials that affect the rights of securityholders.

One commenter agreed with the concept of filing all contracts that are material to the issuer, subject to confidentiality concerns. The commenter noted though, that the US requirement is part of a CD system that is arguably not as rigorous as the Canadian system. In the US, many of the filed documents are also deleted from the public file for confidentiality reasons.

One commenter said the requirement to file copies of contracts that materially affect the rights or obligations of securityholders is unclear. The obligation should be to file copies of contracts that would reasonably be regarded as material to the investor regardless of whether they create or affect rights or obligations.

Response: Based on the majority of the comments received, we have expanded the requirement to apply to all material contracts of the issuer, other than contracts entered into in the ordinary course of business. The requirement is now consistent with the disclosure requirement in the annual information form (AIF) so that the material contracts disclosed in the AIF will have to be filed under Part 12. We have added guidance to the Companion Policy to the Rule (the Policy) and an instruction to the AIF Form to clarify what is meant by contracts entered into in the ordinary course of business. In light of this guidance, we expect the scope of contracts that will have to be filed under Part 12 will be limited to those contracts that an investor would not expect to exist, given the industry the reporting issuer operates within. Also, Part 12 of the Rule permits issuers to edit material contracts to delete portions that contain confidential, competitive or commercially sensitive information.

One commenter said the requirement was unclear as drafted. If the intent was to require indentures governing certain securityholders to be filed, this should be clarified. If the intent is for all material contracts to be filed, then the requirement is too onerous for venture issuers, as almost every contract will be material for a venture issuer. Venture issuers will already be

issuing a press release and filing a material change report, and most investors will rely on the summaries in those documents anyway. Given this, the requirement should not apply to venture issuers.

Response: As discussed above, we have revised the requirement regarding filing contracts so that it requires the filing of all contracts that materially affect the issuer, other than those entered into in the ordinary course of business. Once the reporting issuer considers its contracts in the context of its business and the industry that it operates within, we expect the scope of contracts that will have to be filed under Part 12 will be quite narrow.

2. Business acquisition disclosure

Question: *The Rule would require the filing of a BAR [business acquisition report], in addition to any material change report filed in respect of the acquisition, within 75 days after completion of the significant acquisition. This requirement is meant to achieve greater consistency with the prospectus rules implemented in 2000, and to provide investors in the secondary market, on a relatively timely basis, the type of information currently required for primary market prospectus investors. The requirement is based on meeting certain defined thresholds of significance. It is patterned after a requirement of US federal securities law.*

(a) Is this approach appropriate? Would it be more appropriate, for some or all classes of reporting issuer, to recast the BAR requirement as a subset of the material change reporting requirement, governed by the same trigger - the occurrence of a material change?

Two commenters agreed with the approach in the Rule. The commenters did not believe the BAR requirement should be a subset of the material change report requirement. One of the commenters noted the approach in the Rule is consistent with the prospectus rules, so people are familiar with the concepts. The commenter said the material change requirement is more subjective, and is frequently applied inconsistently.

Three commenters said that the BAR should be recast as a subset of material change reporting. Two of the commenters said this would make the information more relevant, as the change report would be filed within 10 days, possibly as a series of material change reports filed as new information about the acquisition becomes available. One commenter said this approach would also permit issuers to withhold competitively sensitive material by filing confidential reports. The commenter suggested that, if this change is made, the Rule should require less detailed disclosure about the acquisition. One of the commenters said this would require the financial statement requirement to be more flexible and allow alternative disclosure where the financial statements do not exist.

One commenter said that, if the BAR became a subset of the material change reporting requirement, the deadline should not be made shorter than the proposed 75 days. Issuers should have 10 days to file their material change reports, but 75 days to file their BAR.

One commenter said the BAR should not be a subset of the material change reporting requirement if the BAR must be accompanied by historical audited and *pro forma* financial

statements. It would not be reasonable to expect issuers to comply with the financial requirements in the time frames contemplated for material change reporting.

Response: We have decided to maintain the separation between the BAR and material change reporting. The CSA remain of the view that it is important to have the prescribed financial statement disclosure for an acquisition that satisfies the significance tests in the Rule. In most cases, the issuer will also have to file a material change report, which will give investors the proximate disclosure some commenters suggested was important.

Question: *(b) If the BAR requirement is recast as a subset of the material change reporting requirement, should the current thresholds of significance be retained? If so, should they demonstrate materiality in the absence of evidence to the contrary, or merely be guidelines to materiality?*

Three commenters supported using the thresholds of significance as guidelines, rather than prescriptive tests. Two of the commenters said the tests for significance are too rigid, and not indicative of an issuer's true financial situation. The commenters suggested that re-casting the significance tests as guidelines underscores the need for judgment in assessing an acquisition's impact on the acquirer's economic value.

One commenter said that, if the BAR requirement is recast, the current thresholds of significance should be retained and that they should, in the absence of evidence to the contrary, demonstrate materiality.

One comment suggested that if an acquisition met one of the significance tests in Part 8 of the Rule, it would, in most cases, constitute a material change. The commenter said that it may be preferable, though, to provide specific significance tests for BARs so it is clear when an issuer must satisfy the more onerous BAR requirements.

One commenter said a BAR should only be required to be filed if the acquisition meets the significance thresholds outlined in the Rule.

Response: As we have decided not to make the BAR requirement a subset of material change reporting, we have maintained the significance tests.

3. Disclosure of auditor review of interim financial statements

Subsection 4.3(3) and section 6.5 of the Rule require that if an auditor has not performed a review of the interim financial statements, a reporting issuer must disclose that fact. These sections also require that if the auditor performed a review and expressed a qualified or adverse communication or denied any assurance, then the reporting issuer must include a written review report from the auditor accompanying the interim financial statements. Section 3.3 of the Policy elaborates that no positive statement is required when an auditor performed a review and provided an unqualified communication.

This approach was designed to accommodate the requirement in Section 7050 of the Handbook that, if an auditor's interim review is referred to in any document containing the interim financial statements, the auditor should issue a written interim review report and request that it be included in the document. We understand that the CICA [Canadian Institute of Chartered Accountants] Assurance Standards Board currently has a project to amend Section 7050 and this requirement in Section 7050 may be changed. We also understand that the reporting provisions in Section 7050 relating to a scope limitation may be changed; if those provisions of Section 7050 were changed, items (i) and (ii) of subsection 4.3(3)(b) may have to be modified.

One commenter suggested the CSA should consult with the CICA so reporting issuers do not have a legal obligation that is inconsistent with the professional obligations of their auditors.

Response: We agree with the commenter that it is important not to impose a legal obligation on issuers that is inconsistent with the auditors' professional obligations. That consideration factored into our decision to not require issuers to disclose that the auditors have reviewed the financial statements if an unqualified review report was issued until the CICA complete their Section 7050 project.

Question: *(a) Do you agree with the approach in subsection 4.3(3) and section 6.5 of the Rule? Alternatively, if a review was performed and an unqualified report was provided, should a reporting issuer be required to disclose the fact that a review has been performed? If you recommend the latter, what are the benefits of that disclosure?*

One commenter disagreed with the approach because readers may infer a greater level of assurance from the term "review". The commenter said that, until section 7050 of the Handbook is revised, there should be no reference to reviews in an issuer's disclosure.

One commenter expressed concern over requiring auditor involvement with venture issuer interim financial statements. The commenter suggested the relative cost would be higher than for senior issuers, and would not be justified by sufficient benefits to investors.

Three commenters agreed with the approach in subsection 4.3(3) and section 6.5.

Two commenters said issuers should be required to disclose whether or not an auditor has reviewed the interim financial statements, as this would simply the requirement. One of the commenters suggested that the Rule should clarify what is meant by a "review" so investors know what comfort they should take from the review.

Two commenters said the Rule should mandate auditor review of interim financial statements.

Response: We have not changed the approach set out in the Rule. Issuers will be required to disclose only if an auditor has not reviewed the interim financial statements, or if a review was done and a qualified or adverse communication was provided or the auditor denied an assurance. We are not prepared to mandate auditor review of all interim financial statements at this time, although we will keep the matter under review. Until the CICA project considering

Section 7050 of the Handbook is completed, we do not believe it would be appropriate to mandate disclosure of whether or not a review was done.

Question: *(b) Where a review was performed and an unqualified report was provided, if a reporting issuer discloses that a review has been performed, should the review report from the auditor accompany the financial statements?*

Five commenters said that, if there is a requirement to reference the review, or if an issuer voluntarily discloses that a review has been performed, the report should be included with the financial statements. The reasons given by some of the commenters were

- the nature and limitations should be clearly disclosed in a report
- the report would inform securityholders of the auditor's opinion, which is very important information to a securityholder
- the report will inform readers of the limited nature of the review, and so the limited nature of the assurance that should be derived from it; without the report, readers may ascribe too high a degree of assurance to the auditor's review.

One commenter suggested that, if the auditor expressed a qualified or adverse opinion, or denied any assurance, this would be material information and the issuer should include a written review report with the statements.

One commenter said there is no need to file a copy of the review report if an unqualified review has been done.

Response: We thank the commenters for their input on this point. We will continue to monitor the changes, if any, to Section 7050 of the Handbook resulting from the CICA's review. If, in the future, we require disclosure of if a review has been performed as a result of changes to Section 7050, these comments will assist us in structuring the requirement. For now, issuers that choose to disclose that a review has been done will be requested by their auditors under Section 7050 of the Handbook to include a copy of the review report.

4. Added MD&A disclosure

Question: *In the MD&A [management's discussion and analysis], we propose to require all issuers to discuss off-balance sheet arrangements, and to analyze changes in their accounting policies.*

(a) Would it be helpful to include a definition of "off-balance sheet arrangements" to the MD&A? What would you expect the definition would capture?

One commenter noted that their MD&A Interpretive Release *Disclosure About Off-Balance Sheet Arrangements and Related Exposures* recommends that management disclose the definition it has applied in determining the off-balance sheet arrangements it considered. The commenter suggested it would be useful if the Rule provided a definition or other guidance as to the nature and scope of the off-balance sheet arrangements the requirement applied to.

Three commenters suggested that the Rule should define *off-balance sheet arrangements*, as it is important to specify what exactly an issuer is required to disclose in the MD&A. One of the commenters suggested the definition should capture all contractual obligations such as, for example, details of operating leases, commodity delivery arrangements, forward sales, and guarantees. Another of the commenters suggested referencing the United States Securities and Exchange Commission (SEC) definition. The third commenter suggested the need for a principles approach could be discussed in the Policy.

Two commenters said there would be benefits if the Rule had a definition harmonized with the SEC definition, which essentially captures guarantees, retained or contingent interests, derivative instruments and interests in unconsolidated entities.

One commenter said the disclosure obligation relating to off-balance sheet arrangements should require disclosure of arrangements that would reasonably be expected to have an impact on the financial condition of the issuer and that would be of interest to an investor.

One commenter said any definition of *off-balance sheet arrangement* will quickly become outdated with the introduction of new financing structures. Generally accepted accounting principles (GAAP) should govern what constitutes an off-balance sheet arrangement so the disclosure will be focussed on material financing arrangements not otherwise reflected on the balance sheet or in the notes.

Response: We have added guidance to the MD&A of what the term off-balance sheet arrangement includes. We provided guidance rather than a prescriptive definition so the requirement will be flexible enough to adapt to changing financing structures. The guidance we have provided is generally consistent with the SEC concept.

Question: *(b) The requirement to discuss and analyze changes in accounting policies applies to any accounting policies a reporting issuer expects to adopt subsequent to the date of its financial statement, and to any accounting policies that have been initially adopted during the financial period. We are considering whether this disclosure is appropriate for venture issuers. Should venture issuers be exempted from the requirement to discuss either changes in their accounting policies, or the adoption of an initial accounting policy, or both, and why?*

Five commenters said venture issuers should not be exempt from disclosure relating to accounting policies for the following reasons:

- one commenter said that, because the changes would not have a significant impact for most issuers, they could be easily dealt with by stating that; changes that would have a significant impact should be discussed
- one commenter suggested the cost of disclosing, discussing and analyzing the changes should be minimal, and offset by the benefits of increasing investors' confidence in the issuer's disclosure standards

One commenter said venture issuers should be exempted from the requirement to discuss accounting policies in their MD&A. Disclosure of the impact of the adoption of a new accounting policy is already required in financial statements under GAAP, and further discussion

in the MD&A will not provide significant additional benefits. The commenter also noted the impact of accounting policies is often unknown until a detailed analysis is performed. The commenter said venture issuers should not be required to do this analysis before an accounting policy becomes effective.

Response: Consistent with the majority of the comments received, we have not added an exemption to the Rule for venture issuers from the requirement to discuss changes in accounting policies in the MD&A.

Part III Other comments on the Rule

The following are additional comments on the Rule. They do not respond to questions posed in the 2003 Notice. The comments generally appear in the same order as the provisions of the Rule they relate to.

General comments

Four commenters supported the goal of developing and implementing harmonized CD obligations in Canada. One of the commenters also supported the objective of enhancing the consistency of disclosure in the primary and secondary markets, and facilitating capital-raising initiatives such as an integrated disclosure system.

Two commenters supported the types of initiatives proposed by the Rule that harmonize Canadian and US requirements. One of the commenters also supported the aspects that are compatible with the multijurisdictional disclosure system (MJDS).

No response required.

One commenter suggested that, in general, the size of public filings should be reduced. The proposals appear to add more length, and the commenter questioned the value of the additions.

Response: We agree that public filings should not be so long as to be overwhelming. However, the additional disclosure we have added is necessary given the significant number of investment decisions that are based on CD documents. The disclosure issuers are required to provide under the Rule, which is tied to materiality, is relevant to investors in the secondary market.

One commenter suggested the Rule should include a general exemption if the issuer complies with the laws of the jurisdiction of its incorporation, or where a substantial portion of its business is carried on, like the exemption in section 212 of the Alberta *Securities Act*. Alternatively, the commenter said the CSA should coordinate with the federal government to have duplicative provisions removed from the *Canada Business Corporations Act* (CBCA), and provide interim relief in the meantime.

Response: We have revised the Rule to provide an exemption from the proxy solicitation requirements for reporting issuers that comply with the requirements of the jurisdiction in which they are incorporated, organized or continued, provided that the requirements are substantially similar to the requirements of Part 9. We have also exempted reporting issuers from the

requirement in Part 4 to send a request form, provided they send copies of their annual financial statements and MD&A to their securityholders. This means that issuers that are required to comply with corporate law requirements to mail financial statements will not also have to send the request form. We have not provided a general exemption like the one in section 212 of the Alberta Securities Act, as most corporate legislation is not as comprehensive as the requirements in the Rule.

One commenter suggested there should be a greater emphasis on plain language in all disclosure documents. The commenter recommended expanding the plain language standards to emulate those required by the SEC. The commenter suggested that plain language saves time and money for investors by giving them more meaningful opportunities to better understand corporate performance and direction, and would raise the standards for many issuers.

Response: We agree that plain language in disclosure documents is very important. For that reason, most of the forms have instructions requiring issuers to use plain language. We do not think it would be appropriate at this time to emulate the SEC's approach to this issue.

One commenter recommended that the proposals in the Rule regarding audit committee review of public disclosures, including press releases about financial results, should be harmonized with the requirements in proposed MI 52-109. The Rule should be harmonized with what is called for in MI 52-109.

Response: We believe the commenter intended to refer to MI 52-110, rather than MI 52-109, as MI 52-110 will address the obligations of audit committees. We do not believe the obligations in the Rule conflict with what is proposed in MI 52-110. If issuers are subject to both the Rule and MI 52-110, they must comply with both instruments. They can do this without breaching the other instrument.

One commenter said the Rule should be drafted to permit the use of technology for delivery of CD documents, without the need for requiring exemptive relief. The commenter asked, as an example, if issuers would be permitted to extract financial information and MD&A if they were filed as part of a single document, like an annual report, or if the entire report will have to be delivered to the securityholders that request the financial statements. The commenter suggested

- adding specific language that would allow the delivery of only relevant parts of a filed document to securityholders, and
- standardizing where information appears in CD documents and how it is labelled.

Response: We have decided not to be prescriptive in how information in the forms must be organized or labelled, or how documents are to be delivered to securityholders. This will give issuers the maximum amount of flexibility

- *in structuring the disclosure to suit their circumstances,*
- *developing industry practice in delivering documents, and*
- *responding to advances in technology to effect delivery.*

Two commenters suggested the Rule or Policy should expressly permit the practice of *householding* of material - that is, delivering one set of materials to all securityholders that share a household.

