

**Notice of
Multilateral Instrument 51-105
*Issuers Quoted in the U.S. Over-the-Counter Markets***

May 10, 2012

Introduction

Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets* is an initiative of the Canadian Securities Administrators (CSA or we), except the Ontario Securities Commission. The instrument designates as reporting issuers in the local jurisdiction, any issuer whose securities are quoted only on a US OTC market and that have a significant connection to that local jurisdiction.

We, except the Ontario Securities Commission, are adopting:

- Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets* (the Instrument)
 - Form 51-105F1 *Notice – OTC Issuer Ceases to be an OTC Reporting Issuer*
 - Form 51-105F2 *Notice of Promotional Activities*
 - Form 51-105F3A *Personal Information Form and Authorization of Indirect Collection, Use and Disclosure of Personal Information*
 - Form 51-105F3B *Personal Information Form and Authorization of Indirect Collection, Use and Disclosure of Personal Information*
 - Form 51-105F4 *Notice – Issuer Ceases to be an OTC Reporting Issuer*
- (collectively, the Forms)
- Companion Policy 51-105CP (the Companion Policy)

(together, the OTC Rule).

We are also making consequential changes to:

- National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* (NP 11-203)
- CSA Staff Notice 12-307 *Applications for a Decision that an Issuer is not a Reporting Issuer* (Staff Notice)

The OTC Rule and the consequential changes are initiatives of all CSA members except Ontario. Provided all necessary ministerial approvals are obtained, the OTC Rule will come into force on **July 31, 2012**. We are publishing the text of the OTC Rule and a blackline copy of NP 11-203 that identifies the consequential changes to that policy concurrently with this notice. Prior to the expected implementation date of the OTC Rule, CSA staff intend to issue a revised version of the Staff Notice.

Substance and Purpose

The OTC Rule will:

- improve disclosure by issuers with a significant connection to a Canadian jurisdiction whose securities are quoted in the U.S. over-the-counter markets
- discourage the manufacture and sale in a Canadian jurisdiction of U.S. over-the-counter quoted shell companies that can be used for abusive purposes

Background

Background to the OTC Rule

On September 15, 2008, BC Instrument 51-509 Issuers Quoted in the U.S. Over-the-Counter Markets and related amendments (the BC OTC Rule) came into force as a local rule in British Columbia. The BC OTC Rule regulates issuers that are quoted in the U.S. over-the-counter markets but not on another North American exchange listed in the rule and that have a significant connection to British Columbia.

The BC OTC Rule was an initiative to address the harm caused to the reputation of British Columbia's capital markets by market participants with a significant connection to British Columbia that engage in abusive activities through the over-the-counter markets in the United States. These markets consist of the OTC Bulletin Board and OTC Markets quotation systems. Damage to British Columbia's market reputation, in turn, was harming legitimate issuers, investment dealers, and other British Columbia market participants.

Since then, some of the OTC reporting issuers migrated to other Canadian jurisdictions. As a result, we are adopting the OTC Rule.

Application of the OTC Rule

The OTC Rule applies to any OTC issuer that has a significant connection to a local Canadian jurisdiction that has adopted the OTC Rule.

Under the OTC Rule, an OTC issuer is an issuer whose securities are quoted on any U.S. over-the-counter markets unless the issuer is also listed or quoted on the TSX Venture Exchange, the TSX, the Canadian National Stock Exchange, the Alpha Exchange, the New York Stock Exchange, the NYSE Amex, or the NASDAQ Stock Market. Those exchanges impose requirements on issuers that make it unnecessary for them to be subject to the OTC Rule. An OTC reporting issuer also includes an issuer if trades in its securities are reported in the grey market.

Under the OTC Rule, an OTC issuer has a significant connection to a Canadian jurisdiction if

1. it is directed or administered or promotional activities are conducted in or from the jurisdiction, in whole or in part, or
2. it distributed securities in a Canadian jurisdiction prior to obtaining a ticker-symbol for the purpose of having its securities quoted on an over-the-counter market in the U.S. and those securities became the issuer's OTC–quoted securities.

