

5.1.2 CSA Notice - Consequential Amendments Arising from the Replacement of NI 44-101 Short Form Prospectus Distributions

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 (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:

Michael Moretto
Manager, Corporate Finance
British Columbia Securities Commission
(604) 899-6767
mmoretto@bcsc.bc.ca

Tracy Hedberg
Senior Securities Analyst
British Columbia Securities Commission
(604) 899-6797
thedberg@bcsc.bc.ca

Charlotte Howdle
Securities Analyst
Alberta Securities Commission
(403) 297-2990
charlotte.howdle@seccom.ab.ca

Mavis Legg
Manager, Securities Analysis
Alberta Securities Commission
(403) 297-2663
mavis.legg@seccom.ab.ca

Rules and Policies

Patricia Leeson
Senior Legal Counsel
Alberta Securities Commission
(403) 297-5222
patricia.leeson@seccom.ab.ca

Melinda Ando
Senior Legal Counsel
Alberta Securities Commission
(403) 297-2079
melinda.ando@seccom.ab.ca

Ian McIntosh
Deputy Director, Corporate Finance
Saskatchewan Financial Services Commission
(306) 787-5867
imcintosh@sfsc.gov.sk.ca

Bob Bouchard
Director, Corporate Finance
Manitoba Securities Commission
(204) 945-2555
bbouchard@gov.mb.ca

Charlie MacCready
Senior Legal Counsel and Assistant Manager
Ontario Securities Commission
(416) 593-2367
cmaccready@osc.gov.on.ca

Sonny Randhawa
Accountant, Corporate Finance
Ontario Securities Commission
(416) 593-2380
srandhawa@osc.gov.on.ca

Michael Tang
Legal Counsel, Corporate Finance
Ontario Securities Commission
(416) 593-2330
mtang@osc.gov.on.ca

Marcel Tillie
Senior Accountant, Corporate Finance
Ontario Securities Commission
(416) 593-8078
mtillie@osc.gov.on.ca

Rosetta Gagliardi
Conseillère en réglementation
Autorité des marchés financiers
(514) 395-0558 ext. 4462
rosetta.gagliardi@lautorite.qc.ca

Susan W. Powell
Legal Counsel
Market Regulation
New Brunswick Securities Commission
Susan.Powell@nbsc-cvmnb.ca

Rules and Policies

Bill Slattery
Deputy Director, Corporate Finance and Administration
Nova Scotia Securities Commission
(902) 424-7355
slattejw@gov.ns.ca

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	<p>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 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 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.</p> <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	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>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</p>

Rules and Policies

Item	Reference	Comments	Draft CSA Responses
			<p>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	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.	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, 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.

**AMENDMENT INSTRUMENT
FOR
NATIONAL INSTRUMENT 44-102 SHELF DISTRIBUTIONS**

1. This Instrument amends National Instrument 44-102 *Shelf Distributions*.
2. “National Instrument 44-101 Short Form Prospectus Distributions” and “National Instrument 44-101” are struck out wherever they occur and “NI 44-101” is substituted.
3. Subsection 1.1(1) is amended,
 - (a) by adding the following definition after the definition of “MTN program”:

“NI 44-101” means National Instrument 44-101 *Short Form Prospectus Distributions*”;
 - (b) in the definition of “novel”, by adding “,” after “means”; and
 - (c) by repealing the definition of “special warrant”.
4. Section 1.3 is repealed.
5. Part 2 is repealed and the following is substituted:

