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BY ELECTRONIC MAIL

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Alberta Securities Commission
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Ontario Securities Commission
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*

We have reviewed the proposed amendments to National Instrument 51-102 *Continuous Disclosure Obligations* ("NI 51-102"), the accompanying forms and Companion Policy 51-102CP and have the following comments.

Filing of Material Contracts

The requirement under Part 12 of NI 51-102 for reporting issuers to file material contracts entered into outside the ordinary course of business should be eliminated. Both the Toronto Stock Exchange (the "TSX") and the TSX Venture Exchange rules already require the timely disclosure of "material information", which would include both material facts and material changes concerning the business and affairs of an issuer. Section 410 of the TSX Company Manual provides examples of developments likely to require prompt disclosure and includes "entering into or loss of significant contracts". As a result, issuers are required to promptly disclose such material information to the public by news release (subject to certain exceptions). Section 418 of the TSX Company Manual requires the news release to be factual and to contain sufficient detail to enable media personnel and investors to appreciate the true substance and importance of the information so that investors may make informed investment decisions. This section also indicates that the guiding principle in respect of the content of announcements should be to communicate accurately the nature of the information, without providing unnecessary details. According to National Policy 51-201 *Disclosure Standards*, issuers who do not comply with an exchange's disclosure requirements could be subject to an administrative proceeding before a provincial securities regulator.

In addition, if the entering into of a contract constitutes a "material change", the issuer is required to prepare and file a material change report under NI 51-102. Form 51-102F3 requires that the issuer provide sufficient disclosure to enable a reader to appreciate the significance and impact of the material change without having to refer to other material.

As a result of the existing requirements governing timely disclosure of material information established by the stock exchanges, as well as the requirement to file a material change report if a material change occurs in the affairs of the issuer, the requirement to file material contracts under Part 12 of NI 51-102 seems to be redundant.

The TSX Company Manual rules relating to timely disclosure also provide that disclosure of material information concerning the business and affairs of a listed company may be delayed and kept confidential temporarily where immediate release of the information would be unduly detrimental to the interests of the company. NI 51-102 also permits an issuer to file a material change report on a confidential basis where immediate release of the information would be unduly detrimental to the issuer. However, section 12.2(2) of NI 51-102 only provides that an issuer may omit or black-out *certain provisions of the contract* if disclosure of those provisions would be seriously prejudicial to the interests of the issuer or would violate confidentiality provisions. As a result, although disclosure of confidential information would not be required by the TSX rules or the material change rules in NI 51-102 because such information would be detrimental to the issuer, an issuer would still be required to file a contract under Part 12 of NI 51-102 even though in certain circumstances, the entering into of the contract and the nature of the contract itself could be considered confidential information to the issuer, disclosure of which could be unduly detrimental. In these circumstances, the issuer would be required to black-out the nature of the contract itself, in addition to the relevant details of the agreement, which would ultimately provide no useful information to the public once the contract has been filed.

Financial Statement Disclosure for Significant Acquisitions

Sections 8.4(4) and (6) of the proposed NI 51-102 create an exemption from the requirement to include more recent interim and pro forma financial statements in a business acquisition report. One of the conditions included in the exemptions is that "a reasonable investor would not regard the issuer's primary business to be the business acquired by the issuer". It is submitted that the meaning of this condition is not clear and as a result, determining whether or not this condition has been satisfied for any particular acquisition would be difficult. For example, would the acquisition of additional assets (constituting a business) to supplement an issuer's existing primary business trigger this condition and prevent an issuer from relying on the exemption, assuming compliance with all of the other conditions. If so, the issuer would be required to update the interim and pro forma financial statements for the acquired business in the business acquisition report, even though the issuer's primary business has not changed following the acquisition. In addition, the determination of what constitutes the primary business of the issuer may be difficult for many issuers and the proposed instrument provides no guidance on how this term is defined. Consideration should be given to removing this condition from the proposed exemptions.

Additional Disclosure Requirements - Re-filing Documents

Section 11.5 of the proposed NI 51-102 requires an issuer to file a press release disclosing the nature and substance of a change or proposed change if the issuer re-files a document and the information in the re-filed document differs materially from the information in the original document. This new section would appear to require a news release in circumstances where a filing has been made, such as a material change report or business acquisition report, that contained an error (such as a numerical error in respect of reserves data or financial information which may differ materially from what was intended) even in circumstances in which a press release has previously been issued which contained the correct information. Under the current practice, if such an error has been made, the document is immediately re-filed as an amendment with a cover letter explaining the reason for re-filing. Both filings appear on SEDAR and allow the public to clearly see the amendment that has been made. In the above example, it is unlikely the public would even have the incorrect information which would be corrected by the subsequent press release required by section 11.5.

Filing a press release in certain circumstances as required under the proposed section 11.5 would seem to be unnecessary and may create confusion among the public. Consideration should be given to narrowing the scope of its application.

Please contact me if you have any questions or require clarification on any of the foregoing comments.

Sincerely,

MACLEOD DIXON LLP

(Signed) Scott Negraiff