

Annex “B”
Summary of Comments

Summary of Comments and CSA Responses
Proposed Multilateral Instrument 51-105
Issuers Quoted in the U.S. Over-the-Counter Markets (MI 51-105)

A. General Comments

#	Comments	Responses
General		
1.	<i>Multilateral nature of MI 51-105</i>	
	A commenter asked why Ontario is absent from MI 51-105.	<p>The Ontario Securities Commission (OSC) investigated whether there is evidence of abusive activity being conducted in Ontario in relation to OTC issuers and whether, since the BC Instrument 51-509 Issuers Quoted in the U.S. Over-the-Counter Markets (BCI 51-509) was adopted in 2008, some of the OTC issuers operating in British Columbia have migrated to other Canadian jurisdictions including Ontario. As a result of that investigation, the OSC has not found sufficient evidence of abusive activity being conducted in Ontario to pursue legislative amendments that would allow the implementation of MI 51-105 in Ontario. The OSC will continue to monitor whether there is evidence of abusive activity being conducted in Ontario in relation to OTC issuers and determine whether it is necessary in the future to propose amendments to the Securities Act (Ontario) and adopt MI 51-105 as a national instrument.</p> <p>Legislative amendments were not required in other jurisdictions to adopt or implement MI 51-105.</p>
2.	<i>Exempt market dealers</i>	
	A commenter asked whether MI 51-105 permits EMD’s to engage in private placements of OTC issuers.	No, MI 51-105 requires that persons must execute such trades through an investment dealer. We think that the investment dealer category of registration is appropriate for this rule since OTC quoted securities are traded by the public.
Comments on MI 51-105		
3.	<i>Section 1 – Definition of OTC issuer</i>	
	Commenters asked if we would consider adding to the list of exchanges set out in	We reviewed the list of exchanges listed in that paragraph. As a result, we have made the

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	<p>paragraph (b) of the definition of OTC issuer any stock exchanges that impose continuous disclosure requirements and governance requirements that are substantially equivalent to those exchanges on the list.</p> <p>A commenter asked if we would exclude from the definition of OTC issuer an issuer that has previously been and remains a reporting issuer in any local jurisdiction which has adopted MI 51-105. The commenter was concerned that such issuers will already be subject to the disclosure requirements under applicable securities laws.</p>	<p>following changes:</p> <ol style="list-style-type: none"> 1. As we consider NEX to be part of the TSXV for the purposes of MI 51-105, we added text in the Companion policy 51-105CP (51-105CP) to confirm our interpretation. 2. We added the Alpha Exchange Inc. <p>We do not think it is necessary to add any other exchanges or make any further amendments to paragraph (b) of the definition of OTC issuer at this time. However, if an issuer wishes to demonstrate that a specific exchange has similar oversight and governance requirements as the exchanges in paragraph (b) of the definition of OTC issuer, the Canadian securities regulatory authorities may consider relief in the issuer’s specific circumstances.</p> <p>We considered this comment. The reason for treating OTC issuers differently than other reporting issuers is that OTC issuers are not subject to the standards, rules, and regulatory oversight that other exchanges listed in MI 51-105 provide. This differential treatment applies to all OTC issuers, whether or not they are currently reporting issuers.</p> <p>An issuer that is listed on one of the North American exchanges indicated in the definition of “OTC issuer” would not be subject to MI 51-105. We think the situation would be rare where an issuer would be a reporting issuer in a jurisdiction of Canada and not listed or quoted on one of the prescribed exchanges listed in MI 51-105. If such a situation occurs, the Canadian securities regulatory authorities may consider exemptive relief in appropriate circumstances. 51-105CP has some guidance on how issuers can apply for relief.</p>
4.	<i>Section 1 – Definition of ticker symbol date</i>	
	A commenter noted that the definition of “ticker-symbol date” should be limited to when the OTC issuer is first assigned a ticker symbol for OTC-quoted securities.	<p>We acknowledge the comment.</p> <p>Limiting the definition in such a manner would defeat one of the goals of MI 51-105, which is to provide more disclosure about</p>