“Part 2 SHELF QUALIFICATION AND PERIOD OF RECEIPT EFFECTIVENESS

- 2.1 General** - An issuer shall not file a short form prospectus that is a base shelf prospectus, unless the issuer is qualified to do so under this Instrument.
- 2.2 Shelf Qualification for Distributions Qualified under Section 2.2 of NI 44-101 (Basic Qualification)**
 - (1) An issuer is qualified to file a preliminary short form prospectus that is a preliminary base shelf prospectus if, at the time of filing, the issuer is qualified under section 2.2 of NI 44-101 to file a prospectus in the form of a short form prospectus.
 - (2) An issuer that has filed a preliminary base shelf prospectus in reliance on the qualification criteria in subsection (1) is qualified to file a short form prospectus that is the corresponding base shelf prospectus.
 - (3) A receipt issued for a base shelf prospectus of an issuer qualified under subsection (2) is effective until the earliest of
 - (a) the date 25 months from the date of its issue;
 - (b) the time immediately before the entering into of an agreement of purchase and sale for a security to be sold under the base shelf prospectus, if at that time
 - (i) the issuer does not have current annual financial statements and does not satisfy the requirements of the exemption in either of subsection 2.7(1) or (2) of NI 44-101,
 - (ii) the issuer does not have a current AIF and does not satisfy the requirements of the exemption in either of subsection 2.7(1) or (2) of NI 44-101,
 - (iii) the issuer’s equity securities are not listed or posted for trading on a short form eligible exchange,
 - (iv) the issuer is an issuer
 - (A) whose operations have ceased, or
 - (B) whose principal asset is cash, cash equivalents, or its exchange listing, or

(v) the issuer has withdrawn its notice declaring the issuer's intention to be qualified to file a short form prospectus under NI 44-101; and

(c) the lapse date, if any, prescribed by securities legislation.

2.3 Shelf Qualification for Distributions Qualified under Section 2.3 of NI 44-101 (Approved Rating Non-Convertible Securities)

(1) An issuer is qualified to file a preliminary short form prospectus that is a preliminary base shelf prospectus for approved rating non-convertible securities if, at the time of filing, the issuer

(a) is qualified under section 2.3 of NI 44-101 to file a prospectus in the form of a short form prospectus; and

(b) has reasonable grounds for believing that, if it were to distribute securities under the base shelf prospectus, the securities distributed would receive an approved rating and would not receive a rating lower than an approved rating from any approved rating organization.

(2) An issuer that has filed a preliminary base shelf prospectus in reliance on the qualification criteria in subsection (1) is qualified to file a short form prospectus that is the corresponding base shelf prospectus if, at the time of the filing of the base shelf prospectus, the issuer has reasonable grounds for believing that, if it were to distribute non-convertible securities under the base shelf prospectus, the securities distributed would receive an approved rating and would not receive a rating lower than an approved rating from any approved rating organization.

(3) A receipt issued for a base shelf prospectus of an issuer filed under subsection (2) is effective until the earliest of

(a) the date 25 months from the date of its issue;

(b) the time immediately before the entering into of an agreement of purchase and sale for a security to be sold under the base shelf prospectus, if at that time

(i) the issuer does not have current annual financial statements and does not satisfy the requirements of the exemption in either of subsection 2.7(1) or (2) of NI 44-101,

(ii) the issuer does not have a current AIF and does not satisfy the requirements of the exemption in either of subsection 2.7(1) or (2) of NI 44-101,

(iii) the issuer has withdrawn its notice declaring the issuer's intention to be qualified to file a short form prospectus under NI 44-101, or

(iv) the securities to which the agreement relates

(A) have not received a final approved rating,

(B) are the subject of an announcement by an approved rating organization, of which the issuer is or ought reasonably to be aware, that the approved rating given by the organization may be down-graded to a rating category that would not be an approved rating, or

(C) have received a provisional or final rating lower than an approved rating from any approved rating organization; and

(c) the lapse date, if any, prescribed by securities legislation.

2.4 Shelf Qualification for Distributions under Section 2.4 of NI 44-101 (Guaranteed Non-Convertible Debt Securities, Preferred Shares and Cash Settled Derivatives)

(1) An issuer is qualified to file a short form prospectus that is a preliminary base shelf prospectus for non-convertible debt securities, non-convertible preferred shares or non-convertible cash settled derivatives if, at the time of filing, the issuer is qualified under section 2.4 of NI 44-101 to file a prospectus in the form of a short form prospectus.

