

## Chapter 6

# Request for Comments

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### 6.1.1 CSA Notice - Proposed NI 51-101 Standards of Disclosure for Oil and Gas Activities and Request for Public Comment

CANADIAN SECURITIES ADMINISTRATORS

NOTICE

PROPOSED NATIONAL INSTRUMENT 51-101  
STANDARDS OF DISCLOSURE FOR  
OIL AND GAS ACTIVITIES

PROPOSED REPEAL OF NATIONAL POLICY STATEMENT  
NO. 2-B

AND

PROPOSED CONSEQUENTIAL AMENDMENTS

REQUEST FOR PUBLIC COMMENT

The Canadian Securities Administrators (the "CSA") seek public comment on proposed new standards for public disclosure by reporting issuers in the oil and gas sector. We are also proposing to repeal an existing national policy statement and to make consequential amendments to certain securities legislation. We request comments by April 30, 2002.

#### 1. Introduction

##### (a) Proposed NI 51-101<sup>1</sup>

Proposed National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities ("NI 51-101") would establish a regime of continuous disclosure for reporting issuers engaged in exploring for, developing or producing oil or gas, including the extraction of oil from oil sands or shale.

NI 51-101 would be supplemented by three proposed forms and a companion policy:

- ! Form 51-101F1 Statement of Reserves Data and Other Oil and Gas Information ("Form 1")

- ! Form 51-101F2 Report on Reserves Data by Independent Qualified Evaluator ("Form 2")

- ! Form 51-101F3 Report of Management on Oil and Gas Disclosure ("Form 3")

- ! Companion Policy 51-101CP (the "Policy")

(In this Notice, NI 51-101, Forms 1, 2 and 3 and the Policy are together referred to as the "Instrument".)

The text of the Instrument is being published concurrently with this Notice and can be obtained on websites of CSA members, including the following:

- ! [www.albertasecurities.com](http://www.albertasecurities.com)
- ! [www.osc.gov.on.ca](http://www.osc.gov.on.ca)
- ! [www.cvmq.com](http://www.cvmq.com)
- ! [www.bcsc.bc.ca](http://www.bcsc.bc.ca)
- ! [www.ssc.gov.sk.ca](http://www.ssc.gov.sk.ca)
- ! [www.msc.gov.mb.ca](http://www.msc.gov.mb.ca)

##### (b) Repeal of NP 2B

In conjunction with the Instrument, the CSA propose to repeal National Policy Statement No. 2-B Guide for Engineers and Geologists Submitting Oil and Gas Reports to Canadian Provincial Securities Administrators ("NP 2B"). As discussed below, the disclosure standards set out in the Instrument are designed to replace the older, more limited, prospectus-focused standards of NP 2B.

##### (c) Consequential Amendments to Securities Legislation and Directions

The CSA also propose, in conjunction with the Instrument, to amend rules, regulations or other securities legislation and securities directions in various CSA jurisdictions to:

- ! eliminate current requirements for content, preparation and filing of oil and gas reports, in connection with the filing of a prospectus or otherwise<sup>2</sup>;
- ! eliminate current requirements for the filing of oil and gas reports under Multilateral Instrument 45-102 Resale of Securities ("MI 45-102"), such that the

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<sup>1</sup> In Ontario, the following provisions of the *Securities Act* provide the Ontario Securities Commission with authority to make proposed NI 51-101: paragraphs 143(1)22, 24 and 39.

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<sup>2</sup> In Alberta, the Alberta Securities Commission proposes to repeal sections 89,90 and 91 of the ASC Rules

requirements of the Instrument would take the place of those current requirements; and

- ! substitute, for the disclosure currently prescribed for prospectuses and annual information forms ("AIFs"), disclosure consistent with that required under the Instrument.

The proposed changes to MI 45-102 and to the disclosure requirements for prospectuses and AIFs are set out in the Appendix to this Notice.

## **2. Background**

### **(a) Current Oil and Gas Disclosure Requirements**

Current requirements for disclosure concerning oil and gas activities apply principally in connection with prospectus filings.

