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September 19, 2002

Peter Brady, Esq.  
Chair of the Continuous Disclosure Harmonization Committee  
British Columbia Securities Commission  
P.O. Box 10142, Pacific Centre  
701 West Georgia Street  
Vancouver, British Columbia  
V7Y 1L2

Dear Sir:

Re: Proposed National Instrument 51-102, Companion Policy 51-102CP  
and National Instrument 71-102 — Continuous Disclosure Obligations

We are writing to convey our comments on the proposed National Instruments and Companion Policy published on June 21, 2002. We are generally supportive of the proposals that relate to areas within the expertise of auditors, and applaud the Canadian Securities Administrators for changes which would strengthen and accelerate financial reporting, harmonize requirements in the several jurisdictions, and improve guidance for issuers and their professional advisors.

These comments are made by a Task Force of the Assurance Standards Board charged with developing revisions of Sections of the CICA Handbook – Assurance related to offering documents and other financial reporting issues. This letter does not necessarily represent the views of the Board, which is the assurance standard-setting body within the Institute. We understand that other groups within the CICA will be submitting comments on the proposals relating to accounting and MD&A.

Our responses to the specific questions asked in the Request for Comments are identified by the numbers used in the Request.

1. *Criteria for Determining Financial Statement Filing Deadlines*

First, we are concerned about the proposal that smaller issuers would be exempted entirely from the requirement to file an AIF. In our view, providing for a simplified AIF for smaller issuers would serve a greater need than does the AIF of senior issuers, for which relevant information is normally available from many sources. That said, we would favour the use of a single criterion both for determining financial statement deadlines and for the use of a simplified AIF. The most suitable criterion would seem to be the test of eligibility for the use of a short form prospectus, that is, an aggregate market value of \$75 million or more.

2. *Elimination of Requirement to Deliver Financial Statements*

We agree with the approach suggested.

3. *SEC Developments*

- (a) Filing Deadlines – While we support the new deadlines for annual and quarterly reports proposed in the National Instrument, we believe that many senior Canadian issuers are not equipped at present to deal with a 60-day deadline for annual reports or a 30-day deadline for quarterly reports. We note that such a change may be more easily accomplished by U.S. issuers as a result of the mandatory auditor review of interim financial statements in that country. We are concerned that in the tradeoff between timeliness and reliability, the quality of interim reports could be seriously impaired.
- (b) Current Report Requirements – No comment.
- (c) Critical accounting policy disclosure - See the response of other CICA groups.

4. *Combination of Financial Statement and MD&A Filings*

We agree with the proposal to require the filing of the financial statements and MD&A at the same time.

5. *Disclosure of Restructuring Transactions in Information Circulars*

- (a) We believe the definition of “restructuring transaction” is appropriate.
- (b) It would seem appropriate to include significant acquisitions of assets. If the transaction is such as to require shareholder approval, the form of the transaction should not result in a difference in the disclosure requirements.
- (c) We believe the appropriate entities are identified.
- (d) While the intention is to avoid requiring disclosure that is not relevant in the circumstances, we believe that the requirement as drafted (which is essentially unchanged from the existing provision) is open to abuse. For example, we have noted cases of reverse takeovers where the only historical financial statements provided were unaudited, or where pro forma statements were provided only for an interim period and not for a full year. We suggest that there may be a need for a staff notice or some other means of explaining what is required.
- (e) We think no separate forms of information circular are required.
- (f) We think it is unnecessary to identify the relevant items in the prospectus form for every possible type of transaction.

6. *Significant Acquisitions Disclosure*

We have commented previously in connection with the prospectus rules that we believe it would be preferable if the significance tests for business acquisitions were conformed to those of the SEC. Canadian accountants are generally familiar with the U.S. rules, and conforming the requirements would avoid situations where issuers filing in both Canada and the U.S. must consult two different sets of rules.

In any case, we believe it is important that the test for continuous disclosure purposes be the same as that for prospectus purposes.

7. *Requirement to File Material Documents*

We have no comment.

8. *Criteria for Identifying Small Issuers*

The application of different tests for different purposes seems unnecessary. We would favour the application of a single test, such as \$75 million aggregate market value.

