

Chapter 5

Rules and Policies

5.1.1 OSC Notice - Approval of National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities and Repeal of National Policy Statement No. 2-B and Other Consequential Amendments

ONTARIO SECURITIES COMMISSION NOTICE

APPROVAL OF NATIONAL INSTRUMENT 51-101 STANDARDS OF DISCLOSURE FOR OIL AND GAS ACTIVITIES AND REPEAL OF NATIONAL POLICY STATEMENT NO. 2-B AND OTHER CONSEQUENTIAL AMENDMENTS

1. Introduction

The Ontario Securities Commission (the "Commission") has, under section 143 of the *Securities Act* (Ontario) (the "Act"), made National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* (the "National Instrument" or "NI51-101") as a rule under the Act, and has adopted Companion Policy 51-101CP (the "Companion Policy") as a policy under the Act. The National Instrument contains 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 Reserves Evaluator or Auditor* ("Form 2"), and Form 51-101F3 *Report of Management and Directors on Oil and Gas Disclosure* ("Form 3" and together with Form 1 and Form 2, the "Forms"). The National Instrument, Forms and the Companion Policy are collectively referred to as the "Instrument".

The Instrument is an initiative of the Canadian Securities Administrators (the "CSA"). The Instrument has been adopted as a rule in each of British Columbia (except Form 3), Alberta, Ontario and Manitoba and as a Commission regulation in Saskatchewan, and is expected to be considered for adoption as a rule, Commission regulation or policy in all other jurisdictions. The Companion Policy has been, or is expected to be, implemented as a policy in all jurisdictions where the Instrument is adopted.

The Instrument and the material required by the Act to be delivered to the Minister of Finance were delivered on July 11, 2003. The Minister may approve or reject the Instrument or return it for further consideration. If the Minister approves the Instrument, it will come into force, pursuant to section 9.1 therein, on September 30, 2003. The Companion Policy will be adopted on the date that the National Instrument comes into force.

2. Substance and Purpose

NI 51-101 establishes a regime of continuous disclosure for reporting issuers engaged in exploring for, developing or producing oil or gas.

The purpose of the Instrument is to enhance the quality, consistency, timeliness and comparability of public disclosure by reporting issuers concerning their upstream oil and gas activities.

The new disclosure standards are designed to enhance investor confidence in Canadian capital markets and facilitate the raising of new capital by oil and gas reporting issuers. The CSA are of the view that information about oil and gas reserves and activities is essential to enable investors to make informed investment decisions concerning securities of upstream oil and gas issuers. We believe that investors and capital markets are entitled to information that:

- reflects the conclusions of qualified professionals applying consistent standards;
- is given appropriate attention by management and directors;
- is provided on a regular basis; and
- is presented in a manner that facilitates comparison among reporting issuers and over time.

To accomplish these objectives, the Instrument establishes disclosure standards and procedures somewhat akin to those long applied to financial disclosure. It prescribes standards for the preparation and disclosure of oil and gas reserves and related estimates, requires the annual public filing of certain of those estimates and other information pertaining to oil and gas activities,

and specifies responsibilities of corporate directors.

The first public filings applying the new standards will be required in 2004, containing information as at the end of the financial year that ends on, or includes, December 31, 2003. See "Timing and Transition" below.

The Instrument supplements disclosure requirements that apply to reporting issuers generally. It will replace National Policy Statement No. 2-B *Guide for Engineers and Geologists Submitting Oil and Gas Reports to Canadian Provincial Securities Administrators* ("NP 2-B").

The Instrument is being published concurrently with this Notice and can be found on the OSC website at www.osc.gov.on.ca.

3. Implementation of NI 51-101 and Repeal of NP 2-B

In Ontario and most other CSA jurisdictions, NI 51-101 is expected to be implemented as a rule or commission regulation, effective on September 30, 2003.

In conjunction with the implementation of the Instrument, NP 2-B is being repealed and consequential amendments are being made to other national, multilateral and local securities legislation and policies. See "Consequential Amendments to Other Instruments" below.

4. Summary of the Instrument

Mandatory elements of the Instrument are set out in NI 51-101 and in the Forms. Form 1 prescribes the reserves data and other information to be filed by a reporting issuer each year (as a free-standing filing or in its annual information form ("AIF"), pursuant to sections 2.1 and 2.3 of NI 51-101). Form 1 also contains instructions to assist preparers. Forms 2 and 3 prescribe the content of the accompanying reports of the independent qualified reserves evaluator or auditor and of management and directors. Form 3, the report of management and directors, is not required in British Columbia.

The Companion Policy provides explanation and guidance, an extensive Glossary, and sample tables that illustrate how certain of the information required in Form 1 might be presented.

All terms defined or explained in the Glossary are printed in italics (or using bold-face type in Form instructions) each time the term is used in the Instrument.

An outline of key aspects of the Instrument and consequential amendments follows, with the source indicated in italics:

Annual disclosure

- statement of reserves data (reserves and future net revenue estimates) and other oil and gas information (*Form 1*)
- report of independent qualified reserves evaluator or auditor (*Form 2*)
- report of management and directors (*Form 3*)

Reserves evaluations or audits by independent qualified professionals

- "qualified reserves evaluator or auditor" (*definitions*)
- appointed annually to report to directors (*NI 51-101 – section 3.2*)

Prescribed role for directors (does not apply in British Columbia)

- direct contact with reserves evaluators or auditors (*NI 51-101 – section 3.4*)
- review and approve filings (*NI 51-101 – section 3.4*)
- majority-independent "reserves committee" encouraged (*NI 51-101 – section 3.5*)

General requirements and restrictions apply to all public disclosure

- consistency with the reporting issuer's annual filings (*NI 51-101 – section 5.2*)

- application of Canadian Oil and Gas Evaluation ("COGE") Handbook reserves evaluation standards and definitions (*NI 51-101 – sections 4.2(1)(ii), 5.3*)
- prescribed basis for specific types of voluntary disclosure (*NI 51-101 – Part 5*)

Material change disclosure

- must include discussion of the effect of the material change on filed reserves data (*NI 51-101 – Part 6*)

Materiality standard

- NI 51-101 applies only in respect of information likely to affect an investment decision (*NI 51-101 – section 1.4*)

Possible exemptions, on application

- SEC filers could use US standards in their oil and gas disclosure
 - annual filing still required
 - differences from NI 51-101 explained for Canadian investors (*Companion Policy – sections 8.3 and 8.4*)
- senior producing issuers with demonstrated competence could use in-house rather than independent evaluations (*Companion Policy – section 8.2*)

Changes in Filing Procedure

- unlike the lengthy NP 2-B engineering reports, the disclosure required under NI 51-101 is filed electronically on "SEDAR", not in paper form (*consequential amendment to National Instrument 13-101*)
- full engineering or evaluation reports need no longer be provided to securities regulatory authorities unless requested (*NI 51-101 – Part 7*)

Prospectuses and other offering documents

- prospectus, rights offering and other distribution disclosure requirements will also include the oil and gas disclosure required under NI 51-101 (*consequential amendments*)

5. Background

(a) Traditional Oil and Gas Disclosure Requirements

Before NI 51-101, disclosure requirements for disclosure concerning upstream oil and gas activities applied principally in connection with prospectus filings.

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

Current oil and gas continuous disclosure requirements are largely limited to AIFs, which are not filed by all reporting issuers. AIF oil and gas disclosure requirements are drawn from the prospectus requirements.

(b) Shortcomings of the Current Oil and Gas Disclosure Regime

The CSA no longer consider the reserves definitions and the specific disclosure requirements set out in NP 2-B to be sufficiently clear or comprehensive to meet the needs of market participants. We do not believe that the prospectus focus of the current requirements adequately serves the secondary capital markets in which the vast majority of securities trading activity takes place.

The CSA share the concern expressed by some market participants that the shortcomings of current oil and gas disclosure standards could impair public confidence in our capital markets, to the detriment of all oil and gas issuers and investors.

(c) Consultative Process

The Instrument reflects extensive public and industry consultation and advice.

The Instrument responds to the recommendations of an oil and gas taskforce, established by the Alberta Securities Commission (the "ASC") in 1998 and comprised of representatives from a wide variety of professions and sectors of the oil and gas industry and capital markets. The work of the taskforce coincided with the development of new oil and gas reserves definitions by the Petroleum Society of the Canadian Institute of Mining, Metallurgy & Petroleum (the "CIM"), following the CIM's own consultative process, and the development of reserves evaluation standards by the Calgary Chapter of the Society of Petroleum Evaluation Engineers ("SPEE"). Those standards, and the CIM reserves definitions, are set out in the COGE Handbook, which was prepared by SPEE and the CIM and can be obtained from the CIM at www.petsoc.org.

The taskforce recommendations, issued in January 2001, called for:

- annual reporting of reserves and related estimates and other oil and gas information;
- disclosure to be based on the work of independent reserves evaluators applying the new CIM reserves definitions; and
- specific responsibilities for company management and directors.

(d) 2002 Proposal

The CSA responded favourably to the taskforce recommendations, taking into account industry and public comment on those recommendations. The ASC assumed primary responsibility for developing the Instrument. We published the first version of the Instrument on January 25, 2002 (the "2002 Proposal").

The 2002 Proposal generally adopted the recommendations of the taskforce, with some departures designed largely to ameliorate compliance burdens that could result for reporting issuers active in both Canadian and United States capital markets where differing standards apply. It substituted, verbatim, certain requirements derived from the United States Financial Accounting Standards Board ("FASB") for substantially similar requirements suggested by the taskforce. The Companion Policy also discussed the possibility of discretionary relief, on strict conditions, that could permit senior producing issuers to continue the practice under NP 2-B of relying on in-house rather than independent evaluations, and could enable cross-border reporting issuers to follow certain FASB and SEC disclosure requirements in their public disclosure.

Public comment on the 2002 Proposal was generally supportive of its principles. Many of the commenters were, however, uncomfortable with the mandatory application of FASB standards. Larger cross-border reporting issuers were critical of the limitations and restrictions suggested for discretionary relief that, they felt, would unduly restrict their ability to provide disclosure consistent with the practice of their competitors in US capital markets. Some commenters urged more lenient requirements for smaller issuers.

The public comments on the 2002 Proposal and our responses were discussed more fully in the CSA notice accompanying the revised version of the Instrument published early in 2003, discussed immediately below.

(e) 2003 Proposal

The CSA published a revised version of the Instrument (the "2003 Proposal") on January 24, 2003 (March 21, 2003 in Québec) in response to the comments on the 2002 Proposal.

The 2003 Proposal remained largely consistent in outline and in substance with the original version and with the taskforce recommendations. Changes included:

- considerable rewriting, particularly of Form 1, for clarity;
- the elimination of the FASB-derived requirements and substitution of substantially similar requirements presented in a manner more consistent with Canadian usage, together with new discussion in the Companion Policy of possible discretionary relief to preserve for cross-border reporting issuers the option of applying those FASB requirements; and
- easing of some of the restrictions and conditions originally suggested for discretionary relief, to give more scope for US-style disclosure by cross-border issuers.

We received 16 comment letters on the 2003 Proposal. As was the case with public comment on the original proposal, the commenters were thorough and their comments very helpful. We thank them.

The majority of commenters expressed support for the 2003 Proposal or its objectives. In general, the changes made in response to comments on the original version were well received. There was criticism of the extent and detail of certain reserves data disclosure requirements, and a number of suggestions for clarifying amendments. While some representatives of larger reporting issuers firmly supported the proposal, others suggested that the changes did not go far enough to address their concerns. By contrast, some commenters expressed strong opposition to the discretionary relief contemplated for senior or cross-border reporting issuers.