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	<p>The commenter was concerned that certain issuers who had been listed but then are forced to drop off a qualifying exchange, like NASDAQ, would be adversely affected as their ticker-symbol may have been issued many years ago.</p>	<p>issuers whose securities are traded by the public, over-the-counter, without the oversight of a stock exchange or other recognized self-regulatory organization.</p> <p>The Canadian securities regulatory authorities may consider exemptive relief in appropriate circumstances. 51-105CP has some guidance on how issuers can apply for relief.</p>
5.	<p><i>Section 3 – Reporting issuer designation and determination</i></p>	
	<p>A commenter was concerned that a company would be a reporting issuer in all provinces that have adopted MI 51-105 if the company triggers any one of the criteria in one of the local jurisdictions.</p> <p>A commenter suggested that the determination of whether an OTC issuer is a reporting issuer in a local jurisdiction should be based on the current status of such a person’s residence, not at the time the issuance was made, provided that the issuance was made before the Proposed Instrument came into effect.</p> <p>A commenter suggested adding a qualification that the person in a local jurisdiction who acquired stock before the ticker-symbol date still owns such stock after the effective date. The commenter was concerned that MI 51-105 may inadvertently capture companies that have no connection to the local jurisdiction.</p>	<p>We acknowledge the comment but do not think that it necessitates a change to MI 51-105. MI 51-105 is proposed to be adopted as a local rule or regulation in each jurisdiction of Canada, except Ontario. The OTC reporting issuer designation and determination is made on a jurisdiction by jurisdiction basis as is the case for the determination of reporting issuer status under Canadian securities laws.</p> <p>We added some text to 51-105CP to clarify this issue.</p> <p>We disagree with the comment. We think a test that incorporates a person’s current residence may be utilized by persons seeking to avoid application of MI 51-105.</p> <p>We disagree with this comment. We think this change would significantly narrow the application of MI 51-105 and are concerned that the change may be utilized by persons seeking to avoid application of MI 51-105.</p> <p>Any issuer that is an OTC reporting issuer under MI 51-105, and believes that outcome is inconsistent with the purpose and the intent of MI 51-105, may apply to the applicable securities regulatory authority in the local jurisdiction for an exemption. 51-105CP has some guidance on how issuers can apply for relief.</p>

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	<p>A commenter asked for clarity on whether an embargoed press release (i.e., “not for dissemination in Canada”) would not trigger the criteria in Section 3(b).</p>	<p>An issuer needs to review the connecting factors in section 3 of MI 51-105 to conclude whether or not the issuer is an “OTC reporting issuer” and therefore subject to MI 51-105. A news release stating that it is “not for dissemination in Canada” is not determinative. We added some text in 51-105CP on this point.</p>
6.	<i>Section 4 – Ceasing to be an OTC reporting issuer</i>	
	<p>A commenter wanted more specificity on when an OTC reporting issuer ceases to be an OTC issuer because it has a class of securities listed or quoted on an exchange or quotation system specified in the definition of “OTC issuer” in Section 1. The commenter suggested adding a sentence that expressly states that an OTC reporting issuer ceases to be an OTC issuer immediately upon it having a class of securities listed or quoted on an exchange or quotation system specified in the definition of “OTC issuer” in Section 1.</p> <p>A commenter recommended that the procedure for an OTC reporting issuer to cease to be such be the same for all local jurisdictions.</p>	<p>We disagree with the suggestion. We think it is appropriate for the (former) OTC issuer to inform the regulator about the issuer’s change in status.</p> <p>The Autorité des marchés financiers thinks that the revocation of reporting issuers’ status should be the same for all of its reporting issuers. As such, it will maintain its current process, by which the decision to revoke a reporting issuer’s status is made on a case by case basis by a decision maker.</p>
7.	<i>Section 5 – Additional disclosure requirements</i>	
	<p>A commenter noted that issuers required to report under Section 12 of the Securities Exchange Act of 1934 (the “Exchange Act”) that cannot timely file certain required filings, including a Form 20-F, Form 10-K or Form 10-Q, may receive an “extension” to file such reports, upon filing of a Form 12b-25. The commenter suggested that similar relief should be provided to OTC reporting issuers.</p>	<p>We disagree with the comment. We expect issuers to comply with the requirements of MI 51-105.</p> <p>Canadian securities regulatory authorities will generally not grant exemptive relief to a reporting issuer to extend a continuous disclosure filing deadline to enable an issuer to avoid a default.</p>
8.	<i>Section 7 – Registration statement</i>	
	<p>A commenter noted that there may be circumstances where an issuer’s registration statement was filed with the SEC several years ago and that filing the registration statement on SEDAR would not provide</p>	<p>We disagree with the comment. The requirement to file the registration statement applies to an issuer that becomes an OTC reporting issuer when it obtains its ticker symbol. If it becomes an OTC reporting</p>