The OTC Rule applies to an OTC issuer when the U.S. Financial Industry Regulatory Authority (FINRA) assigns a ticker symbol to a class of its securities so that trades in those securities may

be reported. Once an OTC issuer becomes an OTC reporting issuer under the OTC Rule, the OTC Rule will continue to apply to it for at least one year. After that, the OTC Rule applies only if the issuer is directed or administered or carries out promotional activities in or from a jurisdiction of Canada. In Québec, an OTC reporting issuer will have to apply for a decision to revoke its reporting issuer status.

The OTC Rule applies to an OTC issuer that is already a reporting issuer in a Canadian jurisdiction at the time the rule comes into force. We considered excluding the application of the OTC Rule to this class of OTC issuers but concluded, given the objectives of the OTC Rule, that there is no persuasive policy reason to exclude its application to this class of OTC issuers.

Disclosure requirements

Issuers

The OTC Rule improves continuous disclosure by imposing disclosure requirements on OTC reporting issuers. We will monitor and enforce compliance with the new requirements through continuous disclosure reviews and the use of compliance and enforcement tools when appropriate.

Under the OTC Rule, OTC reporting issuers must:

- meet the same periodic disclosure requirements imposed on other domestic reporting issuers under National Instrument 51-102 *Continuous Disclosure Obligations*, including an annual information form (AIF), management's discussion and analysis (MD&A), and audited financial statements
- comply with Canadian timely disclosure requirements
- file their public disclosure on SEDAR

Other than the requirement to file an AIF, OTC reporting issuers are treated as venture issuers, as defined in National Instrument 51-102 *Continuous Disclosure Obligations*.

OTC reporting issuers that are SEC filers – issuers that file disclosure with the United States Securities and Exchange Commission – can comply with the OTC Rule's requirements to file financial statements, material change reports, MD&A and AIFs using documents they file with the SEC.

The OTC Rule also requires an OTC reporting issuer to file

- in certain circumstances, the most recent registration statement it filed with the SEC, and
- information about persons it retains for promotional activities, the nature and scope of the engagement, compensation, and other material terms of the agreements entered into with those persons.

The OTC Rule also requires OTC reporting issuers in the oil and gas business to comply with National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*. The OTC Rule does not impose additional requirements with respect to National Instrument 43-101 *Standards of Disclosure for Mineral Projects* because that instrument currently applies to OTC issuers.

Insider reports

The OTC Rule requires an insider of an OTC reporting issuer to file an insider report on SEDI unless the insider is exempted from those requirements because it has filed its insider report in compliance with U.S. federal securities law. If an insider of an OTC reporting issuer is exempted from reporting requirements under U.S. federal securities law, the OTC Rule requires that it file an insider report under Canadian law.

Personal Information Forms

Under the OTC Rule, each director, officer, promoter or control person of an OTC reporting issuer is required to deliver to the securities regulatory authorities a personal information form (PIF). This form would include the person's consent to a criminal record search. Directors and officers of issuers listed on the TSX Venture Exchange and the TSX must file a similar form with those exchanges. If a person has submitted a PIF to the TSX Venture Exchange or the TSX and the information contained in it has not changed, the person may deliver it to satisfy the requirements of the OTC Rule.

Foreign Issuer and MJDS Exemptions

Under the OTC Rule, an OTC reporting issuer may rely on exemptions from continuous disclosure requirements that are available to other reporting issuers that have a class of securities registered under section 12 of the United States *Securities Exchange Act of 1934* or are required to file reports under paragraph 15(d) of that Act, except for the exemption regarding material change reporting. An OTC reporting issuer must comply with the same timely disclosure requirements for material change reporting as domestic reporting issuers, except that it may use SEC Form 8-K *Current Report* as a material change report. The continuous disclosure and other exemptions for a designated foreign issuer under National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* are available to an OTC reporting issuer that is a designated foreign issuer.

Restriction of exemptions

The OTC Rule deters manufacturers of shell companies from delivering to buyers of shell companies, for abusive purposes, the "public float" that is created from shares sold in private placements to Canadian residents and registered in a US registration statement that an issuer files with the SEC prior to obtaining a ticker-symbol.