The comments on the 2003 Proposal, and CSA staff responses, are summarized in more detail in Appendix A to this Notice.

(f) Changes from the 2003 Proposal

The Instrument incorporates a limited number of changes from the 2003 Proposal.

Most of the changes were made to enhance clarity:

- Additional explanation in the Companion Policy and expanded definitions in the Glossary are meant to resolve ambiguities.
- We have clarified that a reporting issuer is responsible for disclosing in its annual NI 51-101 filing its estimated total abandonment and reclamation costs, but that the reserves-related future net revenue estimates themselves need reflect only those abandonment and reclamation costs that relate specifically to well abandonment.

We have streamlined some of the annual disclosure by scaling back:

- the list of "product types" for which separate disclosure is required; and
- the multi-year annual breakdowns of elements of estimated future net revenue.

To make the required disclosure more meaningful, while at the same time avoiding the need for some problematic and potentially misleading cost allocations, disclosure of future net revenue estimates is to be provided for the reporting issuer as a whole and by "production group" -- the aggregate of products produced together from a single well or reservoir -- rather than separately for each of the products.

A more detailed discussion of the changes from the 2003 Proposal is set out in Appendix B to this Notice.

6. Consequential Amendments to Other Instruments

In consequence of the implementation of the Instrument and the repeal of NP 2-B, amendments are being made to other securities legislation and securities directions. These amendments eliminate current references to NP 2-B. In some cases those references are replaced by references to the Instrument. In other cases, the conversion to a continuous disclosure regime under NI 51-101 eliminates the need to make specific reference to oil and gas disclosure in the amended document.

The amendments come into force at the same time as the Instrument, on September 30, 2003, but their effect is in most cases phased in issuer-by-issuer, as each reporting issuer becomes subject to the Instrument (see "Timing and Transition" below). Transitional provisions are incorporated, where necessary, in the specific consequential amendments. In all cases, the transition is completed not later than June 30, 2005.

(a) National and Multilateral Instruments

The texts of the consequential amendments to the following national and multilateral instruments are set out in Appendix C to this Notice. The amendments are substantially identical to those published with the 2003 Proposal.

- NP 2-B (phased repeal)
- National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*
- National Instrument 44-101 *Short Form Prospectus Distributions*
 - Form 44-101F1 *AIF*

- Form 44-101F3 *Short Form Prospectus*
- National Instrument 45-101 *Rights Offerings*
- Companion Policy 45-101CP
- Multilateral Instrument 45-102 *Resale of Securities*

(b) Local Instruments

Consequential amendments to Ontario securities legislation and policies are set out in Appendix D to this Notice.

7. Timing and Transition

Application of the Instrument, the repeal of NP 2-B, and the other consequential amendments are being phased in. Most reporting issuers will become subject to NI 51-101 in 2004, and the process will be completed by June 30, 2005.

Timing of the transition for a particular reporting issuer will depend on:

- its financial year-end;
- when it first files certain types of disclosure documents; and
- whether it opts voluntarily to become subject to the Instrument earlier than required.

A reporting issuer's transition to NI 51-101 will generally occur when it files, or is required to file, its audited financial statements for its first financial year that ends on, or includes, December 31, 2003. At that time the reporting issuer must file its annual NI 51-101 disclosure. From that time, the reporting issuer also becomes subject to the other provisions of NI 51-101 and (by the operation of transitional measures built into consequential amendments to other securities legislation and policies) to amended prospectus and other distribution disclosure requirements that substitute references to NI 51-101 disclosure for current references to NP 2-B.

Because prospectus disclosure requirements include information relating to oil and gas activities, and because the filing of a prospectus more than 90 days after the end of a reporting issuer's financial year can trigger an accelerated filing of its annual financial statements, the filing of a prospectus could itself similarly accelerate a reporting issuer's first filing obligations under NI 51-101.

Examples of Timing

Taking as an example the current typical 140-day filing deadline for audited annual financial statements, and a reporting issuer with a calendar financial year, the transition to NI 51-101 would apply in or before May 2004. The reporting issuer would make its first annual NI 51-101 filing at the same time as it files its annual financial statements for 2003. After that, it would be fully subject to NI 51-101 and to the consequential changes to prospectus and other rules, and it would cease to be subject to NP 2-B.

If, however, the same reporting issuer files a prospectus during the first 90 to 140 days of 2004, it would have to include in its prospectus annual financial statements for 2003, even though the normal financial statement filing deadline has not yet occurred. The reporting issuer's transition to NI 51-101 would be similarly accelerated: its first annual NI 51-101 filing would be due at the same time, the prospectus would include the same information from that filing, and NP 2-B would not apply.

If the shorter financial statement filing deadlines contemplated in proposed National Instrument 51-102 Continuous Disclosure Obligations (the "CD Rule") are implemented for financial years ending on December 31, 2003, those shorter deadlines (90 days after year-end, or 120 days for "venture issuers") would also apply to NI 51-101 filings. In that case, the transition to NI 51-101 for non-"venture" reporting issuers with calendar financial years, including their first annual NI 51-101 filing, would occur by the end of March 2004. (See the CSA notice published concurrently with the proposed CD Rule. Consult the OSC website for future developments concerning the CD Rule.)

8. Interim Use of CIM Reserves Definitions

Pending the application of NI 51-101 to a particular reporting issuer, NP 2-B will continue to apply to that issuer.

During that interval, the securities regulatory authorities or regulators will accept and encourage the use of the CIM reserves definitions set out in the COGE Handbook for purposes of NP 2-B, rather than the reserves definitions set out in NP 2-B. An

issuer that wishes to exercise this option should advise the regulator in a covering letter accompanying each preliminary prospectus or other document being filed for which NP 2-B is relevant. Each such document in which the CIM definitions are used should also identify and describe the relevant reserves classifications.

Because the CIM definitions incorporate target certainty levels, securities regulatory authorities or regulators would not require an issuer using the CIM definitions to reduce reasonably estimated "probable reserves" by applying an allowance for risk as currently specified under NP 2-B, but the absence of such a reduction should be stated. When estimating reserves and related future net revenue using constant prices and costs, an issuer that uses the CIM definitions should use prices as at the end of its financial year.

9. Costs and Benefits

The CSA developed the Instrument in part as a 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.

The CSA expect that any incremental costs of compliance with NI 51-101 would likely comprise (i) one-time costs attributable to developing satisfactory internal information systems, (ii) for reporting issuers that do not already do so, costs of retaining independent reserves evaluators or auditors to report on reserves data, or (iii) modest incremental costs reflecting the evaluators' adherence to the standards set out in the COGE Handbook and consideration of certain specific factors prescribed in the Instrument.

We understand that most oil and gas reporting issuers already retain independent qualified evaluators to satisfy regulatory requirements or demands from their lenders, investors, auditors or directors. We expect that most reporting issuers will find that they do not need to generate new types of information to satisfy the requirements of the Instrument. Accordingly, we do not anticipate that implementation of NI 51-101 will impose a significant new financial burden on reporting issuers.

Some reporting issuers could see a reduction in effort and costs, because NI 51-101 recognizes a reserves "audit" as a satisfactory alternative to a full "evaluation".

For senior producing issuers with a demonstrated capability to generate their own satisfactory reserves evaluations, the Companion Policy indicates our willingness to consider granting a discretionary exemption to permit them to rely on in-house rather than independent evaluations. The Companion Policy also discusses the possibility of discretionary relief to enable cross-border reporting issuers to provide disclosure more consistent with US practice, to address concerns about potentially duplicative or confusing public disclosure.

We believe that the Instrument will result in improved disclosure and enhanced market confidence, and expect that the resulting benefits to all market participants, including reporting issuers, will justify any incremental costs.

10. Unpublished Materials

In considering the Instrument, we did not rely on any significant unpublished study, report or other written materials.

11. Further Information

You can obtain further information from any of the following:

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12. Appendices

Appendix A – Summary of Public Comments on the 2003 Proposal and CSA Staff Responses
Appendix B – Summary of Changes from the 2003 Proposal
Appendix C – Consequential Amendments to National and Multilateral Instruments
Appendix D – Consequential Amendments to Ontario Securities Instruments

**APPENDIX A
TO
ONTARIO SECURITIES COMMISSION NOTICE

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

SUMMARY OF PUBLIC COMMENTS ON THE 2003 PROPOSAL
AND CSA STAFF RESPONSES**

The CSA received written comments on the version of the National Instrument 51-101 ("NI 51-101") and the related Forms and Companion Policy (together, the "Instrument") published on January 24 (on March 21 in Québec), 2003 (the "2003 Proposal") from the following 16 commenters:

1. AIM Trimark Investments – April 1, 2003
2. APA Petroleum Engineering Inc. – March 31, 2003
3. Canadian Institute of Mining, Metallurgy and Petroleum, Standards Operating Group – March 10, 2003
4. Carscallen Lockwood LLP – March 31, 2003
5. EnCana Corporation – April 4, 2003
6. Fraser Milner Casgrain LLP – March 31, 2003
7. Imperial Oil Limited – March 31, 2003
8. Kozowyk & Associates – March 31, 2003
9. Henry R. Lawrie, FCA – March 19, 2003
10. Nexen Inc. – March 31, 2003
11. OMERS – March 31, 2003
12. Petro-Canada – March 27, 2003
13. Society of Petroleum Evaluation Engineers (Calgary Chapter) – March 28, 2003
14. Standard Life Investments – March 20, 2003
15. Prospectors & Developers Association of Canada – March 24, 2003
16. Toronto Stock Exchange and TSX Venture Exchange – March 31, 2003

Comments were provided by a range of participants in the capital markets and the oil and gas industry: institutional investors, oil and gas producing issuers, reserves evaluation firms and associations, individual professionals and exchanges. Nine commenters had previously commented on the first version of the Instrument that was published on January 25, 2002 (the "2002 Proposal").

We thank the commenters. We appreciate their time and effort. We have considered carefully each of the commenter's suggestions or views.

Commenters were generally supportive of the key principles of the Instrument. A number of commenters stated that the 2003 Proposal was easier to follow and believed that it met the needs of the CSA, investors and industry better than the 2002 Proposal. One senior producer said that the Instrument "will improve overall disclosure while at the same time recognizing the oil and gas industry's need to maintain effective cross-border financial activity", and urged the CSA to implement the Instrument as soon as practicable so that industry could respond in a timely and appropriate manner to the new requirements.

The most frequently mentioned areas of concerns were:

- the scope and application of the discretionary exemptions set out sections 8.2 and 8.4 of the Companion Policy; and

- the level of detail required by certain Items of Form 51-101F1 ("Form 1").

We have adopted a number of technical comments and suggestions. Other comments and CSA staff responses are summarized below; the CSA members that have approved the Instrument have adopted these responses. The comments and responses are grouped by subject matter as follows:

- terminology and application of the Instrument;
- specific provisions of the Instrument;
- the four issues on which we had invited comment in the 2003 Proposal; and
- matters of general application.

1. Terminology and Application of the Instrument

(a) Application to Non-Conventional Activities

Public Comment

Two commenters suggested that conventionally mined oil sands should be dealt with as mineral projects under National Instrument 43-101 *Standards of Disclosure for Mineral Projects* ("NI 43-101") and excluded from NI 51-101, and that NI 51-101 should make clearer whether it deals with either or both coal or coal bed methane. One commenter noted that a CIM committee is considering whether to propose the inclusion in NI 43-101 of new definitions relating to oil sands similar to those used for mineral projects.

