Proposed Changes to Companion Policy 51-102CP

The following are proposed changes to Companion Policy 51-102CP to National Instrument 51-102 *Continuous Disclosure Obligations*

1. Proposed changes to subsection 1.1(1)

1.1 Introduction and Purpose

(1) National Instrument 51-102 *Continuous Disclosure Obligations* (the "Instrument") sets out disclosure requirements for all issuers, other than investment funds **and venture issuers**, that are reporting issuers in one or more jurisdictions in Canada.

2. Proposed changes to section 2.2

2.2 Investment Funds and Venture Issuers

Section 2.1 of the Instrument states that the Instrument does not apply to an investment fund **or to a venture issuer**. Investment funds should look to securities legislation of the local jurisdiction including National Instrument 81-106 *Investment Fund Continuous Disclosure* to find the continuous disclosure requirements applicable to them **and venture issuers should also look to the securities legislation of the local jurisdiction including National Instrument 51-103 *Ongoing Governance and Disclosure Requirements for Venture Issuers* to determine applicable continuous disclosure requirements**.

3. Proposed changes to section 5.2

5.2 Additional Information for ~~Venture~~Senior Unlisted Issuers Without Significant Revenue

Section 5.3 of the Instrument requires certain ~~venture~~**senior unlisted** issuers to provide in their annual or interim MD&A (unless the information is included in their annual financial statements or interim financial report), a breakdown of material costs whether expensed or recognized as assets. A component of cost is generally considered to be a material component if it exceeds the greater of

4. Proposed changes to subsection 8.2(2)

(2) **Business Using Accounting Principles Other Than Those Used by the Reporting Issuer –** Subsection 8.3(13) of the Instrument provides that, for the purposes of calculating the significance tests, the amounts used for the business or related businesses must, subject to subsection 8.3(13.1) of the Instrument, be based on the issuer's GAAP, and translated into the same presentation currency as that used in the reporting issuer's financial statements. This means that in some cases the amounts

must be converted to the issuer's GAAP and translated into the same presentation currency as that used in the reporting issuer's financial statements.

Subsection 8.3(13.1) of the Instrument exempts ~~venture~~**senior unlisted** issuers from the requirement in paragraph 8.3(13)(a) that, for the purposes of calculating the significance tests, the amounts used for the business or related businesses must be based on the issuer's GAAP, but only where the financial statements for the business or related businesses were prepared in accordance with Canadian GAAP applicable to private enterprises and certain other conditions are met.

National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* permits financial statements for a business or related businesses to be prepared in accordance with U.S. GAAP without reconciliation to the issuer's GAAP. This does not impact the application of paragraph 8.3(13)(a) of the Instrument. Thus, if the issuer's GAAP is not U.S. GAAP, paragraph 8.3(13)(a) of the Instrument requires, for the purposes of calculating the significance tests, that the amounts used for the business or related businesses be based on the issuer's GAAP.

Paragraph 8.3(13)(b) of the Instrument applies to all issuers and requires, for the purpose of calculating the significance tests, that the amounts used for the business or related businesses be translated into the same presentation currency as that used in the reporting issuer's financial statements.

5. Proposed changes to subsections 8.7 (5) and (9)

8.7 Preparation of Pro Forma Financial Statements Giving Effect to Significant Acquisitions

(5) **Acceptable Adjustments –** Pro forma adjustments are generally limited to the following two types of adjustments required by paragraph 8.4(7)(b) of the Instrument:

(a) those directly attributable to the specific acquisition transaction for which there are firm commitments and for which the complete financial effects are objectively determinable, and

(b) adjustments to conform amounts for the business or related businesses to the issuer's accounting policies.

If financial statements for a business or related businesses are prepared in accordance with accounting principles that differ from the issuer's GAAP and the financial statements do not include a reconciliation to the issuer's GAAP, pro forma adjustments as described in item (b) above will often be necessary. For example, financial statements for a business or related businesses may be prepared in accordance with U.S. GAAP, or in the case of a ~~venture~~**senior unlisted** issuer, in accordance with Canadian GAAP applicable to private enterprises, in each case without a reconciliation to the issuer's GAAP. Even if financial statements for a business or related businesses are prepared in accordance with the issuer's GAAP, pro forma adjustments as described in item (b) may be necessary to conform amounts for the business or related businesses to the issuer's accounting policies, including, for example, the issuer's revenue recognition policy where the revenue recognition policy of the business or related businesses differs from the issuer's policy.

(9) **Pro Forma Financial Statements where Financial Statements of a Business or Related Businesses are Prepared using Accounting Principles that Differ from the Issuer's GAAP –** Section 3.11 of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* permits reporting issuers to include in a business acquisition report financial statements of a business or related businesses prepared in accordance with U.S. GAAP and without a reconciliation to the issuer's GAAP. That section also permits, subject to specified conditions, a ~~venture~~**senior unlisted** issuer to include in a business acquisition report financial statements of a business or related businesses prepared in accordance with Canadian GAAP applicable to private enterprises and without a reconciliation to the issuer's GAAP. However, section 3.14 of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* requires that pro forma financial statements be presented using accounting policies that are permitted by the issuer's GAAP and would apply to the information presented in the pro forma statements if that information were included in the issuer's financial statements for the same time period as that of the pro forma financial statements. As well, subsection 8.4(7) of the Instrument requires pro forma financial statements to include a description of the underlying assumptions on which the pro forma financial statements are prepared, cross-referenced to each related pro forma adjustment. Therefore, the pro forma financial statements must describe the adjustments presented in the pro forma income statement relating to the business or related businesses to adjust amounts to the issuer's GAAP and accounting policies.