Response: We have not revised the Rule to expressly permit the practice of householding materials. The Rule, as it relates to proxy materials, deals only with registered securityholders, while beneficial securityholders have their rights to receive materials set out in National Instrument 54-101 Communication with Beneficial Owners of Securities of Reporting Issuers (NI 54-101). To be effective, permitting householding of materials must be addressed in both the Rule and in NI 54-101, as approximately 95% of registered securityholders are intermediaries holding on behalf of beneficial owners. We will consider this comment in the context of NI 54-101, and will make changes to the Rule, as appropriate, if changes are made to NI 54-101.

Part 1 - Definitions

One commenter said, generally, definitions referring to the Handbook are difficult for legal practitioners and issuers that use non-Canadian GAAP to apply. The commenter suggested that GAAP-neutral definitions or references should be used in the Rule and in the forms.

Response: The Handbook is only referenced in two definitions (reverse takeover acquiree, and reverse takeover acquirer). The Handbook provides extensive discussion and guidance relating to these concepts that will be helpful to issuers and their advisors. However, it is impractical to incorporate these lengthy descriptions it into the Rule itself. In these limited circumstances, the cross-references are justified.

One commenter suggested that the definition of *acquisition of related businesses* [now in Part 8 of the Rule] should be clarified, as the reference to *common event* could mean that two otherwise unrelated acquisitions could be considered related businesses. For example, if both acquisitions were subject to separate regulatory approval. The commenter also suggested paragraph (c) of the definition should be deleted.

*Response: To be a related business, the definition requires the acquisitions to be subject to a **single** common event. An event such as regulatory approval, for example, would only make the businesses “related” if the regulatory approval of one acquisition is also a condition of the second acquisition.*

One commenter suggested the definition of *asset-backed security* is too broad if it would capture a unit of an income trust that owns 10-year subordinated notes of the underlying company.

Response: We disagree that the definition is too broad. The term asset-backed security is only used in the AIF. The disclosure required in the AIF for asset-backed securities would be extremely relevant to an income trust that owns 10-year subordinated notes.

One commenter suggested *date of acquisition* should be defined as the legal date of closing of the acquisition, which is when control changes, rather than the date of acquisition as determined for accounting purposes under the Handbook.

Response: The definition in the Handbook has two branches. The first deals with the date the assets are transferred and the consideration paid. We expect this would usually be the same as the legal date of the closing of the acquisition. The second branch deals with circumstances where the assets themselves have not been transferred, but control over those assets has been transferred. If that is the case, an issuer using Canadian GAAP must start preparing consolidated financial statements. As the issuer has to determine the date of acquisition for accounting purposes so it can prepare its financial statements, it is appropriate for the same factors to be considered in determining when the BAR report must be filed. It would not be appropriate to only use the legal closing date, as that may take place significantly after the control of the assets has been transferred, and after the issuer has started consolidating the acquisition in its financial statements.

One commenter said the definition of *equity security* should not include securities that have a residual right to participate in earnings. Instead, it should be limited to a security that carries a residual right to participate in the assets of an issuer on the liquidation or winding-up of the reporting issuer.

Response: We have deleted the definition of equity security in the Rule as the term is already defined in National Instrument 14-101 Definitions. That definition refers back to the definition of equity security in securities legislation. It would not be appropriate to change that definition, which has been used for many purposes in many different national and multilateral instruments, in this Rule.

One commenter said the definition of *exchange-traded security* excludes

- all foreign-listed or quoted securities,
- in provinces other than Ontario, appears to exclude securities listed on the Toronto Stock Exchange (TSX), and,
- in Ontario, excludes securities listed on the TSX Venture Exchange (TSXV).

Response: The term is only used in the definition of marketplace. As the definition of marketplace also encompasses exchanges and quotation systems, regardless of where they are located, the limitations to the definition of exchange-traded security suggested by the commenter are irrelevant.

One commenter suggested paragraphs (e) or (f) of the definition of *executive officer* may be over-broad. There could be a large number of policy-making personnel (for example, in respect of the privacy policy, or the environmental policy) that should not be considered executive officers. The commenter suggested that either *senior officer* or *officer* would be more appropriate, particularly in Parts 10 and 13 of the AIF form, and in the Information Circular form.

Response: We disagree. The definition of executive officer is designed to capture persons that are directing the operations of the reporting issuer and making its significant decisions. This includes the people responsible for approving a policy direction and ensuring the policy is

implemented and followed (that is, the making of the policy for the issuer). This group is distinct from those personnel that simply develop the policies for consideration.

One commenter suggested the definitions relating to reverse takeovers should not refer to *control*, as the securityholders of the acquired enterprise may not act in concert, and so will not have control. Instead, it should be a numerical test, such as 50% plus 1 aggregate ownership.

Response: We have added a statement to the Policy to clarify that the term control, as used in the reverse takeovers definitions, refers to control in the accounting context. This is distinct from the concept of a controlled corporation or a control person in securities legislation, which the commenter seems to be alluding to.

One commenter supported the introduction of the new definition of *venture issuer* to provide relaxed disclosure and filing obligations for those issuers.

No response required.

One commenter supported the treatment of venture issuers under the Rule, but said the definition will have to be monitored to determine the effect on smaller capitalization issuers that do not meet the definition.

Two commenters approved of the use of a single threshold for differentiating CD requirements among issuers. One of the commenters, though, thought the threshold should be based on the \$75 million market value test, not the issuer's listing. The commenter said a market value test would capture large issuers listed on the TSXV, and prevent small issuers on the TSX from being subject to the more onerous non-venture issuer requirements.

Response: The listing test is more transparent and easier to understand and apply for investors, who must be able to determine what disclosures they will receive from an issuer they invest in. We recognize that using a listing test, rather than a market value test, will result in some smaller issuers not being able to rely on the exemptions available to venture issuers. If those issuers choose to remain listed on a senior exchange and access the benefits that provides, they should be subject to the associated level of disclosure. Alternatively, those issuers can move to a junior exchange so they can rely on the exemptions for venture issuers.

One commenter that NASDAQ SmallCap companies and those listed on the UK AIM market, for example, should be *venture issuers* under the Rule.

Response: We disagree. NASDAQ SmallCap companies are much larger on average than issuers listed on the TSXV, and are more comparable to TSX listed issuers in Canada.

The majority of issuers that are reporting in Canada that are not foreign issuers entitled to rely on the Foreign Issuer Rule are listed on exchanges in Canada and the US. As a result, we specifically considered those exchanges, and whether it would be appropriate for issuers listed on those exchanges to be considered venture issuers, or not venture issuers. Issuers that are listed on other exchange or quotation systems, such as the UK AIM market, that feel those

markets are comparable to the TSXV can apply for discretionary relief. If it becomes apparent in the future that Canadian reporting issuers are migrating to foreign junior exchanges, the CSA can consider amending the Rule at that time.

Part 4 - Financial statements

Section 4.1 Annual Financial Statements and Auditor's Report

One commenter said subparagraph 4.1(1)(a)(ii) of the Rule should be clarified to indicate if it was intended to require a partial financial year be included in the financial statements.

Response: We do expect partial years to be included in the financial statements. Section 3.1 of the Policy indicates that the term financial year does not necessarily mean a 12 month period.

Section 4.2 Filing Deadline for Annual Financial Statements

One commenter expressed concern with the proposed deadline for year-end reporting, given the logistics of having the documents approved, audited, printed, translated, filed, and delivered in the shortened period. The commenter suggested that the quality of the report is more important than shortening the filing deadline.

Response: The desire of investors for more timely information is not always easily balanced with their desire for heightened reliability. However, we believe that in an environment that increasingly demands, and is capable of furnishing, more timely information, the current filing deadlines are inadequate. We believe that the new filing deadlines, including the different deadlines applicable to venture issuers, reasonably balance the needs for timeliness and reliability. Other changes to the CD requirements, such as removing the requirement to deliver financial statements and MD&A except on request, will also reduce the time it takes to prepare the documents for filing.

One commenter was concerned about the impact of the shorter time frames for filing financial statements given section 79 of the Ontario *Securities Act*, which requires issuers to send financial statements filed to their securityholders at the same time as they are filed. The commenter questioned what the impact of the Rule on section 79 will be, since the Rule is silent on this point.

Response: Section 79 of the Ontario Securities Act has already been amended to remove the concurrent delivery requirement, provided the financial statements are sent by the filing deadline. In addition, the Ontario Securities Commission has published for comment Ontario Rule 51-801, which will implement the Rule in Ontario. Under Ontario Rule 51-801, section 79 of the Ontario Securities Act will not apply to issuers that comply with section 4.6 of the Rule. Other jurisdictions have published similar local rules for comment that will implement the Rule in their jurisdictions or have proposed amendments to their Securities Acts. The specific implementation of the Rule in each local jurisdiction cannot be done within the Rule itself, as it differs from jurisdiction to jurisdiction.

Section 4.3 Interim Financial Statements

Two commenters said disclosure of whether an auditor has reviewed the interim financial statements should be prominent and presented in a consistent location with the interim report. They also suggested that issuers should not be given the alternative of disclosing in their financial statements or MD&A. One of the commenters suggested that, instead, the Rule should require a legend to be placed on the face of the interim financial statements.

One commenter said that disclosure about auditor review of interim financial statements should not be in either the financial statements, or in the MD&A. It should be in a notice that accompanies the interim financial statements.

Response: We have revised the Rule to require disclosure that an auditor has not reviewed the financial statements in a notice that accompanies the financial statements. This ensures that the information is prominent and easily located. We have not required the disclosure to be given as a notation on the financial statements, as this is not a requirement under GAAP, and we have generally not prescribed the format of financial statements.

Section 4.5 Review and Approval of Financial Statements

Four commenters said boards of directors should be permitted to delegate the review and approval of interim financial statements to the audit committee. The commenters had the following concerns with requiring board approval of interim financial statements:

- none of the recent United States initiatives relating to corporate governance, including the *Sarbanes-Oxley Act* and the most recent requirements of the New York Stock Exchange, mandate board approval of interim financial statements
- the logistics of obtaining board approval of interim financial statements within the short time frames for filing interim financial statements are prohibitive, would increase costs, and would delay the filing of the interim financial statements
- the requirement removes responsibility from the audit committee, which should be encouraged to contribute their knowledge and expertise to the fullest extent practical, not have opportunities to actively participate removed
- the standard and quality of financial statements reviewed and approved by an audit committee, which includes independent members of the board with an appropriate level of financial understanding, are high
- boards are permitted to delegate approval of interim financial statements under the CBCA
- delegation of approval to the audit committee does not reduce the liability of non-audit committee directors

One commenter supported the requirement to have the board of directors approve all interim and annual financial statements as it provides greater clarity to market participants than “review” of the financial statements.

One commenter supported the requirement for the audit committee to review all interim financial statements.

Response: We have noted the concerns expressed by the commenters about the logistics of obtaining board approval before filing the interim financial statements. We are also aware of the general trend toward the creation of audit committees that have more financial experience, both

as a result of increasing regulatory requirements, and as an industry response to investor demands. With the increased expertise within audit committees, and recognizing the pressures that the reduced filing deadlines will place on issuers, we have revised the Rule to require that either the audit committee or the board of directors must approve the interim financial statements. We explain in the Policy that, because of restrictions in some corporate legislation, only the board of directors of some issuers will be permitted to approve financial statements. However, we have given flexibility for those issuers that are not subject to that corporate legislation, and that decide they can satisfy their obligations to their shareholders by utilizing the expertise available in their audit committees.

Section 4.6 Delivery of Financial Statements

General

One commenter supported the requirement for delivery of financial statements and MD&A together.

One commenter suggested the CSA should work with the federal government to amend the requirement in the CBCA that corporations mail their annual financial statements to all securityholders except those that inform the corporation in writing that they do not want a copy. The commenter noted that, until this requirement is changed in the CBCA, federally incorporated companies will not have the benefit of section 4.6.

Response: We will draw the government's attention to the areas of inconsistency between the corporate legislation and the Rule. It will then be up to the government to decide if changes to the corporate legislation will be made.

The concept and interaction with NI 54-101

One commenter expressed concern with the entire framework governing the delivery of documents to securityholders set out in NI 54-101.

Two commenters opposed the approach in section 4.6 of the Rule. The reasons one or both of the commenters gave were

- it permits issuers to respect the wishes of investors that have indicated under NI 54-101 that they do not want to receive certain materials, but requires other investors to reconfirm annually that they do want to receive materials
- the conflict behind, and confusion created by, requiring intermediaries to obtain a one-time-only instruction from beneficial owners, and the requirement for issuers to ask again, on an annual basis, if the beneficial owners wish to receive annual financial statements (but not proxy materials)
- it is unclear if the non-return of a request form overrides an investor's election under NI 54-101 to receive materials; if it does override the instructions under NI 54-101, then there is little value in requiring intermediaries to obtain clients' instructions under NI 54-101 at all
- it does not conform to investors' requests to receive less paper, because they will receive request forms from each issuer whose securities they own
- proxy materials should not be delivered without the financial statements – it would be a severe deficiency from a corporate governance point of view, and call into question the integrity of the vote

- the uncertainty of who is to pay for the cost of delivery of the request form to objecting beneficial owners (OBOs) that have indicated under NI 54-101 that they wish to receive securityholder materials - neither intermediaries or clients should be expected to pay the costs of delivery of the request form
- the significant costs and effort in implementing a system to track the mailing and return of request forms, and the annual instructions, to both the issuers and intermediaries

One commenter suggested the Rule should be clear what the effect would be of failing to respond to the request form, if the securityholder has already elected under NI 54-101 to receive all proxy related materials.

Response: We have not changed the requirement to deliver an annual request form, although we have clarified the requirement in some respects. In response to the specific concerns raised by the commenters:

- *The requirement to send the request form only to those securityholders that have indicated they want to receive materials under NI 54-101 is appropriate. The basic principal behind the delivery requirement is that only those investors that want the financial statements should receive copies of them. Currently, under NI 54-101, securityholders must give instructions for their entire portfolio – they cannot distinguish among the various issuers represented in their portfolio. The instructions they give relate to all proxy-related materials, which includes both information circulars and financial statements. As a result, securityholders have to indicate they want to receive proxy materials for all issuers in their portfolio, even if the only information they wish to receive is the information circular for one issuer represented in their portfolio. The request form gives securityholders an opportunity to respond to each issuer individually, and so “customize” their instructions on an issuer-by-issuer basis.*
- *The Policy now indicates that failing to request the financial statements and MD&A will override the instructions given under NI 54-101, to the extent those instructions relate to the financial statements and MD&A only. Failing to request the financial statements will not affect securityholders’ right to receive the forms of proxy or information circulars in accordance with their instructions. The NI 54-101 instructions are still relevant, because issuers are still required to deliver information circulars and forms of proxies in accordance with the instructions.*
- *We disagree that the requirement to send a request form will not conform to investors’ requests to receive less paper. There is a significant difference between receiving a one-page request form, and receiving a set of financial statements and MD&A that the securityholder does not want.*
- *Investors that want the financial statements will still have access to the statements. Once they request the statements, issuers must deliver a copy within 10 days of receiving the request, if the financial statements have already been filed. We do not agree that delivering the financial statements only on request will result in corporate governance deficiencies.*
- *The request form should be treated the same as all other materials delivered under NI 54-101. As such, issuers are not required to pay for delivery of the form to OBOs that decline to disclose their beneficial ownership to the issuer.*
- *As we expect the request forms will be sent as part of the proxy-related materials, and will largely be returned directly to the issuer, we expect the implementing costs will not be significant. Some groups may also consider providing a separate tracking service to issuers.*

One commenter asked if there should be a distinction between OBOs and non-objecting beneficial owners (NOBOs) under NI 54-101, as reporting issuers should not be required to pay for delivery to OBOs.

One commenter said the Rule should specify that the reporting issuer is responsible for paying the costs of sending the request forms to all registered and beneficial owners.

Response: We agree that issuers should not be required to pay for the delivery of the request form or financial statements to OBOs that decline to disclose their beneficial ownership to the issuer. We have revised the Rule to ensure this is the result.

One commenter agreed that the onus should be on the reporting issuer to determine if its securityholders want copies of its financial statements and MD&A. The commenter had concerns with how the requirement would interact with NI 54-101, and suggested a thorough analysis of how the Rule and NI 54-101 interact should be done to ensure there are no gaps. In particular, the commenter asked the following:

- Since the wording in NI 54-101 and the Rule is not identical, does “declined to receive materials” mean declined to receive all materials, or does it also include a securityholder that has declined to receive some materials?
- Will those securityholders that were deemed under NI 54-101 to have opted to not receive materials be considered to have “declined to receive materials” under the Rule?

