

# Heenan Blaikie

March 13, 2007

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

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

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

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

Mark Franko

T 403 781.3390  
F 403 234.7987  
mfranko@heenan.ca

12th Floor, Fifth Avenue Place  
425 – 1st Street SW  
Calgary, Alberta  
Canada T2P 3L8

www.heenanblaikie.com

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

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

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

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

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

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

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

**Heenan Blaikie LLP**

(signed) *“Mark Franko”*

Mark Franko