CSA Staff Response

The intended product of both conventional and non-conventional oil projects is essentially the same – a liquid hydrocarbon. We believe that investors are likely to consider a reporting issuer focused on oil sands to be more comparable to a conventional oil producer than to a hard rock mining issuer. Accordingly, NI 51-101 applies to activities directed at the extraction or production of hydrocarbons from either conventional or non-conventional sources (such as surface mines and in situ projects).

We believe that the definition of "oil and gas activities" makes clear that such activities include the search for and extraction of hydrocarbons and by-products, which would include coal bed methane (a hydrocarbon) but not coal.

We recognize that the process of mining oil sands differs from conventional oil production from wells, and has similarities to other mineral projects. As discussed in section 1.6 of the Companion Policy, oil sands mining issuers may find useful guidance in NI 43-101 concerning disclosure about mine development and operation that could supplement their disclosure of reserves data and other information under NI 51-101.

There may be circumstances in which a reporting issuer's non-conventional oil and gas activities also involve exploration, development or production activities in respect of non-hydrocarbon minerals, such as coal. If those non-hydrocarbon activities are also material to the reporting issuer, that aspect of its business is likely to be subject to the disclosure standards under NI 43-101, while the oil and gas activities remain subject to NI 51-101.

In the event that market and industry participants and professionals active in the oil sands or other non-conventional oil and gas sectors develop new definitions for those sectors, the CSA will consider whether the Instrument should be modified or supplemented.

(b) Interaction with the COGE Handbook

Public Comment

One commenter noted that some of the terms identified in the Glossary (Appendix 1 to the Companion Policy) as deriving from the COGE Handbook do not appear in the glossary in the COGE Handbook. More generally, the commenter urged that effort be made to conform the COGE Handbook to the Instrument and eliminate any contradictions.

CSA Staff Response

The Glossary is meant to assist users by directing them to original source documents, if any, for definitive or expanded explanation in a glossary or in the body of the source document. We have modified slightly some of the definitions in the Glossary to match the corresponding discussion in the COGE Handbook.

(c) Contractual Prices

Public Comment

Two commenters suggested that we clarify that the contractually fixed prices used in determining both "constant prices and costs" and "forecast prices and costs" exclude contracts that are, for accounting purposes, "financial instruments" or "financial hedges".

CSA Staff Response

We have revised the definitions to clarify that contractual prices are used if the reporting issuer is obligated to supply a physical product (typically, oil or gas). If the reporting issuer can satisfy its obligation in cash rather than by supplying physical product, the contractual prices are not used for this purpose. In that case, as new section 4.3 of the Companion Policy explains, the obligation may be a "financial instrument" for which the CICA Handbook discusses financial statement disclosure.

(d) Qualified Evaluators and Auditors/Qualified Persons

Public Comment

One commenter suggested that NI 51-101 use the NI 43-101 term "qualified person" instead of the two terms "qualified reserves evaluator" and "qualified reserves auditor".

CSA Staff Response

NI 51-101 and NI 43-101 were developed for different industries. NI 51-101 (and the COGE Handbook) deliberately distinguish between the reserves evaluation and reserves audit functions.

(e) Supporting Filing

Public Comment

One commenter questioned the deletion, from the definition of "supporting filing", of the proviso that post-filing events have not rendered the document inaccurate or misleading.

CSA Staff Response

We had deleted this proviso because it could have been interpreted as creating a requirement to update original filings. With or without the proviso, reporting issuers are responsible for ensuring that their disclosure record as a whole is not misleading.

2. Specific Provisions of NI 51-101

(a) Part 3 – Directors

Public Comment

An institutional investor expressed a wish that each board of directors establish a reserves review committee that has two or three independent members with background or experience in reserves evaluation.

CSA Staff Response

The CSA encourage the formation of reserves committees, which are discussed in Section 3.5 of NI 51-101. The Instrument does not prescribe particular background or experience for board or reserves committee membership. We expect that shareholders and directors will give due attention to the background and experience appropriate for members of their company's board or reserves committee.

(b) **Part 4 – Measurement**

(i) **Subsection 4.2(1) – Requirements for Disclosed Reserves Data**

Public Comment

One commenter stated that paragraph 4.2(1)(d) of NI 51-101 is hard to follow and seems to mix two issues.

CSA Staff Response

We have reorganized subsection 4.2(1) to make it clearer:

- Paragraph (a) specifies conditions that apply in general to filed reserves and future net revenue estimates: qualification of the preparer of the estimates, adherence to the COGE Handbook, and assumption that development funding will be available.
- Paragraph (b) (formerly paragraph (d)) requires that abandonment and reclamation costs be considered before attributing reserves to an undrilled property.
- Paragraph (c) (formerly paragraph (e)) requires that future net revenue estimates include deductions of future well abandonment costs (see the following comment) and, unless otherwise specified in the Instrument, future income tax expenses.

(ii) **Future Net Revenue and Abandonment and Reclamation Costs**

Public Comment

One commenter asked that we define "abandonment and reclamation costs" and "salvage value". Some commenters expressed uncertainty as to whether total abandonment and reclamation costs are to be considered by the reserves evaluator in estimating future net revenue (disclosed under Part 2 of Form 1) or only by the reporting issuer in its additional disclosure (Part 6 of Form 1). The commenters noted that reclamation costs, and salvage value, cannot be accurately estimated by evaluators without site visits and formal evaluation by experts in that area.

CSA Staff Response

We have made clarifying changes. We did not define "abandonment and reclamation" and "salvage value". Instead, the newly-defined term "well abandonment costs" (that subset of total abandonment and reclamation costs relating specifically to the cost of abandoning a well and disconnecting it from the surface gathering system) is used in place of former references to total abandonment and reclamation costs in:

- the definition of "future net revenue";
- paragraph 4.2(1)(c) (formerly paragraph 4.2(1)(e)) of NI 51-101 concerning the estimation of future net revenue; and
- Part 2 of Form 1, where new Instruction 3 explains that the abandonment and reclamation costs deducted in the estimation of future net revenue must include, at minimum, well abandonment costs.

Whether or not the reserves evaluator considers more than well abandonment costs in estimating future net revenue, Item 6.4 of Form 1 requires that the reporting issuer (not the evaluator) disclose its total abandonment and reclamation costs (for surface leases, wells, facilities and pipelines) and state what portion, if any, of that total is not already reflected in the reserves data.

(c) **Part 5 – All Disclosure**

(i) **Section 5.3**

Public Comment

One commenter questioned whether section 5.3 of NI 51-101 should be expressly subject to section 1.2.

CSA Staff Response

Section 5.3 is not subject to section 1.2. Section 1.2 applies only in the case of conflicting definitions of the same term in (i) NI 51-101 or other securities legislation, and (ii) the COGE Handbook. Section 5.3 requires, in effect, that disclosure of reserves use the COGE Handbook reserves definitions. The COGE Handbook reserves definitions therefore prevail (they are repeated in the Glossary simply for ease of reference).

(ii) Disclosure of Natural Gas

Public Comment

One commenter suggested that volumetric description of natural gas does not reflect its value and that quantities of natural gas should instead be reported on the basis of standard heat content, gigajoules or MMBtus. The commenter also questioned the requirement in section 5.4 for disclosure of marketable quantities reflecting prices for natural gas in the condition in which it is sold, suggesting that producers may not know the eventual condition of gas sold, in their name, outside Alberta.

CSA Staff Response

We have not adopted the comments. The CSA's objective is to ensure consistency and reliability in the disclosure of information that capital markets are accustomed to. The commenter raises interesting points but we believe that it would exceed the purpose of the Instrument to impose, without thorough industry and public debate, this change in what we understand to be widespread industry usage. The commenter might wish to pursue with petroleum industry associations these ideas for a change in industry practice.

Section 5.4 emphasizes consistency of disclosure concerning products in their saleable rather than raw condition. Reporting issuers should interpret the provision reasonably in this light.

(iii) Paragraph 5.8(b) – Disclosure for all Properties

Public Comment

One commenter criticized, as excessively onerous, the requirement under paragraph 5.8(b) to supplement any disclosure of property-specific reserves with disclosure of total reserves for all properties. The commenter suggested that, when it applies, the provision could be satisfied using earlier reserves data updated only for production.

CSA Staff Response

We do not consider the provision onerous. It is meant to ensure that disclosure by a reporting issuer of estimates for a particular property does not mislead readers in light of the different confidence levels that might apply to a single property as compared to estimates for the reporting issuer as a whole, owing to the effects of aggregation. We do not prescribe any particular computations or adjustments. As with all public disclosure, a reporting issuer is responsible for taking the steps necessary in the circumstances to ensure that its disclosure is not misleading.

(iv) Prospects

Public Comment

Two commenters requested clarification about what is meant by anticipated results from prospects.

CSA Staff Response

Section 5.9 is meant to give investors specific information to add context to a reporting issuer's disclosure of its expectations for an oil and gas play not yet beyond the exploration stage. The CSA consider such contextual information particularly important where the disclosure suggests actual volumes or cash flows. We have made no substantive change to section 5.9 (or to section 5.10 which deals with disclosure of the fair value of a prospect).

(d) Part 6 – Material Changes

Public Comment

One commenter expressed concern about the costs of having an independent reserves estimate prepared whenever a reporting issuer reports a material change.

CSA Staff Response

The comment suggests a misunderstanding of Part 6 of NI 51-101. If a material change report is triggered, and if the triggering event would affect reserve estimates, Part 6 requires that the material change report comment on the effect of that material change on the most recent NI 51-101 annual filing. Part 6 does not mandate any particular procedure, the involvement of an independent evaluator for that purpose, or the filing of another formal evaluation report. It is the responsibility of the reporting issuer to consider what steps are necessary in the circumstances to ensure that its disclosure is not misleading.

3. Specific Provisions of Form 51-101F1

(a) Part 1 – Date of Statement

Public Comment

One commenter questioned the removal of the discussion, found in the Instructions to Part 1 of Form 1 in the 2002 Proposal, concerning information arising between the effective date and the preparation date of an evaluation report.

CSA Staff Response

Our primary objective is to ensure that all professionals involved in a reserves evaluation communicate with each other and the reporting issuer to ensure that the reporting issuer's disclosure is complete and consistent. We considered that portion of the Instructions overly prescriptive and unnecessary for this purpose.

(b) Part 2 – Disclosure of Reserves Data

Public Comment

A number of commenters expressed the view that some of the prescribed disclosure of reserves data was more detailed than necessary to serve investor needs. One commenter suggested that some of the detail is proprietary.

CSA Staff Response

We understand that the commenters' concerns relate primarily to the breakdowns of future net revenue required under Items 2.1(3) and 2.2(3) of Form 1.

The CSA agree that mandatory public disclosure of some of the detail, such as breakdowns of future net revenue components year-by-year for ten years, would be unnecessary. We believe that we have addressed the commenters' concerns by revising Items 2.1(3) and 2.2(3) to require only the totals (not year-by-year for ten years) for each component of future net revenue. The disclosure of forecast prices and future development costs has also been reduced from ten years to five (for development costs, this requirement now appears in Item 5.3).

(c) Part 4 – Reconciliations

(i) Constant Case/Forecast Case

Public comment

The 2003 Proposal would give reporting issuers the choice of using either constant or forecast prices and costs in their reconciliations of reserves and future net revenue. A number of commenters urged that the Instrument mandate one price and cost case for the reconciliations (one urging the forecast case, another the constant case, and a third not specifying) to facilitate comparability among reporting issuers.

CSA Staff Response

We have not made this change. The CSA expect reconciliations to be used more to track the performance of a reporting issuer and the reliability of its reserves data estimates from one year to the next, than for item-by-item comparisons between companies. This makes a universally mandated set of assumptions less critical than for some of the reserves data disclosure itself.