The commenter suggested these questions could be resolved by changing the requirement so issuers must deliver the request form to beneficial owners that have chosen to receive all securityholder materials.

Response: We have changed the Rule as suggested by the commenter.

One commenter suggested the annual request form should ask the securityholders to indicate if they do **not** want to receive the financial statements and MD&A. If the securityholder does not indicate he or she does not want to receive the documents, the issuer should be required to deliver them.

One commenter suggested that a securityholder that fails to return the request form should be deemed to have requested the annual financial statements, and declined to receive the interim financial statements. The commenter suggested this would be a more appropriate approach, as the rate of response of securityholders is relatively constant, regardless of the question asked.

Response: We disagree with these suggestions, as we expect they would result in people receiving copies of the financial statements and MD&A that did not actually want them. The requirement for securityholders to request the financial statements and MD&A ensures that securityholders that want paper copies can still easily obtain them, without imposing unnecessary delivery obligations on issuers

Two commenters suggested the financial statements and MD&A should be delivered to securityholders on request, regardless of whether the request is made by returning the request form, or in some other way.

Response: We have revised the Rule to delete the reference to the request for the financial statements being made in the request form. Securityholders are entitled to copies of the financial statements and MD&A, regardless of how they request them.

One commenter asked if the request form must be sent only to equity securityholders, or to holders of all publicly traded securities, including debtholders.

One commenter suggested the Rule should be clear that the request form does not have to be sent to non-voting shareholders and debtholders.

Response: We have clarified the Rule to specify that the request form must only be sent to securityholders other than holders of debt instruments. We have not excluded non-voting shareholders from the requirement, as shareholders, whether holding voting or non-voting securities, are in a different position from debtholders. Debtholders can negotiate the delivery of documents, such as financial statements, when the terms of the debt instrument are being settled. Securityholders do not normally have the option of negotiating terms with the issuer. As a result, holders of non-voting shares should be treated the same as holders of voting shares. This is consistent with their treatment under the financial statement delivery requirement currently in securities legislation.

One commenter said issuers should be given an exemption from the requirement to send the request form if they elect to send their financial statements and MD&A to all their securityholders.

Response: We have added an exemption to the Rule for issuers that elect to send the financial statements and MD&A to all their securityholders other than holders of debt instruments.

Delivery of the financial statements

One commenter supported not requiring financial statements to be filed and delivered to securityholders concurrently.

No response required.

One commenter said issuers should be given 30 days after the deadline for filing their financial statements and MD&A to deliver copies to their securityholders. This would give them sufficient time to print, package and mail the annual proxy-related documents that include the annual financial statements and MD&A. In the meantime, the information would be available on the System for Electronic Document Analysis and Retrieval (SEDAR) and on the issuer's website. The commenter noted that, under United States securities laws, issuers have much more than 90 days after year-end to print and mail their annual report to their securityholders.

Response: We disagree. We have already reduced the burden on issuers by removing the requirement to deliver the financial statements and MD&A to all securityholders.

Securityholders that do request a copy of the financial statements and MD&A are entitled to receive the copies in a timely manner. Requiring delivery by the later of the filing deadline, and 10 days after the issuer receives the request, provides this timeliness for securityholders. Our requirement for delivery of the financial statements and MD&A to securityholders on request is different from the concept in the United States, where delivery is not required. As such, the requirements are not comparable.

One commenter suggested that it should be clarified that only the current year's financial statements and MD&A are required to be sent to securityholders.

Response: The Rule now specifies that an issuer does not have to deliver financial statements that were filed more than two years before the date of the request.

One commenter noted that, as the issuer may not be able to control when it receives requests for copies of the financial statements and MD&A, the issuer may be required to undertake several separate mailings of materials. This will increase the issuer's costs.

Response: While we recognize that the issuer may have to undertake several different mailings, we expect the overall costs of delivery will be reduced from the current requirement of having to mail to all securityholders. As securityholders should be entitled to receive copies of the financial statements and MD&A on request, and as these requests may be made over time as new investors acquire securities of the issuer, it is not possible to eliminate the costs associated with multiple mailings.

Content of the request form

Two commenters suggested that reporting issuers and intermediaries will need to prepare their own form of request form, as none is prescribed. One of the commenters suggested the Rule should clarify that it is up to reporting issuers and intermediaries to develop the necessary mechanisms to comply with the request form requirements.

One commenter suggested the Rule should mandate certain information be given to securityholders on or with the request form, such as an explanation of the effect of failing to respond, that investors may change their choice at any time, and who to contact to make changes.

One commenter suggested the procedures involved in sending the request form should be spelled out in the Rule.

Response: We have decided to give issuers the maximum flexibility relating to the request form. As a result, we have not prescribed the content of the form, when it should be sent, or the exact procedures for sending it. This will allow issuers to consider what practices work best in their individual circumstances, and industry to develop aids to assist issuers.

One commenter supported the requirement to only deliver financial statements and MD&A to securityholders that request them. The commenter did not object to the sending of the annual request form, as long as the requirement is not onerous. The commenter said it is reassuring that

securityholders can obtain copies of documents in print, if they want, but suggested it would be preferable for securityholders to be directed to company websites and SEDAR for copies.

Response: Issuers may choose to direct securityholders to their websites and SEDAR in the request form.

Additional disclosure

Two commenters said reporting issuers should be required to include a statement in their AIFs, proxy circulars, or annual financial statements telling securityholders how they can request a copy of the financial statements.

Response: We have added a requirement to the information circular for issuers to disclose how copies of the financial statements and MD&A can be requested from the issuer.

Section 4.9 Change in Corporate Structure

One commenter noted that much of the information required in the notice of a change in corporate structure will already be disclosed in both press releases and material change reports. The commenter suggested the Rule should be revised so issuers will not be required to provide previously disclosed information.

Response: We have added a statement to the Policy that issuers may use a news release or material change report as their notice under section 4.9 provided that the news release or material change report

- *has all the information required under section 4.9, and*
- *is filed as the notice under either the Change in Corporate Structure category on SEDAR, or as a paper filing for issuers that are not required to file on SEDAR.*

Section 4.11 Change of Auditor

One commenter asked if the “personnel of a reporting issuer responsible for finalizing” financial statements in the definition of *disagreement* are the directors, as the directors are responsible for the final step of approving them. If so, was this intended?

Response: The choice of the word finalizing in the Rule, a broader term than approval, was purposeful. The term personnel encompasses those members of management that are responsible for the preparation of the financial statements, as opposed to the board of directors which is responsible for approving the final annual financial statements before they are filed.

One commenter suggested that the press release issued in connection with the appointment of a new auditor should include a requirement to describe the information in the reporting package. This is already a requirement in the press releases issued in connection with the termination or resignation, but reportable events should be disclosed in both press releases.

Response: We agree. Issuers will now be required to either describe the information in the reporting package in the news release issued when the successor auditor is appointed, or refer to the prior news release that contained this disclosure.

One commenter said the requirement for a successor auditor to communicate with the reporting issuer and securities regulatory authorities if the issuer has not complied with the change of auditor requirements should also apply to the former auditor.

Response: The CSA have determined that it is not appropriate to impose obligations on auditors that are no longer associated with the reporting issuer. Accordingly, the requirement that was in National Policy 31 has been revised to impose the obligation solely on the successor auditor.

Part 5 [Part 6] – AIFs and Form 51-102F1 [Form 51-102F2]

See below under the heading **Part 6 – MD&A and Form 51-102F2 - Form 51-102F2 – Relationship between the AIF and MD&A** for comments relating to the interaction and relationship between the AIF and the MD&A.

One commenter questioned if it was appropriate for venture issuers to not be required to prepare an AIF, given that the AIF is a core disclosure document. The commenter also suggested that, as a core document, all issuers should be required to post the AIF, or the filings comprising an AIF, in the case of venture issuers, on their websites.

Response: During the first comment period on the Rule, the majority of the commenters supported the distinctions between categories of reporting issuers. We considered these comments, and the financial and other resource constraints that venture issuers may be particularly subject to, when we exempted venture issuers from filing the AIF. The CSA believe that, even with these exemptions, investors will still have access to timely information about all public companies. The CSA are satisfied that the exemptions for venture issuers balance the needs of investors with the challenges facing those issuers. If the CSA adopts an integrated disclosure system (IDS), it may be appropriate to extend the requirement to all issuers that wish to access IDS.

We have not mandated that the AIF be posted on an issuer’s website. As the AIF is already available on the Internet through SEDAR, this additional requirement is not necessary. Issuer’s may choose to post the AIF on their website, if they have a website.

One commenter suggested Form 51-102F1 [now Form 51-102F2] should be explicitly referred to in this Part.

Response: We disagree. AIF is a defined term in the Rule that includes the Form 51-102F2, but also includes alternative forms of AIFs.

Form 51-102F1 [Form 51-102F2]

General

One commenter supported the increased disclosure obligations in the AIF that are currently only in prospectuses. The commenter particularly supported

- the requirement to disclose risk factors
- the guidance given with respect to risk factors, such as cash flow and liquidity problems

- the requirement for directors and officers to disclose involvement with a company just before it became bankrupt or when an event occurred that resulted in a penalty being imposed.

No response required.

One commenter said the Form should include references to the requirements in Part 12 of the Rule as well as in Form 52-110F1 *Information Required in an AIF* as a reminder to include all required information.

Response: We have not added the cross-reference to Part 12 of the Rule because we have amended Part 12 so that material contracts are not filed as part of the AIF. We have added a reference in the AIF to Form 52-110F1.

Part 1 General Instructions and Interpretation

One commenter said the requirements relating to the date of information included in the AIF are inconsistent. Information must be dated as at the year-end, but the instructions then say the information provided in the AIF must be current.

Response: We have clarified the language in the AIF. Information must be provided as at the financial year-end. If that information would be misleading because of intervening events, though, it must be updated so the AIF will not be misleading when it is filed.

One commenter suggested *special purpose vehicle* should be defined in the form.

Response: We have not added a definition as the term is only used in Part 1(i) of the Form. Further, the reference to special purpose vehicle is consistent with the reference in National Instrument 44-101 Short Form Prospectus Distributions (NI 44-101), which has been applied by issuers for a number of years, without a definition.

Item 4 General Development of the Business

One commenter suggested the Form should contemplate an issuer without a three-year history.

Response: We have not revised the Form. If the issuer does not have a three-year history because it was the resulting issuer from an amalgamation, for example, it may be appropriate to include the history of the predecessor issuers. If the issuer does not have a three-year history because it is a newly incorporated issuer with a new business, it can rely on Part 1(l) of the Form. Part 1(l) provides that issuers do not have to respond to items that are inapplicable. As a result, that issuer can satisfy the disclosure requirement by providing history for the period it has been in existence.

One commenter said the requirement to discuss expected changes to the business in the AIF is inconsistent with the AIF's stated purpose of disclosing information "up to a point in time".

Response: We have revised the stated purpose of the AIF to be consistent with CSA's expectations of the disclosure. That is, the AIF is intended to provide material information at a

point in time in the context of the issuer's historical and possible future developments. Given this stated purpose, the discussion of expected changes is appropriate.

Item 5 Describe the Business

One commenter suggested that the requirement to disclose the terms of *any* leases is too onerous. Although the instructions to the Form qualify the requirements with the materiality concept, a less onerous requirement could be drafted.

*Response: As part of our review of the MD&A and AIF we discuss below under the heading **Part 6 MD&A - Form 51-102F2 – Relationship between the AIF and MD&A**, we have deleted this requirement in the AIF. The relevant discussion will be provided in the MD&A as part of the financial discussion.*

One commenter suggested the disclosure about mortgages should take into account that a mortgage may have a face amount in excess of the current obligation secured, as it is the amount of the debt that matters.

*Response: As part of our review of the MD&A and AIF we discuss below under the heading **Part 6 MD&A - Form 51-102F2 – Relationship between the AIF and MD&A**, we have deleted this requirement in the AIF. The relevant discussion will be provided in the MD&A as part of the financial discussion. Also, in the MD&A, the disclosure relating to mortgages will relate to the current obligation secured, rather than the face value of the mortgage.*

One commenter said the requirement to disclose changes to contracts could be very difficult to comply with, given the involvement of third parties. Having to provide this disclosure could also prejudice the issuer's negotiating position to the detriment of investors.

Response: Issuers are only required to disclose the affects of renegotiations or terminations that they are aware of. This is consistent with the disclosure requirement in NI 44-101. If the issuer is not able to ascertain the possible effects because of the uncertainties of dealing with third parties, it is important for investors to know of these uncertainties.

Two commenters approved of the requirement for companies to provide social and environmental policies disclosure in the general description of their business. The commenters suggested that the instructions relating to risk factor disclosure should also include a broad instruction to disclose risks of a social responsibility or sustainability nature. The commenters felt that inclusion of environmental, social and cultural disclosure in the general description of the business is insufficient, without specific inclusion of these items in risk factors.

Response: The examples provided in the risk factor disclosure are not intended to be comprehensive nor exhaustive. The likely result of attempting to list every type of risk disclosure that may be appropriate would be to exclude those that may be relevant to a specific issuer. Instead, the examples are provided to encourage the issuer to think about what is applicable in its circumstances. It is not necessary to list social or environmental issues in the risk factor disclosure. If those items are applicable to an issuer, the issuer will be expected to discuss them, given the broad language in the Form.

Three commenters disagreed with requiring disclosure of social and environmental policies. One of the commenters said the disclosure will only add clutter without helping the investing public or other people that may be concerned about these issues. Another commenter suggested that, instead of mandating the disclosure of social and environmental policies, guidance should be added to the Form. The guidance would provide that issuers may have to discuss social and environmental policies if they otherwise constitute information required to be disclosed under general AIF and MD&A requirements relating to risks and uncertainties. The third commenter said the requirement inappropriately expands the scope of the AIF, which generally includes financial, operational and governance information. The commenter said this non-material information should not be in the AIF, which is expected to be subject to chief executive officer (CEO) and chief financial officer (CFO) certification with prospectus-level liability. Similar policy information is provided, as required under the *Bank Act*, through Public Accountability Statements posted on bank's web sites. The commenter suggested that is a better way to provide this information.

Response: We have not deleted the requirement to disclose social and environmental policies, however, we have clarified that the topic only applies if the issuer has implemented social or environmental policies that are fundamental to the issuer's operations. In that context, such policies would not expand the scope of the AIF – they are intrinsically linked to the issuer's operational practices.

One commenter said the requirement to disclose social and environmental policies should be limited to those policies that are material.

Response: All of the disclosure requirements in the AIF, subject to certain named exceptions, are subject to the general instruction in Part 1(c) that issuers do not need to disclose information that is not material. As such, the requirement to disclose social and environmental policies is already limited to those policies that are material to the issuer.

One commenter suggested *social policy* should be defined in the form.

Response: We have revised the requirement to provide examples of the types of policies that should be disclosed in the Form.

One commenter stated that risk factors should not be required to be disclosed in the order of their seriousness. The commenter said the requirement could cause litigation or regulatory risks because it may not be possible to predict which risk would be the most serious. The commenter suggested the requirement should, at a minimum, reflect the uncertainty of this disclosure.

Response: We disagree that risk factors should not have to be disclosed in the order of their seriousness for the following reasons:

- *it is important for the most serious risks to be disclosed first so this information is not buried,*
- *the disclosure itself will reflect the uncertainties of the risks, and*

- *the requirement has existed in the prospectus context for a number of years, and we are not aware of any litigation commenced as a result of the order of the disclosure.*

One commenter said the requirement to disclose *all* environmental liabilities in the Form should be limited to those known, and material, environmental liabilities.

Response: We have not added the suggested qualifiers to the disclosure. Issuers can only disclose information that is known to them, so that qualification is not necessary. Further, all of the disclosure requirements in the AIF, subject to certain named exceptions, are subject to the general instruction in Part 1(c) that issuers do not need to disclose information that is not material. As such, the requirement to disclose environmental liabilities is already limited to those liabilities that are material to the issuer.

Item 6 Selected Consolidated Financial Information

One commenter noted discrepancies between the content and periods covered by the AIF financial discussion and the MD&A financial discussion. The commenter suggested that instead of having separate disclosure in the AIF, issuers should be required to reference their latest annual MD&A, or latest two MD&As, in their AIFs.

Response: As discussed below, we have done a thorough review of the AIF and MD&A to clarify their purposes, and the disclosure required to achieve those purposes. As a result, we have moved the disclosure that was in section 6.1 of the AIF to the MD&A. In the MD&A, it will provide an annual overview from which broad trends can be seen.

