



New Short Form Prospectus System

Effective December 30, 2005

The Canadian Securities Administrators (the CSA) have published a notice indicating that they intend to replace National Instrument 44-101 – *Short Form Prospectus Distributions*. The current short form prospectus form (44-101F3) and companion policy (44-101CP) are also to be replaced.

The proposed short form prospectus rule will permit more reporting issuers to use the short form prospectus system by eliminating the minimum market capitalization requirement and the requirement that an issuer be a reporting issuer for a minimum of 12 months in order to be eligible to use the short form prospectus system. The proposed rule will also streamline the short form prospectus system by eliminating the requirement for regulatory review of an issuer's initial annual information form before the issuer can file a short form prospectus. In addition, the proposed rule will extend the pre-marketing period of a "bought deal" to up to four business days prior to the date of the filing of the preliminary short form prospectus.

Interrelationships with Continuous Disclosure

The short form prospectus distribution system established under National Instrument 44-101 is predicated on the continuous disclosure filings of reporting issuers pursuant to National Instrument 51-102 - *Continuous Disclosure Obligations* (NI 51-102). Issuers should be mindful of their ongoing disclosure and filing obligations under applicable continuous disclosure rules and should note that issues raised in the context of a continuous disclosure review may be taken into consideration by the securities regulatory authorities when determining whether it is in the public interest to refuse to issue a receipt for a short form prospectus.

Basic Qualification Criteria

The basic qualification criteria in order to be eligible to use the short form prospectus system are structured to allow most Canadian listed issuers to participate in the expedited offering system created by NI 44-101. An issuer is qualified to file a short form prospectus under the proposed rule if the following criteria are satisfied:

(a) the issuer is an electronic filer under NI 13-101;

- (b) the issuer is a reporting issuer in at least one jurisdiction of Canada;
- (c) the issuer is up to date in filing all required periodic and timely disclosure documents;
- (d) the issuer has, in at least one jurisdiction in which it is a reporting issuer, (i) current annual financial statements, and (ii) a current Annual Information Form (AIF);
- (e) the issuer's equity securities are listed and posted for trading on a short form eligible exchange (TSX, TSX-V (other than NEX) and CNQ) and the issuer is not an issuer (i) whose operations have ceased, or (ii) whose principal asset is cash, cash equivalents, or its exchange listing.

An issuer that is a "venture issuer" for the purpose of NI 51-102 may not be obligated to file an AIF under applicable securities laws. However, to qualify under NI 44-101 to file a short form prospectus, venture issuers will be required to file an AIF in accordance with NI 51-102 so as to have a "current AIF".

Pursuant to the proposed rule, there will no longer be any Initial or Renewal AIFs filed under NI 44-101. AIFs will be filed under NI 51-102 and will no longer be "accepted" by the securities regulatory authorities.

The securities regulatory authorities may require, in the public interest, that an issuer utilize the long form prospectus regime if the offering is, in essence, an initial public offering by a business or if: (a) the offering is for the purpose of financing a dormant or inactive issuer whether or not the issuer intends to use the proceeds to reactivate the issuer or to acquire an active business; or (b) the offering is for the purpose of financing a material undertaking that would constitute a material departure from the business or operations of the issuer as at the date of its current annual financial statements and current AIF.

An issuer need not have filed all of its continuous disclosure filings in the local jurisdiction in order to be qualified to file a short form prospectus, but will be required to file in the local jurisdiction all documents

incorporated by reference into the short form prospectus no later than the date of filing the preliminary short form prospectus.

Notice Declaring Intention

Pursuant to the proposed rule, an issuer is not qualified to file a short form prospectus unless it has filed, with at least one securities regulator, a notice declaring its intention to be qualified to file a short form prospectus under NI 44-101. This notice must be filed at least 10 business days prior to the issuer filing its first preliminary short form prospectus. It is expected that this notice will be a one-time filing for issuers that intend to be participants in the short form prospectus distribution system as the notice is operative until withdrawn. Subsection 2.8(4) of NI 44-101 is a transitional provision that has the effect of deeming issuers that, as of December 29, 2005, have a current AIF under the pre-December 30, 2005 short form prospectus distribution system to have filed this notice and no additional filing is required to satisfy the notice requirements set out in the proposed rule.

Solicitations of Expressions of Interest

Part 7 of NI 44-101 revises the current “pre-marketing” rules associated with bought deals to provide for a four-day pre-marketing period. The proposed rule provides that the prospectus requirement does not apply to solicitations of expressions of interest before the filing of a preliminary short form prospectus if (a) the issuer has entered into an enforceable agreement with an underwriter who has, or underwriters who have, agreed to purchase the securities, (b) the agreement referred to in paragraph (a) has fixed the terms of the distribution and requires that the issuer file a preliminary short form prospectus for the securities and obtain from the regulator a receipt, dated as of a date that is not more than four business days after the date that the agreement is entered into, for the preliminary short form prospectus, (c) the issuer has issued and filed a news release announcing the agreement immediately upon entering into the agreement, (d) upon issuance of a receipt for the preliminary short form prospectus, a copy of the preliminary short form prospectus is sent to each person or company who has expressed an interest in acquiring the securities, and (e) except as provided in paragraph (a), no agreement of purchase and sale for the securities is entered into until the short form prospectus has been filed and a receipt obtained.

Effective Date

The proposed revisions to NI 44-101 represent an important change to securities laws. Provided all necessary ministerial approvals are obtained, the

proposed short form prospectus rule will come into force on December 30, 2005.

This update is intended as a summary only and should not be regarded or relied upon as advice to any specific client or regarding any specific situation. If you would like further information regarding the issues discussed in this update or if you wish to discuss any aspect of this commentary, please feel free to contact any of the following:

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