- (2) An issuer that has filed a preliminary base shelf prospectus in reliance on subsection (1) is qualified to file a short form prospectus that is the corresponding base shelf prospectus.
- (3) A receipt issued for a base shelf prospectus of an issuer qualified under subsection (2) is effective until the earliest of
 - (a) the date 25 months from the date of its issue;
 - (b) the time immediately before the entering into of an agreement of purchase and sale for a security to be sold under the base shelf prospectus, if at that time
 - (i) a credit supporter has not provided full and unconditional credit support for the securities to which the shelf prospectus supplement relates,
 - (ii) unless the requirements of subparagraph 2.4(1)(b)(ii) of NI 44-101, but not the requirements of subparagraph 2.4(1)(b)(i) of NI 44-101, were satisfied at the time the issuer filed its base shelf prospectus, the credit supporter does not have current annual financial statements and does not satisfy the requirements of the exemption in either of subsection 2.7(1) or (2) of NI 44-101,
 - (iii) unless the requirements of subparagraph 2.4(1)(b)(ii) of NI 44-101, but not the requirements of subparagraph 2.4(1)(b)(i) of NI 44-101, were satisfied at the time the issuer filed its base shelf prospectus, the credit supporter does not have a current AIF and does not satisfy the requirements of the exemption in either of subsection 2.7(1) or (2) of NI 44-101,
 - (iv) the issuer has withdrawn its notice declaring the issuer's intention to be qualified to file a short form prospectus under NI 44-101, or
 - (v) either of the following is true
 - (A) the credit supporter's equity securities are not listed or posted for trading on a short form eligible exchange, or
 - (B) the credit supporter is a credit supporter
 - (I) whose operations have ceased, or
 - (II) whose principal asset is cash, cash equivalents, or its exchange listing, and
 - either of the following is true:
 - (C) the credit supporter does not have issued and outstanding non-convertible securities that
 - (I) have received an approved rating,
 - (II) have not been the subject of an announcement by an approved rating organization, of which the issuer is or ought reasonably to be aware, that the approved rating given by the organization may be down-graded to a rating category that would not be an approved rating, and
 - (III) have not received a rating lower than an approved rating from any approved rating organization, or
 - (D) the securities to which the agreement relates
 - (I) have not received a final approved rating,
 - (II) have been the subject of an announcement by an approved rating organization, of which the issuer is or ought reasonably to

be aware, that the approved rating given by the organization may be down-graded to a rating category that would not be an approved rating, and

- (III) have received a provisional or final rating lower than an approved rating from any approved rating organization; and

- (c) the lapse date, if any, prescribed by securities legislation.

2.5 Shelf Qualification for Distributions under Section 2.5 of NI 44-101 (Guaranteed Convertible Debt Securities or Preferred Shares)

(1) An issuer is qualified to file a short form prospectus that is a preliminary base shelf prospectus for convertible debt securities and convertible preferred shares if, at the time of filing, the issuer is qualified under section 2.5 of NI 44-101 to file a prospectus in the form of a short form prospectus.

(2) An issuer that has filed a preliminary base shelf prospectus in reliance on subsection (1) is qualified to file a short form prospectus that is the corresponding base shelf prospectus.

(3) A receipt issued for a base shelf prospectus qualified under subsection (2) is effective until the earliest of

- (a) the date 25 months from the date of its issue;

- (b) the time immediately before the entering into of an agreement of purchase and sale for a security to be sold under the base shelf prospectus, if at that time

- (i) the securities to which the agreement relates are not convertible into securities of a credit supporter that has provided full and unconditional credit support for the securities being distributed,

- (ii) the credit supporter does not have current annual financial statements and does not satisfy the requirements of the exemption in either of subsection 2.7(1) or (2) of NI 44-101,

- (iii) the credit supporter does not have a current AIF and does not satisfy the requirements of the exemption in either of subsection 2.7(1) or (2) of NI 44-101,

- (iv) the credit supporter's equity securities are not listed or posted for trading on a short form eligible exchange,

- (v) the credit supporter is a credit supporter

- (A) whose operations have ceased, or

- (B) whose principal asset is cash, cash equivalents, or its exchange listing, or

- (vi) the issuer has withdrawn its notice declaring the issuer's intention to be qualified to file a short form prospectus under NI 44-101; and

- (c) the lapse date, if any, prescribed by securities legislation.

