

March 8th, 2006

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**Re: Request for Comment Proposed Amendments to National Instrument 51-102  
Continuous Disclosure Obligations.**

Dear Sirs and Mesdames:

The Canadian Advocacy Committee (CAC) of Canadian CFA Societies is please to have an opportunity to respond to the proposed change for National Instrument 51-102.

The CAC represents the 13,000 Canadian members of CFA Institute<sup>1</sup> and its 12 Member Societies across Canada. The CAC membership includes portfolio managers, analysts and other investment professionals in Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada.

***1. Venture issuers and debt-only issuers – Should debt-only issuers be treated as venture issuers? Should an exchange listing of debt only affect the treatment of the issuer under NI 51-102 and more specifically should a foreign exchange listing of debt only affect the treatment of a Canadian debt-only issuer?***

The CAC does not agree that debt-only issuers should be treated as “venture issuers” because as we understand the proposed rules this would increase the delay in the reporting of

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<sup>1</sup> In August of 2004, the Association for Investment Management and Research (AIMR) changed its name to the CFA Institute

financial information. The CAC believes that debt investors need timely information in the same manner as equity investors. Further as this information is provided to credit rating agencies and private lenders on an ongoing basis we believe that the timely distribution of this information would not pose an unfair burden to debt issuers.

***2. Request form – We propose amending section 4.6 of NI 51-102 to remove the requirement for issuers to send a request form to their shareholders each year. We have not changed the requirement for issuers to mail their financial statements and MD&A to any shareholder that requests them, or to disclose in the information circular how the shareholders may request the financial statements and MD&A.***

The CAC supports this change. Nonetheless, the process of requesting information should be simple, without significant cost to the investors and not rely on the investors having access to the internet.

***3. Delivery of financial statements – Under NI 51-102, an issuer must mail its financial statements to any securityholder that requests them. An issuer is exempt from this requirement if it mails its statements to all its securityholders. We propose to clarify in the exemption when the issuer has to deliver the financial statements to rely on the exemption.***

The CAC believes that minor delays are acceptable regarding disclosure that is mailed to investors. However, if electronic disclosure is permitted and used by an issuer then there should be no delays for conventional distribution of statements to those that request written copies.

***4. Filing of certain documents – Although we have not proposed specific amendments to Part 12 of NI 51-102, we are considering streamlining it.***

***a) Is the filed information useful to investors?***

It is the view of the CAC that these documents are not only useful, they are essential to have a proper understanding and evaluation of a firm's financial disclosure.

***b) Do the benefits to investors outweigh the costs to issuers complying with the requirement?***

We believe that the relative cost of making these documents available to investors is small and clearly the benefit is large. Given the risks accepted by investors, all consciences investors and investment professionals will use any and all available information in order to monitor their investment portfolios. Our members most certainly read and make financial decisions based on the financial statement and the MD&A.

***c) Should we eliminate the requirement? Why?***

As discussed above, we believe that the maintenance of this requirement is beneficial to the public. Further, we believe that the presentation of such information should be improved. Documents issued under this requirement should be clearly identified and be easy to locate on any electronic filing system. Current practices are ad hoc and not consistently applied by issuers (a significant number of these documents are found in the “other” or “press release” category on SEDAR). Documents that remain valid for long periods of time such as articles of incorporation should not be ranked at the bottom of the list as new documents are filed. Our members have found that current documents relating to this requirement are posted below annual and quarterly statements that can be many years old.

***4. Further comments and suggestions:***

The CAC is concerned that the current continuous disclosure regime does not adequately meet the needs of fixed income investors. Although the current MD&A disclosure requires a discussion of any existing or impending default under debt or significant loan agreements these provision are insufficient to appreciate an issuer’s true default risk.

In many cases current debt covenant ratios are difficult or impossible to calculate because either the specific definition used in the debt instrument’s legal documentation is not available or because the detail information required to calculate a ratio is not reported within the financial statements.

The CAC believes that required MD&A disclosure rules should include further information on an issuers’ current debt ratios included within credit agreements and trust indentures. Specifically, the CAC suggests including a table with 1) all significant debt covenants ratios; 2) the level that must be maintained according the various debt indentures; and 3) the current level of the ratio as of the reporting date. Disclosure should apply both for public debt and private debt (including private placements and bank debt).

We believe that an issuer will incur no additional cost in collecting this information since management must already monitor and report their financial performance against debt covenants to its debt holders or trustees.

The CAC would welcome the opportunities to provide any assistance that might be useful. Please refer questions to Robert Morgan at [morgan@forbes-morgan.ca](mailto:morgan@forbes-morgan.ca) (514) 583 2395.

Sincerely yours,

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Canadian Advocacy Committee

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