9. *Approach to Regulation of Small Issuers*

We question whether the varying criteria for purposes of financial statement deadlines, disclosure requirements, AIF filing requirements and executive compensation requirements can be justified on a cost/benefit basis. As noted above, we favour the application of a single criterion.

10. *Cost/Benefit Analysis*

We have no comment.

11. *Credit Supporters and Exchangeable Shares*

- (a) We would favour the first alternative named, that is, that the continuous disclosure obligations of the issuer be supplemented by a requirement that it provide continuous disclosure about the credit supporter. There may be developments that have a significant effect on the issuer that would not be disclosed if the only disclosure made was that relating to the credit supporter. Further, there may be developments that are significant to the credit supporter that are irrelevant to the issuer.
- (b) We favour the proposed requirement for the parent issuer to provide continuous disclosure, with the proposed exemption for a parent issuer that is either a reporting issuer or an SEC issuer.
- (c) In the case of a credit supporter, we believe that only financial statements and MD&A should be required. As to parent issuers, we believe full continuous disclosure should be required.
- (d) We have no suggestions about other situations.

We have a number of additional comments related to the proposals.

*Pro forma Financial Statement Disclosure for Significant Dispositions*

We do not understand the rationale for proposing pro forma disclosure of significant dispositions after they have taken place, unless it is a desire for symmetry. As is noted in the request for comments, the CICA Accounting Standards Board has exposed for comment a proposed Handbook Section dealing with disclosure of and accounting for significant dispositions within the historical financial statements. The cost allocations and assumptions required to construct pro forma financial statements are likely to make the pro forma presentation more misleading than enlightening. We recommend that the proposal be dropped.

*Auditor's Report Under U.S. GAAS*

We concur with the proposal to permit the auditor's report on financial statements of an SEC issuer to be prepared in accordance with U.S. GAAS. However, we note two factors that must be considered in this connection. First and most significant, there are issues surrounding the current requirements of the Canada Business Corporations Act and a number of the provincial corporations acts that require financial statements to be prepared in accordance with Canadian GAAP and auditor's reports to be in accordance with Canadian GAAS, as well as requirements governing the accounting followed by financial institutions. Second (and related to the first point), the requirements of FOREIGN REPORTING, Section 5610 of the CICA Handbook – Assurance would have to be reviewed and a decision reached as to whether the existing Recommendations require change.

*Auditor's Report Under Other Foreign Auditing Standards*

In certain circumstances, the proposals would permit the financial statements of a foreign issuer to be audited, and the auditor's report issued, under auditing standards other than those of Canada or the U.S. When the audit is conducted under either International Standards of Auditing or standards that are substantially equivalent to Canadian GAAS, the auditor's report must be accompanied by a statement by the auditor confirming that the standards applied are substantially equivalent to Canadian GAAS, and disclosing materially differences in the form and content of the auditor's report. While in principle we see no objection to this proposal, we question how, in many cases, a foreign auditor (or a Canadian auditor who is consulted on the matter) will be able to confirm that the foreign GAAS applied are "substantially equivalent" to Canadian GAAS.

*Business Acquisition Disclosure*

We are concerned that the proposed Instrument is unclear as to the consequences of an issuer's failure to comply with the disclosure requirements for business acquisitions. It is to be expected that situations will arise where the issuer is unable to comply, for example when the vendor of the business will not provide the required financial information, or does not do so on a timely basis.

*Inappropriate Disclosure of Financial Information*

Situations sometimes arise in which financial information such as the results of operations are disclosed in press releases or by other means before the financial statements have been approved by the board or the audit committee. This can have an unfortunate result if it is later determined, as a result of an audit or review, or deliberations by the directors, that changes are necessary or desirable.

We recommend that the CSA consider introducing into the continuous disclosure requirements a provision that would prohibit the publication of the financial position or results of operations before the board, or where appropriate the audit committee, has approved the financial statements. This would have to be worded in such a way as not to discourage the timely release of appropriate forward-looking information.

We hope that these comments will be helpful.

Yours very truly,



James Saloman, FCA  
Co-Chair, Assurance Standards Board Task Force