Item 4.1 of Form 1 requires reconciliations of reserves for each of the proved, probable and proved plus probable categories. To prepare the reconciliation the reporting issuer will need reserves estimates for each of those categories. Were Item 4.1 to mandate constant case reconciliations, the reporting issuer would have to prepare constant case

reserves estimates in the probable and proved plus probable categories, which are deliberately not mandated under Part 2 of Form 1. On the other hand, we understand that forecast case reconciliations can be more difficult to prepare and, as evidenced by one of the comment letters, they may not satisfy all users. Rather than impose either choice, we think it sufficient that a reporting issuer discloses which price and cost case it is using.

(ii) Need for Future Net Revenue Reconciliation

Public Comment

One commenter suggested deleting the reconciliation of future net revenue on the grounds that it is not meaningful, is tedious to put together (requiring a joint effort between evaluators and accountants) and may take more time than is available.

CSA Staff Responses

We have retained the requirement. We acknowledge that future net revenue reconciliations require effort, but we also understand that some market participants consider them important. They are required under US FASB standards and were recommended by the ASC oil and gas taskforce.

(iii) Gross Reserves/Net Reserves

Public Comment

One commenter recommended that reconciliations be made using company gross reserves, not company net reserves, because royalties are sensitive to price fluctuations.

CSA Staff Response

Although royalties may add a degree of complexity to preparing reconciliations, the CSA consider company net reserves (called "net reserves" in the Instrument) the correct choice because they better reflect a reporting issuer's true reserves position (by including royalties owned by the reporting issuer and excluding royalties owned by others).

(iv) Economic Factors

Public Comment

One commenter suggested that we delete the reconciliation item "economic factors" because it requires the additional step of rerunning the earlier data with the most recent year-end price and cost case, is expensive and time-consuming and provides insignificant results.

CSA Staff Response

We have retained this item. The rerun would only be required if the prior year's estimates are revised as a result of changes in previously-estimated prices and costs and only if this revision is material.

(v) Property Disposition or Acquisition

Public Comment

One commenter sought clarity as to whether the effect of a disposition or acquisition on the aggregation process is to be reported as a "technical revision".

CSA Staff Response

We infer from the question that the commenter is distinguishing between

- (i) the estimated reserves or future net revenue attributed to a property acquired or disposed of, considered in isolation, and
- (ii) the incremental effect that the acquisition or disposition of that property could have on the estimates for the reporting issuer as a whole, because of aggregation.

We would ordinarily expect the full effect to be disclosed in the reconciliation as a "disposition" or "acquisition", and not as a technical revision. A reporting issuer may, however, wish to provide additional explanation to make the reconciliation understandable and meaningful.

(d) Part 5 – Additional Information Relating to Reserves Data

Public Comment

One commenter suggested that we require disclosure of the capital requirement pertaining to the transfer of proven non-producing reserves to the proven producing category.

CSA Staff Response

The disclosure required by Item 5.3 about development costs – estimated amounts in total and by year for the first five years, and a discussion of the source and funding of such costs – should address what we understand to be the commenter's concern.

(e) Part 6 – Other Oil and Gas Information

Public Comment

One commenter suggested that detailed disclosure required by Item 6.3 concerning forward contracts would be in direct violation of confidentiality provisions contained in most gas purchase and sale contracts. The commenter suggested that the CSA restrict the disclosure requirements to fundamentals that enable the reader to understand a reporting issuer's marketing portfolio: contract term, nature of buyer, market location and basic pricing structure.

CSA Staff Response

Item 6.3 is intended to inform investors if a reporting issuer cannot benefit from favourable market prices because it has by contract locked in future sales at pre-determined prices. We have clarified that a general discussion of key aspects of such a contract will suffice.

4. Form 51-101F2

(a) Future Net Revenue

Public Comment

One commenter requested that we clarify whether the estimated future net revenue to be stated in Item 4 of Form 51-101F2 ("Form 2") is calculated before or after deduction of income taxes.

CSA Staff Response

We have revised Item 4 to clarify that the amount is future net revenue before deduction of income taxes.

(b) Reservations

(i) General

Public Comment

One commenter suggested that the CSA differentiate between factual statements and reservations and provide a clearer explanation of what constitutes a reservation or disclaimer. For example:

- Did a site inspection take place? (The commenter noted that for some foreign properties a site visit by the evaluator might be prudent.)
- Have multiple evaluators used a common set of assumptions regarding product pricing, inflation, and exchange rates?

CSA Staff Response

The explanation of the term "reservation" set out in the Glossary reflects the CSA's intention. We believe that material departures from the wording of Form 2, or from the standards set out in the COGE Handbook, impair the comparability of disclosure.

Concerning the specific example cited by the commenter, if a site visit is appropriate under COGE Handbook standards and its absence would be a material departure from good evaluation practice, then we would regard the absence of a site visit as inappropriate and a reference to that fact as an impermissible reservation. In the case of foreign properties, the CSA agree with the commenter that site visits would be prudent.

The Instrument does not specify how the work of multiple consultants will be coordinated or compiled. The responsibility for the disclosure is that of the reporting issuer, whether it engages one or several evaluators. We believe that the arrangements between the reporting issuer and its evaluators to ensure the required quality of the disclosure are best left to their corporate and professional judgement.

(ii) Prospects

Public Comment

One commenter requested that evaluators be allowed greater flexibility with regard to disclaimers (or reservations) on prospects.

CSA Staff Response

The CSA do not believe that evaluators need greater flexibility concerning prospects. Disclosure concerning prospects is not part of the mandatory reserves data on which the evaluator reports in Form 2. If a reporting issuer chooses to make disclosure concerning prospects, it is the reporting issuer's responsibility to ensure that it satisfies Part 5 of NI 51-101.

(c) Consent Letters

Public Comment

Two commenters suggested that the Instrument was not clear as to when consent letters from evaluators are or are not required, or as to why no consent is required for a reporting issuer to file the evaluator's report (Form 2) or issue the news release required by section 2.2 of NI 51-101.

CSA Staff Response

The CSA believe that the evaluator's consent to the reporting issuer's use of the evaluator's report (Form 2) is implicit. An evaluator should anticipate, when it gives its client issuer a signed Form 2, that the purpose is to enable the reporting issuer to satisfy its obligations under the Instrument by filing the report and issuing the news release. However, written consent from the evaluator is required if the reporting issuer uses the reserves data to which the Form 2 relates for other purposes, such as in a subsequent news release or in a securities offering document.

5. Form 51-101F3

Public Comment

One commenter stated that certification of Form 51-101F3 ("Form 3") by two senior officers and two directors exposes them to a higher level of liability than exists in other Canadian industries and limits the defences available to them. Another commenter urged that we make clearer in Form 3 the differing responsibilities of management and directors.

CSA Staff Response

Form 3 is meant to confirm for readers the respective roles of management and directors and the process underlying corporate oil and gas disclosure. We believe that it does so. We are not persuaded that it exposes officers and directors to excessive or inappropriate liability or denies them appropriate defences. To the extent that civil liability arises under securities legislation, the relevant provisions also set out available defences. The CSA (other than the BCSC, which is not adopting Form 3) remain of the view that Form 3 will enhance market confidence in oil and gas disclosure and thereby indirectly serve the interests of reporting issuers too.

6. Companion Policy: Possible Discretionary Exemptions

Commenters expressed strong, but opposing, views on the possible discretionary relief discussed in Part 8 of the Companion Policy. The focus was on two provisions:

- section 8.2, which discusses possible discretionary exemption to permit a senior producing issuer to use in-house, rather than independent, evaluators; and
- section 8.4, which discusses possible discretionary exemption to permit a reporting issuer that files disclosure in both Canada and the US to present oil and gas information more in accordance with US practice.

While some commenters were opposed to some or all such discretionary relief, proponents from among the class of issuers that might be eligible for relief stressed in their comments that such discretionary relief would be extremely important. One such issuer characterized the suggested relief as "absolutely crucial".

(a) Relief from Independent Evaluation or Audit Requirement

(i) General Principle and Scope

Public Comment

Opponents of the possible discretionary relief discussed in section 8.2 of the Companion Policy felt that all reporting issuers, irrespective of size, should have annual independent reserves evaluations or audits. They argued that:

- exemption would be inconsistent with the trend toward improved corporate governance;
- the availability of reserves audits as an alternative to reserves evaluations would reduce the cost burden of independent involvement; and
- tying exemption to the size of the reporting issuer is misguided, size being no assurance of good disclosure.

Comments of some of the larger issuers indicated that such relief was appropriate and important to them. Proponents generally supported the relief on grounds of cost. Larger issuers pointed to their well-established internal capabilities, and checks and balances, that would ensure the quality of their internally-generated reserves estimates.

Two commenters suggested that similar relief ought also to be available to small issuers, one suggesting that the relief would be more appropriate for the smallest issuers than for the largest. It was argued that independent evaluations would be proportionately more costly for smaller issuers but "not sufficiently change the risk profile inherent in an emerging issuer's reserves estimates".

CSA Staff Response

The CSA remain of the view that the terms and conditions of the discretionary relief discussed in section 8.2 are appropriate. We have made no substantive change to the provision.

We continue to place considerable importance on independent involvement in reserves disclosure, as a method of ensuring quality and as an important element of sustaining market confidence. It is our understanding that the great majority of public companies of all sizes already engage independent evaluators to satisfy the demands of their lenders, investors, auditors or directors.

We acknowledge that the costs of independent evaluation may, as a proportion of market capitalization or other measure of size, be relatively greater for smaller issuers than for larger issuers. It is our view that the benefits of independent involvement, too, may be relatively greater. In some cases, only an independent evaluator might have the resources needed to evaluate a smaller issuer's reserves. We also believe that greater market confidence in the oil and gas sector as a whole, consequent on implementation of the Instrument, is likely to be of direct benefit to both smaller and larger issuers seeking capital.

For these reasons, the CSA are not at present prepared to relax that requirement for smaller issuers. We do anticipate that the possibility of modified treatment for the most junior issuers may be considered in connection with the CSA's separate initiative investigating the merits of "proportionate regulation".

For senior producers, the relief contemplated in section 8.2 would in effect maintain the current position reflected in ASC Staff Notice 43-701 (December 1, 2000), which restricts exemption from the independent evaluation requirement

under NP 2-B to that class of issuer. The discussion in the Companion Policy, however, is more restrictive in that it suggests that the relief would likely be conditional on the applicant demonstrating satisfactory in-house evaluation capabilities and disclosure practices. Other aspects of NI 51-101 would continue to apply to holders of such an exemption: the evaluator, in-house or independent, must have the qualifications and experience called for in the Instrument and the COGE Handbook, and apply the reserves evaluations procedures set out in the COGE Handbook. The role and responsibilities of issuer management and directors are little affected by such relief, and their (modified) report would still be filed. Whether or not a reporting issuer relies on such an exemption, its disclosure and underlying reserves evaluation may be reviewed by securities regulatory staff as part of a continuous disclosure review.

We expect (as one commenter noted in its letter) that even reporting issuers that might be eligible for such relief may decide to engage independent evaluators to satisfy other external requirements or as a measure of internal quality assurance.

(ii) Unconditional Exemption?

Public Comment

One commenter expressed concern that exemption from the independent evaluation requirement would not be subject to any particular conditions, and suggested that allowing the exemption at the reporting issuer's sole discretion could leave room for potential abuse.