To effect this, the OTC Rule:

- denies the use of the private agreement take-over bid exemption that could be used for this purpose
- requires a Canadian resident who acquired shares from an OTC issuer before it obtained a ticker-symbol to sell the shares only through a registrant, from an account in the person's own name, into the market or into a formal take-over bid, amalgamation, merger, reorganization or other similar statutory procedure, and
- requires a legend on the certificates or a legend restriction notation on the ownership statements representing the seed stock held by Canadian residents to that effect.

The OTC Rule will also deter insiders and persons who have close ties to issuers from dumping shares into a market that has been prepared with promotional disclosure. Therefore, the OTC

Rule provides security holders of OTC reporting issuers with a transparent, open-market resale regime for securities acquired in a private placement.

All of the usual capital raising exemptions would be available to an OTC issuer during both its private and public stages. However, the OTC Rule would place restrictions on the use of prospectus exemptions when an OTC reporting issuer is issuing securities for services.

Transition Provisions

The transition provisions are not applicable in British Columbia.

When the OTC Rule comes into force, an OTC reporting issuer will have to begin making disclosure immediately. The first quarterly and annual filings would require reporting on periods prior to the effective date of the OTC Rule.

Issuers that are not SEC filers may not have an auditor or the resources and experience to meet the OTC Rule's new disclosure requirements. To give these issuers more time to prepare for compliance with the new rule, we are providing a transition period following the adoption of the OTC Rule. This would give OTC reporting issuers more time to comply with their requirements to file annual financial statements and interim financial reports, related MD&A, AIFs, and, if applicable, their oil and gas disclosure documents.

Proposed Fees

The securities regulatory authorities will impose the same filing fees that reporting issuers, and insiders of reporting issuers, pay to the applicable securities regulatory authority. These fees are set out in the applicable securities legislation. OTC reporting issuers will also have to pay SEDAR fees as well as late fees for failure to meet filing deadlines.

Costs

The disclosure requirements should not be onerous for OTC reporting issuers who are SEC filers, because they can use the documents they file with the SEC in lieu of the Canadian forms for material change reports, financial statements, MD&A and AIF.

OTC reporting issuers who are not SEC filers and who do not have audited financial statements may incur significant new costs to comply with the OTC Rule.

OTC reporting issuers in the oil and gas sector, like other reporting issuers, must comply with National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*. Compliance with this rule may result in significant new costs to OTC reporting issuers.

Since an OTC reporting issuer has a significant connection with a jurisdiction of Canada, we think it is appropriate that those issuers make disclosure to the same standard as other Canadian reporting issuers.

Consequential changes

We are amending NP 11-203 to direct filers to the Companion Policy for the factors a filer should consider in identifying the principal regulator for an application for exemptive relief from

the requirements of the Instrument or the Forms.

We are also amending the Staff Notice to state that the simplified procedure for ceasing to be a reporting issuer detailed in that staff notice is not available for an OTC reporting issuer. The revised Staff Notice will indicate that the simplified procedure and the modified approach described in the Staff Notice are not available to a reporting issuer that is an OTC reporting issuer under Multilateral Instrument 51-105.

Summary of Written Comments Received by the CSA

We published the OTC Rule for comment on June 10, 2011. During the comment period, we received submissions from 3 commenters. We have considered the comments received and thank all of the commenters for their input. The names of commenters are contained in Annex A of this notice and a summary of their comments, together with our responses, are contained in Annex B of this notice.

Summary of Changes to the OTC Rule

After considering the comments received, we have made some revisions to the materials that were published for comment. Those revisions are reflected in the OTC Rule we are publishing concurrently with this notice. As these changes are not material, we are not republishing the Instrument for a further comment period.

In particular, we added Alpha Exchange Inc. to the list of exchanges in the definition of OTC issuer in the Instrument. We also updated the Companion Policy to provide additional guidance to market participants based on the comments we received on the OTC Rule.

Local Matters

Annex C is being published in any local jurisdiction that is making related changes to local securities laws, including local notices or other policy instruments in that jurisdiction. It also includes any additional information that is relevant to that jurisdiction only.