- ! Current prospectus forms require disclosure of specified information about an issuer's oil and gas properties, wells, production, estimated reserves and plans for exploration and development.
- ! NP 2B deals mainly with the preparation and content of engineering reports submitted in connection with a prospectus filing, and sets out information relating to oil and gas reserves that is to be included in a prospectus.

To the extent that there is currently an oil and gas continuous disclosure requirement, it arises in connection with the AIF required of certain reporting issuers in Ontario and Québec, or in connection with AIFs filed voluntarily under National Instrument 44-101 Short Form Prospectus Distributions ("NI 44-101") or under Multilateral Instrument 45-102 Resale of Securities). The primary form of AIF is set out in Form 44-101F1 AIF, which calls for essentially the same oil and gas disclosure as in a long form prospectus.

### **(b) Deficiencies of Current Oil and Gas Disclosure Regime**

The current prospectus-centred oil and gas disclosure regime does not, in the view of the CSA or many market participants, adequately serve capital markets in which the vast majority of trading activities takes place in the secondary market. The CSA believe that a focus on continuous disclosure is necessary.

The CSA also share the concern expressed by some market participants that current oil and gas disclosure standards do not always produce information of the quality and consistency required to enable investors to make informed investment decisions. While many issuers and their professional advisers undoubtedly apply high standards and produce information of high quality, the CSA are concerned that poor, or inconsistent, disclosure practices on the part of some

issuers can lead to a broader impairment of public confidence in our capital markets, to the detriment of all oil and gas issuers and investors.

### **(c) ASC Oil and Gas Taskforce Recommendations**

The quality of oil and gas disclosure has been of particular concern to the Alberta Securities Commission. In June 1998, the ASC established an Oil and Gas Taskforce (the "Taskforce" mentioned earlier) to make recommendations for disclosure requirements for public oil and gas issuers. Taskforce members were drawn from a variety of sources, including small and large oil and gas producers, reserves evaluators, investment dealers, accounting and legal advisers and regulatory staff.

The Taskforce issued its recommendations in January 2001 (they can be viewed on the ASC website at [www.albertasecurities.com](http://www.albertasecurities.com)). The Taskforce recommendations included the following:

- ! Use of new reserves terminology and estimation procedures being developed by the Canadian Institute of Mining, Metallurgy & Petroleum ("CIM") and the Canadian committee of the international Society of Petroleum Evaluation Engineers ("SPEE").
- ! Annual disclosure by all public oil and gas issuers, containing:
  - (i) estimates of reserves and of future net revenue (cash flow) attributable to those reserves, in specified categories, based on specified assumptions and "forecast" as well as "constant" prices and costs, and reported on by independent professional evaluators; and
  - (ii) specified information relating to the issuer's oil and gas properties, production and activities (an updated, enhanced version of the disclosure currently required in prospectuses and AIFs).
- ! An explicit assignment of certain responsibilities relating to oil and gas disclosure to boards of directors, and encouragement for the establishment of a "reserves committee" with a majority of non-management members.

### **3. CSA Response to the Taskforce Recommendations and Alternatives Considered**

The CSA welcomed the Taskforce recommendations.

In developing a response, the CSA considered several possible alternatives:

- (i) Do nothing, retaining NP 2B and its prospectus focus.

- (ii) Adapt NP 2-B for continuous disclosure.
- (iii) Import continuous disclosure standards from the United States or elsewhere.
- (iv) Develop exclusively Canadian continuous disclosure standards.
- (v) Develop continuous disclosure standards combining US and Canadian elements.

The CSA rejected alternative (i) because of our concern about the inadequacy of current standards, as discussed above. We rejected alternative (ii) on the basis that the disclosure standards of NP 2B are simply too limited and too dated.

Alternatives (iii) and (iv) were both considered very thoroughly by the Taskforce which, as noted above, in essence recommended alternative (iv), a wholly Canadian system with one requirement very similar to current US standards.

The Taskforce recommendations generated considerable public interest and, in some cases, criticism. Some of the criticism of which the CSA are aware came from issuers and others who already work with, and are accustomed to applying, US standards. Those critics questioned the benefits of applying new, different but overlapping Canadian standards.