One commenter questioned the value of requiring the dividends disclosure, as that information can be found in the notes to the annual financial statements and a cross-reference should suffice.

Response: The disclosure required relating to dividends goes beyond disclosure that would be included in the notes. To the extent the disclosure does overlap, section 1(f) (formerly 1(e)) of the Form permits issuers to incorporate information required to be included in the AIF by reference to another document.

Item 7 Description of Capital Structure

One commenter questioned the value of requiring a description of the issuer's capital structure, as that information can be found in the notes to the annual financial statements and a cross-reference should suffice.

Response: Section 1(f) (formerly 1(e)) of the Form permits issuers to incorporate information required to be included in the AIF by reference to another document.

One commenter supported the added disclosure about ratings in the AIF.

One commenter supported the ratings disclosure in the AIF, except the requirement to describe any factors or considerations identified by the approved rating organization as giving rise to unusual risks associated with the securities. The commenter's reasons were:

- the factors and considerations reflect the rating organization’s own views that the issuer may not agree with
- the factors and considerations would normally be publicly disclosed in the rating organization’s press release.

One commenter stated that an issuer should not be responsible for giving lengthy disclosures on credit ratings beyond the rating, the agency involved, and the address of the agency’s public web site.

One commenter questioned the value of requiring detailed information about ratings, given that accurate and timely information is publicly available.

Response: The full disclosure about the ratings information is important information for investors to have. Investors should not be expected to locate the information on the ratings agency’s web page, or by locating news releases that have been issued by third parties some time prior to the date of the AIF. By providing this information in their AIF, issuers are not adopting the ratings agency’s statements; they are simply repeating the relevant information that led to the rating being given.

One commenter questioned whether an issuer must disclose “quiet” or “shadow” ratings, or unsolicited ratings, in the AIF.

Response: We expect it will be rare for Canadian reporting issuers that are not able to rely on the exemptions from the AIF requirement under the Foreign Issuer Rule to have unsolicited ratings. When an unsolicited rating is given, though, the issuer should disclose it, as it is relevant information for investors.

One commenter suggested clarification should be added of what disclosure is being sought by the phrase “what attributes, if any, of the securities are not addressed by the rating”.

Response: As discussed in the Companion Policy to NI 44-101, ratings agencies may consider other factors in addition to, for example, creditworthiness of the issuer, when assigning a rating. These factors must be discussed in the AIF. We have added an instruction to the Form to clarify this requirement.

Item 8 Market for Securities

One commenter suggested that the requirement to include a summary of the monthly volume and price ranges of securities in the AIF is no longer warranted. There is a significant chance of error in preparing the information, and the value to the reader is minimal since most securityholders have access to real-time graphing and share price information.

Response: Including this disclosure in the AIF makes it easily accessible by investors. Investors should not be required to locate or create the information through the marketplace.

Item 10 Directors and Officers

One commenter was concerned with the requirement to disclose bankruptcies of issuers that a director or officer has been involved with. The commenter thought it may have the unintended consequence of preventing experienced people from becoming involved in an issuer because of their past connection with a bankrupt company. These people may have more expertise in avoiding bankruptcies than people that have not had this experience. The commenter suggested that, if the intent is to elicit information about criminal activity, the wording should be clearer.

One commenter supported the requirement for issuers to disclose the involvement of their directors and officers with a company just before it became bankrupt or when an event occurred that resulted in a penalty being imposed.

Response: We agree that this is relevant information for investors. By requiring the information to be disclosed, investors will be able to draw their own conclusions – positive or negative - about the qualifications of the directors and officers.

One commenter said the disclosure in the AIF relating to bankruptcies and penalties should not be necessary, as the information will already be provided in a prospectus. Every year after that, it will be included in the proxy circular, which will normally be filed before the AIF.

Response: The disclosure required in the information circular relates solely to directors proposed for election. The information required in the AIF is broader, as it includes all directors and executive officers. To the extent the information in the AIF duplicates what is in the information circular, issuers can satisfy the AIF disclosure by incorporating the disclosure from their information circular into the AIF, as contemplated in section 1(f).

One commenter suggested the disclosure should be limited to the knowledge of the officers and directors. The commenter also suggested the December 31, 2000 date in section 10.2(3) should be updated.

Response: We disagree that the disclosure should be limited to the knowledge of the officers and directors. The disclosure is limited to bankruptcies that occur within a year of the director or officer ceasing to be involved with the issuer, and penalties that resulted from events that occurred while the director or officer was involved. Directors and officers are expected to have this information or, if they do not, to obtain it.

We have not changed the date in section 10.2(3), as it is based on the date for the corresponding disclosure obligation in the prospectus disclosure rules.

Item 11 Promoters

One commenter suggested disclosure of promoters can be very difficult since the term is very ambiguous and poorly drafted. Further, the securityholder may not agree that it is a promoter, particularly since promoter's resales have been added to the "always a distribution" category, and the issuer may not have the ability to obtain the necessary disclosure information from the promoter.

One commenter had concerns about the disclosure relating to promoters for the following reasons:

- the term is not defined in the Rule and, in other contexts, has been used to refer to investor relations persons
- this is a new requirement for TSX listed issuers, who are less likely than smaller issuers to engage promoters to tout their stock
- no rationale is provided for this proposed new requirement in the AIF.

The commenter recommended that both *promoter* and *investor relations* should be defined in the Rule to distinguish the “touting” of stock (that is, promoting), from valid investor relations activities.

Response: The term promoter is clearly defined in various Securities Acts as a person that takes the initiative in founding, organizing or reorganizing the business of the issuer, and persons that receive more than 10% of an issuer’s outstanding securities in consideration for services or property received in connection with founding, organizing or reorganizing the issuer’s business. As a matter of law, a term defined in a Securities Act and used in the Rule has the meaning in the Act of the local jurisdiction. As a result, the use of promoter in the AIF is distinct from the more colloquially used “stock promoter”. The disclosure relating to promoters is important and relevant information for securityholders. Securityholders should know who has taken the initiative in organizing the issuer’s business, and what consideration that person received for doing so.

Item 12 Legal Proceedings

One commenter suggested only legal proceedings that have been instituted should be required to be disclosed except (if applicable) under material change requirements, where confidentiality can be maintained. The commenter suggested the requirement to disclose contemplated legal proceedings could preclude the sensitive negotiation of settlements.

Response: We have not eliminated the requirement to disclose contemplated legal proceedings. Many contemplated legal proceedings are required under GAAP to be disclosed in the notes to the financial statements. If the legal proceedings are not already disclosed in the notes, and disclosure would prejudice the issuer, the issuer can apply for an exemption on a case-by-case basis.

One commenter suggested the 10% exclusion from the requirement to disclose potential or actual legal proceedings should be based on equity or market capitalization, as liabilities should perhaps also be taken into account.

Response: Issuers are required to disclose information about legal proceedings because of the effect on the issuer of having to pay out a claim, or receiving a payout, as a result of the proceedings. It is the relationship between the issuer’s assets and the amount of the claim that is the relevant test, not the amount of the claim in relation to the issuer’s equity or market capitalization.

One commenter said disclosure should not be required of any legal proceedings which are deemed to be frivolous and without merit by both the company and its outside counsel. Otherwise, plaintiffs could be incited to claim damages that exceed the 10% threshold set out in Part 12 to seek public attention.

Response: We disagree. This exclusion would be too subjective to be applied consistently by issuers, and would cause uncertainty for investors.

Item 13 Interest of Management and Others in Material Transactions

One commenter supported the added disclosure about the interest of management and others in material transactions.

No response required.

Item 15 Material Contracts

One commenter suggested it would be helpful if the Policy included a narrative and some examples to clarify the meaning of the phrase *entered into in the ordinary course of business*. Absent this guidance, the commenter would expect that almost all business contracts are entered in the ordinary course of business because the transactions regularly occur in the industry, even if they do not occur frequently for the issuer.

One commenter questioned the value of disclosing material contracts in the AIF. The commenter suggested that, if the requirement is retained, additional guidance should be provided.

Response: To clarify what is meant by ordinary course of business, we have added guidance to the Policy, and an instruction to the Form. As the requirement is to disclose material contracts that are not entered into in the ordinary course of business, it relates to a very narrow range of contracts that investors would not otherwise expect to exist. Given the nature of these contracts, it is very important that they be disclosed in the AIF.

One commenter suggested the requirement to disclose material contracts should be limited to one year, rather than two years, to avoid repetition.

Response: We agree with the commenter that the requirement to disclose contracts entered into within the last two years is not necessary. We have revised the requirement so that issuers will be required to disclose contracts entered into during the last financial year, and contracts that are still in effect. As a result, investors can look to the AIF to see what material contracts the issuer entered into during the year, and which contracts are still affecting the issuer.

One commenter questioned the need to make these contracts available for inspection, since issuers are required

- to describe any contracts that their business is substantially dependent on in the AIF (paragraph 5.1(1)(j)),
- to describe every contract that can reasonably be regarded as material to an investor in the AIF (section 15.1), and
- file copies of material contracts under Part 12 of the Rule.

One commenter said the requirement to make copies of the contracts available for inspection must be modified so it will not apply to contracts that contain competitive or commercially sensitive information.

One commenter said issuers should not be required to produce copies of business contracts, whether they are entered into the ordinary course of business or not, for the following reasons:

- analysts and securityholders can get information about a contract from a well-written summary of the main terms of the contract
- the most likely people to benefit from full disclosure of all terms of business contracts include an issuer's competitors and litigants
- certain terms of business contracts are confidential, or may contain information protected by privacy law
- the cost of determining what terms of a contract must be blacked out to protect confidentiality or privacy is not justified – it will create new expenses for issuers, and regulatory uncertainty.

*Response: We have removed the requirement to make material contracts available for inspection from the Form, as reporting issuers must now file copies of these documents under Part 12 of the Rule (see the responses to the comments under **Question 1(b)** above). Part 12 of the Rule permits issuers to edit material contracts to delete portions that contain confidential, competitive or commercially sensitive information.*

Item 16 Interests of Experts

One commenter said the disclosure relating to experts should be removed. The commenter suggested that imposing a requirement to name experts in an AIF will likely increase issuer costs, particularly if the issuer has to obtain consent from the expert simply to include the expert's name in the AIF.

Response: We have not imposed a requirement in the Rule for issuers to obtain consent simply to include the expert's name in the AIF. The AIF merely points out that instruments other than the Rule may require consents if the expert's statement, report or valuation is included in the AIF. We have revised the instruction to make this clear.

One commenter suggested eliminating the requirement to disclose experts' holdings. The commenter noted it is not a requirement in the United States, and can be very difficult and invasive to determine in the case of large law firms.

Response: We disagree with the commenter. It is relevant to an investor if an expert the issuer is relying on to provide information has an interest in the issuer. This has been a requirement in the prospectus context for some time, and has not proven to be too onerous for issuers or their experts.

Part 6 [Part 5]- MD&A and Form 51-102F2 [Form 51-102F1]

General

One commenter suggested Form 51-102F2 [Form 51-102F1] should be explicitly referred to in this Part.

Response: We disagree. MD&A is a defined term in the Rule that includes the Form 51-102F1, but also includes alternative forms of MD&A.

One commenter supported the concept of issuers filing fourth quarter MD&A, but recognized this could not be a requirement when detailed fourth quarter financial statements are not required.

No response required.

One commenter recommended that the Rule explicitly articulate that MD&A and financial statements form the two-part core reporting package in the CD system.

One commenter suggested the AIF and MD&A should be co-ordinated to form the core integrated disclosure document, with the AIF providing basic disclosure at a point in time, and the MD&A being a living document updated quarterly and referenced into the AIF.

Response: We agree that the financial statements and MD&A are important documents – that is reflected in the disclosure we require in the financial statements and the MD&A. The fact that they are inter-related is apparent given the requirement for issuers to file them at the same time, and deliver them to securityholders together. We also agree that the disclosure required in the AIF and MD&A have different focuses. For that reason, we have carefully reviewed the disclosures in the AIF and MD&A to ensure they are consistent with their stated purposes. We disagree that any of the disclosure documents in the Rule should be rated as more important than the others.

Section 6.1 [5.1] Filing of MD&A

One commenter said the annual MD&A should not have to be filed at the same time as the annual financial statements. This will delay the filing of the annual financial statements, as they are ready earlier than the MD&A. The commenter suggested the MD&A should be filed as soon as possible after the financial statements are filed.

Response: We asked commenters during the first comment period on the Rule whether the financial statements and MD&A should be required to be filed at the same time, as one filing. The vast majority of commenters that responded were in favour of the financial statements and MD&A being filed at the same time. We agree with those commenters. The benefit of having the discussion of the financial statements filed concurrently with the statements themselves outweighs the concern that completing the MD&A may delay the filing of the financial statements.

One commenter suggested that the MD&A should be filed electronically on SEDAR with the financial statements as one filing, because a person reading an MD&A must have the full set of financial statements at the same time.

Response: The CSA agree that the financial statements and MD&A should be filed at the same time. However the CSA have decided not to combine them into one document. Having the financial statements and MD&A filed at the same time provides the same benefit without imposing the additional burden of compiling them into one document, particularly as different people may have responsibility for preparing the documents.

Section 6.3 [5.3] Additional Disclosure for Venture Issuers Without Significant Revenue

One commenter said the additional disclosure for venture issuers without significant revenue should be made in the notes to the financial statements. The MD&A should be used for any needed discussion of this disclosure.

Response: The disclosure required under section 5.3 of the Rule is not currently required under GAAP to be included in the financial statements. To ensure the information is provided, we have made it a requirement of the MD&A, unless the issuer already provided it in the financial statements. As the disclosure is financial in nature, it is more appropriate to the MD&A, than, for example, the AIF.

Section 6.4 [5.4] Disclosure of Outstanding Share Data

One commenter suggested that, in disclosing its outstanding share data, the issuer should be required to estimate the number of its voting or equity securities that are issuable on the conversion, exercise or exchange of outstanding securities, if that number is not determinable. Investors should not be required to make this estimate, particularly since they are relying on that information for the purposes of National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues*. The commenter suggested the CSA could provide a safe harbour for issuers that make reasonable estimates in good faith.

Response: If the number of securities issuable is not known, this will normally be because the number depends on the market price of that class of securities at a future point in time, or on some other benchmark that could fluctuate significantly over time. As a result, it may be difficult or impossible to arrive at a reasonable estimate of the number, and any attempt to do so may result in a misleading figure being provided. Accordingly, we do not propose to require an estimate.

One commenter said issuers should be specifically permitted to incorporate the outstanding share data information from the notes to their financial statements into the MD&A, if the information has not changed since the date of the financial statements, and if this is specifically indicated in the MD&A.

One commenter suggested disclosure of outstanding share data should be provided in the notes to the financial statements, or the AIF. The commenter noted that sections 3210 and 3240 of the Handbook already provide for much of this information.

Response: It is very important for securityholders to be able to find this information in the same place for all issuers, as they rely on this disclosure in determining if the take-over bid or early warning requirements have been triggered. For the same reason, this information must be as current as possible. As a result, we have continued to require the disclosure in the MD&A, not the AIF, and have not permitted incorporation by reference. The information provided in the MD&A will be more up-to-date than the information provided in the notes to the financial statements.

Section 6.5 [5.5] Disclosure of Auditor Review of Interim Financial Statements

Two commenters said disclosure of whether an auditor has reviewed the interim financial statements should be prominent and presented in a consistent location. They also suggested that issuers should not be given the alternative of disclosing in the financial statements or MD&A. One of the commenters suggested that, instead, the Rule should require a legend to be placed on the face of the interim financial statements.

One commenter said the disclosure should not be in either the financial statements, or in the MD&A. It should be in a notice that accompanies the interim financial statements.

Response: We have revised the Rule to provide that the disclosure that an auditor has not reviewed the financial statements must be made in a notice that accompanies the financial statements. This ensures that the information is prominent and easily located.

Section 6.6 [5.6] Approval of MD&A

Two commenters supported the requirement for board approval of MD&A.

One commenter expressed support for the clarification around audit committee review and board approval of MD&A.

Three commenters supported the proposal for audit committee review of the MD&A.

Response: Consistent with the requirements relating to the approval of interim financial statements, we have revised the Rule to require that either the audit committee or the board of directors must approve the interim MD&A.

One commenter suggested that board approval of the MD&A should occur following any CEO or CFO certifications of the annual or interim filings. These certifications are contemplated in proposed MI 52-109.

Response: The Rule does not prescribe procedures issuers must follow to obtain board or audit committee approval. We do not expect that MI 52-109 will prescribe procedures either. Issuers must determine what the appropriate procedures are for them, depending on their operations and internal controls.