CSA Staff Response

The exemption would not be at the reporting issuer's sole discretion. The discretion is that of the securities regulatory authority. As discussed above and in section 8.2, relief would likely be subject to important conditions including regulatory satisfaction with the applicant's reserves evaluation capabilities and disclosure practices and undertakings by the applicant.

(iii) Text of Modified Report

Public Comment

One commenter noted that the wording of the representation concerning management influence on evaluators set out in a modified Report of Management and Directors on Reserves Data and Other Information was problematic.

CSA Staff Response

We agree with the commenter. The text has been revised to refer to the likelihood of the in-house evaluator's work being adversely influenced.

(iv) Small Issuer Reliance on Senior Producer's In-House Evaluation

Public Comment

One commenter asked whether a small issuer's independent evaluator could use reserves estimates prepared by a senior issuer's in-house evaluators, without further audit.

CSA Staff Response

We think it unlikely that a qualified reserves auditor would be prepared to issue a report based on bare reliance on the report of another. However, the concept of audit does imply the exercise of judgement as to the extent of review and investigation appropriate in respect of reserves information prepared by another. The extent to which a qualified reserves evaluator or auditor is able or willing to rely on evaluation work of another will likely vary with the circumstances of each case, audit standards set out in the COGE Handbook and applicable professional standards of practice and codes of ethics.

(b) Discretionary Relief to Permit US-Style Disclosure

Public comment

The contemplated discretionary relief to permit cross-border reporting issuers to disclose oil and gas information more in accordance with US practice was criticized by both proponents and opponents:

- Some cross-border reporting issuers urged that the exemption be automatic, and that it should go further by treating US Form 10-K disclosure as a complete substitute for NI 51-101 (implying that disclosure of the terminology and standards used, explanation of major differences from NI 51-101 standards, and accompanying reports of the evaluator and management and directors, should be waived).
- One commenter requested that Canadian disclosure required despite the exemption, but not mandated by the SEC, should be accepted in a filing separate from the Form 10-K or AIF.
- Some commenters feared that disclosure beyond that required by the SEC but, we understand, routinely provided in other US public disclosure (such as disclosure of probable reserves) would jeopardize their exemption.
- One commenter objected to the potential for reporting issuers to "cherry-pick" the disclosure requirements of NI 51-101, choosing those it likes and ignoring the others. The commenter argued that allowing reporting issuers to disclose probable reserves without disclosing the related future net revenue seems to encourage misleading disclosure and does not facilitate comparisons.

CSA Staff Response

The CSA are persuaded that, for reporting issuers heavily engaged in the US capital markets, mandatory disclosure under two sets of disclosure standards and practices could be both costly to the reporting issuers and confusing to investors. We believe that there will be appropriate cases to permit such reporting issuers to provide oil and gas information in a manner more consistent with US practice. The discretionary nature of the relief gives regulatory staff an opportunity to consider each applicant's case. The undertakings and conditions contemplated in section 8.4 – including public disclosure of how a reporting issuer's disclosure differs from NI 51-101, and the provision of comparable information from year to year – should enable Canadian investors to use that information to make informed investment decisions and to make comparisons with other Canadian issuers.

Contrary to the interpretation of some commenters, voluntary disclosure beyond that required in the US (for example, probable reserves estimates), if consistent with the undertakings and conditions discussed in section 8.4, would not jeopardize the exemption.

The Instrument offers flexibility in its presentation of the required disclosure. The CSA do not consider an unmodified Form 10-K filing alone sufficient. We believe that Forms 2 and 3 provide important information that is not necessarily available in Form 10-K. We consider explanations of material departures from NI 51-101 essential for Canadian investors, but we have modified the discussion in 8.4 to suggest that such disclosure can be "reasonably proximate" to the primary disclosure in a Form 10-K (for example, in a Canadian "wrapper").

Reporting issuers would not be completely free to "cherry-pick" the disclosure they prefer from one year to the next. Paragraph 8.4(b)(iii) indicates that an exemption would be subject to conditions designed to ensure that the disclosure applies clearly identified standards and definitions, that key assumptions are stated, and that the information disclosed in one year (if the subject remains material for the reporting issuer) continues to be provided in subsequent annual filings so that investors can assess and compare that information from year to year.

(c) Annual Reapplications?

Public Comment

One commenter suggested that discretionary relief under the Instrument should be time-limited, and that applicants ought to reapply each year to extend the relief.

CSA Staff Response

The CSA believe that the suggestion would add an administrative burden for both applicant and regulator that outweighs the benefit to the public. Discretionary relief is only granted on terms and conditions considered appropriate in the circumstances. Thereafter the reporting issuer, like any other, must comply with securities legislation and the terms and conditions of its own exemption.

7. Responses to CSA Questions

The CSA Notice that accompanied the 2003 Proposal sought public comment on four issues. The following discussion summarizes the questions we asked, the public comments received and our responses.

(a) Effect of Conversion to CIM Reserves Definitions

- (i) *Might there be a widespread and substantive difference between proved reserves estimated using the CIM definitions as compared to estimates made reasonably applying the NP 2-B definitions?*
- (ii) *Market participants (reporting issuers, analysts, investors, creditors) will need to become aware of and understand the new CIM definitions and the extent to which reported estimates can be expected to differ from those under NP 2-B. How can the CSA help foster market awareness and understanding of the new CIM reserves definitions?*

Public Comment

The widely varying responses to our queries indicate a considerable diversity of view as to how the conversion to the CIM definitions will affect evaluation results. There does, however, seem to be general support for using the industry-developed definitions.

A number of commenters encouraged education of users through seminars to facilitate the transition to the new reserves definitions. One commenter did not think that most investors would ever grasp the meaning of the definitions and should not be expected to; the commenter suggested instead that disclosure should emphasize that reserves are an estimate with a range of possible actual outcomes.

CSA Staff Response

We are persuaded from the comments that it would be at best premature, and likely impossible, to make any general statement as to how estimates under the new definitions are likely to compare to the disclosure under NP 2-B, either systemically or issuer by issuer. We believe that investors can understand even technical information if it is well presented and we agree that good corporate disclosure should convey clearly that reserves estimates are just that – estimates reflecting varying degrees of certainty. The CSA will consider means of fostering awareness of the changes and we encourage market participants to do the same.

(b) Mandatory Disclosure of "Constant Case" Reserves Data

Should the CSA reconsider the requirement in the Instrument for disclosure of constant case estimates of proved reserves and related future net revenue? In particular:

- (i) *Are such estimates sufficiently important to investors to warrant mandatory disclosure?*
- (ii) *Would the response to question (i) differ if the "ceiling test" in the CICA Handbook's Accounting Guideline AcG-5 were modified to no longer use a constant case estimate of future net revenue?*

Public Comment

The majority of commenters stated that reporting of the constant case was useful for comparability and consistency. One commenter urged mandatory disclosure of constant case estimates of both proved and probable reserves using the same range of discount rates as for the forecast case.

CSA Staff Response

We are persuaded by the majority of commenters that it is worth retaining the requirement for some constant case disclosure. The Instrument therefore continues to require disclosure of reserves data estimated using both the forecast case and the constant case. Reporting issuers are free to match the same level of detail in their constant case disclosure as in their forecast case disclosure, but we do not think it necessary to make it mandatory.

(c) Professional Organizations

We sought comment on the criteria set out in the definition of "professional organization", membership in which is a condition of being a "qualified reserves evaluator or auditor".

Public Comment

Senior issuers generally supported the CSA's approach to evaluating Canadian and foreign professional organizations as set out in section 1.5 of the Companion Policy. They encouraged the CSA to "pre-clear" large internationally recognized foreign reserves evaluators prior to implementation.

CSA Staff Response

We have made no substantive changes to section 1.5. We will consider applications for exemption from the Canadian professional membership requirement as contemplated in that section, including applications submitted before the effective date of the Instrument. In considering such applications, evidence of the views of a Canadian professional organization as to the equivalency of particular foreign standards to Canadian standards would likely be helpful.

(d) Disclosure by Product Type/Production Group

Would it be preferable to prescribe certain reserves data disclosure for "production groups" (the aggregate of products derived from a single well or reservoir) rather than separately for each product type?

Public Comment

Some commenters suggested that reserves volumes and sales prices be reported by product type and that the related future net revenue be reported by production group. Two commenters suggested that distinguishing between product types, and combining single product types from different operations, is a subjective exercise: one referred to "artificial splits" and another to "fictional combinations". One commenter criticized the increase in the number of product types to nine from the four specified in the 2002 Proposal.

CSA Staff Response

We agree with the commenters that allocating costs among product types within a production group to estimate future net revenue can be problematic. The Instrument now specifies that reserves estimates are to be disclosed by product type and the related future net revenue by production group.

Most of the increase in the number of product types involved non-conventional products. We have retained those product types; a reporting issuer does not have to report product types that are not material to it. We had added, but have now removed, "sulphur and other non-hydrocarbon by-products" as a separate product type.

8. Matters of General Application

(a) Extend the Comment Period?

Public Comment

One commenter suggested that the period for public comment be extended, in light of the number of changes from the 2002 Proposal and the fact that the comment period coincided with a busy time for some analysts and consultants.

CSA Staff Response

The commenter noted that the public consultation process has already lasted over two years. In fact, the Instrument responded to the ASC oil and gas taskforce recommendations and the CIM reserves definitions, both of which were themselves the result of several years of debate and consultation.

Some commenters urged, and the CSA agree, that it is now time to bring the Instrument into effect, and that we should do so promptly so that industry and its advisors have time to prepare for compliance. Accordingly, we did not extend the comment period.

(b) The Documents

Public Comment

One commenter was critical of the length of the Instrument and specifically questioned the placement of some of the requirements in forms rather than in NI 51-101. The commenter suggested that each provision in the Companion Policy bear the same number as the corresponding provision in NI 51-101, even if gaps in the numbering result.

CSA Staff Response

We have endeavoured to balance the desire for brevity with the need to provide certainty and guidance. Each of the three forms included in the Instrument consolidates the detailed requirements of most direct relevance to a particular user group: the issuer; the reserves evaluator and auditor; and management and directors. Use of the form has also allowed us to include instructions designed to assist those users. The purpose of CSA companion policies is to explain

and provide guidance on mandatory elements in rules and forms, including discussion of how securities regulatory authorities are likely to interpret and apply specific provisions. Some provisions of the Companion Policy pertain to more than one provision (and more than one document), making the direct matching of provision numbers impractical.

(c) **Establish a Multidisciplinary Advisory Committee**

Public Comment

One commenter suggested that the CSA set up a multidisciplinary advisory committee.

CSA Staff Response

The CSA see merit in establishing a multidisciplinary advisory committee with industry and professional participation to advise on application of the Instrument, developments in industry and emerging issues. A similar body has proved very helpful in connection with NI 43-101. We will consider the suggestion further.

**APPENDIX B
TO
ONTARIO SECURITIES COMMISSION NOTICE
IMPLEMENTATION OF NATIONAL INSTRUMENT 51-101
STANDARDS OF DISCLOSURE FOR OIL AND GAS ACTIVITIES**

SUMMARY OF CHANGES FROM THE 2003 PROPOSAL

The following discussion summarizes differences between National Instrument 51-101 ("NI 51-101") and its related Forms and Companion Policy (together, the "Instrument") published for comment on January 24 (on March 21 in Québec), 2003 (the "2003 Proposal").

The Instrument is consistent in substance with the 2003 Proposal, but it does incorporate limited changes.

Most of the changes are intended to clarify the application of the Instrument. A number of the changes were made in response to specific comments or suggestions made by public commenters.