Questions

Please refer your questions to any of the following:

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New Brunswick Securities Commission / Commission des valeurs mobilières du Nouveau-Brunswick

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Annex “A”
List of Commenters

We received comment letters from the following:

Clark Wilson LLP
Exempt Market Dealers Association of Canada
McMillan LLP

Annex “B”
Summary of Comments

Summary of Comments and CSA Responses
Proposed Multilateral Instrument 51-105
Issuers Quoted in the U.S. Over-the-Counter Markets (MI 51-105)

A. General Comments

#	Comments	Responses
General		
1.	<i>Multilateral nature of MI 51-105</i>	
	A commenter asked why Ontario is absent from MI 51-105.	<p>The Ontario Securities Commission (OSC) investigated whether there is evidence of abusive activity being conducted in Ontario in relation to OTC issuers and whether, since the BC Instrument 51-509 Issuers Quoted in the U.S. Over-the-Counter Markets (BCI 51-509) was adopted in 2008, some of the OTC issuers operating in British Columbia have migrated to other Canadian jurisdictions including Ontario. As a result of that investigation, the OSC has not found sufficient evidence of abusive activity being conducted in Ontario to pursue legislative amendments that would allow the implementation of MI 51-105 in Ontario. The OSC will continue to monitor whether there is evidence of abusive activity being conducted in Ontario in relation to OTC issuers and determine whether it is necessary in the future to propose amendments to the Securities Act (Ontario) and adopt MI 51-105 as a national instrument.</p> <p>Legislative amendments were not required in other jurisdictions to adopt or implement MI 51-105.</p>
2.	<i>Exempt market dealers</i>	
	A commenter asked whether MI 51-105 permits EMD's to engage in private placements of OTC issuers.	No, MI 51-105 requires that persons must execute such trades through an investment dealer. We think that the investment dealer category of registration is appropriate for this rule since OTC quoted securities are traded by the public.
Comments on MI 51-105		
3.	<i>Section 1 – Definition of OTC issuer</i>	
	Commenters asked if we would consider adding to the list of exchanges set out in	We reviewed the list of exchanges listed in that paragraph. As a result, we have made the

#	Comments	Responses
	<p>paragraph (b) of the definition of OTC issuer any stock exchanges that impose continuous disclosure requirements and governance requirements that are substantially equivalent to those exchanges on the list.</p>	<p>following changes:</p> <ol style="list-style-type: none"> As we consider NEX to be part of the TSXV for the purposes of MI 51-105, we added text in the Companion policy 51-105CP (51-105CP) to confirm our interpretation. We added the Alpha Exchange Inc. <p>We do not think it is necessary to add any other exchanges or make any further amendments to paragraph (b) of the definition of OTC issuer at this time. However, if an issuer wishes to demonstrate that a specific exchange has similar oversight and governance requirements as the exchanges in paragraph (b) of the definition of OTC issuer, the Canadian securities regulatory authorities may consider relief in the issuer's specific circumstances.</p>
	<p>A commenter asked if we would exclude from the definition of OTC issuer an issuer that has previously been and remains a reporting issuer in any local jurisdiction which has adopted MI 51-105. The commenter was concerned that such issuers will already be subject to the disclosure requirements under applicable securities laws.</p>	<p>We considered this comment. The reason for treating OTC issuers differently than other reporting issuers is that OTC issuers are not subject to the standards, rules, and regulatory oversight that other exchanges listed in MI 51-105 provide. This differential treatment applies to all OTC issuers, whether or not they are currently reporting issuers.</p> <p>An issuer that is listed on one of the North American exchanges indicated in the definition of "OTC issuer" would not be subject to MI 51-105. We think the situation would be rare where an issuer would be a reporting issuer in a jurisdiction of Canada and not listed or quoted on one of the prescribed exchanges listed in MI 51-105. If such a situation occurs, the Canadian securities regulatory authorities may consider exemptive relief in appropriate circumstances. 51-105CP has some guidance on how issuers can apply for relief.</p>
4.	<p><i>Section 1 – Definition of ticker symbol date</i></p>	
	<p>A commenter noted that the definition of "ticker-symbol date" should be limited to when the OTC issuer is first assigned a ticker symbol for OTC-quoted securities.</p>	<p>We acknowledge the comment.</p> <p>Limiting the definition in such a manner would defeat one of the goals of MI 51-105, which is to provide more disclosure about</p>