2.6 Shelf Qualification for Distributions under Section 2.6 of NI 44-101 (Asset-Backed Securities)

(1) An issuer that is qualified under section 2.6 of NI 44-101 to file a prospectus in the form of a short form prospectus may file a preliminary base shelf prospectus for asset-backed securities if, at the time of filing, the issuer has reasonable grounds for believing that

- (a) all asset-backed securities that it may distribute under the base shelf prospectus will receive an approved rating; and

- (b) no asset-backed securities that it may distribute under the base shelf prospectus will receive a rating lower than an approved rating from any approved rating organization.

- (2) An issuer that has filed a preliminary base shelf prospectus in reliance on the qualification criteria in section 2.6 of NI 44-101 may file the corresponding base shelf prospectus if, at the time of the filing of the base shelf prospectus, the issuer has reasonable grounds for believing that
 - (a) all asset-backed securities that it may distribute under the base shelf prospectus will receive an approved rating; and
 - (b) no asset-backed securities that it may distribute under the base shelf prospectus will receive a rating lower than an approved rating from any approved rating organization.
- (3) A receipt issued for a base shelf prospectus qualified under subsection (2) is effective for a distribution of asset-backed securities until the earliest of
 - (a) the date 25 months from the date of its issue;
 - (b) the time immediately before the entering into of an agreement of purchase and sale for an asset-backed security to be sold under the base shelf prospectus, if at that time
 - (i) the issuer does not have current annual financial statements and does not satisfy the requirements of the exemption in either of subsection 2.7(1) or (2) of NI 44-101,
 - (ii) the issuer does not have a current AIF and does not satisfy the requirements of the exemption in either of subsection 2.7(1) or (2) of NI 44-101, or
 - (iii) the asset-backed securities to which the agreement relates
 - (A) have not received a final approved rating,
 - (B) have been the subject of an announcement by an approved rating organization, of which the issuer is or ought reasonably to be aware, that the approved rating given by the organization may be down-graded to a rating category that would not be an approved rating, or
 - (C) have received a provisional or final rating lower than an approved rating from any approved rating organization; and
 - (c) the lapse date, if any, prescribed by securities legislation.

2.7 Lapse Date - Ontario - In Ontario, the lapse date prescribed by securities legislation for a receipt issued for a base shelf prospectus is extended to the date 25 months from the date of issuance of the receipt.

2.8 Lapse Date - Alberta - In Alberta, the lapse date prescribed by securities legislation for a receipt issued for a base shelf prospectus is the date 25 months from the date of the issuance of the receipt.

2.9 Limitation on Offerings - Despite any provision in this Instrument, the shelf procedures shall not be used for a distribution of rights under a rights offering.”

- 6. Subsections 4.1(1) and (2) are amended by moving “in the local jurisdiction” to after “distribute”.
- 7. Section 5.1 is amended in the preamble by adding “for the distribution” after “a short form prospectus”.
- 8. Sections 5.3 and 5.6 are amended by striking out “44-101F3” wherever it occurs and substituting “44-101F1”.
- 9. Section 5.4 is amended by striking out “person or company” and substituting “issuer or selling securityholder”.
- 10. Section 5.5 is amended by adding the following after paragraph 8:

- “9. List all exemptions from the provisions of this Instrument 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.”