The CSA consider some of that criticism justified. The proposed Instrument, therefore, although largely consistent with Taskforce recommendations, reflects the CSA's adoption of alternative (v) above. The CSA have not relied on unpublished studies.

The proposed Instrument would establish a new continuous disclosure regime, centred on mandatory annual disclosure. The information to be disclosed each year would include, as part of "reserves data", "proved" reserves and related cash flow estimated using "constant" prices, applying US standards that are very similar to the corresponding standards recommended by the Taskforce. The annual reserves data disclosure would also apply made-in-Canada standards for disclosure of "proved" and "probable" reserves (and related cash flow) estimated using "forecast" prices. The reserves data would be supplemented by annual disclosure of other information relating to the issuer's reserves, production, properties, facilities and related activities.

The CSA have also considered exemptions that might be available, in appropriate circumstances, from certain of the requirements of the Instrument. These possible exemptions are discussed in the Policy and below.

#### **4. The CSA Proposal**

##### **(a) Purpose and Substance**

The Instrument is intended to improve the quality, consistency and comparability (among issuers, and over time) of public disclosure by reporting issuers in the

"upstream" oil and gas sector (as distinct from "downstream" refining and marketing activities).

Better disclosure should enhance the ability of investors to make informed investment decisions, and foster confidence in our capital markets.

The CSA are of the view that a reasonable investor, in making an investment decision concerning securities of an oil and gas reporting issuer, may find information about the issuer's oil and gas reserves, properties and facilities to be as important as the information contained in its financial statements. For that reason, the Instrument would establish standards for oil and gas disclosure somewhat akin to the standards for financial reporting:

- ! periodic (annual) reporting of "reserves data", which are estimates of reserves quantities and of associated future net revenue, as well as certain reserves-related information and other information about oil and gas activities;
- ! consistent application of professional- and industry-developed terminology and reporting standards;
- ! annual reporting, by an independent professional, on reserves data, again consistently applying newly-codified professional standards; and
- ! responsibility for reviewing and approving annual oil and gas disclosure explicitly assigned to the board of directors, with provision for the delegation of certain of those responsibilities to a "reserves committee".

To ensure consistency with the new Instrument, the CSA propose that existing provisions of securities legislation be:

- ! repealed, insofar as they relate to the preparation, content or filing of oil and gas reports; or
- ! amended, insofar as they specify oil and gas information to be disclosed in prospectuses or AIFs

##### **(b) Overview of the Instrument**

The following outline provides an overview of the disclosure regime under the proposed Instrument:

##### **Annual disclosure:**

- ! independent reserves evaluations required
- ! filing of such evaluations and other oil and gas information
- ! filing of independent evaluator's report and management report

- ! more information to support disclosure of "prospects" and certain other estimates

**Material change disclosure**

- ! must discuss the expected effect on information contained in the annual filings

**All disclosure**

- ! requirements and restrictions designed to ensure, for all public disclosure, quality and consistency (e.g., consistency with the annual filings and prescribed terminology)

**Prospectuses**

- ! eliminate current oil and gas disclosure items, substitute the new annual filings and material change disclosure

**Materiality standard**

- ! no disclosure of information that is not material to a reasonable investor's investment decision would be required

**Directors**

- ! explicit responsibilities (approve annual filings, review disclosure procedures)
- ! encouragement of independent "reserves committees" (like audit committees)

**(c) Summary of the Instrument**

Mandatory elements of the Instrument are set out in NI 51-101 and in Forms 1, 2 and 3. Form 1 also contains instructions to guide users. The Policy provides explanation and additional guidance on elements of NI 51-101, and discusses possible exemptions from its requirements.

**(i) NI 51-101**

Part 1 of NI 51-101 sets out the scope of the Instrument and identifies the source of certain terminology.