Section 6.7 [5.7] Delivery of MD&A

For comments relating to the sending of an annual request form, see above under the heading for **Part 4 Financial Statements - Section 4.6 Delivery of Financial Statements.**

One commenter supported the requirement for delivery of financial statements and MD&A together.

No response required.

Form 51-102F2 [Form 51-102F1]

General comments

One commenter was concerned that MD&A is being, or will be, used for detailed disclosures that are or should be called for under GAAP. The commenter suggested that, if the disclosure is necessary but is not currently required under GAAP, then the information should be provided as an appendix to the MD&A, not in the MD&A itself.

Response: We do not agree with using an appendix, rather than including the information in the body of the MD&A. The disclosure of outstanding share data, additional disclosure for venture issuers without significant revenue, and restricted share disclosure is relevant to the financial statements, but not specifically called for under GAAP. This disclosure helps investors understand what the financial statements show and do not show.

One commenter suggested that the MD&A content should be organized and reported according to an appropriate framework that is conceptually realistic and logical. This would

- make it easier for readers to locate information, and understand its links with other information within the MD&A and the financial statements
- improve the preparers' understanding of the historical and prospective disclosures required
- more strongly address the need for information relevant to assessing future prospects that place the results reported in the financial statements in a business context

The commenter provided detailed comments suggesting how the MD&A could be reorganized. The suggestions included restructuring the contents of the MD&A so the issuer is asked first to present its "big picture" assessment, then a more detailed assessment of financial condition, results of operations and cash flows, followed by other disclosures.

Response: The framework provided in the Form is a guideline only. Issuers are permitted to follow the order that is appropriate for them to make their discussion meaningful in their individual circumstances. We do not agree that it would be appropriate to be prescriptive in the format, as what is appropriate for one issuer may not be appropriate for another.

One commenter said issuers should be required to discuss their business strategies, key performance drivers and core capabilities in their MD&A, as contemplated by the CICA MD&A guidance. The commenter suggested the CSA and CICA should take a more complementary approach to adopt a common disclosure framework for the MD&A.

Response: We have undertaken a complete review of the disclosures required in each of the AIF and MD&A, and considered the requirements of the CICA in its MD&A guidance. We have ensured that the disclosure required in the two documents focuses on their respective purposes in

*the CD environment. For a complete discussion of this process, and the results of our review, see below under the heading **Relationship between the AIF and MD&A.***

Relationship between the AIF and MD&A

Two commenters suggested a section on risk factors, like the section included in the AIF, should be added to the MD&A. One of the commenters suggested the risk factor section should list social and environmental risks as examples. That commenter stated that the Guidelines produced by the Canadian Performance Report Board are not sufficient in this regard, as they do not include the concept of social and environmental risk. The other commenter suggested there should be more specific requirements about risk and risk management disclosures in the MD&A, consistent with, or further strengthening, the requirements in Form 44-101F2.

Response: Risk factors should be discussed in the context of the other topics specifically listed in the MD&A, such as liquidity and off-balance sheet arrangements, not as a stand-alone item. This is distinct from the AIF, where risks to the issuer's overall business, rather than its financial position specifically, are discussed separately.

One of the commenters suggested risk factors is just one area in the AIF that should be required in the MD&A. The commenter suggested there are other areas in the AIF that are relevant to understanding reported financial results so should be in the MD&A, such as

- Item 4 – General Development of the Business, as it provides important contextual information and contemplates disclosure of changes in the business that may occur during the current financial year
- portions of Item 5 - Description of the Business, such as specialized skill and knowledge, economic dependence, and environmental protection, as they provide important contextual information
- Item 6 – Selected Consolidated Financial Information
- the portion of Item 7 – Description of Capital Structure relating to ratings information
- the portion of Item 8 – Market for Securities relating to trading prices and volumes
- the portion of Item 10 – Directors and Officers relating to conflicts of interests between officers and directors and the company
- Item 13 – Interest of Management and Others in Material Transactions
- Item 15 – Material Contracts

The commenter said that the distinctive purposes of the AIF and MD&A should be clarified, and that the disclosures called for in each of the respective forms should be made consistent with that stated purpose. The commenter felt this was important since there is no obligation to deliver an AIF, and venture issuers are not required to prepare an AIF. Alternatively, the commenter suggested issuers should be required to distribute the AIF to their securityholders.

One commenter said the overlap between the AIF form requirements, MD&A form requirements, and the MD&A content recommended by the CICA, must be addressed so issuers can report more efficiently and investors know which document to reference for disclosure.

Response: We agree with the commenters that suggested the roles of the MD&A and AIF must be clarified. We have revised the descriptions of the AIF and MD&A in each of the Forms to reflect

their different focuses. We have also reviewed the disclosure requirements to eliminate overlap wherever possible, and ensure the disclosure in each form is appropriate to its stated purpose. As a result, disclosure relating to leases and mortgages, and the financial discussion, has been removed from the AIF and, in some cases, added to the MD&A. Similarly, portions of the MD&A that went beyond the financial statements have been revised or removed.

We have not added a requirement for issuers to distribute their AIFs. Instead, we have added a requirement in the MD&A for issuers to disclose that, if they prepare an AIF, the AIF is available on SEDAR.

The CSA approach the AIF and MD&A within the overall context of the CD environment. This is a different approach than the CICA, which dealt only with MD&A through the Canadian Performance Reporting November 2002 release called Board's Management's Discussion and Analysis: Guidance on Preparation and Disclosure. Given this different context, we have not moved disclosure of a more general, business focus from the AIF to the MD&A. Instead, we have focused the MD&A on the financial statements, with the AIF speaking to the business in general.

One commenter suggested there should be a prominent notice in the MD&A as to the existence of the AIF, and information as to how securityholders can access it. The commenter also suggested the MD&A should include an explicit reference to the Form 51-102F5 *Information Circular* and Form 51-102F6 *Statement of Executive Compensation Form*. The commenter said that these documents contain important information enabling investors to understand the business and factors that may affect an issuer's performance and prospects.

Response: We have revised the MD&A to require issuers that are required to prepare an AIF to disclose that the AIF and other disclosure documents are available on SEDAR.

Part 1 General Instructions and Interpretation

One commenter supported the principle that the MD&A should enable investors to see the company through the eyes of management.

Three commenters supported the emphasis on the content of the MD&A being in plain language.

No response required.

Two commenters approved of the reference to social and environmental issues in the introduction to the MD&A. One of the commenter suggested that the MD&A should also include a direction to describe a company's social and environmental policies.

Response: As part of the general clarification of the roles of the AIF and MD&A discussed above, we have deleted the reference in the MD&A description to social and environmental issues. We have continued to require disclosure of these policies in the AIF. These areas may be discussed in the MD&A, if appropriate, as part of the general risks and uncertainties that may affect the issuer's future performance.

One commenter suggested the ideas in section 1(g) relating to forward-looking information should be embodied as requirements in Part 2 of the form.

Response: Part 1 is general guidance that applies to all MD&A. As such, the reference in section 1(g) has broader application being in Part 1, than if it were a specific requirement in Part 2.

One commenter said issuers should be permitted to incorporate information contained in the notes to the financial statements by reference into the MD&A. The commenter suggested this would not prejudice securityholders, since the financial statements will always accompany the MD&A.

Response: The CSA are not prepared to permit incorporation by reference from the financial statements into the MD&A. The financial statements are the base documents that must present, in full, all information required by GAAP. MD&A serves the important, but different, purpose of supplementing and complementing the financial statements. We do not agree that the financial statements can substitute for portions of the MD&A.

Part 2 – Item 1 Annual MD&A

Refer to the comments under **Part II - Question 4(b)** above for the comments relating to exemptions from certain disclosure requirements in the MD&A for venture issuers.

Two commenters supported the requirement to date the annual and interim MD&A.

No response required.

One commenter suggested the Form should provide additional guidance on the scope of the discussion required under Section 1.3 - Summary of Quarterly Results. The commenter questioned whether the instructions to “discuss the factors that have caused variations over the quarters” requires issuers to

- identify general trends that have developed over the eight quarters (which will likely have been discussed under section 1.2),
- compare results in a single quarter against results from the corresponding period in the prior year, or
- speak to the seasonality of its business.

Response: We have clarified the requirement in the Form by referring to trends and seasonality.

One commenter questioned whether section 1.5(h) of the Form requires disclosure of defaults that have been waived prior to or after their occurrence.

Response: Yes, section 1.5(h) of the MD&A requires disclosure of defaults that have been waived prior to or after their occurrence. Despite having been waived, such defaults are “arrears”, as referred to in section 1.5(h).

Three commenters supported the expanded disclosures about off-balance sheet arrangements.

No response required.

One commenter said the requirement to discuss transactions involving related parties should be limited to those transactions that are material.

Response: All of the disclosure requirements in the MD&A are subject to the general instruction in Part 1(e) that issuers do not need to disclose information that is not material. As such, the requirement to disclose transactions involving related parties is already limited to those transactions that are material to the issuer.

Three commenters supported giving disclosure to investors about changes in accounting policies, and two of those commenters supported the critical accounting estimates disclosure. One of the commenters felt that disclosure should be given in the notes to the financial statements, where significant accounting policies are disclosed. That commenter suggested portions of the proposed disclosure could possibly remain in the MD&A as explanation and discussion by management.

Response: The disclosure that we have required relating to changes in accounting policies goes beyond what is required under GAAP. As such, the disclosure complements and supplements what will be in the financial statements.

One commenter said venture issuers should not be exempted from the requirement to discuss critical accounting estimates.

Response: We disagree. We have retained this exemption as the disclosure obligation on venture issuers would be too significant a burden, even when balanced against the interests of investors in having this information.

One commenter said the CSA should not require disclosure of critical accounting estimates until the SEC has finalized its requirements, otherwise the goal of consistency with the US could be defeated.

Response: While we were aware of the SEC discussions on this issue, we did not reproduce the SEC proposals into the MD&A. Instead, having regard to what the SEC was proposing to require disclosure of, we extracted the portions that we felt were important and relevant in Canada. We will continue to monitor the SEC developments in this area.

One commenter suggested an assessment of the different critical accounting estimates that could have been used would be useful disclosure, if the administrative burden on reporting issuers is not unreasonable.

Response: We have not added a requirement to assess the different critical accounting estimates that could have been used, as we are not satisfied that the administrative burden would not be unreasonable.

One commenter suggested section 1.13 [1.14] should be clear that ordinary business arrangements (for example, purchase orders) are not *financial or other instruments*.

Response: The definition of financial instruments in the Handbook does capture contracts that give rise to both a financial asset of one party and a financial liability of another party. As a result, some “ordinary business arrangements” would be considered financial instruments under section 1.14.

One commenter suggested the restricted share disclosure should be in the notes to the financial statements or the AIF, not the MD&A.

Response: We have revised the Rule so the only restricted share disclosure requirements that will apply to the MD&A and financial statements will be to use the appropriate terms to describe the restricted securities. Full restricted security disclosure will be required in other CD documents reporting issuers must prepare, such as the AIF.

One commenter agreed with the requirement to discuss causes for variations in the fourth quarter (annual) MD&A since a fourth quarter interim MD&A is not otherwise required. The commenter suggested, though, that the discussion in the annual MD&A should be limited to referencing the first through third quarter interim MD&As.

Response: We disagree. The annual MD&A is not intended to be an update or a fourth quarter MD&A. It should reflect the annual financial statements, which contain information for a full year. Once the annual MD&A is filed, it is itself updated quarterly by the interim MD&A.

Part 2 – Item 2 Interim MD&A

One commenter said that interim MD&A requirements are now, in effect, as exhaustive as annual MD&A requirements because of the requirement to update the annual MD&A. The commenter questioned whether this was appropriate given the time constraints in preparing the interim MD&A, and the absence of an audit.

Response: The interim MD&A is not intended to reproduce all the information in the annual MD&A. As noted in the instructions to section 2.2 of the Form, the issuer can assume that the reader has access to the annual MD&A, so the information in the annual MD&A does not have to be repeated. The interim MD&A is intended to update the annual MD&A for material changes that have occurred.

One commenter supported having interim MD&A update the annual MD&A, but suggested the form should specifically require that any significant change related to historical or prospective performance and risks needs to be disclosed.

Response: As discussed above, we are not requiring comprehensive risk disclosure to be provided in the MD&A, as that information will be provided in the AIF. There are requirements in the MD&A to discuss known trends, risks or uncertainties that will materially affect the issuer’s future performance. To the extent these trends, risks or uncertainties have materially changed from the date of the annual MD&A, this will have to be updated in the interim MD&A.

Part 7 - Material change reporting and Form 51-102F3

One commenter suggested the material change report requirements should be left to statute, particularly given references in the Ontario Bill 198 civil liability provisions to “failure to make timely disclosure in the manner and at the time required under [the] Act”. The commenter suggested the requirements may also be inconsistent with the material change requirements in certain provinces’ statutes.

Response: It is hoped that the civil liability provisions can be amended to refer to securities legislation in general. In any event, we disagree that the requirements are inconsistent with the current material change reporting requirements.

One commenter said the CSA should adopt a “material information” CD standard because

- the current material change standard is insufficient, and
- the standard would then be harmonized with stock exchange timely disclosure policies.

Response: Any such fundamental changes would require the various Securities Acts to be amended, which goes beyond the scope of this Rule. The Draft Report of the Ontario Five-Year Review Committee also recommended not changing the requirement from “material change” to “material information”.

One commenter said that the reference in subsection 7.1(4) [now subsection 7.1(3)] of the Rule to “transaction” may not work properly, since a material change may itself be a proposed transaction.

Response: We have clarified the section by replacing the reference to “transaction” with “trade”.

One commenter suggested subsections 7.1(4) and (5) [now subsections 7.1(3) and (5)] should be amended so issuers will not be required to disclose matters that will not proceed.

Response: We disagree and so have not made any changes to the Rule.

One commenter said it should be clear that confidential negotiations between parties, absent a binding definitive agreement, do not constitute a material change. The commenter suggested that the TSX and TSXV should also be asked to conform their approaches.

Response: We do not agree. Confidential negotiations may constitute a material change in some circumstances. If the issuer decides the negotiations do constitute a material change, the issuer can, if appropriate, use the procedures in Part 7 to file a confidential material change report.

Form 51-102F3

One commenter said material change reports should be expressly permitted to be filed with cautionary language to the effect that the transaction *may be* a material change, when the issue is unclear. This can be particularly important where there are cross-border issuers, since there is no equivalent requirement in the United States.

Response: We do not agree. It is up to an issuer to determine whether a change is a material change for it or not. It would not be appropriate for issuers to couch their material change reports in language that creates uncertainty.

One commenter said issuers should not be required to have a principal office in Canada.

Response: The requirement in the Form to disclose the address of the issuer's principal office in Canada does not create a requirement for the issuer to have a principal office in Canada. If the issuer has only one office in Canada, that will be the issuer's principal office in Canada, even though the head office and other major offices are outside of Canada. If the issuer does not have any office in Canada, the disclosure requirement is inapplicable.

One commenter said Item 7 of the Form, relating to keeping some significant facts confidential, is unclear as to what statutory "discretion" is being referred to. The commenter also said it is unclear how the instructions under Item 7 are to be legally accomplished.

Response: The individual Commissions have discretion, within their Acts, to keep information filed under the Act confidential, if the tests set out in those provisions are met. An issuer may determine that there is certain information relating to the material change that it wants to keep confidential, although the change itself can be made public. Part 7 simply sets out the procedure the issuer must follow to have the information kept confidential, not the tests that will be applied under the various Acts.

Part 8 - Business acquisition report and Form 51-102F4

General

One commenter said the level of detail required in the BAR should be reduced so it could be filed earlier. The commenter noted that, by the time the BAR is actually filed, the information in it may be stale.

Response: We have not reduced the level of detail required in the BAR to reduce the time for filing it. We consider the information in the BAR to be important information for investors. The issuer will usually also have to file a material change report, which will give investors the proximate disclosure the commenter suggests is important.

One commenter suggested that the Rule should have a definition of *step-by-step acquisition* as used in section 8.10 [8.11].

Response: We have revised section 8.11 of the Rule to refer to step-by-step purchases, as described in the Handbook.

Exemption with an information circular

One commenter said that the exemption from the BAR requirement if an information circular has been filed should be available even if there is a material change to the non-financial terms of the transaction. If the change is to non-financial terms, issuers should not be required to re-do the financial statements for filing with the BAR.

Response: Most often, a material change to the terms of the transaction is accompanied by changes to the financial statements. In these circumstances, the disclosure in the information circular is no longer an accurate substitute for the BAR. Issuers can apply for relief from the BAR requirement, or the requirement to up-date the financial statements, if the material change has not affected the financial statements.