Partly in response to more general comments received, we have also revised certain of the specific disclosure requirements in Form 51-101F1 ("Form 1") with a view to streamlining the disclosure while making it more meaningful to investors.

(a) Terminology

The Instrument incorporates a limited number of new or modified definitions or interpretations, in either or both Part 1 of NI 51-101 and Appendix 1 to the Companion Policy.

(i) Price and Cost Assumptions – Contract Prices

We amended the definitions of "constant prices and costs" and "forecast prices and costs" to clarify the circumstances in which contractual prices are to be used in estimating reserves data.

The revision to the definitions makes clear that contract prices are to be used for both the constant case and forecast case estimates if the contract or other obligation binds the reporting issuer to supply a physical product (typically, oil or gas). If the reporting issuer is able to satisfy its obligation in cash rather than by supplying physical product, the contractual prices are not used for this purpose. In that case, the obligation may be a "financial instrument" for which, as new section 4.3 of the Companion Policy explains, the CICA Handbook discusses financial statement disclosure.

(ii) Future Income Tax Expenses

The 2003 Proposal defined the term "future income tax expenses" but used the defined term interchangeably with the undefined term "income taxes". The Instrument now uses the defined term except where the more generic term is used in a document likely to be read by the general public.

(iii) Future Net Revenue

The definition of "future net revenue" is amended to eliminate an inconsistency with the way the term is applied in some provisions of the Instrument. The revised definition:

- prescribes the deduction of "well abandonment costs" (a newly-defined term) rather than total abandonment and reclamation costs (see the discussion below under "Abandonment and Reclamation Costs"); and
- contemplates exceptions to the general principle that future income tax expenses are deducted in estimating future net revenue (there are several instances in which the Instrument refers specifically to "future net revenue before deducting future income tax expenses").

(iv) Product Types

The 2003 Proposal defined "product type" to include, among other things, natural gas and two types of oil and gas by-products: (i) natural gas liquids and (ii) sulphur and other non-hydrocarbon compounds.

Because natural gas can include natural gas liquids, listing them as separate product types created an inconsistency or overlap. To address that problem, to resolve other potential ambiguities and to facilitate other disclosure changes discussed below, the Instrument now:

- expands the definition of "gas" to refer to "associated gas", "non-associated gas", and "solution gas", and defines each;
- makes clear that the term "crude oil" does not include solution gas (natural gas dissolved in oil);
- defines "natural gas liquids"; and
- makes clear, in the definition of "product type", that natural gas liquids are a separate product type, not a part of "natural gas"; and
- eliminates sulphur and other non-hydrocarbon products as a product type.

(v) Production Group

The new term "production group" (a concept applied indirectly in certain provisions of the 2003 Proposal) groups the principal product type from a well or reservoir with its by-products.

Use of the concept in certain revised disclosure requirements (see below under "Disclosure by production groups") avoids the need for arbitrary and potentially misleading allocations of costs and other factors among multiple products that are produced together from a well or reservoir. This should make disclosure both simpler and more meaningful.

(vi) Proved and Unproved Properties

The 2003 Proposal's definitions of "proved property" and "unproved property" left an unintended gap between properties to which proved reserves are attributed and properties to which no reserves of any category have been attributed. To close the gap, the definition of "proved property" has been amended to refer to a property to which reserves of any category have been attributed.

The Instrument now uses these defined terms instead of more general descriptions of the same concepts that had been used in certain provisions of the 2003 Proposal (for example, in Item 6.2 of Form 1).

(vii) Conformity to CICA Handbook

Minor additions or modifications have been made to the definitions of "exploration costs", "exploratory well" and "property" for conformity with the corresponding definitions in Accounting Guideline AcG-5 "Full cost accounting in the oil and gas industry" in the CICA Handbook.

(b) Estimating and Disclosing Reserves Data

(i) Abandonment and Reclamation Costs

The CSA consider estimated "abandonment and reclamation costs" a very important element of oil and gas disclosure. The quoted phrase, however, covers a variety of costs, not all of which will necessarily be known to, or taken into account by, a qualified reserves evaluator or auditor in estimating reserves data. In many cases, the qualified reserves evaluator or auditor may take into account only a subset of total abandonment and reclamation costs – "well abandonment costs" – (costs of abandoning a well and disconnecting it from the surface gathering system), in estimating future net revenue.

As it did in the 2003 Proposal, Item 6.4 of Form 1 continues to require a reporting issuer to disclose its estimated total abandonment and reclamation costs and (under paragraph 6.4(d)) to disclose the portion of those amounts that have not been deducted in the disclosed estimates of future net revenue on which the qualified reserves evaluator or auditor reports.

Certain provisions of the 2003 Proposal, however, seemed to suggest that the reserves data must invariably be estimated taking into account all abandonment and reclamation costs, a result clearly inconsistent with Item 6.4(d).

To address this inconsistency, the Instrument now uses the newly-defined term "well abandonment costs" in:

- paragraph 4.2(1)(c) (formerly paragraph 4.2(1)(e)) of NI 51-101, which sets out as a general requirement for disclosed reserves data that well abandonment costs (not necessarily total abandonment and reclamation costs) must be deducted in estimating future net revenue; and
- new Instruction 3 to Part 2 of Form 1, which explains that the abandonment and reclamation costs deducted in the estimation of future net revenue must include, at minimum, well abandonment costs.

(ii) Assigning Reserves to Undrilled Property

Paragraph 4.2(1)(b) of NI 51-101, which also sets out a general requirement for disclosed reserves data, retains the principle from the 2003 Proposal that total abandonment and reclamation costs (not only well abandonment costs) must be taken into account when determining whether to attribute reserves to an undrilled property.

The provision has been revised to make clear that it applies whenever that determination is being made – that is, at any time the issue arises as to whether reserves should be attributed to an undrilled property to which reserves have not yet been attributed.

We have not altered the principle that this is not necessarily a recurring process once reserves are assigned. (As noted above, paragraph 4.2(1)(c) then applies to require deduction of well abandonment costs in the estimation of the future net revenue attributable to those reserves.)

(iii) Income Taxes Reflected in Reserves Data

We further amended paragraph 4.2(1)(c) (formerly paragraph 4.2(1)(e)) of NI 51-101 to provide, as a general principle, that disclosed future net revenue is to be an after-tax estimate unless the Instrument specifies otherwise (as it does, for example, in certain requirements for disclosure of future net revenue before deduction of future income tax expenses). A parallel amendment to the definition of future net revenue was discussed under "Terminology" above.

(iv) Simpler, More Meaningful Disclosure

A number of commenters on the 2003 Proposal expressed concern about the volume of information and the level of detail required in the annual reserves data disclosure under Part 2 of Form 1. Some argued in effect that the disclosure would exceed investor requirements and in some cases involve disclosure of proprietary information.

The CSA agree that some of that detailed data could be eliminated without depriving investors of the information they need to make informed investment decisions, and that other changes could make the disclosure provided more meaningful.

Revised Part 2 of Form 1 reflects two primary changes:

- **Streamlined disclosure** -- The 2003 Proposal would have required, under Items 2.1 and 2.2 of Form 1, annual disclosure of components of future net revenue, estimated by year for at least 10 years.

Items 2.1(3)(b) and 2.2(3)(b) of Form 1 now require disclosure only of the aggregate of each component of the future net revenue estimates, using constant and forecast prices and costs respectively. (The revised requirement is illustrated in the revised sample tables on pages 2 and 4 of Appendix 2 to the Companion Policy.) An exception is disclosure of estimated future development costs, for which new Item 5.3(1)(b)(ii) requires disclosure for 5 years.

The result is in some respects also more consistent with the January 2001 recommendations made by the ASC oil and gas taskforce to the CSA.

- **Disclosure by production groups** -- In a further effort to ensure that more streamlined reserves data disclosure is meaningful for investors, we have built on the concept of "production group" used indirectly in the 2003 Proposal. Future net revenue is now to be disclosed by production group rather than by product type (Items 2.1(3) and 2.2(3)).

Reservoirs typically contain, and wells typically produce, more than one "product type". For example, an oil well or oil reservoir will often produce, along with crude oil, other products incidental to the production of the oil: solution gas, natural gas liquids and sulphur. Mandatory disclosure separately for each of these product types can require awkward allocations of costs amongst the various product types produced from a single well or reservoir.

Disclosure by product type can also obscure the fact that a reporting issuer can produce natural gas from both natural gas wells and, as solution gas, from oil wells. An investor might consider the distinction important, given that the economics of producing solution gas are likely more affected by physical and economic aspects of oil production than are the economics of producing gas from predominantly gas wells.

(v) Reconciliation Breakdown

The elements to be disclosed in the reserves reconciliation under Item 4.1 of Form 1 have been reordered to correspond to the relevant discussion in the COGE Handbook, and the brief descriptions of those elements have been replaced by new Instruction 3 which directs readers to the COGE Handbook for more extensive guidance.

The 2003 Proposal called for reconciliations for each product type, but an Instruction indicated that it would suffice to provide the information only in respect of the principal product type attributable to a well, reservoir or other reserves entity. To clarify the requirement, Item 4.1(2)(b) now specifies the products for which the reconciliation is required. Revised Instructions confirm that by-products may be disregarded for this purpose.

(c) Other Changes

(i) Responsibility Rests with the Reporting Issuer

Subsections 2.4(1) and 4.2(1) of NI 51-101 now make clear that responsibility for complying with the Instrument rests with the reporting issuer.

(ii) Consent of Reserves Evaluator or Auditor

Subsection 5.7(1) of NI 51-101 has been amended to make clear that not only disclosure of a complete report of a qualified reserves evaluator or auditor, but also disclosure of information derived from that report, requires the written consent of the author, subject to the exceptions set out in subsection 5.7(2).

In response to uncertainty about the effects of this provision evidenced in public comment, we explain the application of this requirement in new Section 5.2 of the Companion Policy.

(iii) Report of Independent Qualified Reserves Evaluator or Auditor

Item 4 of the report set out in Form 51-101F2 ("Form 2") has been modified to specify that the net present value of future net revenue to be set out in that provision is a pre-tax estimate, to better enable the reader to match it to the reporting issuer's own disclosure in response to Item 2.2(2) of Form 1.

(iv) Transition

Section 1.3 of the Companion Policy provides examples to assist reporting issuers in understanding when their disclosure obligations under NI 51-101 first apply to them, depending upon their financial year-ends. The examples set out are unchanged from the 2003 Proposal, but we now emphasize that the examples are based on the assumption of a 140-day deadline for the filing of annual financial statements. We have done so because the CSA are proposing, in a separate initiative, to reduce the annual financial statement filing period from 140 days to 90 days (120 days for "venture issuers"). See proposed National Instrument 51-102 *Continuous Disclosure Obligations*, available on the websites of a number of CSA jurisdictions.

We have also explained that a prospectus filing could accelerate the reporting issuer's first filing obligations under NI 51-101.

(v) Discretionary Exemptions

Part 8 of the Companion Policy discusses the possibility of discretionary exemptions to permit the use of in-house rather than independent reserves evaluations, and the substitution of US-style disclosure for some of the requirements of the Instrument. We have made very limited, non-substantive changes to this discussion:

- **Disclosure of exemption to be "reasonably proximate"** – The references in sections 8.2, 8.3 and 8.4 to disclosure of a reporting issuer's reliance on a discretionary exemption being "proximate" to the relevant information has been modified to refer to "reasonably proximate". The purpose is to give reporting issuers some flexibility while ensuring that readers will not be misled.
- **In-house evaluations** – Section 8.2 of the Companion Policy discusses the possibility of discretionary relief to enable senior producing issuers to rely on in-house reserves evaluations. We have added to the discussion an undertaking of the applicant issuer, which would likely be required for a discretionary exemption, to implement internal procedures that will permit the preparation of the modified reports described in section 8.2.