- ! Section 1.1 provides that the Instrument applies only to reporting issuers.
- ! Section 1.2 limits the application of the Instruments to information that is "material", in that it would be likely to influence a decision by a reasonable investor to buy, hold or sell a security of the reporting issuer.
- ! Section 1.3 provides that terms used in the Instrument have the meanings ascribed to them in the Appendix to NI 51-101 or, if no such meaning is given, the

meanings given in other securities legislation (including National Instrument 14-101 Definitions) or, to the extent not inconsistent, in the "SPEE Handbook" or the "FASB Standard".

The SPEE Handbook is the handbook of petroleum evaluation standards being developed by the SPEE. The FASB Standard, which is reproduced in Schedule 1 to the Appendix to the Policy, is derived from oil and gas disclosure standards of the United States Financial Accounting Standards Board (the "FASB").

Given the importance of the SPEE Handbook to the application of the Instrument, the CSA do not propose to implement the Instrument until the first edition of the SPEE Handbook has been finalized and accepted by the CSA.

Part 2 of NI 51-101 sets out certain requirements for financial reporting and estimation of oil and gas reserves and related information.

- ! Section 2.1 gives oil and gas reporting issuers that provide financial disclosure in accordance with Canadian generally accepted accounting principles a choice between two accounting methods.

- ! Section 2.2 prescribes standards for estimates of reserves and related information to be filed under the Instrument. Among other things, such information must be prepared by a qualified evaluator in accordance with SPEE standards and, in specified cases, applying the FASB Standard.

As defined in the Appendix to NI 51-101, a "qualified evaluator" must, among other things, be a member of a professional organization that admits members primarily on the basis of their education qualifications, requires compliance with professional standards established by the organization, has disciplinary powers, and is either given authority or recognition by statute in a Canadian jurisdiction or is accepted for this purpose by the securities regulatory authority or regulator.

Part 3 of NI 51-101 sets out certain responsibilities of reporting issuers and their directors.

- ! Section 3.2 requires a reporting issuer to appoint an independent qualified evaluator to report to its directors on reserves data.
- ! Section 3.3 requires the reporting issuer to make available to the reporting issuer information necessary to enable the evaluator to provide that report.
- ! Section 3.4 enumerates certain responsibilities of directors, including the responsibility to review the reporting issuer's oil and gas disclosure procedures

and practices and its appointment of an independent evaluator, and to approve the filing (and, in specified cases, the content) of certain information to be filed under the Instrument.

- ! Section 3.5 permits a board of directors to delegate its review responsibilities under section 3.4 to a "reserves committee", somewhat akin to an audit committee.

Part 4 of NI 51-101 sets out a number of requirements that would apply to public disclosure, generally, by or on behalf of an oil and gas reporting issuer. These requirements are intended to ensure that public oil and gas disclosure is consistent with information filed by a reporting issuer, consistent with SPEE standards or other applicable standards, and does not present information in a manner that might mislead recipients. The requirements would apply whether or not the public disclosure is filed with a securities regulatory authority. In some cases, they would apply to both written and oral disclosure.

Part 5 mandates annual disclosure filings by a reporting issuer.

- ! Section 5.1 of NI 51-101 would require issuers to file (i) the reserves data and other oil and gas information set out in Form 1, (ii) the report of an independent qualified evaluator on the reserves data (Form 2), and (iii) the report of management on the issuer's oil and gas disclosure (Form 3).

This information must be filed each year, in respect of the most recent financial year, within the time prescribed for filing the audited annual financial statements.

- ! Section 5.3 provides that these annual filing requirements can be satisfied by including the information in an AIF.
- ! Section 5.2 requires a reporting issuer to announce its filing of information under section 5.1 in news release that also advises the public where to find the filed information.

Part 6 of NI 51-101 expands on the requirements of securities legislation respecting disclosure of material changes. To maintain the usefulness of the annual filings under Part 5, section 6.1 would require that disclosure of a material change include a discussion of how, if at all, the material change is expected to affect the information most recently filed under section 5.1

Part 8 of NI 51-101 provides that exemptions from the Instrument may be granted by the securities regulatory authority or by the regulator (in Ontario, only by the regulator).

Part 9 of NI 51-101 deals with the coming into force of NI 51-101. Under section 8.2, the first annual filings under NI 51-101 would be required for a reporting issuer's financial year that includes, or ends on, December 31, 2002.