One commenter said the exemption from the BAR requirement should permit issuers to rely on filing statements, which may be used as alternative detailed disclosure documents by issuers listed on the TSXV, as well as information circulars. The commenter noted that the disclosure standards for filing statements prepared by capital pool companies (CPCs) are virtually identical to the disclosure standards applicable to a CPC's information circular, except the filing statement does not include any disclosure as to proxy-related matters or matters dealing with a shareholder meeting or shareholder approvals.

Response: We have revised the exemption so that issuers that file a filing statement prepared under the policies of the TSXV that contains the disclosure required by section 14.2 of the Information Circular form are exempt from the BAR requirements.

One commenter said it is not clear if a CPC that relies on the exemption in section 14.5 of the Form 51-102F5 from the requirement to include prospectus-level disclosure of a transaction would be entitled to rely on the exemption in section 8.1(4) [now section 8.1(2)].

Response: We have clarified the Rule so that a CPC that files a filing statement or information circular that complies with TSXV policies and requirements will be entitled to rely on the exemption from the BAR requirements.

One commenter said the exemption in section 8.1 should contain a clause similar to section 14.5 in the Form 51-102F5 *Information Circular* so the exemption would be available to issuers that comply with the policies and requirements of the TSXV. Otherwise, an issuer that obtains a waiver from the TSXV relating to its policies, would have to apply for separate relief from the securities regulatory authorities under Part 13 of the Rule.

Response: Except as noted above for CPCs, we have not revised the exemption to permit an information circular or filing statement that complies with TSXV policies to be used to satisfy the business acquisition requirements. We do not permit waivers under TSXV policies to determine what is appropriate reporting for CD requirements under the Rule except in the limited context of CPCs. We are not prepared to extend the exemption as suggested by the commenter. The TSXV will not be considering whether waivers it grants are appropriate in the BAR context.

Significance tests

Two commenters supported the change to the thresholds in the significance tests proposed in the Rule. One of the commenters suggested the prospectus rules should be amended to correspond with the BAR requirements in the Rule to facilitate an integrated disclosure system.

Response: The CSA intends to reconsider the significant acquisition reporting requirements in prospectuses in light of the changes to the Rule. This will occur as part of a general review of the long form and short form prospectus regimes that is currently underway.

One commenter said the income test should not be one of the tests of significance, as income is too cyclical to use as a standard significance measure. The commenter suggested using balance sheet measures, such as total assets or total capital, as these are more stable and provide more insight into overall financial position.

Response: The CSA agree that the income test is not appropriate for venture issuers. For other issuers, the income test is often a major indicator of significance. Issuers can also recalculate significance based on more recent financial statements. This makes the income statement measures even more valid, as the test does not have to be based on out-of-date information.

Financial statement requirements

One commenter was concerned with the requirement to file audited historical financial statements for the acquired business. The commenter submitted that

- there is not much utility in the requirement as, in many circumstances, they will not help an investor form a view as to the appropriateness of the price paid or the future performance to be expected
- the focus on factors not considered relevant by the decision makers implementing the transaction may create a misleading impression for readers of the reports
- the requirement may result in transactions for private businesses that do not have historically audited financial statements not proceeding.

The commenter suggested that the utility of historical financial statements should be tested in some meaningful way, such as a cost/benefit analysis, before being imposed.

Response: The CSA believe historical financial statement information about the target company required in a BAR is relevant for ongoing secondary market investors, as well as current securityholders of the issuer. We do not agree that the financial statements may create a misleading impression for readers, as, whether or not the issuer's decision to acquire the business was based on the financial statements of the acquired business, the financial statements provide valuable information about the acquired business. For a number of years, the prospectus rules have required financial statements of an acquired business. Given the number of investment decisions that are based on CD, rather than prospectus disclosure, it is no longer appropriate for this kind of comprehensive information to be limited to the prospectus context.

One commenter suggested that, if issuers are required to file *pro forma* financial statements, they should not be required to also produce a compilation report.

Response: The requirement to produce a compilation report in addition to pro forma financial statements is a requirement under the prospectus rules. We are currently reviewing the prospectus rules, including the differences between the BAR requirements in the Rule and those in the prospectus requirements. We will consider this comment as part of that review.

One commenter asked if, in section 8.4 [8.5], the reference to the 45-day period should be 90 days in the case of financial years, since an audit is required.

Response: The reference to 45 days is appropriate. Issuers are not required to file the BAR until 75 days after the date of acquisition. With the additional 45 days set out in section 8.5, issuers will actually have in excess of the 90 days that would apply to annual financial statement filings under Part 4.

One commenter suggested there should be an express exemption from the financial statement requirements for situations where financial statements are not available, and where an unqualified audit report is not available. If the current approach is retained, the commenter suggested it should be subjected to a rigorous cost-benefit analysis first.

Response: It is not appropriate to provide blanket relief from the financial statement requirement where financial statements “are not available”. A test of whether or not financial statements are available would necessarily be extremely subjective, difficult to apply for issuers, and subject to widely different application by issuers. Issuers can seek discretionary relief based on their individual circumstances, if they require relief from the financial statement requirements. This provides flexibility for issuers, without undermining the BAR requirement, and ensures exemptions are provided on a consistent basis.

Form 51-102F4

One commenter said issuers should not be required to have a principal office in Canada.

Response: The requirement in the Form to disclose the address of the issuer’s principal office in Canada does not create a requirement for the issuer to have a principal office in Canada. If the issuer has only one office in Canada, that will be the issuer’s principal office in Canada, even though the head office and other major offices are outside of Canada. If the issuer does not have any office in Canada, the disclosure requirement is inapplicable.

One commenter asked what would happen if a valuator would not consent to the disclosure of a prior valuation of an acquired business as is required in the form.

Response: If the issuer cannot comply with a requirement in the Form, the issuer can apply for relief on a case-by-case basis.

Part 9 - Proxy solicitation and information circulars

One commenter suggested section 9.1(1) should be clear that the reference is only to the *formal* notice requirements of a proposed meeting, not the advance notice given by press release.

Response: The wording in the Rule is consistent with corporate legislation, and with the requirements as they have existed in securities laws. We are not aware of any confusion in applying the requirements, and disagree that it is necessary to clarify what notice is being referred to.

One commenter said debt securities may not contemplate proxies, which could cause problems under section 9.1(2).

Response: The basis for the requirement in subsection 9.1(3) [9.1(2)] is to enable the debtholder to make an informed decision when asked to vote on matters submitted to the meeting of debtholders. If a notice of a meeting is sent, then a form of proxy and an information circular must also be sent to debtholders. In those circumstances where debt securities do not contemplate proxies, an application can be made to obtain relief from the requirement to send a form of proxy.

One commenter said the Rule should be clear that the proxy solicitation requirements apply to registered owners and beneficial holders of securities.

Response: We have not revised the Rule. The Rule applies the proxy solicitation requirements to registered holders of securities. An issuer's obligations to its beneficial owners is set out in section 2.7 of NI 54-101. Section 9.1 of the Policy alerts issuers to the requirements in NI 54-101.

Two commenters suggested that the Rule should provide an exemption from the proxy solicitation requirements where an issuer has complied with similar corporate law requirements under its corporate statute. One of the commenters said, if the exemption is not provided, the CSA should coordinate with the federal government to have duplicative provisions removed from the CBCA, and provide interim relief in the meantime.

Response: We have revised the Rule as suggested by the commenters.

One commenter suggested that the CSA should not be legislating in the area of proxy solicitation, which is an area of corporate law.

Response: We disagree. Not all reporting issuers are corporate entities. As a result, it is important to ensure that investors of all reporting issuers, whether or not they are corporations, are treated fairly and equally. Further, information circulars form an important part of an issuer's CD record for securities laws purposes. As such, it is appropriate for the Rule to specify the requirements for information circulars. Finally, as noted above, we have also provided an exemption from the proxy solicitation requirements for reporting issuers that comply with the requirements of the jurisdiction in which they are incorporated, organized or continued, provided that the requirements are substantially similar to the requirements of Part 12. This will reduce duplication between corporate and securities requirements in the proxy solicitation area.

One commenter suggested CBCA-type solicitation exclusions should be incorporated in Part 9 of the Rule, and such exclusions should not apply to foreign companies, especially those whose laws are inconsistent.

One commenter said the definition of *solicit* should be harmonized with corporate law. If this change cannot be made until legislative amendment is completed, the commenter suggested the

CSA clarify in the interim the nature of solicitation where it does not conflict with the legislative definition.

Response: A change to the definition of solicit would require amendment of the various Securities Acts, which is not possible in all the jurisdictions at this time. We will consider this issue again in the context of the CSA's Uniform Securities Law Project. In the interim, the definitions of solicit contained in the various Securities Acts will apply to the term as used in the Rule. We also note that foreign issuers can rely on the exemptions under the Foreign Issuer Rule for exemptions from all of the proxy solicitation requirements.

One commenter noted that subsections 9.4(5), (8), and (9) refer to *form of proxy of a reporting issuer*, while other subsections simply refer to *form of proxy*. The commenter suggested the words *of a reporting issuer* should be deleted if the intention is to capture solicitations by dissidents, as well as solicitations by management.

Response: We have not deleted the words as suggested, as the proxy content requirements are intended to apply only to proxies sent to securityholders of reporting issuers, whether it is management or a dissident soliciting the proxies. We have revised the wording so this is clear.

Form 51-102F5

One commenter approved of permitting an information circular to incorporate information by reference, but suggested issuers should be cautioned that this may not be permitted under corporate legislation. The commenter suggested this warning should be added to Part 1(c) of the Form 51-102F5, or section 1.3 of the Policy.

Response: We disagree that further guidance is required in section 1.3 of the Policy. The fact that corporate legislation may not permit incorporation by reference is, in effect, a "more onerous requirement", as contemplated in section 1.3.

One commenter suggested the requirement to deliver a copy of any document incorporated by reference into the information circular *before the meeting* should be deleted. The commenter said requiring the documents *promptly* should be sufficient, and the requirement could cause uncertainty if the request is not received until shortly before the meeting.

Response: We have revised the Form. Issuers will now be required to promptly deliver a copy of any document incorporated by reference if requested.

One commenter said Item 4 – Proxy Instructions should refer to the disclosure required under section 2.16 of NI 54-101.

Response: We have not added this reference to the Form, but have added a reminder regarding NI 54-101 to Part 9 of the Policy.

Two commenters supported the requirement for issuers to disclose bankruptcies of proposed directors and any penalties, sanctions or bankruptcies of companies that the proposed director was a director or executive officer of.

One commenter said that the requirement to disclose bankruptcies of companies that a proposed director has been involved with may have the unintended consequence of preventing experienced people from becoming involved in an issuer because of their past connection with a bankrupt company. These people may have more expertise in avoiding bankruptcies than people that have not had this experience. The commenter suggested that, if the intent is to elicit information about criminal activity, the wording should be clearer.

Response: We agree that this is relevant information for investors. By requiring the information to be disclosed, investors will be able to draw their own conclusions – positive or negative – about the qualifications of the directors and officers.

One commenter suggested the disclosure about bankruptcies and penalties should be limited to the knowledge of the issuer.

Response: We disagree that the disclosure should be limited to the knowledge of the issuer, or its officers and directors. The disclosure is limited to bankruptcies that occur within a year of the director or officer ceasing to be involved with the issuer, and penalties that resulted from events that occurred while the director or officer was involved. Directors and officers are expected to have this information or, if they do not, to obtain it, and provide it to the issuer.

One commenter suggested foreign issuers should be expressly exempted from the Canadian executive compensation requirements in Item 8, as is done in the United States.

Response: SEC foreign issuers and designated foreign issuers can rely on the exemptions from the proxy solicitation requirements, including the form requirements, under 71-102.

One commenter suggested the disclosure requirements relating to securities authorized for issuance under equity compensation plans under Item 9 should not extend to non-compensation arrangements, as currently implied in the instructions.

Response: It is clear that the requirements in Item 9 apply only to compensation arrangements. All of the requirements and instructions specifically refer to compensation arrangements.

One commenter suggested further guidance is required for issuers to be able to provide the disclosure required under Item 9 – Securities Authorized for Issuance under Equity Compensation Plans. In particular

- is the disclosure under the Equity Compensation Plan Information Table intended to cover all awards that may result in an employee holding stock – for example, it does not appear to include an award of restricted stock that is subject to forfeiture
- how is the information in column (c) to be calculated, if the compensation plan may provide for a formula that automatically increases the number of securities available for issuance based on a percentage of the issuer's outstanding capital as contemplated in instruction (vii)
- it is unclear if the reference to *aggregate plan information for each class of security* in instruction (ii) is intended to require information be provided separately for each class or series of equity security, or how issuers should deal with classes of securities that are inter-convertible

- instruction (iv) should refer to options, warrants or rights *to be issued pursuant to a compensation plan assumed* in connection with a merger, consolidation or other acquisition
- the instructions sometimes refer to *compensation plan and individual compensation arrangement, compensation plan, and equity compensation plan* – the differing language is confusing.

Response: The disclosure in the Form relates to securities that are not yet issued – that is, the equity security is issuable. Securities that are already outstanding, whether they are subject to forfeiture or not, will be reflected in the issuer’s issued and outstanding capital disclosure, and so are not required to be discussed in this Item.

The Item requires the calculation to be done as of the end of the most recently completed financial year. Any formulas that may affect the number of securities available for issuance are then disclosed in the footnote.

We have clarified the language in the Form. Disclosure is required for each class of separately. We have revised the language in the Form relating to options, warrants or rights outstanding under a compensation plan assumed in connection with a merger, consolidation or other acquisition transaction.

We have clarified in the instructions that all references to compensation plans include individual compensation arrangements. In some places equity compensation plan is used because it would not otherwise be clear from the context that the compensation plan disclosure relates to plans under which equity securities may be issued. If this is clear from the context, the Form refers simply to compensation plans.

One commenter said the disclosure of equity compensation plans is redundant, as issuers already provide substantially similar disclosure in the notes to the financial statements. If the information must be repeated, the requirement should distinguish between equity compensation plans that involve the issuance of shares from treasury, and those that do not. Because the current disclosure requirements are structured with stock option plans in mind, the disclosure provided for other types of plans could be misleading to investors. The commenter also suggested issuers should be permitted to refer readers to the corresponding note in their annual financial statements.

Response: Although some of the disclosure in Item 9 repeats what may be provided in the notes to the financial statements, there is additional disclosure that would not be in the financial statements, and it provides a place for all the information to be seen together. Further, to the extent there is duplication, section 1(c) of the Form permits issuers to incorporate information by reference. The only disclosure required in the Item is disclosure of compensation plans “under which equity securities of the issuer are authorized for issuance”. As a result, plans that do not involve the issuance of shares from treasury do not have to be discussed.

One commenter suggested section 10.1(2) seemed to require *all* employee debt to be disclosed, which could be practically impossible.

Response: Section 10.1(2) does not require all employee debt to be disclosed. As provided in section 10.3, issuers are not required to disclose routine indebtedness.

One commenter supported the requirement to disclose aggregate indebtedness to the issuer of all directors and executive officers.

No response required.

One commenter said the requirement for prospectus-level disclosure in some circumstances should not apply to foreign issuers. Instead, they should be required to provide sufficient detail to enable securityholders to form a reasoned judgement.

Response: We made prospectus-level disclosure the standard in response to the majority of comments received during the first comment period on the Rule. We continue to believe this is the appropriate standard to apply. Certain foreign issuers can rely on the exemptions in the Foreign Issuer Rule from the information circular requirements.

One commenter suggested prospectus-level disclosure should not be required if a prospectus exemption is available, as often there is only a circular because the exchange requires shareholder approval for dilution protection purposes.

Response: We disagree. Often the policy rational behind the prospectus exemption is that there is prospectus-level disclosure in an information circular.

One commenter said section 14.2 requiring prospectus-level disclosure should also refer to a cancellation or redemption of securities.

Response: We disagree. The requirement in the Form to provide prospectus-level disclosure is based on the principle in securities legislation that an issuer must deliver a prospectus in connection with a distribution. It is consistent with the legislation because, in the restructuring transactions described in the Form, securities are being changed, exchanged, issued or distributed. Extending the requirement to cancellations or redemptions would be inconsistent with this principle.

One commenter said it appears the financial statement disclosure required by section 14.2 must be on an unconsolidated basis. The commenter suggested the wording should be revised so information could be consolidated for an entity and all of its subsidiaries.