#	Comments	Responses
	<p>The commenter was concerned that certain issuers who had been listed but then are forced to drop off a qualifying exchange, like NASDAQ, would be adversely affected as their ticker-symbol may have been issued many years ago.</p>	<p>issuers whose securities are traded by the public, over-the-counter, without the oversight of a stock exchange or other recognized self-regulatory organization.</p> <p>The Canadian securities regulatory authorities may consider exemptive relief in appropriate circumstances. 51-105CP has some guidance on how issuers can apply for relief.</p>
5.	<i>Section 3 – Reporting issuer designation and determination</i>	
	<p>A commenter was concerned that a company would be a reporting issuer in all provinces that have adopted MI 51-105 if the company triggers any one of the criteria in one of the local jurisdictions.</p>	<p>We acknowledge the comment but do not think that it necessitates a change to MI 51-105. MI 51-105 is proposed to be adopted as a local rule or regulation in each jurisdiction of Canada, except Ontario. The OTC reporting issuer designation and determination is made on a jurisdiction by jurisdiction basis as is the case for the determination of reporting issuer status under Canadian securities laws.</p> <p>We added some text to 51-105CP to clarify this issue.</p>
	<p>A commenter suggested that the determination of whether an OTC issuer is a reporting issuer in a local jurisdiction should be based on the current status of such a person's residence, not at the time the issuance was made, provided that the issuance was made before the Proposed Instrument came into effect.</p> <p>A commenter suggested adding a qualification that the person in a local jurisdiction who acquired stock before the ticker-symbol date still owns such stock after the effective date. The commenter was concerned that MI 51-105 may inadvertently capture companies that have no connection to the local jurisdiction.</p>	<p>We disagree with the comment. We think a test that incorporates a person's current residence may be utilized by persons seeking to avoid application of MI 51-105.</p> <p>We disagree with this comment. We think this change would significantly narrow the application of MI 51-105 and are concerned that the change may be utilized by persons seeking to avoid application of MI 51-105.</p> <p>Any issuer that is an OTC reporting issuer under MI 51-105, and believes that outcome is inconsistent with the purpose and the intent of MI 51-105, may apply to the applicable securities regulatory authority in the local jurisdiction for an exemption. 51-105CP has some guidance on how issuers can apply for relief.</p>

#	Comments	Responses
	A commenter asked for clarity on whether an embargoed press release (i.e., “not for dissemination in Canada”) would not trigger the criteria in Section 3(b).	An issuer needs to review the connecting factors in section 3 of MI 51-105 to conclude whether or not the issuer is an “OTC reporting issuer” and therefore subject to MI 51-105. A news release stating that it is “not for dissemination in Canada” is not determinative. We added some text in 51-105CP on this point.
6.	<i>Section 4 – Ceasing to be an OTC reporting issuer</i>	
	<p>A commenter wanted more specificity on when an OTC reporting issuer ceases to be an OTC issuer because it has a class of securities listed or quoted on an exchange or quotation system specified in the definition of “OTC issuer” in Section 1. The commenter suggested adding a sentence that expressly states that an OTC reporting issuer ceases to be an OTC issuer immediately upon it having a class of securities listed or quoted on an exchange or quotation system specified in the definition of “OTC issuer” in Section 1.</p> <p>A commenter recommended that the procedure for an OTC reporting issuer to cease to be such be the same for all local jurisdictions.</p>	<p>We disagree with the suggestion. We think it is appropriate for the (former) OTC issuer to inform the regulator about the issuer’s change in status.</p> <p>The Autorité des marchés financiers thinks that the revocation of reporting issuers’ status should be the same for all of its reporting issuers. As such, it will maintain its current process, by which the decision to revoke a reporting issuer’s status is made on a case by case basis by a decision maker.</p>
7.	<i>Section 5 – Additional disclosure requirements</i>	
	<p>A commenter noted that issuers required to report under Section 12 of the Securities Exchange Act of 1934 (the “Exchange Act”) that cannot timely file certain required filings, including a Form 20-F, Form 10-K or Form 10-Q, may receive an “extension” to file such reports, upon filing of a Form 12b-25. The commenter suggested that similar relief should be provided to OTC reporting issuers.</p>	<p>We disagree with the comment. We expect issuers to comply with the requirements of MI 51-105.</p> <p>Canadian securities regulatory authorities will generally not grant exemptive relief to a reporting issuer to extend a continuous disclosure filing deadline to enable an issuer to avoid a default.</p>
8.	<i>Section 7 – Registration statement</i>	
	<p>A commenter noted that there may be circumstances where an issuer’s registration statement was filed with the SEC several years ago and that filing the registration statement on SEDAR would not provide</p>	<p>We disagree with the comment. The requirement to file the registration statement applies to an issuer that becomes an OTC reporting issuer when it obtains its ticker symbol. If it becomes an OTC reporting</p>