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	<p>current information. The commenter also noted that certain registration statements (i.e., Form S-8 or Form 8-A) would not provide any material disclosure and should be carved out from this section.</p>	<p>issuer this way, then the OTC reporting issuer must file the last registration statement it filed with the SEC.</p> <p>Generally speaking, the OTC reporting issuer will file the last registration statement that provides for registration of securities previously distributed by the OTC reporting issuer.</p> <p>We require OTC reporting issuers to file these registration statements because these documents provide base disclosure for which the issuers and their management are responsible and provides useful information for investors.</p>
9.	<i>Section 11 – Resale of seed stock</i>	
	<p>A commenter suggested amending section 11(1) of MI 51-105 to specifically limit the restrictions on resale to persons who reside in a local jurisdiction which has adopted MI 51-105.</p> <p>A commenter noted that section 11(1)(b)(iii) restricts an investment dealer to executing trades through any over-the-counter markets in the United States of America. The commenter stated that investment dealers executing such trades should not be restricted to over-the-counter markets in the United States of America, especially because other markets (outside Canada) may exist where such securities may be sold.</p>	<p>We do not think it is necessary to revise MI 51-105 in the manner suggested. We think that 51-105CP provides sufficient guidance to market participants.</p> <p>We acknowledge the comment but we will not be implementing this change at this time.</p>
10.	<i>Section 12 – Legends on seed stock</i>	
	<p>A commenter noted that the legend requirements contained in Section 12(1) of MI 51-105 may be impractical and, in some cases, impossible to satisfy.</p>	<p>We disagree that the legending requirements are impossible to satisfy.</p> <p>We can see circumstances where issuers have delivered unlegended share certificates prior to making the decision to go public in the U.S. over-the-counter markets.</p> <p>Issuers that have delivered unlegended share certificates can ask their shareholders to submit their certificates for replacement with legended ones. Shareholders may be motivated to seek legended certificates because, until they do, they will not be able to trade the securities without violating the resale</p>

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		<p>requirements in MI 51-105.</p> <p>Another option for issuers would be to legend all share certificates, so that if shares are traded to an investor in a local jurisdiction, the restriction applies to the shares held by the investor.</p>
11.	<i>Section 13 – Resale of private placement securities acquired after ticker-symbol date</i>	
	<p>A commenter was concerned that section 13 of MI 51-105 is dissimilar to Section 12(1) of BCI 51-509. A commenter also presumed that it was not the intention of the CSA to restrict reliance on other exemptions from the registration and prospectus requirements contained in National Instrument 45-106 <i>Prospectus and Registration Exemptions</i> which may be available for transfer of securities of OTC reporting issuers.</p>	<p>In this context, we think it is important to limit trades of securities acquired in private placements to open market trades through investment dealers. A shareholder must apply for an exemption if the shareholder wishes to sell securities privately or under different conditions than permitted in MI 51-105.</p>
12.	<i>Section 15 – Securities for services</i>	
	<p>A commenter indicated that the valuation of certain securities, such as convertible securities, and the determination of whether issuance of the securities would be commercially reasonable would be difficult to establish.</p> <p>A commenter suggested allowing for a mandated discount similar to the concept of “discounted market price” as used in the Policies of the TSX Venture Exchange.</p>	<p>The issuer’s directors must assign a value to each security that the issuer proposes to issue. We think it is unnecessary to provide a definition or guidance on whether a particular issuance of securities is commercially reasonable. The commercial reasonability standard is commonly used in commercial contexts and its meaning has been discussed in numerous court decisions.</p> <p>We disagree with the comment. We will not be implementing this proposed change to MI 51-105.</p>