Response: We have not revised the Form. Prospectus-level disclosure must be provided for “each entity, securities of which are being changed, exchanged, issued, or distributed, and for each entity that would result from the significant acquisition”. To the extent one of the entities named in the Form is a subsidiary of a parent issuer, the consolidated financial statements of the parent would not satisfy the disclosure requirement. Securityholders are entitled to receive financial statements of the actual subsidiary entity involved in the transaction.

One commenter noted that, in many subdivisions and consolidations, a cash settlement is paid in lieu of issuing fractional shares. *Restructuring transactions* currently excludes subdivisions, consolidations, or other transactions that only affect the number of securities of a class that are outstanding. If cash is paid, however, issuers could not rely on that exclusion.

Response: The exclusion would still be available in the circumstances described by the commenter. The payment of cash under a restructuring transaction does not change the fundamental nature of the transaction – being a transaction that is only affecting the number of securities outstanding.

One commenter said it is anomalous that a dissident is not required to provide the same prospectus-level disclosure under section 14.4 as an issuer, unless the restructuring involves the change, exchange, issue or distribution of securities of the dissident or an affiliate of the dissident.

Response: We disagree. It would be an impossible burden on dissidents to require them to provide prospectus-level disclosure about an issuer they may not be affiliated with. They would likely not have access to the information, or be able to verify the accuracy of the disclosure. Further, the prospectus-level disclosure about the issuer would likely already have been provided in management’s information circular. As a result, even if the dissident could provide the disclosure, it would be duplicative.

One commenter said the exemption from the prospectus-level disclosure requirement for CPCs effecting a qualifying transaction should be available to other issuers effecting reverse takeovers (RTOs) because

- a qualifying transaction is merely one form of RTO, so they should be treated the same
- the policies of the TSXV afford very similar protections to investor interests in the context of qualifying transactions and RTOs.

The commenter noted, though, that the role of the TSXV in reviewing information circulars for both qualifying transactions and RTOs may be changing.

Response: We exempted CPCs effecting qualifying transactions from the prospectus-level disclosure requirement in recognition of the active role of the TSXV in establishing disclosure standards for qualifying transactions. The CSA disagree that exchange issuers completing RTOs and changes of business should be exempt from section 14.2, as the TSXV does not necessarily impose the same prospectus-form disclosure requirement or review procedures. If the role of the TSXV does change with respect to qualifying transactions, we may reconsider whether the exemption for CPCs is appropriate.

One commenter said the exemption from prospectus-level disclosure for CPCs should extend to CPCs preparing a filing statement, rather than an information circular.

Response: It is not necessary to extend the exemption for CPCs to their filing statements. The Rule does not speak to filing statement requirements – they are requirements prescribed by the TSXV. Only the TSXV can grant an exemption from its requirements.

Form 51-102F6

One commenter noted current executive compensation disclosure has been modified in the Form to include certain portions of the guidelines on executive compensation previously issued by the CSA. The commenter questioned whether there were other portions of the previously issued guidelines that should be reflected in the new Form, and whether the Rule or the Form should clarify the status of the guidelines issued prior to the Rule being adopted.

Response: We have incorporated all the relevant guidance that has been previously issued into this Form. Issuers can choose to look at the guidance we previously issued as a useful reference indicating the results of our issue-oriented review of current executive compensation disclosures and some of the problem areas.

One commenter suggested that disclosure of executive compensation should only be required for the current year to help keep the document short. Securityholders can obtain information on prior years by “calling up” the prior year’s document.

Response: While the document would be shorter with only one year of information presented, its usefulness would be significantly diminished without the comparative historical information. We expect most investors want the comparative information in the document to assist in their understanding of the information, while saving them the difficulty of accessing the information separately.

One commenter suggested the definition of *Named Executive Officers*, or *NEOs*, should include the chief financial officer, regardless of the amount of compensation received by the CFO. Otherwise, for many venture issuers, disclosure will usually only be provided for the CEO, as very few officers will receive compensation exceeding the \$100,000 threshold.

Response: We agree with the commenter, and have added CFOs to the definition of NEO.

One commenter suggested the threshold in the definition of *Named Executive Officer* should be increased to at least \$150,000 to reflect the impact of inflation since the disclosure requirement was introduced.

Response: We agree with the commenter, and have increased the threshold to \$150,000.

One commenter said the reference in section 8.2 to “signs” should be deleted, since Item 9 does not require the members of the compensation committee to sign the report.

Response: We have deleted the reference to a compensation committee member signing the report under Item 9.

One commenter suggested that the requirement to include a performance graph in the Statement of Executive Compensation is no longer warranted. There is a significant chance of error in preparing the graph, and the value to the reader is minimal since most securityholders have access to real-time graphing and share price information.

Response: We have not removed the requirement to include the graph, as it provides useful information about an issuer's performance relative to a market indicator. The requirements are defined to minimize the chance of error in preparing the graph. Further, while some users may be able to construct their own graph, the majority of users would prefer to have the relevant information easily accessible in one document. Investors should not be required to locate or create this information.

One commenter said the restrictions that apply if an issuer abandons a voluntarily-provided comparison index are unduly restricted. The commenter noted that securityholders will still have the standard comparison index for comparison purposes. Issuers should only be required to provide this information as a footnote to the performance graph in the first year after the additional index is no longer provided.

Response: This comment refers to the timing of the disclosures. The commenter would like to delay the reporting of the change until the year of the change instead of the year before the change is made. We do not agree that the current requirement is unduly restrictive. Investors are entitled to know that a change will be made in the future, why it is being made, and its expected impact, then they will not be surprised in the following year when the comparative index is different.

Part 11 – Additional filing requirements

Section 11.1 Additional Filing Requirements

See the comments under **Question 1. Filing documents** above relating to the filing of documents sent to securityholders.

Section 11.2 Change of Status Report

One commenter said the status of a venture issuer must be very transparent to the marketplace. As a result, the CSA should consider adding a separate report category to SEDAR or keeping a separate list of venture issuers on CSA member websites to ease public access to this information.

Response: The change of status filing will be added as a separate category in SEDAR.

Section 11.3 Voting Results

One commenter said the Rule should not include a mandatory requirement to file a report disclosing information related to securityholder votes unless and until an equivalent requirement is adopted in the United States.

Response: Although we are mindful of the approach to securities regulation in the United States, we do not decide what disclosure is appropriate in Canada based on the requirements in the United States. In any event, we note that there is a similar requirement in the United States in the Form 10-K.

One commenter said the requirement to disclose voting results should be limited to those meetings where a person was required under the Rule to send an information circular or form of proxy to registered securityholders. Otherwise, the issuer could be in default for failing to file a report disclosing voting results after a meeting it was not involved in, for example, a meeting of its noteholders.

Response: We have not made the change suggested by the commenter. Management of a reporting issuer will be aware of meetings held by its securityholders, even if it did not call the meeting, and will be informed of the results of the meeting.

One commenter said the Rule should require issuers to disclose information regarding vote totals and vote percentages in a standardized form. The commenter suggested the form should be filed within 30 days of the annual general meeting, and be posted on SEDAR.

Response: The Rule requires issuers to disclose the results of any vote promptly after a meeting of securityholders. The report will be filed under a separate category on SEDAR. As the information that must be disclosed in the report is prescribed, it is not necessary to mandate a specific form of report.

Two commenters agreed with the proposal to require disclosure of voting results, but said the requirement should also apply to venture issuers. One of the commenters suggested that the discipline imposed by disclosure of voting results may be more necessary for venture issuers, as it is very difficult for small securityholders to exert much pressure on management. The commenter felt the cost of filing would be minimal, since the venture issuer will have to tabulate the votes regardless.

Response: We disagree that the requirement should also apply to venture issuers. Before imposing additional filing requirements on an issuer, the CSA must be satisfied that the requirement will provide a benefit to the capital markets that justifies the cost to the issuer. We are not satisfied that the requirement will provide sufficient benefit to investors in venture issuers to justify imposing this requirement.

Section 11.4 Financial Information

One commenter supported the requirement to file copies of news releases disclosing information regarding results of operations or financial condition, but suggested it should expressly apply to releases about both historical and prospective information.

Response: We have revised the requirement as suggested by the commenter.

One commenter suggested the requirement to file a copy of any news release issued that discloses information regarding results of operations or financial condition should apply only to statements for the period in question.

Response: We disagree. It is important that all disclosure relating to an issuer's financial condition or operations be filed, whether it relates to the current, completed, or future periods.

Part 12 – Filing of material documents [now Filing of certain documents]

One commenter suggested that, instead of filing copies of particularly lengthy documents, issuers should be permitted to file summaries of the documents.

One commenter suggested issuers should not be required to file constating documents, as

- those documents are available on demand from other sources
- there is very little demand for the documents
- meaningful information about these documents is already provided in AIFs, prospectuses, proxy circulars, and financial statements

The commenter said the burden of filing the documents is not offset by a corresponding benefit.

Response: We disagree. Requiring the filing of the documents listed in Part 12 ensures that everything contained in them is easily accessible by securityholders, whose rights are created, and greatly affected, by those documents. Further, issuers are not required to file their corporate by-laws at all, and do not file their articles of incorporation with government offices electronically. Filing these documents on SEDAR gives investors immediate electronic access.

One commenter said the requirement should be clarified so banks will not be required to file copies of the *Bank Act*. Section 13 of the *Bank Act* provides that the Act is the charter of all Schedule I and II banks.

Response: We have made this change.

One commenter questioned the need to file copies of these contracts, since issuers are required in their AIFs to describe

- any contracts that their business is substantially dependent on (paragraph 5.1(1)(j)), and
- every contract that can reasonably be regarded as material to an investor (section 15.1).

Response: The requirement to file contracts entered into other than in the ordinary course of business gives investors access to the details of agreements that are not usual, and so would not be expected, in the issuer's business. We expect this will be a very limited number of contracts, as issuers would not be expected to enter into contracts that are unusual in its business on a regular basis.

Three commenters suggested the requirement to file copies of shareholder or voting trust agreements, and other contracts that materially affect the rights or obligations of securityholders, should be limited to those contracts that the issuer is a party to. One of the commenters suggested that the requirement should also be limited to agreements that restrict the exercise of voting rights by shareholders holding not less than 10% of the outstanding voting rights.

Response: We have limited the requirement to file securityholder or voting trust agreements to those agreements that the reporting issuer has access to. The requirement in subsection 12.1(1)(e) to file copies of contracts that create or materially affect the rights or obligations of

securityholders is already limited to contracts “of the issuer or a subsidiary of the issuer”. As such, third party contracts would not have to be filed under this requirement.

One commenter suggested that, in the case of contracts that materially affect the rights or obligations of securityholders, the requirement should also be limited to agreements that directly affect the securityholders’ rights or obligations generally, and in their capacity as securityholders.

Response: As suggested by the commenter, we have revised the Rule so it is clear that the agreements that must be filed are those that affect securityholders generally.

One commenter suggested the Rule should give guidance on the meaning of the phrase *materially affect the rights or obligations of securityholders*.

Response: We have not given any guidance on this point. Whether a contract will materially affect the rights or obligations of securityholders will be so fact specific to a particular issuer that general guidance would not be useful.

Two commenters said the requirement must be modified to provide that contracts that contain competitive or commercially sensitive information do not have to be filed.

Response: We have provided that issuers may exclude portions of documents that contain competitive or commercially sensitive information. Issuers will still be required to file the remaining portions of the documents.

Four commenters said all contracts that create or materially affect the rights or obligations of securityholders should be filed, whether or not the class of security is held by more than 50 securityholders. One commenter said the 50 securityholder limit should be clarified for securities held by CDS.

Response: We have clarified the requirement by taking out the reference to 50 securityholders. As a result, the requirement will be consistent with the requirement, as revised, in Part 11 discussed in the response to Question 1(a) above.

One commenter said the documents filed under Part 12 should have to be filed within a fixed number of days after the Rule is implemented. Otherwise, it may be more than a year before some issuers are required to file the documents.

Response: We do not agree that it is necessary to accelerate when the documents under Part 12 must be filed. If the document is new and constitutes a material change, it will be filed with a material change report. Otherwise, the documents will be filed with the first AIF.

One commenter suggested that, given the different wording between this requirement and the requirement in Item 15 of the AIF, the requirement in Part 12 is limited to corporate documents, while the disclosure in the AIF extends to business contracts. The commenter said it would be helpful if this, and what *entered into in the ordinary course of business* means, was clarified.

Response: We have added guidance to the Policy relating to the interpretation of the phrase ordinary course of business.

Two commenters said that the contracts should not be published as an attachment to, or an integral part of the AIF, as proposed. One of the commenters suggested this would make the AIF too cumbersome for most investors, unnecessarily costly for issuers to produce, and could infringe on confidential information involving private parties. The commenter recommended that the agreements be summarized in the AIF, and made accessible through SEDAR.

Response: We agree that the material documents should not be published as an attachment to the AIF. We have deleted this requirement. Instead, the documents must be filed no later than when the AIF or the material change report is filed.

Part 13 – Exemptions

One commenter suggested the exemption for reporting issuers wishing to rely on their existing exemptions should expressly apply to all new requirements, including Parts 8, 11 and 12, and sections 4.8, 4.10 and 4.11, which are new or were previously only policies.

One commenter suggested foreign issuers that previously obtained discretionary relief should be fully grandfathered, and all new provisions in the Rule should not apply to them.

Response: Foreign issuers that previously obtained relief may continue to rely on that relief in a jurisdiction under section 13.2 of the Rule, if the prior relief was granted by the jurisdiction from a substantially similar provision of the Rule. When prior discretionary orders were issued, each jurisdiction would only have considered if it was appropriate to grant relief from the requirements that actually existed in that jurisdiction. The conditions to the relief would reflect this. As such, it would not be appropriate, and is in fact beyond the legislative authority in some jurisdictions, to retroactively extend the relief to areas that did not exist at the time the order was originally issued. We also note that the Foreign Issuer Rule provides exemptions from most of the requirements of the Rule for SEC foreign issuers and designated foreign issuers, provided certain conditions are met. Those conditions reflect the circumstances in which the CSA believe it is appropriate for foreign issuers to not have to comply with the CD obligations in the Rule.

One commenter suggested the requirement to file a notice to rely on the exemption in section 13.2 should not apply to foreign issuers, who may have no knowledge that the Rule has been implemented.

Response: The Foreign Issuer Rule provides exemptions from most of the requirements of the Rule for SEC foreign issuers and designated foreign issuers, provided certain conditions are met. Those foreign issuers do not have to file a notice to rely on the exemptions. If the issuer is not able to rely on the exemptions in the Foreign Issuer Rule, then it is important for the issuer to assess if the relief it obtained is still relevant. Once the issuer has done this assessment, it is not difficult for the issuer to advise the securities regulatory authorities that it is still able to rely on the relief so we can ensure our records accurately reflect what the issuer will be filing.

One commenter noted that, Québec, unlike other provinces, has traditionally required the parent company of exchangeable share issuers to become reporting issuers, and then granted them CD relief. The commenter suggested Québec should exempt parent companies from the Rule (expressly including all new requirements) under Part 13 without any need to inform the CVMQ.

Response: The CVMQ will continue to require that the parent issuer of the exchangeable share issuer become a reporting issuer in Québec. The parent issuer, if an SEC foreign issuer, may be exempted from complying with Canadian CD requirements under either MJDS or the Foreign Issuer Rule. Parent issuers that cannot rely on either MJDS or the Foreign Issuer Rule can apply for relief on a case-by-case basis.

One commenter said the exemption for exchangeable share issuers and insiders of exchangeable share issuers should still be available if the issuers have incentive options outstanding.

Response: We have not revised the Rule as suggested by the commenter at this time. Issuers that have incentive options outstanding can apply for discretionary relief on a case-by-case basis. We will consider amending the Rule in the future, if it becomes appropriate.

One commenter suggested that the requirement to file documents under the exchangeable share exemption should require the filing to be done *promptly*, rather than *concurrently*, as formatting or other changes may have to occur first.

Response: We have revised the requirement so documents must be filed at the same time, or as soon as practicable after, they are filed with the SEC.

One commenter suggested the exemption from the insider reporting requirement should not be subject to

- the insider not receiving information as to material facts or material changes concerning the parent issuer before they are generally disclosed, or
- the insider not being an insider of the parent issuer in any capacity other than by virtue of being an insider of the exchangeable share issuer.

The commenter suggested that the requirement in the exemption for United States disclosure should be sufficient for the purposes of the exemption. The commenter said that, in any event, *insider* is not a definition that applies to a parent issuer that is not also a reporting issuer.