#	Comments	Responses
	current information. The commenter also noted that certain registration statements (i.e., Form S-8 or Form 8-A) would not provide any material disclosure and should be carved out from this section.	<p>issuer this way, then the OTC reporting issuer must file the last registration statement it filed with the SEC.</p> <p>Generally speaking, the OTC reporting issuer will file the last registration statement that provides for registration of securities previously distributed by the OTC reporting issuer.</p> <p>We require OTC reporting issuers to file these registration statements because these documents provide base disclosure for which the issuers and their management are responsible and provides useful information for investors.</p>
9.	<i>Section 11 – Resale of seed stock</i>	
	<p>A commenter suggested amending section 11(1) of MI 51-105 to specifically limit the restrictions on resale to persons who reside in a local jurisdiction which has adopted MI 51-105.</p> <p>A commenter noted that section 11(1)(b)(iii) restricts an investment dealer to executing trades through any over-the-counter markets in the United States of America. The commenter stated that investment dealers executing such trades should not be restricted to over-the-counter markets in the United States of America, especially because other markets (outside Canada) may exist where such securities may be sold.</p>	<p>We do not think it is necessary to revise MI 51-105 in the manner suggested. We think that 51-105CP provides sufficient guidance to market participants.</p> <p>We acknowledge the comment but we will not be implementing this change at this time.</p>
10.	<i>Section 12 – Legends on seed stock</i>	
	<p>A commenter noted that the legend requirements contained in Section 12(1) of MI 51-105 may be impractical and, in some cases, impossible to satisfy.</p>	<p>We disagree that the legending requirements are impossible to satisfy.</p> <p>We can see circumstances where issuers have delivered unlegended share certificates prior to making the decision to go public in the U.S. over-the-counter markets.</p> <p>Issuers that have delivered unlegended share certificates can ask their shareholders to submit their certificates for replacement with legended ones. Shareholders may be motivated to seek legended certificates because, until they do, they will not be able to trade the securities without violating the resale</p>

#	Comments	Responses
		<p>requirements in MI 51-105.</p> <p>Another option for issuers would be to legend all share certificates, so that if shares are traded to an investor in a local jurisdiction, the restriction applies to the shares held by the investor.</p>
11.	<i>Section 13 – Resale of private placement securities acquired after ticker-symbol date</i>	
	<p>A commenter was concerned that section 13 of MI 51-105 is dissimilar to Section 12(1) of BCI 51-509. A commenter also presumed that it was not the intention of the CSA to restrict reliance on other exemptions from the registration and prospectus requirements contained in National Instrument 45-106 <i>Prospectus and Registration Exemptions</i> which may be available for transfer of securities of OTC reporting issuers.</p>	<p>In this context, we think it is important to limit trades of securities acquired in private placements to open market trades through investment dealers. A shareholder must apply for an exemption if the shareholder wishes to sell securities privately or under different conditions than permitted in MI 51-105.</p>
12.	<i>Section 15 – Securities for services</i>	
	<p>A commenter indicated that the valuation of certain securities, such as convertible securities, and the determination of whether issuance of the securities would be commercially reasonable would be difficult to establish.</p> <p>A commenter suggested allowing for a mandated discount similar to the concept of “discounted market price” as used in the Policies of the TSX Venture Exchange.</p>	<p>The issuer’s directors must assign a value to each security that the issuer proposes to issue. We think it is unnecessary to provide a definition or guidance on whether a particular issuance of securities is commercially reasonable. The commercial reasonability standard is commonly used in commercial contexts and its meaning has been discussed in numerous court decisions.</p> <p>We disagree with the comment. We will not be implementing this proposed change to MI 51-105.</p>

**Annex “C”
Local Matters**