11. Section 6.1 is amended by adding “and, in Québec, to contain no misrepresentation that is likely to affect the value or the market price of the securities to be distributed” after “distributed under the prospectus”.
12. Section 6.2(1) is amended by adding “,” after “base shelf prospectus” wherever it occurs.
13. Section 6.2 is amended by adding the following after subsection (2):
 - “(3) Any unaudited financial statements of an issuer or an acquired business incorporated by reference into the base shelf prospectus but filed after the date of filing the base shelf prospectus must have been reviewed in accordance with the relevant standards set out in the Handbook for a review of financial statements by an entity’s auditor or a public accountant’s review of financial statements.
 - (4) Despite subsection (3)
 - (a) if the financial statements of the issuer or acquired business have been audited in accordance with U.S. GAAS, the unaudited financial statements may be reviewed in accordance with U.S. review standards;
 - (b) if the financial statements of the issuer or acquired business have been audited in accordance with International Standards on Auditing, the unaudited financial statements may be reviewed in accordance with international review standards; or
 - (c) if the financial statements of the issuer or acquired business have been audited in accordance with auditing standards that meet the foreign disclosure requirements of the designated foreign jurisdiction to which the issuer is subject, the unaudited financial statements may be reviewed in accordance with review standards that meet the foreign disclosure requirements of the designated foreign jurisdiction to which the issuer is subject.
 - (5) The review specified in subsection (3) must have been completed
 - (a) if the base shelf prospectus established an MTN program or other continuous offering, no later than filing of the unaudited financial statements; or
 - (b) in all other circumstances, no later than the next filing of a shelf supplement.”
14. Section 6.5 is amended by striking out “securities legislation that regulate conflicts of interest in connection with a distribution of securities of a registrant, a connected issuer of a registrant or a related issuer of a registrant” and substituting “National Instrument 33-105 *Underwriting Conflicts*”.
15. Section 6.7 is amended by adding “and, in Québec, contain no misrepresentation that is likely to affect the value or the market price of the securities to be distributed,” after “distributed”.
16. Section 7.1 is amended by striking out “do not”.
17. Subsection 7.2(1) is amended by striking out “that use of the” and substituting “the use of that”.
18. Section 7.3 is repealed.
19. Subsection 8.2(1) is amended by striking out “5.5” and substituting “5.6”.
20. Subsection 9.1(1) is amended
 - (a) by striking out “11.1” and substituting “6.1”; and
 - (b) by striking out “2.9 of National Instrument 44-101” and substituting “9.2”.
21. Part 9 is amended by adding the following after section 9.1:
 - “**9.2 Market Value Calculation**
 - (1) For the purposes of this Part,

- (a) the aggregate market value of the equity securities of an issuer on a date is the aggregate of the market value of each class of its equity securities on the date, calculated by multiplying
 - (i) the total number of equity securities of the class outstanding on the date, by
 - (ii) the closing price on the date of the equity securities of the class on the exchange in Canada on which that class of equity securities is principally traded; and
 - (b) instalment receipts may, at the option of the issuer, be deemed to be equity securities if
 - (i) the instalment receipts are listed and posted for trading on an exchange in Canada, and
 - (ii) the outstanding equity securities, the beneficial ownership of which is evidenced by the instalment receipts, are not listed and posted for trading on an exchange in Canada.
- (2) For the purposes of subsection (1), in calculating the total number of equity securities of a class outstanding, an issuer shall exclude those equity securities of the class that are beneficially owned, or over which control or direction is exercised, by persons or companies that, alone or together with their respective affiliates and associated parties, beneficially own or exercise control or direction over more than 10 per cent of the outstanding equity securities of the issuer.
- (3) Despite subsection (2), if a portfolio manager of a pension fund or investment fund, alone or together with its affiliates and associated parties, exercises control or direction in the aggregate over more than 10 per cent of the outstanding equity securities of an issuer, and the fund beneficially owns or exercises control or direction over 10 per cent or less of the issued and outstanding equity securities of the issuer, the securities that the fund beneficially owns or exercises control or direction over are not excluded unless the portfolio manager is an affiliate of the issuer.”
22. Part 10 is repealed.
23. Subsection 11.1(2) is amended by striking out “and Alberta”.
24. Appendix A is amended by striking out “and will not contain any misrepresentation” wherever it occurs and substituting “. For the purpose of the Province of Québec, this simplified prospectus, together with documents incorporated herein by reference and as supplemented by the permanent information record, will contain no misrepresentation that is”.
25. Appendix B is amended by striking out “and does not contain any misrepresentation” wherever it occurs and substituting “. For the purpose of the Province of Québec, this simplified prospectus, together with documents incorporated herein by reference and as supplemented by the permanent information record, contains no misrepresentation that is”.
26. This Instrument comes into force on December 30, 2005.