**(ii) Form 1**

Form 1 specifies the oil and gas information to be filed each year under item 1 of section 5.1 of NI 51-101. This information includes the "reserves data" under item 2.1.

Except for the reserves data, which must be presented together, the general instructions to Form 1 give reporting issuers wide latitude in how they present the required information, and reiterate that immaterial information need not be disclosed.

**(iii) Form 2**

Form 2 sets out the prescribed text of the independent qualified evaluator's report on reserves data, to be filed under section 5.1 of NI 51-101.

Section 5.4 of NI 51-101 limits the extent to which a departure from the prescribed report -- a "reservation" of opinion -- will be accepted for purposes of the annual filing requirement.

**(iv) Form 3**

Form 3 sets out the prescribed text of the annual report of management and directors on a reporting issuer's disclosure, also to be filed under section 5.1 of NI 51-101

**(v) The Policy**

The Policy provides explanation and guidance on the application of the Instrument, and discusses certain possible exemptions.

Part 1 discusses the scope and application of NI 51-101 and certain of the standards applied under NI 51-101, notably those derived from the SPEE Handbook and standards adopted from the FASB.

- ! Section 1.2 discusses the materiality standard.
- ! Section 1.3 provides examples of the timing of first application of NI 51-101 to a reporting issuer.
- ! Section 1.6 identifies professional associations, membership in which will be acceptable for purposes of the definition of "qualified evaluator". It also discusses factors the CSA would likely take into account in considering whether other professional associations should be accepted for that purpose.

Part 2 provides guidance as to aspects of measurement under Part 2 of NI 51-101.

Part 3 discusses the responsibilities of reporting issuers and directors.

- ! Section 3.1 encourages the use of a "reserves committee", although it is not mandatory.
- ! Section 3.2 notes that mandatory involvement of independent qualified evaluators is not intended to relieve reporting issuers or directors of responsibility for oil and gas disclosure.

Part 4 provides guidance applicable to public oil and gas disclosure generally. This includes section 4.3, which cautions issuers about disclosure of reports of qualified evaluators that provide only "negative" assurance ("Nothing has come to my attention...") rather than a positive opinion.

Part 5 provides guidance on the annual filing requirements, including the flexibility permitted in the use of the Forms or an AIF, and unacceptable "reservations" in an independent qualified evaluator's report.

Part 6 provides explanation and guidance concerning material change disclosure.

Part 7 deals with the independence of professionals.

- ! Section 7.1 discusses the criteria of independence that apply, in respect of the relationship between a reporting issuer and a qualified evaluator, under the SPEE standards.
- ! Section 7.2 notes that there may be certain circumstances in which the CSA do not believe that an individual, although technically independent, is in fact in a position to provide the objective opinion expected under NI 51-101.

Part 8 discusses exemptions that the CSA consider could be granted in certain circumstances, and the likely conditions of such exemptions.

- ! Section 8.2 discusses exemption, for "senior producing issuers", from the requirement for involvement of a qualified evaluator independent of the issuer. It includes forms of report that would likely be required, in lieu of Forms 2 and 3, by issuers that obtain and rely on such an exemption.
- ! Paragraph 8.3 discusses a potential exemption that might be granted to issuers that have securities registered with the SEC under the 1934 Act. Such an exemption could permit an issuer to satisfy the requirements of Instrument 51-101 by, in effect, providing disclosure exclusively in accordance with US standards.

Such an exemption would likely be conditional on strict conformity to those standards in all of the reporting

issuer's public disclosure, with loss of the exemption (requiring the preparation and filing of disclosure fully consistent with the standards prescribed in NI 51-101) in the event that an issuer makes any public disclosure not conforming to US standards. This exemption would be granted only in the discretion of the securities regulatory authority or the regulator.

## **5. Costs and Benefits**

The CSA have developed the Instrument in part in response to concerns expressed by market participants about the quality and consistency of public oil and gas disclosure, and the resulting potential for harm to investors and Canadian oil and gas issuers generally.

