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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 financiers  
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, Government of Yukon  
Registrar of Securities, Nunavut

Submitted by e-mail to:

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**RE : Comments on Proposed Amendments to NI 51-102 *Continuous Disclosure Obligations***

The Canadian Investor Relations Institute (CIRI) is pleased to respond to the CSA's Request for Comment regarding proposed amendments to NI 51-102 Continuous Disclosure Obligations, Related Forms and Companion Policy, NI 52-107 Acceptable Accounting Principles, Auditing Standards and Reporting Currency, and NI 71-102 Continuous Disclosure and Other Exemptions Relating to Foreign Issuers and Companion Policy

CIRI is a professional, not-for-profit organization of corporate executives and consultants responsible for communication between public companies and the investment community. With over 800 members as of the end of 2005, CIRI is the world's second largest society of investor relations professionals. CIRI is headquartered in Mississauga and has active chapters in Toronto, Montreal, Calgary and Vancouver.

CIRI is dedicated to advancing the stature and credibility of the investor relations (IR) profession and the competency of its members. CIRI is recognized as the Canadian authority on investor relations, and is committed to enabling fair and efficient capital markets. As part of that commitment, CIRI takes a strong interest in continuous disclosure obligations to aid shareholders in making informed investment decisions.

### *General Comments*

CIRI supports the proposed amendments to NI 51-102. In the comments below, we have expanded on areas of particular importance from an investor relations perspective. For the two areas of CIRI's concern, we repeat, in bold type, the CSA's questions from the Request for Comment notice.

## **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.**

CIRI is concerned about the consequences of this amendment, primarily from the shareholder's point of view. If left to the discretion of each issuer as to how shareholders may request each issuer's annual and/or interim financial statements and MD&As on the initial delivery dates, then it is very likely that shareholders would be given a confusing array of methods to request these documents. For example, without more detailed specification in NI 51-102, a shareholder of four different securities could be instructed to send a request by e-mail to one issuer, by mail to the second issuer, by phone to the third issuer and by facsimile to the fourth issuer. Further, the specified recipient of those requests could also vary widely from issuer to issuer including: the issuers' law firm, transfer agent or to any of the issuer's departments.

CIRI agrees that it is helpful to shareholders to require every issuer to disclose in the information circular and the annual information form as to how an issuer's shareholders may contact that issuer to request the financial statements and MD&A. CIRI does not agree, however, that how that contact is made should be left to the discretion of each issuer and would prefer that NI 51-102 was more specific.

As a solution, CIRI recommends that NI 51-102 require issuers to use the existing proxy form and the voting instruction form as the request forms upon which shareholders should request annual and/or interim financial statements and MD&As on the initial delivery dates. If this recommendation was followed, a shareholder would be asked to simply mark a box on the proxy or voting instruction form rather than having to fill out a separate request form. The advantages of using the proxy and voting instruction forms to request the financial statements and MD&A include:

- eliminating the need for either the issuer or the shareholder to create, handle or process a separate request form;
- reducing the number of forms sent to each shareholder;
- allowing shareholders the ease of using a form that already identifies the shareholder, thus eliminating any need for the shareholder to write down his or her name and address and any errors that could result from any missing or misread mailing information on a hand-written form; and
- providing shareholders with a consistent format to request this material for all securities.

**a) Do you agree that we should remove the requirement to deliver an annual request form? Why?**

No. CIRI recommends the use of a form to provide consistency in how shareholders contact issuers to request the financial statements and MD&A. As stated earlier CIRI recommends, however, that rather than using a separate request form, the request for this material be indicated on the proxy or the voting instruction form. Online voting could be amended to include a selection box for the shareholder to request this information.

**b) If we retain it, should we amend the requirement to specify**

**(i) when and how an issuer should send the request form, or**

Yes. NI 51-102 should require that an issuer add a selection box on the proxy form and on the voting instruction form. The regulations for sending these forms need not be specified in section 4.6 of NI 51-102.

**(ii) the content of the request form**

As CIRI does not recommend using a separate form to request the financial statements and the MD&A, there would be no need to specify the content.