**AMENDMENTS TO
COMPANION POLICY 44-102CP
TO NATIONAL INSTRUMENT 44-102 *SHELF DISTRIBUTIONS***

Companion Policy 44-102CP to National Instrument 44-102 *Shelf Distributions* is amended as follows:

1. "National Instrument" is struck out wherever it occurs and substituted with "NI" other than in subsection 1.1(1) and in subsection 1.1(2) in the phrase "National Instrument 44-101 *Short Form Prospectus Distributions*".
2. Subsection 1.1(2) is amended by striking out "5" and substituting "6".
3. Section 2.2 is amended
 - (a) in subsection (1) by adding ", the time" after "(ii)";
 - (b) in subsection (2) by striking out "At the time of the coming into force of this Policy New Brunswick has a lapse date provision in its securities legislation and has not provided blanket relief for shelf distributions."; and
 - (c) by rescinding subsection (3).
4. Subsection 2.3(1) is amended by striking out "POP" and substituting "short form prospectus distributions".
5. Section 2.4 is amended
 - (a) in the title, by adding "Novel" after "of";
 - (b) in subsection (2), by adding the following after "The securities regulatory authorities":

"also want to ensure that prospectus investors of such products are entitled to the appropriate rights at the time of their investment as contemplated by applicable securities laws. Reference is made to section 4.8 of Companion Policy NI 44-101CP for a discussion of these issues. The securities regulatory authorities";
 - (c) in subsection (3)
 - (i) by striking out "issues" and substituting "distributions"; and
 - (ii) by adding the following after "prospectus.":

"This includes any circumstances where a base shelf prospectus, including, if applicable, an unallocated shelf prospectus, may be used together with a prospectus supplement to qualify novel products.";
 - (d) in subsection (4), by adding the following to the end:

"However, in circumstances where an issuer or its advisor is uncertain if a product is novel, the securities regulatory authorities encourage the issuer to either treat products as novel or to seek input from staff prior to filing a base shelf prospectus or prospectus supplement, as the case may be."; and
 - (e) in subsection (5), by adding the following to the end:

"The securities regulatory authorities also believe that the rights provided to investors in such products should be no less comprehensive than the rights provided in offerings previously reviewed by a securities regulatory authority in a jurisdiction."
6. Subsection 2.5(3) is amended by striking out "These terms" and substituting "This information".
7. The following section is added after section 2.6:

2.6.1 Expert's Consent – Section 7.2 of NI 44-102 provides that if a document (the "Document") containing an expert's opinion, report or valuation is incorporated by reference into a base shelf prospectus and filed after the filing of the base shelf prospectus, the issuer must file the written consent of the expert in

accordance with deadlines that vary with the circumstances. For example, issuers are reminded that separate auditor's consents are required at the filing of the base shelf prospectus and in each subsequent shelf prospectus supplement for each set of audited financial statements incorporated by reference. The following is intended to illustrate the required timing for the filing of the expert's consents:

Type of Prospectus Filed	Timing of inclusion of expert's report	Timing of filing of expert's consent
MTN or non-MTN base shelf prospectus	Expert's report included in the base shelf prospectus at the date the base shelf prospectus is filed.	Expert's consent is filed at the date the prospectus is filed.
MTN base shelf prospectus	Expert's report included in a Document, filed after the base shelf prospectus is filed, that is incorporated by reference into the prospectus.	Expert's consent is filed at the date the Document is filed.
Non-MTN base shelf prospectus	Expert's report included in a Document, filed after the base shelf prospectus is filed, that is incorporated by reference into the prospectus.	Expert's consent is filed no later than the date of filing of the next prospectus supplement corresponding to the base shelf prospectus or the date the Document is filed.