Response: We disagree. The conditions to the exemption are consistent with the exemptions in National Instrument 55-101 Exemption from Certain Insider Reporting Requirements. Further, the exchangeable securities are essentially identical to the parent issuer's securities. If the Canadian insider has material undisclosed information about the parent issuer, the Canadian insider could use this information to profit from trading in exchangeable securities in Canada.. We also disagree with the statement that the term insider does not apply to a parent issuer that is not also a reporting issuer. The definition of insider includes being an insider of an issuer that holds more than 10% of the outstanding voting rights. It does not matter if the parent issuer is a reporting issuer or not.

One commenter suggested an exemption should also be given in the Rule from the early warning requirements in securities legislation.

Response: The exemption in section 13.3 has been added to codify certain exemptive relief that has been routinely granted in the applications context. The applications have generally not requested relief from the early warning requirements. As a result, we have not had a full opportunity to consider the implications of this relief, and so have not added the exemption to this section. We also note that the early warning requirements relate to acquisitions of voting or equity securities of a reporting issuer. In our experience, designated exchangeable securities have tended to be non-voting securities in relation to the exchangeable security issuer, and would not meet the definition of equity security. Accordingly, we believe the need for this relief will be rare, and would be better addressed through an application for exemptive relief.

Part 14 Effective Date and transition

One commenter said the requirements in the Rule relating to financial statements, MD&A and AIFs should not apply until the filing in 2005 of a company's annual documents for the financial year ended in 2004. For example, the quarterly MD&A should only have to update the annual MD&A filed under the Rule.

Response: The Rule provides that the financial statement, MD&A and AIF requirements apply to financial years beginning on or after January 1, 2004. As a result, the first AIF and first annual financial statements and MD&A will not have to be filed under the Rule until 2005. It would not be appropriate to delay the implementation of the Rule as it relates to interim financial statements and interim MD&A until 2005. The Rule does not substantially change the financial statement filing requirements, except the deadline for filing for issuers other than venture issuers. Those issuers have had sufficient time to prepare for the shorter filing deadline because of the CSA notices issued on the anticipated effective date of the Rule, and through the advance notice of implementation of the Rule.

We have also clarified in the MD&A that, if the first MD&A filed in the Form 51-102F1 is an interim MD&A, the first MD&A must contain all of the disclosure required in the annual MD&A. This was already required under the Form, but has been made clearer. Issuers can, and are encouraged to, start using the Form 51-102F1 for any MD&A filed for periods before their 2004 financial year. If they chose to do this, their first interim MD&A can update the annual MD&A filed under Form 51-102F1.

Part IV Companion Policy 51-102CP Continuous Disclosure Obligations

Part 3 Financial statements

One commenter said the language in the Policy regarding the return of the request form under section 4.6 of the Rule should be expanded to make it clear that any requested financial statements must be sent to OBOs through their intermediaries. The commenter also suggested these provisions should be in the Rule, rather than in the Policy.

Response: We disagree. We have not been prescriptive in the Rule about the procedures for the request forms. As a result, the Rule contemplates that an OBO may request the financial statements through its intermediary, or not.

Part 7 Electronic delivery of documents

One commenter welcomed the guidance that CD documents may be delivered electronically, if the issuer complies with the relevant Québec staff notice and CSA national policy.

No response required.

Part 8 Business acquisition reports

One commenter said the statement in section 8.9(1) of the Policy that relief from the financial statement requirements in the BAR will not be granted because of the cost or time of preparing them is inconsistent with the principles of securities regulation set out in, for example, section 2.1 of the Ontario *Securities Act*.

Response: The Policy has been revised to reflect that relief will generally not be granted solely based on cost or the time of preparing them. The securities regulatory authorities will consider all of the relevant factors in the context of an application for discretionary relief.

Schedule 1
List of commenters

ADP Investor Communications – August 20, 2003

Agrium Inc. – August 15, 2003

BCE Inc. – August 18, 2003

BDO Dunwoody LLP – August 19, 2003

Bennett Jones LLP – August 20, 2003

Canadian Bankers Association – August 27, 2003

Canadian Institute of Chartered Accountants
Canadian Performance Reporting Board – August 15, 2003

Canadian Investor Relations Institute – August 19, 2003

EnCana Corporation – August 29, 2003

Ernst & Young, LLP – August 19, 2003

Tanis J. MacLaren – August 18, 2003

Osler, Hoskin & Harcourt LLP – August 25, 2003

RBC Dominion Securities Inc., RBC Action Direct Inc.,
RBC Private Counsel Inc., The Royal Trust Company,
and Royal Trust Corporation of Canada – August 18, 2003

Simon Romano – August 11, 2003

Stephen D. Rotz, CA, CFA – August 8, 2003

Royal Trust Corporation of Canada, CIBC Mellon Global Securities Services Company, State
Street Trust Company Canada – August 28, 2003

Shareholder Association for Research and Education – August 24, 2003

Shell Canada Limited – August 25, 2003

Social Investment Organization – August 6, 2003

Talisman Energy Inc. – August 19, 2003

Teachers' Pension Plan – August 19, 2003

Toronto Stock Exchange – August 21, 2003

TSX Venture Exchange – August 18, 2003

Appendix C

Amendments to National Instrument 44-101 *Short Form Prospectus Distributions* Form 44-101F3 and Companion Policy 44-101CP And Revocation of Form 44-101F1 and Form 44-101F2

Part 1 Amendments to National Instrument 44-101

1.1 Amendments to Part 1 of NI 44-101 - *Part 1 of National Instrument 44-101 is amended by,*

(a) *in section 1.1, repealing the definition of “AIF” and substituting the following:*

“AIF” means an annual information form

- (a) in Form 51-102F2,
- (b) in Form 51-102F2 or Form 44-101F1, if the annual information form was filed in respect of financial years beginning before January 1, 2004, or
- (c) in the form referred to in section 3.4;

(b) *in the definition of “current AIF” in section 1.1, adding “, Form 10-KSB,” after the words “Form 10-K”, wherever they appear;*

(c) *in section 1.1, adding immediately after the definition of “foreign GAAS” and immediately before the definition of “44-101 regulator” the following:*

“Form 51-102F1” means Form 51-102F1 *Management’s Discussion and Analysis*;

“Form 51-102F2” means Form 51-102F2 *Annual Information Form*;

(d) *in section 1.1, repealing the definition of “MD&A” and substituting the following:*

“MD&A” means the management’s discussion and analysis of financial condition and results of operations of an issuer

- (a) in Form 51-102F1, or
- (b) for financial years beginning before January 1, 2004,
 - (i) in Form 51-102F1, or

- (ii) required to be disclosed in an AIF in respect of financial years beginning before January 1, 2004;
- (e) *in section 1.1, adding immediately after the definition of “MRRS” and immediately before the definition of “non-convertible” the following:*

“NI 51-102” means National Instrument 51-102 *Continuous Disclosure Obligations*;

1.2 Amendments to Part 3 of NI 44-101 - Part 3 of National Instrument 44-101 is amended by

(a) *repealing subsection 3.1(1) and substituting the following:*

- (1) An issuer filing an initial AIF under this Instrument shall file the AIF
 - (a) in Form 51-102F2;
 - (b) in respect of financial years beginning before January 1, 2004, in Form 51-102F2 or Form 44-101F1; or
 - (c) in the form referred to in section 3.4.

(b) *repealing subsection 3.2(1) and substituting the following:*

- (1) An issuer filing a renewal AIF under this Instrument shall file the AIF
 - (a) in Form 51-102F2;
 - (b) in respect of financial years beginning before January 1, 2004, in Form 51-102F2 or Form 44-101F1; or
 - (c) in the form referred to in section 3.4.

(c) *repealing subsection 3.2(5) and substituting the following:*

- (5) Upon receipt of a notice from the 44-101 regulator that its renewal AIF is being reviewed, an issuer shall promptly file the renewal AIF again, in all jurisdictions in which the renewal AIF was filed, with
 - (a) the following statement added in bold type to the cover page of the renewal AIF, if the renewal AIF is in Form 51-102F2, until the issuer is notified that the review has been completed:

“This annual information form is currently under review by the provincial and territorial securities regulatory authorities of one or more jurisdictions. Information contained in this form

is subject to change.”, or (b) the statement required under Item 1.2 of Form 44-101F1, if the renewal AIF is in Form 44-101F1.

(d) *repealing subsection 3.3(2) and substituting the following:*

- (2) An issuer that files an AIF under this Instrument shall file an undertaking with the regulator to the effect that, when the securities of the issuer are in the course of a distribution under a preliminary short form prospectus or a short form prospectus, the issuer will provide to any person or company, upon request to the secretary of the issuer,
- (a) one copy of the AIF of the issuer, together with one copy of any document, or the pertinent pages of any document, incorporated by reference in the AIF,
 - (b) one copy of the financial statements of the issuer for its most recently completed financial year for which financial statements have been filed together with the accompanying report of the auditor and one copy of the most recent interim financial statements of the issuer that have been filed, if any, for any period after the end of its most recently completed financial year,
 - (c) one copy of the information circular of the issuer in respect of its most recent annual meeting of shareholders that involved the election of directors, and
 - (d) one copy of any other documents that are incorporated by reference into the preliminary short form prospectus or the short form prospectus and are not required to be provided under paragraphs (a), (b) or (c).

(e) *repealing section 3.4 and substituting the following:*

3.4 Alternative Forms of AIF - An issuer that

- (a) has a class of securities registered under section 12 of the 1934 Act or is required to file reports under section 15(d) of the 1934 Act, and
- (b) is not registered or required to be registered as an investment company under the *Investment Company Act of 1940* of the United States of America,

may file an AIF in the form of an annual report or transition report under the 1934 Act on Form 10-K, Form 10-KSB or on Form 20-F.

Part 2 Amendments to Companion Policy 44-101CP

2.1 Part 1 of Companion Policy 44-101CP is amended by,

(a) in section 1.7, adding the following as new subsection (1):

- (1) **AIF** – The term “AIF” is defined to mean either a Form 51-102F2 or Form 44-101F1 *AIF*, depending on when the AIF is filed. Issuers may choose to file their annual information forms for financial years beginning before January 1, 2004 in either Form 51-102F2 or Form 44-101F1. For financial years beginning on or after January 1, 2004, issuers must use Form 51-102F2.

(b) renumbering subsections 1.7(1) to (6) as subsections 1.7(2) to (7).

2.2 Part 8 of Companion Policy 44-101CP is amended by,

(a) in subsection 8.1(1),

- (i) **striking the words “Item 4.2 of Form 44-101F1 specifies” and substituting “Item 4.2 of Form 44-101F1 and section 5.3 of Form 51-102F2 specify”; and**
- (ii) **striking the words “Form 44-101F1 leaves” in the second sentence and substituting “Form 44-101F1 and Form 51-102F2 leave”;**

(b) in subsection 8.1(2),

- (i) **striking the words “Item 4.2(b)(i) of Form 44-101F1 AIF requires” and substituting “Item 4.2(b)(i) of Form 44-101F1 AIF and section 5.3(2) of Form 51-102F2 require”; and**
- (ii) **striking the words “, the cash flows from which service the asset-backed securities”; and**

(c) in section 8.2,

- (i) **adding the words “and Item 10 of Form 51-102F2” after the words “Item 8 of Form 44-101F1” wherever they appear; and**
- (ii) **striking the word “requires” and substituting “require”.**

Part 3 Revocation of Forms 44-101F1 AIF and 44-101F2 MD&A

3.1 Revocation of Form 44-101F1 AIF – Form 44-101F1 AIF is revoked.

3.2 Revocation of Form 44-101F2 MD&A – Form 44-101F2 MD&A is revoked.

Part 4 Amendments to Form 44-101F3 Short Form Prospectus

4.1 *Item 10 of Form 44-101F3 Short Form Prospectus is repealed and the following substituted:*

Item 10: Resource Property

10.1 Resource Property – If a material part of the proceeds of a distribution is to be expended on a particular resource property and if the current AIF does not contain the disclosure required under Item 4.3 or 4.4, as appropriate, of Form 44-101F1, or section 5.4 or 5.5, as appropriate, of Form 51-102F2, for the property or that disclosure is inadequate or incorrect due to changes, disclose the information required under section 5.4 or 5.5 of Form 51-102F2.

4.2 *Item 12 of Form 44-101F3 Short Form Prospectus is amended by*

(a) *striking subparagraph 12.1(1)7. and substituting the following:*

7. MD&A relating to the issuer’s interim financial statements included in the short form prospectus.

(b) *in subparagraph 12.1(1)8., adding the words “for financial years beginning before January 1, 2004,” after the words “information circulars or;”;*

(c) *striking subparagraph 12.1(3)(a) and substituting the following*

(a) has filed an AIF in a form of current annual report on Form 10-K, Form 10-KSB or Form 20-F under the 1934 Act, as permitted under section 3.4 of National Instrument 44-101 and under NI 51-102.

(d) *in subparagraph 12.2 4., adding the words “for financial years beginning before January 1, 2004,” after the words “information circulars or;”;* and

(e) *in clause 13.1(2)(b)(ii), striking the words “Form 10-K or Form 20-F” and substituting “Form 10-K, Form 10-KSB or Form 20-F”.*

Part 5 Effective Date

5.1 Effective Date

- (1) This Amendment, except for Part 3, comes into force on March 30, 2004.
- (2) Part 3 of this Amendment comes into force on May 19, 2005.

Appendix D

Amendment to And Revocation of National Instrument 62-102 *Disclosure of Outstanding Share Data*

Part 1 Amendment to National Instrument 62-102

1.1 **Amendment to Part 3 of National Instrument 62-102 – *Part 3 of National Instrument 62-102 is amended by adding the following as section 3.2:***

3.2 **Exemption for years beginning January 1, 2004** – This Instrument does not apply to financial years beginning on or after January 1, 2004.

Part 2 Revocation of National Instrument 62-102

1.1 **Revocation of National Instrument 62-102 – *National Instrument 62-102 is revoked.***

Part 2 Effective Date

2.1 **Effective Date**

- (1) This Amendment, except for Part 2, comes into force on March 30, 2004.
- (2) Part 2 comes into force on May 19, 2005.

**Amendment to
National Instrument 62-103
*The Early Warning System and Related Take-Over Bid
and Insider Reporting Issues***

Part 1 Amendment to National Instrument 62-103

- 1.1** Amendment to Part 1 of National Instrument 62-103 – *Subsection 1.1(1) of National Instrument 62-103 is amended by repealing paragraph (g) of the definition of “applicable provisions”.*
- 1.2** Amendment to Part 2 of National Instrument 62-103 – *Subsection 2.1(1) of National Instrument 62-103 is amended by adding the words “or section 5.4 of National Instrument 51-102 Continuous Disclosure Obligations,” after “section 2.1 of National Instrument 62-102 Disclosure of Outstanding Share Data”.*

Part 2 Effective Date

- 2.1** **Effective Date** – This Amendment comes into force on March 30, 2004.

Appendix E

Amendments to National Policy 31

Change of Auditor of a Reporting Issuer that is an Investment Fund

and

National Policy 51

Changes in the Ending Date of a Financial Year and in Reporting Status

Part 1 Amendments to National Policy 31

- 1.1 **Amendment to title of National Policy 31** – *National Policy 31 is amended by adding “that is an Investment Fund” after “Change of Auditor of a Reporting Issuer”.*
- 1.2 **Amendment to Part 1 of National Policy 31** - *Section 1.1 of National Policy 31 is amended by adding “that is an investment fund as defined in National Instrument 51-102 Continuous Disclosure Obligations” after “reporting issuer”.*
- 1.3 **Amendment to Part 2 of National Policy 31** – *Part 2 of National Policy 31 is amended by renumbering sections 2.1 to 2.6 as sections 2.2 to 2.7, and adding the following as new section 2.1:*

“2.1 This Policy Statement only applies to reporting issuers that are not subject to National Instrument 51-102 *Continuous Disclosure Obligations*.”

Part 2 Amendments to National Policy 51

- 2.1 **Amendment to title of National Policy 51** – *National Policy 51 is amended by adding “of an Investment Fund” after “Changes in the Ending Date of a Financial Year and in Reporting Status”.*
- 2.2 **Amendment to Part 1 of National Policy 51** – *The definition of “Filing Issuer” in Part 1 of National Policy 51 is amended by adding “and that is an investment fund as defined in National Instrument 51-102 Continuous Disclosure Obligations” after “Jurisdiction”.*
- 2.3 **Amendment to Part 3 of National Policy 51** – *Paragraph 3.1(1)(b) of National Policy 51 is amended by adding “of a Filing Issuer” after “reporting status”.*

Part 3 Effective Date

- 3.1 **Effective Date** – These Amendments comes into force on March 30, 2004.