(vi) Sample Disclosure Tables

The sample disclosure tables in Appendix 2 to the Companion Policy have been amended to reflect the changes in Form 1 described above.

APPENDIX C
TO
ONTARIO SECURITIES COMMISSION NOTICE
IMPLEMENTATION OF NATIONAL INSTRUMENT 51-101
STANDARDS OF DISCLOSURE FOR OIL AND GAS ACTIVITIES
CONSEQUENTIAL AMENDMENTS
TO NATIONAL AND MULTILATERAL INSTRUMENTS

In conjunction with implementation of National Instrument 51-101 ("NI 51-101") amendments are being made to a number of existing national, multilateral and local instruments and forms. The purpose of these consequential amendments is, generally, to phase out the application of National Policy Statement No. 2-B ("NP 2-B") and to substitute the application of NI 51-101.

The transition from an NP 2-B disclosure regime to NI 51-101 will apply to a reporting issuer, at the latest, when it files (or is required to file) audited financial statements for a year that ends on or includes December 31, 2003.

The transition to NI 51-101 will apply earlier to a reporting issuer that makes a voluntary filing under Part 2 of NI 51-101 earlier than required. It may also apply somewhat earlier to a reporting issuer that files a prospectus after December 31, 2003, to ensure that NI 51-101 disclosure is provided together with audited financial statements for the financial year (prospectuses currently require financial statements 90 days after the year-end, whereas the current annual financial statement filing period is generally 140 days). In the case of an initial public offering of securities by prospectus, disclosure consistent with NI 51-101 would generally be required if the preliminary or final prospectus is filed after March 30, 2004.

The texts of the proposed consequential amendments to the following national and multilateral policy statements, instruments, forms and companion policies follow:

- NP 2-B (repeal on June 30, 2005)
- National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*
- National Instrument 44-101 *Short Form Prospectus Distributions*
 - Form 44-101F1 *AIF*
 - Form 44-101F3 *Short Form Prospectus*
- National Instrument 45-101 *Rights Offerings*
 - Companion Policy 45-101CP
- Multilateral Instrument 45-102 *Resale of Securities*

**INTERIM AMENDMENT
AND SUBSEQUENT RESCISSION
OF
NATIONAL POLICY STATEMENT NO. 2-B
GUIDE FOR ENGINEERS AND GEOLOGISTS SUBMITTING OIL AND GAS REPORTS TO CANADIAN PROVINCIAL
SECURITIES ADMINISTRATORS**

PART 1 INTERIM AMENDMENT

1.1 Amendment – National Policy Statement No. 2-B *Guide for Engineers and Geologists Submitting Oil and Gas Reports to Canadian Provincial Securities Administrators* ("NP 2-B") is amended by adding the following before the heading "General":

"Phase-out of Policy

1. This Policy does not apply to an issuer on or after the earliest date on which the issuer files, or is required to file or to disclose in a filed document, the statement referred to in Item 1 of section 2.1 of National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*.
2. This Policy is rescinded with effect on June 30, 2005."

1.2 Effective Date – Section 1.1 comes into force on September 30, 2003.

PART 2 RESCISSION

2.1 Rescission – NP 2-B is rescinded with effect on June 30, 2005.

**AMENDMENT
TO
NATIONAL INSTRUMENT 13-101
SYSTEM FOR ELECTRONIC DOCUMENT ANALYSIS AND RETRIEVAL (SEDAR)**

PART 1 AMENDMENT

1.1 Amendment – National Instrument 13-101 System for Electronic Document Analysis and Retrieval (SEDAR) is amended by:

- (a) adding to Item 2.3(1)3 the words ", provided that this paragraph 3 does not apply to a statement or report referred to in section 2.1 of National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*"
- (b) adding the following to Appendix A, under the heading "II. Other Issuers (Reporting/Non-Reporting)" "B. Continuous Disclosure" "(a) General Filings":

Oil and Gas Annual Disclosure (NI 51-101)

PART 2 EFFECTIVE DATE

2.1 Effective Date – This amendment comes into force on September 30, 2003.

**AMENDMENT
TO
NATIONAL INSTRUMENT 44-101
SHORT FORM PROSPECTUS DISTRIBUTIONS**

PART 1 AMENDMENT

1.1 Amendment – National Instrument 44-101 *Short Form Prospectus Distributions* is amended by:

- (a) deleting Item 5 of paragraph 10.2(a) and substituting the following:
 - 5. **Oil and Gas Reports** – Any technical report or certificate relating to oil and gas properties prepared in accordance with National Policy Statement No. 2-B *Guide for Engineers and Geologists Submitting Oil and Gas Reports to Canadian Provincial Securities Administrators* that the regulator requests be filed and that was not previously filed, if the preliminary short form prospectus is filed on or before June 30, 2005, the issuer is engaged in oil and gas activities (as defined in National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*) and:
 - (i) the issuer has not filed and is not required to have filed (alone or in the preliminary short form prospectus or as part of another filed document) the statement referred to in Item 1 of section 2.1 of National Instrument 51-101;
 - (ii) the preliminary short form prospectus does not include and is not required to include audited financial statements for a financial year ended on or after December 31, 2003;
 - (iii) if the preliminary short form prospectus is filed on or before March 30, 2004 for an initial public offering of securities, it does not include financial statements for a financial year or interim period that ends on or after December 31, 2003; and
 - (iv) if the preliminary short form prospectus is filed after December 31, 2003 and during the issuer's first financial year, it does not include financial statements for an interim period that ends on or after December 31, 2003.
- (b) deleting Item 9 of paragraph 10.3(a) and substituting the following:
 - 9. **Other Oil and Gas Reports** – Any technical report or certificate relating to oil and gas properties prepared in accordance with National Policy Statement No. 2-B that the regulator requests be filed and that was not previously filed, if the short form prospectus is filed on or before June 30, 2005, the issuer is engaged in oil and gas activities (as defined in National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*) and:
 - (i) the issuer has not filed and is not required to have filed (alone or in the short form prospectus or as part of another filed document) the statement referred to in Item 1 of section 2.1 of National Instrument 51-101;
 - (ii) the short form prospectus does not include and is not required to include audited financial statements for a financial year ended on or after December 31, 2003;
 - (iii) if the short form prospectus is filed on or before March 30, 2004 for an initial public offering of securities, it does not include financial statements for a financial year or interim period that ends on or after December 31, 2003; and
 - (iv) if the short form prospectus is filed after December 31, 2003 and during the issuer's first financial year, it does not include financial statements for an interim period that ends on or after December 31, 2003.
- (c) deleting Item 10(i) of paragraph 10.3(a) and substituting the following:
 - (i) deals with a mineral project or oil and gas activities of the issuer; and

PART 2 EFFECTIVE DATE

2.1 Effective Date – This amendment comes into force on September 30, 2003.

**AMENDMENT
TO
FORM 44-101F1 AIF**

PART 1 AMENDMENT

1.1 Amendment – Item 4 of Form 44-101F1 is amended by:

- (a) adding the following after "operations," in the preamble to section 4.4:
unless section 4.5 applies,
- (b) adding the following after section 4.4:

4.5 Issuers with Oil and Gas Activities

This Item 4.5 applies if the issuer is engaged in oil and gas activities (as defined in National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*) and:

- (a) has filed or is required to have filed (or has included or is required to have included in another filed document) audited annual financial statements for a financial year that ends on or after December 31, 2003;
- (b) has, prior to the date on which it is required to file audited financial statements for a financial year that ends on or after December 31, 2003, filed under Part 2 of National Instrument 51-101 (or included in another filed document) the statement referred to in Item 1 of section 2.1 of National Instrument 51-101; or
- (c) is including in the AIF the statement referred to in Item 1 of section 2.1 of National Instrument 51-101, whether or not for the purpose of satisfying its filing obligations under National Instrument 51-101.

Disclose the following:

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 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 the issuer's most recent financial year.
- (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 Reserves Evaluator or Auditor

Include with the information disclosed under section 1 the report of one or more qualified reserves evaluators or qualified reserves auditors, referred to in Item 2 of section 2.1 of National Instrument 51-101, on the reserves data included in the disclosure provided under paragraphs 1(a) and 1(b) of this Item.

3. Report of Management and Directors

Include with the information disclosed under section 1 the report of management and directors, referred to in Item 3 of section 2.1 of National Instrument 51-101, relating to that information.

INSTRUCTIONS

- (1) *Disclosure in the AIF must be consistent with National Instrument 51-101.*
- (2) *Unless the information presented under paragraph 2 is included in the AIF in satisfaction of the issuer's filing obligations under Part 2 of National Instrument 51-101, the issuer may require the written consent of a qualified reserves evaluator or qualified reserves auditor to disclose information in this Form, pursuant to section 5.7 of National Instrument 51-101.*

PART 2 EFFECTIVE DATE

- 2.1 Effective Date** – This amendment comes into force on September 30, 2003.

**AMENDMENT
TO
FORM 44-101F3 SHORT FORM PROSPECTUS**

PART 1 AMENDMENT

1.1 Amendment – Form 44-101F3 *Short Form Prospectus* is amended by:

- (a) adding to the initial instructions the following:
 - (12) *Disclosure in a preliminary short form prospectus or short form prospectus must be consistent with National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities if the issuer is engaged in oil and gas activities (as defined in National Instrument 51-101) and:*
 - (a) *has filed or is required to have filed (or has included or is required to have included in another filed document) audited annual financial statements for a financial year that ends on or after December 31, 2003;*
 - (b) *has, prior to the date on which it is required to have filed audited financial statements for a financial year that ends on or after December 31, 2003, filed or is required to have filed (or has included or is required to have included in another filed document) the statement referred to in Item 1 of section 2.1 of National Instrument 51-101;*
 - (c) *is filing a preliminary short form prospectus or short form prospectus:*
 - (i) *that includes or is required to include audited financial statements for a financial year ended on or after December 31, 2003;*
 - (ii) *after March 30, 2004 for an initial public offering of securities, and the prospectus includes financial statements for a financial year or interim period that ends on or after December 31, 2003; or*
 - (iii) *after December 31, 2003 and during the issuer's first financial year, and the prospectus includes financial statements for an interim period that ends on or after December 31, 2003; or*
 - (d) *indicates in the preliminary short form prospectus or short form prospectus that information disclosed therein is presented in accordance with National Instrument 51-101.*
- (b) amending Item 10 by:
 - (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";
- (c) adding the following after Item 10.1:

10.2 – Oil and Gas Activities

 - (1) Unless paragraph (2) applies, if a material part of the proceeds of a distribution is to be expended on a particular oil and gas property and if the current AIF does not contain the disclosure required under Item 4.4 of Form 44-101F1 for that property or the disclosure is inadequate or incorrect due to changes, disclose the information required under that Item 4.4.
 - (2) (a) This paragraph applies to an issuer that is engaged in oil and gas activities (as defined in National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*) and that:

- (i) has filed or is required to have filed (or has included or is required to have included in another filed document) audited annual financial statements for a financial year that ends on or after December 31, 2003;
 - (ii) has, prior to the date on which it is required to file audited financial statements for a financial year that ends on or after December 31, 2003, filed (or included in another filed document) the statement referred to in Item 1 of section 2.1 of National Instrument 51-101;
 - (iii) is filing the short form prospectus:
 - (A) including audited financial statements for a financial year ended on or after December 31, 2003;
 - (B) after March 30, 2004 in respect of an initial public offering of securities, and the prospectus includes financial statements for a financial year or interim period that ends on or after December 31, 2003; or
 - (C) after December 31, 2003 and during the issuer's first financial year, and the prospectus includes financial statements for an interim period that ends on or after December 31, 2003; or
 - (iv) indicates in the preliminary short form prospectus or short form prospectus that information disclosed therein is presented in accordance with National Instrument 51-101.
- (b) To the extent not included in the current AIF or in a material change report filed subsequent to the filing of the current AIF, provide:
- (i) the information that would be required under Item 4.5 of Form 44-101F1 if the AIF were being filed on the date of the preliminary short form prospectus or short form prospectus; and
 - (ii) any other information required in the statement referred to in Item 1 of section 2.1 of National Instrument 51-101:
 - (A) as at the end of, or for, the most recent financial year for which the short form prospectus includes an audited balance sheet of the issuer; or
 - (B) in the absence of a completed financial year referred to in clause (A), as at the most recent date as at which the short form prospectus includes an audited balance sheet of the issuer, and for the greatest portion of a financial year that includes the date of that balance sheet and for which the short form prospectus includes an audited income statement of the issuer.