8. Section 3.1 is amended

(a) in subsection (2)

- (i) by striking out "subsection 5.8(1)" wherever it occurs and substituting "section 5.8";
- (ii) by striking out "6.5" and substituting "3.5"; and
- (iii) by striking out "the National Instrument" and substituting "NI 44-102"; and

(b) by adding the following as subsection (4):

"If an issuer wishes to add securities to its base shelf prospectus it may do so prior to issuing all of the securities qualified by the base shelf prospectus by filing an amendment to the base shelf prospectus. This will not extend the life of the base shelf prospectus."

**AMENDMENT INSTRUMENT
FOR
NATIONAL INSTRUMENT 44-103
POST-RECEIPT PRICING**

1. This Instrument amends National Instrument 44-103 *Post-Receipt Pricing*.
2. Subsection 3.2(1) is amended
 - (a) in clause 5(a)(ii) by striking out “and” and substituting “or”;
 - (b) in subparagraph 5(b) by striking out “otherwise,”;
 - (c) in subparagraph 7(c) by adding “together with the documents and information incorporated herein by reference and” after “simplified prospectus,”;
 - (d) in paragraph 8 by adding “together with the documents and information incorporated herein by reference and” after “simplified prospectus,”; and
 - (e) by adding the following after paragraph 9:
 - “10. List all exemptions from the provisions of this Instrument 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.”
3. Section 3.3 is amended in paragraph 8 by striking out “44-101F3” and substituting “44-101F1”.
4. Section 3.6 is amended in paragraph 2 by moving “to the document” to after “reference”.
5. Section 4.1 is amended by adding “and, in Québec, to contain no misrepresentation that is likely to affect the value or the market price of the securities to be distributed” after “under the prospectus”.
6. Subsection 4.5(2) is amended
 - (a) by repealing subparagraph 3(c) and substituting the following:
 - “(c) any person or company who is a promoter of the issuer:

“This [insert, if applicable, “short form”] prospectus, [insert in the case of a short form prospectus distribution – “together with the documents incorporated herein by reference,”] constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required under securities legislation of [insert name of each jurisdiction in which qualified]. [Insert if distribution made in Québec - “For the purpose of the Province of Québec, this [insert, if applicable, “simplified”] prospectus, [insert in the case of a short form prospectus distribution - “together with documents incorporated herein by reference and as supplemented by the permanent information record,”] contains no misrepresentation likely to affect the value or the market price of the securities to be distributed.””
 - (b) by repealing paragraph 4 and substituting the following:
 - “4. Instead of the prospectus certificate required under paragraph 8 of subsection 3.2(1), a certificate in the following form signed by each underwriter, if any, who for the securities to be distributed under the prospectus, is in a contractual relationship with the issuer or selling security holder:

“To the best of our knowledge, information and belief, this [insert, if applicable, “short form”] prospectus [insert in the case of a short form prospectus distribution - “, together with the documents incorporated herein by reference,”] constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required under the securities legislation of [insert name of each jurisdiction in which qualified]. [Insert if distribution made in Québec - “For the purpose of the Province of Québec, this [insert, if applicable, “simplified”] prospectus, [insert in the case of a short form prospectus distribution - “together with documents incorporated herein by reference and as supplemented by the permanent information record,”] contains no misrepresentation likely to affect the value or the market price of the securities to be distributed.””

Rules and Policies

7. Part 5 is repealed.
8. Subsection 6.1(2) is amended by striking out “and Alberta”.
9. This Instrument comes into force on December 30, 2005.

**AMENDMENT TO
COMPANION POLICY 44-103CP
TO NATIONAL INSTRUMENT 44-103 *POST-RECEIPT PRICING***

Companion Policy 44-103CP to National Instrument 44-103 *Post-Receipt Pricing* is amended as follows:

1. Subsection 1.3(2) is amended by striking out “National Instrument” wherever it occurs and substituting “NI” other than in the phrase “National Instrument 44-101 *Short Form Prospectus Distributions*”.

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

1. This Instrument amends National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*.
2. Section 1.1 is amended by:
 - (a) repealing paragraph (a) and substituting the following:

“(a) “annual information form” has the same meaning as “AIF” in National Instrument 51-102 *Continuous Disclosure Obligations*,” ; and
 - (b) repealing paragraph (r).
3. This Instrument comes into force on December 30, 2005.

