

NOTICE**Consequential Amendments Arising from the
Replacement of
National Instrument 44-101 *Short Form Prospectus Distributions*****Amendments to National Instrument 44-102 *Shelf Distributions*,
National Instrument 44-103 *Post-Receipt Pricing*,
National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*,
and Form 51-102F2 *Annual Information Form* of National Instrument 51-102 *Continuous
Disclosure Obligations*****October 21, 2005****Overview**

We, the Canadian Securities Administrators (CSA), are replacing National Instrument 44-101 *Short Form Prospectus Distributions*, Form 44-101F3 *Short Form Prospectus* and Companion Policy 44-101CP (collectively, the Former Short Form Instruments), which came into effect December 31, 2000, with new instruments (collectively, the New Short Form Instruments) (see CSA Notice of Replacement of National Instrument 44-101 *Short Form Prospectus Distributions* dated October 21, 2005).

The New Short Form Instruments permit more reporting issuers to use the short form prospectus system, eliminates duplication and inconsistencies between the short form system and the continuous disclosure regimes, further streamlines the short form prospectus system, and addresses deficiencies or ambiguities in the Former Short Form Instruments that we have identified over the past four years.

A number of other national instruments build on the foundation of the Former Short Form Instruments, or make reference to some of their requirements. As a consequence of the replacement of the Former Short Form Instruments with the New Short Form Instruments, we are also amending:

- National Instrument 44-102 *Shelf Distributions* (NI 44-102) and the related Companion Policy 44-102CP (44-102CP);
- National Instrument 44-103 *Post-Receipt Pricing* (NI 44-103) and the related Companion Policy 44-103CP (44-103CP);
- National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* (NI 51-101) and the related Companion Policy 51-101CP (NI 51-101CP); and
- Form 51-102F2 *Annual Information Form* (Form 51-102F2) of National Instrument 51-102 *Continuous Disclosure Obligations*.

In this Notice, the amendment instruments for NI 44-102, NI 44-103, and NI 51-101 are collectively referred to as the Instrument Amendments. The amendment instrument for Form

51-102F2 is referred to as the AIF Amendment. The amendments to 44-102CP, 44-103CP, and 51-101CP are collectively referred to as the Policy Amendments.

Members of the CSA in the following jurisdictions have made, or expect to make, the Instrument Amendments and the AIF Amendment

- a rule in each of British Columbia, Alberta, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador;
- a commission regulation in Saskatchewan and a regulation in Québec; and
- a policy in the Northwest Territories, Yukon and Nunavut.

The Policy Amendments have been, or are expected to be, adopted in all jurisdictions.

In British Columbia and Ontario, the implementation of the Instrument Amendments and the AIF Amendment is subject to ministerial approval.

In Ontario, the Instrument and the other materials required to be delivered to the minister responsible for the oversight of the Ontario Securities Commission were delivered on **October 14, 2005**.

In Québec, the Instrument Amendments and the AIF Amendment are regulations made under section 331.1 of *The Securities Act* (Québec) and must be approved, with or without amendment, by the Minister of Finance. The Instrument Amendments and the AIF Amendment will come into force on the date of its publication in the *Gazette officielle du Québec* or on any later date specified in the regulation.

Provided all necessary ministerial approvals are obtained, the Instrument Amendments and the AIF Amendment will come into force on **December 30, 2005**.

Summary of Written Comments

On January 7, 2005, we published the Instrument Amendments and Policy Amendments for comment. The comment period ended in April 2005. During the comment period we received a submission from one commenter, KPMG LLP. Appendix A summarizes their comments and our responses.

Summary of Changes to the Instrument Amendments and Policy Amendments

After considering the comments, we made some changes to the Instrument Amendments and the Policy Amendments. We do not believe these changes are material and so are not republishing the Instrument Amendments or the Policy Amendments for a further comment period. The changes are summarized in Appendix B.

The AIF Amendment

We are making the AIF Amendment as a consequence of comments we received regarding the proposed changes to Item 15 of Form 44-101F1 *Short Form Prospectus* (Form 44-101F1) that we published for comment on January 7, 2005. The AIF Amendment conforms the requirement for disclosure about interests of experts in section 16.2 of Form 51-102F2 so that it is the same as what we published for comment in section 15.2 of Form 44-101F1. The AIF Amendment is not being published for comment because it does not materially change Form 51-102F2.

Questions

Please refer your questions to any of:

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Appendix A

Summary of Comments on NI 44-102 *Shelf Distributions*

Item	Reference	Comments	Draft CSA Responses
1.	Auditor involvement with interim financial statements	The commenter expressed concerns about removing the auditor's comfort letter requirement under section 7.3 of NI 44-102. The commenter suggested mandating an auditor review of interim financial statements included or incorporated by reference in the short form prospectus or supplements that establishes a continuous distribution.	<p>We acknowledge the concern raised by the commenter. We have included a requirement in subsection 6.2(3) of NI 44-102 that an auditor must review any unaudited financial statements of an issuer or an acquired business incorporated by reference into a base shelf prospectus but filed after the date of the filing of the base shelf prospectus.</p> <p>We have also included a requirement in subsection 6.2(5) of NI 44-102 that the review must have been completed, if the base shelf prospectus established an MTN program or other continuous offering, no later than the filing of the unaudited financial statement, or, in all other circumstances, no later than the next filing of a shelf supplement.</p>
2.	Auditor involvement with other documents subsequently filed and incorporated by reference	The commenter expressed concerns about auditor involvement with other documents subsequently filed and incorporated by reference. It is impossible for an auditor to be continuously updating his or her reasonable investigation throughout the period of a continuous distribution. It is also impracticable and contrary to the objectives of a continuous distribution system to require an issuer to obtain an updated auditor's consent every time additional information is deemed to be incorporated by reference into the base shelf	We have not made any changes to the consent requirements in either NI 44-101 or NI 44-102. Experts' liability stems from the applicable provisions in the respective Provincial Securities Acts and/or the common law. Consideration of this issue is beyond the scope of this initiative.

Item	Reference	Comments	Draft CSA Responses
		<p>prospectus. The commenter suggested two alternatives:</p> <ul style="list-style-type: none"> • align the consent requirements of auditors and other experts associated with the continuous offering with the related certificate requirements of the issuer and underwriter (and promoter and credit supporter, where applicable) or • clearly indicate in NI 44-102 that the auditor's prospectus liability is not extended past the date of their last consent 	<p>We note that there are also professional standards related to auditor's consents as set out in the CICA Handbook – Assurance.</p>
3.	Updating prospectus certificates and experts' consents	<p>The commenter also suggested that the filing of the AIF be regarded as the filing of an amended prospectus and that an issuer be required to file updated prospectus certificates and experts' consents when the AIF is incorporated into a base shelf prospectus underlying a continuous distribution of securities.</p>	<p>We have not made the suggested change. A new certificate is required under NI 44-102 only if an amended prospectus is filed. We do not believe the filing of an AIF should be regarded as the filing of an amended prospectus.</p> <p>An AIF would be incorporated by reference into the base shelf prospectus and would be certified by either a forward-looking certificate at the time of the base or a new certificate at the time of the supplement. We believe that this requirement under NI 44-102 is appropriate.</p>
4.	Form of auditor's consent associated with a continuous offering	<p>The commenter also suggested that the form of auditor's consent in CICA Handbook Section 7110 should satisfy the consent requirement in section 7.2 of NI 44-102.</p>	<p>We believe that a CICA Handbook Section 7110 auditor's consent is not sufficient for purposes of the short form prospectus. The CICA Section 7110 auditor's consent does not include the statement that the auditor has read the short form prospectus and has no reason to believe that there are any misrepresentations in information derived from the following: the report,</p>

Item	Reference	Comments	Draft CSA Responses
			financial statements on which the auditor reported, knowledge of the auditor as a result of the services performed, or knowledge as a result of the audit of the financial statements. We believe these statements are an integral part of the auditor's consent.
5.	Auditor's consents associated with a continuous offering – Example in section 2.6.1 of CP	The commenter stated that the guidance in proposed section 2.6.1 of the Companion Policy was found to be of limited help in clarifying the requirements in section 7.2 and suggested alternative wording.	We acknowledge the comment. We have changed the table in section 2.6.1 of the Companion Policy by incorporating some of the commenter's suggestions.

Appendix B

Summary of Changes

The following summarizes the changes to the Instruments and the Policies from the version that was published for comment on January 7, 2005.

NI 44-102

Qualification to File a Short Form Prospectus – We have made appropriate changes to NI 44-102 to reflect the decision to proceed with Alternative B in the New Short Form Instruments.

List of Exemptions – We have added a requirement to list all exemptions from the provisions of NI 44-102 granted to the issuer applicable to the base shelf prospectus, including all exemptions to be evidenced by the issuance of a receipt for the base shelf prospectus pursuant to section 11.2 of NI 44-102. We have added this requirement to ensure issuers to provide greater transparency with respect to such exemptions.

Review of Unaudited Financial Statements – We have added subsection 6.2(3) to require any unaudited financial statements incorporated by reference into a base shelf prospectus but filed after the date of filing the base shelf prospectus to be reviewed in accordance with the relevant standards set out in the CICA Handbook for a review of financial statements by an entity's auditor or a public accountant's review of financial statements. This review requirement is consistent with the comfort letter requirement that was in section 7.3, which is being repealed. In effect, NI 44-102 retains the review requirement, but no longer requires the comfort letter addressed to the regulator evidencing that review.

Because National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* permits certain issuers to include in a base shelf prospectus audited financial statements that have been audited in accordance with certain foreign auditing standards, subsection 6.2(4) permits those same issuers to include in a base shelf prospectus unaudited financial statements that have been reviewed in accordance with certain foreign review standards.

We have also added subsection 6.2(5), which specifies when the review must be completed.

NI 44-103

List of Exemptions – We have added a requirement to list all exemptions from the provisions of NI 44-103 granted to the issuer applicable to the base PREP prospectus, including all exemptions to be evidenced by the issuance of a receipt for the base PREP prospectus pursuant to section 6.2 of NI 44-103. We have added this requirement to ensure issuers to provide greater transparency with respect to such exemptions.