**c) Are there any other changes we should make to the request form, if we retain it?**

No, CIRI does not recommend any other changes to the request form. CIRI does recommend, however, that the CSA extend its influence to effect changes in regional securities acts, including section 79.(1) of the Ontario Securities Act, to harmonize with NI 51-102 as to the default action that issuers must take with regard to delivering the financial statements and MD&A. The acts stipulate that issuers must send this material to registered shareholders unless otherwise specified by the shareholder. NI 51-102 allows issuers to refrain from sending this material to any shareholders, including registered shareholders, unless otherwise specified by the shareholder. This conflict in approach renders this particular aspect of section 4.6 (1) of NI 51-102 redundant as the acts takes precedence and the conflict is confusing for issuers and shareholders alike.

**d) If we eliminate the request form, is there an alternative we could propose to replace the request form that would allow shareholders to request financial statements and MD&A?**

As stated earlier, CIRI recommends that a separate request form be replaced by adding a selection box on the proxy form and the voting instruction form, providing a consistent request format for shareholders and enabling issuers to efficiently solicit shareholder response to the delivery of the annual and interim financial statements and MD&A.

### 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.**

**We believe the delivery deadline should be the same if an issuer is sending the statements on request, or to all its securityholders under the exemption. We think it is important that securityholders that want paper copies of the financial statements have prompt access to them once they are filed. Their access should not be affected by the issuer relying on an exemption. As we recognize that an issuer may need time to copy the statements after filing them, we have extended the delivery deadline to no later than 10 days after the filing deadline. Do you agree with this change?**

CIRI agrees that the current wording of section 4 of NI 51-102 requires clarification. CIRI also agrees that shareholders should have access to paper copies of the financial statements and MD&A.

CIRI does not, however, agree that the obligation of issuers to provide paper copies of those materials should place an undue burden upon issuers for the relatively few requests for paper copies that most issuers receive. The proposed amendment does not significantly change the current status of the NI 51-102. The consequences of implementing the proposed amendment can still cause issuers to incur two mailings to their shareholders in advance of their annual meetings; one mailing for the financial statements and MD&A and a second mailing for the proxy, management information circular, notice of annual meeting and other proxy related materials. Issuers wishing to avoid two mailings will be forced to move their annual meetings or their fiscal year ends to bring those two events close enough together so that their record dates for their annual meetings occur before the required delivery date of their financial statements and MD&A. A side effect of accelerated annual meeting dates could be a concentration of annual meetings over a shorter period of time, which, in turn, could result in a possible shortage of venues, and in scheduling conflicts between issuers as well as between directors sitting on several boards, transfer agents acting as scrutineers, members of the investment community and others who involved in annual meetings.

CIRI is concerned that the proposed amendment places too much significance on the early delivery of paper copies of the financial statements and MD&A. Most shareholders, potential investors and investment analysts regularly make use of online access to these materials. With the successful adoption in 2005 of the new filing deadlines specified in NI 51-102, the majority of those interested in obtaining those documents can do so relatively soon after the end of the reporting period.

CIRI recommends that the requirement to deliver paper copies of the financial statements and MD&A be timed with the delivery of the proxy and proxy related materials. This recommendation would still allow shareholders to receive paper copies of the financial statements and MD&A in advance of the annual meeting without unduly burdening issuers to rush the production of these paper copies.

Although the proposed amendments recognize that issuers need time to copy any reports for shareholders, the proposed extension of 10 days would not, however, handle all issuers' requirements to produce a sufficient number of annual reports. Many issuers still publish the financial statements and MD&A in a full-colour annual report, which usually requires more than 10 days to print, dry, bind, package and distribute. CIRI's recommendation allows issuers the time to fully complete the printing process of the annual reports and still deliver these reports in advance of the annual meeting.

CIRI agrees that NI 51-102 should still specify that issuers be required to fulfill, within 10 days, any requests for the financial statements and MD&A that issuers receive after they have completed their primary mailing of the financial statements and MD&A. In addition to disclosing how shareholders may request the financial statements and MD&A in the information circular, many issuers have a 'contact us' section on their web sites where shareholders or other interested parties can request disclosure documents by e-mail or phone. We strongly encourage this practice.

And finally, to accommodate the very few shareholders who are impatient to receive paper copies of the financial statements and MD&A and who can not or are not willing to print this material from the issuer's web site or the SEDAR web site, CIRI recommends that if the final published copies are not yet available, issuers be required to print a black and white copy of the online documents and forward them to the shareholder within 10 days.

CIRI appreciates the opportunity to make this submission and we would be pleased to answer any questions you may have.

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