PART 2 EFFECTIVE DATE

2.1 Effective Date – This amendment comes into force on September 30, 2003.

**AMENDMENT
TO
NATIONAL INSTRUMENT 45-101
RIGHTS OFFERINGS**

PART 1 AMENDMENT

1.1 Amendment – Subsection 3.1(1) of National Instrument 45-101 *Rights Offerings* is amended by:

- (a) deleting from Item 4 the words after "Projects"; and
- (b) adding after Item 4 the following, and renumbering the former Item 5 accordingly:
 - 5. If the issuer is engaged in oil and gas activities (as defined in National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*) and the rights offering circular is sent to the reviewing authority on or before June 30, 2005, an oil and gas report prepared in accordance with National Policy Statement No. 2-B *Guide for Engineers and Geologists Submitting Oil and Gas Reports to Canadian Provincial Securities Administrators*, unless the issuer has filed or is required to have filed (or has included or is required to have included in another filed document) the statement referred to in Item 1 of section 2.1 of National Instrument 51-101.

PART 2 EFFECTIVE DATE

2.1 Effective Date – This amendment comes into force on September 30, 2003.

**AMENDMENT
TO
COMPANION POLICY 45-101CP**

PART 1 AMENDMENT

1.1 Amendment – Section 1.5 of Companion Policy 45-101CP is amended by:

(a) deleting from the heading the words after "43-101" and substituting the following:

", National Policy Statement No. 2-B or National Instrument 51-101"; and

(b) deleting the words after "Mineral Projects" and substituting the following:

, National Policy Statement No. 2-B or National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities.

PART 2 EFFECTIVE DATE

2.1 Effective Date – This amendment comes into force on September 30, 2003.

**AMENDMENT
TO
MULTILATERAL INSTRUMENT 45-102
RESALE OF SECURITIES**

PART 1 AMENDMENT

1.1 Amendment – Section 1.1 of Multilateral Instrument 45-102 *Resale of Securities* is amended by:

- (a) adding the following after the definition of "NI 44-101":

"NI 51-101" means National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities;
- (b) deleting paragraph (e) of the definition of "qualifying issuer" and substituting the following:
 - (e) that has filed a current oil and gas report consistent with NP 2-B, if the issuer
 - (i) is engaged in oil and gas activities (as defined in NI 51-101),
 - (ii) is not qualified to file a short form prospectus under NI 44-101,
 - (iii) has not filed and is not required to have filed audited annual financial statements for a financial year that ends on or after December 31, 2003, and
 - (iv) has not, prior to the date on which it is required to file audited financial statements for a financial year that ends on or after December 31, 2003, filed under Part 2 of NI 51-101 or included in another filed document the statement referred to in Item 1 of section 2.1 of NI 51-101,

PART 2 EFFECTIVE DATE

2.1 Effective Date – This amendment comes into force on September 30, 2003.

**APPENDIX D
TO
ONTARIO SECURITIES COMMISSION NOTICE

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

CONSEQUENTIAL AMENDMENTS
TO ONTARIO SECURITIES LEGISLATION**

In conjunction with implementation of National Instrument 51-101, the Ontario Securities Commission has amended certain local Ontario instruments. The purpose of these consequential amendments – to phase out the application of National Policy Statement No. 2- B and substitute the application of NI 51-101 – the timing, and the transitional application issuer-by-issuer, are the same as for the consequential amendments to national and multilateral instruments discussed in Appendix C.

OSC Instruments

The Ontario local consequential amendments affect the following:

- OSC Rule 41-501 *General Prospectus Requirements*
- OSC Form 41-501F1 *Information Required in a Prospectus*

The texts of these proposed consequential amendments are set out below.

**PROPOSED AMENDMENT
TO
ONTARIO SECURITIES COMMISSION RULE 41-501
GENERAL PROSPECTUS REQUIREMENTS**

PART 1 AMENDMENT

1.1 Amendment – Ontario Securities Commission Rule 41-501 *General Prospectus Requirements* is amended by:

(a) deleting Item 3 of subsection 13.2(1) and substituting the following:

3. Oil and Gas Reports

Any technical report or certificate relating to oil and gas properties prepared in accordance with National Policy Statement No. 2-B *Guide for Engineers and Geologists Submitting Oil and Gas Reports to Canadian Provincial Securities Administrators* that was not previously filed, if the preliminary prospectus is filed on or before June 30, 2005, the issuer is engaged in oil and gas activities (as defined in National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*) and:

- (i) the issuer has not filed and is not required to have filed (alone or in the preliminary prospectus or as part of another filed document) the statement referred to in Item 1 of section 2.1 of National Instrument 51-101;
- (ii) the preliminary prospectus does not include and is not required to include audited financial statements for a financial year ended on or after December 31, 2003;
- (iii) if the preliminary prospectus is filed on or before March 30, 2004 for an initial public offering of securities, it does not include financial statements for a financial year or interim period that ends on or after December 31, 2003; and
- (iv) if the preliminary prospectus is filed after December 31, 2003 and during the issuer's first financial year, it does not include financial statements for an interim period that ends on or after December 31, 2003.

(b) deleting Item 8 of subsection 13.3(1) and substituting the following:

8. Other Oil and Gas Reports

Any technical report or certificate relating to oil and gas properties prepared in accordance with National Policy Statement No. 2-B that was not previously filed, if the prospectus is filed on or before June 30, 2005, the issuer is engaged in oil and gas activities (as defined in National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*) and:

- (i) the issuer has not filed and is not required to have filed (alone or in the prospectus or as part of another filed document) the statement referred to in Item 1 of section 2.1 of National Instrument 51-101;
- (ii) the prospectus does not include and is not required to include audited financial statements for a financial year ended on or after December 31, 2003;
- (iii) if the prospectus is filed on or before March 30, 2004 for an initial public offering of securities, it does not include financial statements for a financial year or interim period that ends on or after December 31, 2003; and
- (iv) if the prospectus is filed after December 31, 2003 and during the issuer's first financial year, it does not include financial statements for an interim period that ends on or after December 31, 2003.

(c) deleting Item 9(i) of subsection 13.3(1) and substituting the following:

- (i) deals with a mineral project or oil and gas activities of the issuer; and

PART 2 EFFECTIVE DATE

2.1 Effective Date – This amendment comes into force on September 30, 2003.

**PROPOSED AMENDMENT
TO
ONTARIO SECURITIES COMMISSION FORM 41-501F1
INFORMATION REQUIRED IN A PROSPECTUS**

PART 1 AMENDMENT

1.1 Amendment – Ontario Securities Commission Form 41-501F1 *Information Required in a Prospectus* is amended by:

- (a) adding to the initial instructions the following:
 - (11) *Disclosure in a prospectus must be consistent with National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities if the issuer is engaged in oil and gas activities (as defined in National Instrument 51-101) and:*
 - (a) *has filed or is required to have filed (or has included or is required to have included in another filed document) audited annual financial statements for a financial year that ends on or after December 31, 2003;*
 - (b) *has, prior to the date on which it is required to have filed audited financial statements for a financial year that ends on or after December 31, 2003, filed or is required to have filed (or has included or is required to have included in another filed document) the statement referred to in Item 1 of section 2.1 of National Instrument 51-101;*
 - (c) *is filing a preliminary prospectus or prospectus:*
 - (i) *that includes or is required to include audited financial statements for a financial year ended on or after December 31, 2003;*
 - (ii) *after March 30, 2004 for an initial public offering of securities, and the prospectus includes financial statements for a financial year or interim period that ends on or after December 31, 2003; or*
 - (iii) *after December 31, 2003 and during the issuer's first financial year, and the prospectus includes financial statements for an interim period that ends on or after December 31, 2003; or*
 - (d) *indicates in the prospectus that information disclosed therein is presented in accordance with National Instrument 51-101.*
- (b) amending Item 6 by:
 - (a) adding after "operations," in the preamble to Item 6.4:

unless Item 6.5 applies,
 - (b) adding after Item 6.4 the following:

6.5 Issuers with Oil and Gas Activities

This Item 6.5 applies if the issuer is engaged in oil and gas activities (as defined in National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*) and:

- (a) has filed or is required to have filed (or has included or is required to have included in another filed document) audited annual financial statements for a financial year that ends on or after December 31, 2003;
- (b) has, prior to the date on which it is required to file audited financial statements for a financial year that ends on or after December 31, 2003, filed (or included in another filed document) the statement referred to in Item 1 of section 2.1 of National Instrument 51-101;
- (c) is filing the prospectus:

- (i) including audited financial statements for a financial year ended on or after December 31, 2003;
 - (ii) after March 30, 2004 for an initial public offering of securities, and the prospectus includes financial statements for a financial year or interim period that ends on or after December 31, 2003; or
 - (iii) after December 31, 2003 and during the issuer's first financial year, and the prospectus includes financial statements for an interim period that ends on or after December 31, 2003; or
- (d) indicates in the prospectus that information disclosed therein is presented in accordance with National Instrument 51-101.

1. Reserves Data and Other Information

- (a) Disclose the information prescribed by Form 51-101F1 *Statement of Reserves Data and Other Oil and Gas Information*:
- (i) as at the end of, and for, the most recent financial year for which the prospectus includes an audited balance sheet of the issuer; or
 - (ii) in the absence of a completed financial year referred to in clause (i), as at the most recent date for which the prospectus includes an audited balance sheet of the issuer, and for the greatest portion of the financial year that includes the date of that balance sheet and for which the prospectus includes an audited income statement of the issuer.
- (b) To the extent not reflected in the information disclosed in response to paragraph (a), disclose the information contemplated by Part 6 of National Instrument 51-101, in respect of material changes that occurred after the applicable balance sheet date referred to in paragraph (a).

2. Report of Qualified Reserves Evaluator or Auditor

Include with the information disclosed under section 1 the report of one or more qualified reserves evaluators or qualified reserves auditors, referred to in Item 2 of section 2.1 of National Instrument 51-101, on the reserves data included in the disclosure provided under paragraph 1(a) of this Item.

3. Report of Management and Directors

Include with the information disclosed under section 1 the report of management and directors, referred to in Item 3 of section 2.1 of National Instrument 51-101, relating to that information.

INSTRUCTION

The issuer may require the written consent of a qualified reserves evaluator or qualified reserves auditor to disclose information in this Form, pursuant to section 5.7 of National Instrument 51-101.

PART 2 EFFECTIVE DATE

2.1 Effective Date – This amendment comes into force on September 30, 2003.