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By Email

March 9, 2006

British Columbia Securities Commission  
Alberta Securities Commission  
Saskatchewan Financial Services Commission – Securities Division  
Manitoba Securities Commission  
Ontario Securities Commission  
Autorité des marchés financier  
New Brunswick Securities Commission  
Registrar of Securities, Prince Edward Island  
Nova Scotia Securities Commission  
Newfoundland and Labrador Securities Commission  
Registrar of Securities, Northwest Territories  
Registrar of Securities, Yukon Territory  
Registrar of Securities, Nunavut

Dear Sirs/Mesdames:

**Re: Proposed Amendments to National Instrument 51-102 *Continuous Disclosure Obligations* ("NI 51-102")**

We are writing in response to the request for comments in respect of proposed amendments to NI 51-102 dated December 9, 2005.

Our comments on the proposed amendments are as follows:

1. We agree with the exemptions provided in section 8.4 (4) and (6) which allow an issuer to incorporate by reference into a business acquisition report interim financial statements and pro forma financial statements related to an acquired business if such financial statements were included in a document filed before the date of acquisition that provided prospectus level disclosure for the acquired business.
2. We note that the Income Test is still included as one of the tests for measuring the significance of an acquisition. We have encountered situations where the Income Test leads to anomalous results in that the significance of the acquired business is exaggerated out of proportion to its significance on an objective basis and in comparison to the results of the Asset Test and Investment Test.

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As an example of the anomalous results, we note that because absolute values of loss and earnings numbers are sometimes compared in applying the test, an issuer with an enormous loss may not be caught by the test, while an issuer with a small profit would be.

Additionally, because most investment decisions are at least in part based upon a discounted cash flow analysis, earning power is already reflected in the issuer's investment in the target company.

If the Income Test cannot be eliminated in its entirety, and it is considered necessary to have a test based on the earnings statement, we would recommend that it be replaced with a revenue-based test. We note, for example, that in other statutes such as the *Competition Act* (Canada), the notifiable transactions provisions provide for a revenue-based test for the determination of whether or not that part applies to a transaction. The determination of revenue would likely be subject to fewer accounting adjustments than the determination of income from continuing operations. Therefore, it would likely provide a more accurate gauge of the significance of an acquired business as compared to an issuer rather than an income test which can provide anomalous results where the income of an issuer may be artificially low due to accounting reasons.

We hope our comments on the proposed Instrument are helpful and if you would like to discuss any of the issues raised in this letter, please do not hesitate to contact Paul Mingay at (416) 367-6006 or Gordon Raman at (416) 367-6232.

Yours very truly,

*(signed) Borden Ladner Gervais LLP*

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