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September 17, 2002

## VIA E: MAIL

Alberta Securities Commission  
British Columbia Securities Commission  
Manitoba Securities Commission  
Securities Administration Branch, New Brunswick  
Securities Commission of Newfoundland and Labrador  
Registrar of Securities, Government of the Northwest Territories

c/o **Peter Brady, Chair of the Continuous Disclosure Harmonization Committee**  
British Columbia Securities Commission  
PO Box 10142, Pacific Centre  
701 West Georgia Street  
Vancouver, British Columbia V7Y 1L2

Nova Scotia Securities Commission  
Registrar of Securities, Government of Nunavut  
Ontario Securities Commission  
Office of the Attorney General, Prince Edward Island  
Commission des valeurs mobilières du Québec  
Saskatchewan Securities Commission  
Registrar of Securities, Government of Yukon

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

Dear Sirs/Mesdames:

**Re: Comments on Proposed National Instrument 51-102 *Continuous Disclosure Obligations* (the “Rule”), Form 51-102F1, Form 51-102F2, Form 51-102F3, Form 51-102F4, Form 51-102F5, Form 51-102F6 (collectively, the “Forms”), and Companion Policy 51-102CP *Continuous Disclosure Obligations* (the “Policy”)**

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Thank you for the opportunity to comment on the Rule, Forms and Policy (collectively referred to as the “Policies”).

## Introduction

We are a mid-sized law firm located in Calgary, Alberta. We have five lawyers practicing in the securities law area. This group acts for numerous small to medium sized public companies primarily listed on the TSX Venture Exchange (the “Exchange”). Our public company clients represent a wide variety of industry sectors.

In preparing our comments we have reviewed the Canadian Securities Administrators Notice and Request for Comment, the Rule, the Forms, the Policy, and a comment letter to you dated August 29, 2002 from the Exchange. Two representatives from our firm also attended a presentation by Exchange staff on the proposed Policies.

### **Overview of the continuous disclosure philosophy**

Although the Policies provide for certain reductions to the reporting requirements of small issuers, in our opinion the Policies do not adequately address the fundamental differences between small issuers and more senior issuers. The cost of regulatory compliance is disproportionate for small issuers. The proposed Policies, which we agree are beneficial in terms of ensuring fair and efficient capital markets, impose an even greater financial burden on small issuers. This burden is not justified by the possible benefits to shareholders.

We concur with the suggestion of the Exchange that small business investments pose a much higher risk, due to the nature of the business and the small issuer's inability to cost-effectively comply with the same continuous disclosure requirements which senior issuers are subject to. Harmonized continuous disclosure regulations must recognize the differences in the capital markets of small and senior issuers. We would submit that each reporting requirement must be justified on its own by conducting an analysis of the benefits of the proposed requirement to shareholders and the incremental compliance costs to small and senior issuers alike, with appropriate concessions implemented for small issuers.

### **Business acquisition report**

The regulatory costs associated with business acquisitions by small issuers have made many potential transactions that would otherwise be attractive business opportunities prohibitively expensive. The financial reporting requirement set out in Form 54-102F4 further increases these costs and we would suggest provides little meaningful disclosure to shareholders in most instances, particularly in respect of development stage and exploration issuers. We suggest that the business acquisition requirements should not apply to any transaction where the issuer has filed an Exchange prescribed disclosure document in a form acceptable to the Exchange.

### **Implication for Exchange Discretion**

The policies of the Exchange take the context of the transaction into account. Further, the Exchange's review of business acquisitions, reverse take-overs, changes of businesses and capital pool company qualifying transactions includes an analysis of management and insiders, relative value, disclosure of relevant risk factors, and adequacy of financial resources upon completion of the transaction. Although the disclosure document may not necessarily contain audited financial information, the disclosure is typically more meaningful to shareholders.

Further, the Exchange currently has discretion to deal with financial statement issues that may arise in the course of its review of a proposed transaction. If the financial reporting requirements of the Policies are implemented as proposed, matters involving financial statement issues will involve potentially costly applications to the appropriate securities commission for resolution.

### **120 days for annual financial statements**

Generally, we expect that small issuers will be able to comply with the shortened period for filing audited year end financial statements. However, under the new reporting regime, those issuers with a December 31 year end must file their audited financial statements by April 30. Many auditors of small businesses also have significant personal tax practices and it is inevitable that some issuers will have to complete their audits and file their financial statements prior to March 31 or earlier.

### **Conclusion**

Although we support the idea of national continuous disclosure rules with a view to ensuring fair and efficient capital markets, we are of the opinion that the proposed Policies do not adequately recognize the disproportionate cost of compliance to small issuers. Additional research should be conducted to determine whether the incremental costs to small issuers justify the potential benefit to shareholders.

We appreciate the opportunity to provide our comments. Should you have any questions, please do not hesitate to contact the undersigned.

Yours very truly,  
McLEOD & COMPANY LLP

signed "Richard A. Finlay"

Richard A. Finlay

RAF/

cc: TSX Venture Exchange  
Attn: Matt Bootle, Director of Accounting Standards