To the extent that NI 51-101 succeeds in improving disclosure and thereby bolstering confidence in our capital markets, investors and oil and gas issuers should all benefit.

Any incremental costs of compliance with NI 51-101 would, in the view of the CSA, likely be attributable to (i) developing and maintaining satisfactory internal information-gathering procedures or (ii) retaining independent qualified evaluators to report on reserves data. The CSA understand that the SPEE standards to be, to a large extent, a codification of current best practice standards, and that the vast majority of oil and gas reporting issuers already retain independent qualified evaluators to satisfy regulatory requirements or demands from their lenders, investors, or auditors. The CSA expect that most issuers will find that they do not need to generate new types of information to satisfy the requirements of the Instrument. Accordingly, the CSA do not anticipate that implementation of NI 51-101 would impose a significant financial burden on issuers.

To the extent that an issuer incurs costs in raising its disclosure standards to satisfy NI 51-101, the CSA anticipate that much of that burden would be temporary. Once issuers and their independent evaluators have developed satisfactory reserves estimation and reporting standards, the ability to use independent reserves audits, rather than independent evaluations, in subsequent years offers the potential for cost savings, even from current requirements (audits are not generally used at present).

## **6. Request for Comment**

The CSA request public comment on the proposed Instrument, and the related proposals to repeal NP 2B and to make consequential amendments to existing securities legislation.

### **(a) Specific Issue for Comment**

In addition to any other comments that you may have on these proposals, the CSA invite comment on the following specific issue. Section 5 of this Notice sets out the CSA's assessment of costs and benefits to investors and industry

## Request for Comments

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under the proposed Instrument. What other costs and benefits to investors and industry do you anticipate? Would the benefits of implementing the Instrument outweigh the costs?

### (b) Assume SPEE Standards Consistent

As discussed in this Notice, the proposed Instrument would mandate the application of terminology and standards included in the SPEE Handbook, currently under development.

Although the SPEE Handbook will be an important reference source for many users of the Instrument, the CSA believe that readers will be in position to understand the proposed Instrument, and to provide meaningful comments on our proposal, even without the SPEE Handbook. They will be assisted by consulting the Appendix to the Policy, which sets out much of the relevant terminology as it is expected to appear in the SPEE Handbook.

In considering and commenting on the proposed Instrument, please assume that the SPEE Handbook will not include provisions that conflict or are incompatible with the Instrument. The CSA will assess public comments on the basis of the same assumption.

### 7. How to Send Your Comments

We invite your comments, by April 30, 2002. Please note that your comments will not be confidential.

Please address your comments to all of the CSA member commissions, as follows:

Alberta Securities Commission  
British Columbia Securities Commission  
Saskatchewan Securities Commission  
The Manitoba Securities Commission  
Ontario Securities Commission  
Commission des valeurs mobilières du Québec  
Office of the Administrator, New Brunswick  
Registrar of Securities, Prince Edward Island  
Nova Scotia Securities Commission  
Securities Commission of Newfoundland  
Registrar of Securities, Government of the Northwest Territories  
Registrar of Securities, Government of the Yukon Territory  
Registrar of Securities, Nunavut

You need not deliver your comments to all of the CSA member commissions, but please deliver your comments to the Alberta Securities Commission and to the Commission des valeurs mobilières du Québec, at the addresses below.

If you send your comments by e-mail, please follow up with a signed hard copy of your comments, to demonstrate that

you are the sender (this is not always apparent in an e-mail). In all cases, please include, with the hard copy of your comments, a copy of your comments in a diskette in DOS or Windows format, preferably Word.