**AMENDMENTS
TO
COMPANION POLICY 51-101CP
TO NATIONAL INSTRUMENT 51-101
STANDARDS OF DISCLOSURE FOR OIL AND GAS ACTIVITIES**

Companion Policy 51-101CP to National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* is amended as follows:

1. Section 2.4 is amended by:

(a) rescinding paragraph (a) and substituting the following:

“(a) Meaning of “Annual Information Form” - *Annual information form* has the same meaning as “AIF” in National Instrument 51-102 *Continuous Disclosure Obligations*. Therefore, as set out in that definition, an *annual information form* can be a completed Form 51-102F2 *Annual Information Form* or, in the case of an SEC issuer (as defined in NI 51-102), a completed Form 51-102F2 or an annual report or transition report under the 1934 Act on Form 10-K, Form 10-KSB or Form 20-F.”

(b) in paragraph (b) by striking out the first sentence and substituting the following:

“Form 51-102F2 *Annual Information Form* requires the information required by section 2.1 of NI 51-101 to be included in the *annual information form*. That information may be included either by setting out the text of the information in the *annual information form* or by incorporating it by reference from separately filed documents.”

2. Appendix 1 is amended by:

(a) rescinding the definition of “Annual information form” and substituting the following:

“ Annual information form	A completed Form 51-102F2 <i>Annual Information Form</i> , or in the case of an SEC issuer (as defined in National Instrument 51-102 <i>Continuous Disclosure Obligations</i>) a completed Form 51-102F2 or an annual report or transition report under the 1934 Act on Form 10-K, Form 10-KSB or Form 20-F. [NI 51-102]”
---------------------------	--

(b) rescinding the definition of NI 44-101.

**AMENDMENT INSTRUMENT FOR
FORM 51-102F2 ANNUAL INFORMATION FORM OF
NATIONAL INSTRUMENT 51-102 CONTINUOUS DISCLOSURE OBLIGATIONS**

1. This Instrument amends Form 51-102F2 *Annual Information Form*.
2. Subsection 16.2(1) is amended
 - (a) in paragraphs (a) and (b), by adding "and, if the expert is not an individual, by the designated professionals of that expert," immediately after "named in section 16.1"; and
 - (b) in paragraph (c), by adding "and, if the expert is not an individual, by the designated professionals of that expert" immediately after "named in section 16.1".
3. The following subsection is added after subsection 16.2(1):
 - "(1.1) For the purposes of subsection (1), a "designated professional" means, in relation to an expert named in section 16.1,
 - (a) each partner, employee or consultant of the expert who participated in and who was in a position to directly influence the preparation of the statement, report or valuation referred to in paragraph 16.1(a); and
 - (b) each partner, employee or consultant of the expert who was, at any time during the preparation of the statement, report or valuation referred to in paragraph 16.1(a), in a position to directly influence the outcome of the preparation of the statement, report or valuation, including, without limitation
 - (i) any person who recommends the compensation of, or who provides direct supervisory, management or other oversight of, the partner, employee or consultant in the performance of the preparation of the statement, report or valuation referred to in paragraph 16.1(a), including those at all successively senior levels through to the expert's chief executive officer;
 - (ii) any person who provides consultation regarding technical or industry-specific issues, transactions or events for the preparation of the statement, report or valuation referred to in paragraph 16.1(a); and
 - (iii) any person who provides quality control for the preparation of the statement, report or valuation referred to in paragraph 16.1(a)."
4. The following subsection is added after subsection 16.2(2):
 - "(2.1) Despite subsection (1), an auditor who is independent in accordance with the auditor's rules of professional conduct in a jurisdiction of Canada or who has performed an audit in accordance with US GAAS is not required to provide the disclosure in subsection (1) if there is disclosure that the auditor is independent in accordance with the auditor's rules of professional conduct in a jurisdiction of Canada or that the auditor has complied with the SEC's rules on auditor independence."
5. This Instrument comes into force on December 30, 2005.