(i) Send one copy to:

Stephen Murison  
Legal Counsel  
Alberta Securities Commission  
Suite 400  
300 - 5th Avenue SW  
Calgary, Alberta T2P 3C4

e-mail: [stephen.murison@seccom.ab.ca](mailto:stephen.murison@seccom.ab.ca)

(ii) Send one copy to:

Denise Brosseau, Secretary  
Commission des valeurs mobilières du Québec  
Stock Exchange Tower  
800 Victoria Square  
P.O. Box 246, 22nd Floor  
Montréal, Québec H4Z 1G3

e-mail: [consultation-en-cours@cvmq.com](mailto:consultation-en-cours@cvmq.com)

8. Further Information

You can obtain further information from any of the following:

Stephen Murison  
Legal Counsel  
Alberta Securities Commission  
Telephone: (403) 297-4233  
Fax: (403) 297-6156  
e-mail: [Stephen.Murison@seccom.ab.ca](mailto:Stephen.Murison@seccom.ab.ca)

Derek Patterson  
Manager and Senior Legal Counsel,  
Legal and Market Initiatives  
British Columbia Securities Commission  
Telephone: (604) 899-6801  
Fax: (604) 899-6506  
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Deborah McCombe  
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January 25, 2002.

**APPENDIX**

**Proposed Consequential Amendments to Securities Legislation and Securities Directions**

The CSA propose, in conjunction with implementation of NI 51-101, to amend current requirements of securities legislation and securities directions:

- ! concerning the filing of oil and gas reports under Multilateral Instrument 45-102 Resale of Securities ("MI 45-102"); and
- ! concerning oil and gas disclosure in annual information forms and prospectuses, to substitute requirements for disclosure consistent with that required under Parts 5 and 6 of NI 51-101.

**PART 1. CONSEQUENTIAL AMENDMENTS CONCERNING MI 45-102**

- 1.1 The CSA propose that, in the jurisdictions in which MI 45-102 is in force:
- (a) **MI 45-102** - paragraph (e) of the definition of "qualified issuer" in section 1.1 of MI 45-102 be repealed; and
  - (b) **45-102CP** - Companion Policy 45-102CP be amended by adding, after section 2.5, a provision:
    - (i) reminding issuers that have mineral projects of the disclosure and filing requirements, including requirements to file technical reports or other information under National Instrument 43-101 Standards of Disclosure for Mineral Projects; and
    - (ii) reminding reporting issuers that are engaged in oil and gas activities, or in extracting hydrocarbons from shale, tar sands or coal, of the disclosure and filing requirements under NI 51-101.

**PART 2. DISCLOSURE REQUIREMENTS FOR ANNUAL INFORMATION FORMS AND PROSPECTUSES**

**2.1 Long Form Prospectus**

The CSA propose that the prescribed content of current forms of "long form prospectus" be amended substantially as follows:

- (a) by adding the following instruction:

## Request for Comments

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"Disclosure in a prospectus must be consistent with National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities";

- (b) by deleting the current disclosure requirements particular to oil and gas issuers<sup>3</sup>, and substituting the following:

**"[#] Issuers with Oil and Gas Activities**

For issuers engaged in oil and gas activities (as defined in National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities) or in extracting hydrocarbons from shale, tar sands or coal:

**1. Reserves Data and Other Information**

- (a) In the case of information that, for purposes of Form 51-101F1 Statement of Reserves Data and Other Oil and Gas Information, is to be prepared as at the end of a financial year, disclose that information as at the most recent financial year-end for which the prospectus includes a balance sheet.
- (b) In the case of information that, for purposes of Form 51-101F1, is to be prepared for a financial year, disclose that information for each financial year or period for which the prospectus includes a statement of income for a financial year or period.
- (c) To the extent not reflected in the information disclosed in response to paragraphs (a) and (b), disclose the information contemplated by Part 6 of National Instrument 51-101, in respect of material changes that occurred after the issuer's most recent financial year-end for which the prospectus includes a balance sheet date, to the date of the prospectus.

**2. Report of Qualified Independent Evaluator**

- Include with the disclosure under section 1 the report of a qualified evaluator, referred to in item 2 of section 5.1 of National Instrument 51-101, on the

reserves data included in the disclosure required under paragraph 1(a).

- 3. Report of Management** - Include with the disclosure under section 1 a report in the form of Form 51-101F3 Report of Management on Oil and Gas Disclosure that refers to the information disclosed under section 1.;" ;

- (c) **Filing Requirements** - by removing the requirements for the filing, with a preliminary prospectus or a prospectus, of technical reports or certificates in respect of oil and gas activities; and

- (d) **Transition** - By providing, as a transitional measure, that to the extent that paragraph (b) would require disclosure of information prepared as at, or for a financial year ended on, a date (the "effective date") earlier than the date on which National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities first applies to the issuer, such disclosure may, at the option of the issuer, be omitted provided that the issuer discloses:

- (i) the information, prepared as at or for the financial year ended on that effective date, that would have been required under Item [#] but for the amendment set out in paragraph (b); and
- (ii) the fact that the information disclosed under paragraph (i) was prepared in accordance with the former requirement.

**2.2 AIFs and Short Form Prospectuses**

The CSA propose the following amendments to AIF and short form prospectus requirements under National Instrument 44-101 Short Form Prospectus Distributions:

- (a) **AIFs** - Form 44-101F1 AIF is amended by deleting section 4.4 and substituting the following:

**"4.4 Issuers with Oil and Gas Activities**

For issuers engaged in oil and gas activities (as defined in National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities) or in extracting hydrocarbons from shale, tar sands or coal:

**1. Reserves Data and Other Information**

- (a) In the case of information that, for purposes of Form 51-101F1 Statement of Reserves Data and Other Oil and Gas Information, is to be prepared as at the end of a financial year, disclose that information as at

<sup>3</sup> Such disclosure requirements appear in the following provisions, among others:

- Item 6.4 of OSC Form 41-501F1 *Information Required in a Prospectus*
- Item 6.4 of Schedule 1 *Information Required in a Prospectus*, under CVMQ Policy Statement Q-28 *General Prospectus Requirements*
- Item 6.4 of BCSC Form 41-501F1 *Information Required in a Prospectus*
- Item 9(3) of ASC Form 14 *Information Required in a Prospectus of a Natural Resource Issuer*
- Item 7 of MSC Form 11 *Information Required in the Prospectus of a Mining Company*

the issuer's most recent financial year-end.

(b) In the case of information that, for purposes of Form 51-101F1, is to be prepared for a financial year, disclose that information for each financial year or period for which MD&A is included in the AIF.

(c) To the extent not reflected in the information disclosed in response to paragraphs (a) and (b), disclose the information contemplated by Part 6 of National Instrument 51-101, in respect of material changes that occurred after the issuer's most recent financial year-end.

## 2. Report of Qualified Independent Evaluator

Include with the disclosure under section 1 the report of a qualified evaluator, referred to in item 2 of section 5.1 of National Instrument 51-101, on the reserves data included in the disclosure required under paragraph 1(a).

## 3. Report of Management

Include with the disclosure under section 1 a report in the form of Form 51-101F2 Report of Management on Oil and Gas Disclosure that refers to the information disclosed under section 1.

*INSTRUCTION The information presented in response to section 4.4 must be in accordance with National Instrument 51-101. "*

(b) **Transition for AIFs** - To the extent that paragraph (a) would require disclosure of information prepared as at, for a financial year ended on, a date (the "effective date") earlier than the date on which National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities first applies to the issuer, such disclosure may, at the option of the issuer, be omitted provided that the issuer discloses:

(i) the information, prepared as at or for the financial year ended on that effective date, that would have been required but for the amendment set out in paragraph (a); and

(ii) the fact that the information disclosed in reliance on subparagraph (i) was prepared in accordance with the former requirements of Form 44-101F1.

(c) **Short Form Prospectuses** - Form 44-101F3 Short Form Prospectus is amended:

(i) by adding to the initial instructions the following:

(12) *"Disclosure in a short form prospectus must be consistent with National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities.*

(ii) by amending Item 10 as follows:

A. deleting the heading and substituting the following:

**"Item 10: - Resource Issuers" ;**

B. deleting the heading of section 10.1 and substituting the following:

**"10.1 - Issuers with Mineral Projects" ;**

C. deleting from section 10.1, each time it occurs, the phrase "or 4.4, as appropriate"; and

D. adding the following:

**"10.2 - Oil and Gas Activities**

To the extent not included in the current AIF, provide the information that would be required under Item 4.4 of Form 44-101F1 if the AIF were being filed on the date of the short form prospectus."