

**CANADIAN SECURITIES ADMINISTRATORS
STAFF NOTICE 44-301****FREQUENTLY ASKED QUESTIONS REGARDING
THE NEW PROSPECTUS RULES****INTRODUCTION**

On December 31, 2000, National Instrument 44-101 Short Form Prospectus Distributions ("**NI 44-101**"), National Instrument 41-101 Prospectus Disclosure Requirements ("**NI 41-101**"), National Instrument 44-102 Shelf Distributions ("**NI 44-102**") and National Instrument 44-103 Post-Receipt Pricing ("**NI 44-103**") came into effect. At the same time, Ontario Securities Commission Rule 41-501 General Prospectus Requirements ("**Rule 41-501**") came into force in Ontario and became available to issuers in each of the other Canadian jurisdictions. Together, these instruments provide a substantially complete code for the preparation of prospectuses for issuers other than mutual fund issuers.

Since their implementation, staff of the various members of the Canadian Securities Administrators ("**staff**") have received numerous enquires as to the application and operation of the new prospectus rules. Accordingly, staff have compiled the following list of frequently asked questions, together with their responses to such questions, in order to assist issuers, their auditors and their counsel in complying with the new prospectus regime. Readers should note, however, that the responses presented in this notice represent the views of staff and are intended as general guidance only. Staff will endeavour to periodically republish this staff notice as new questions arise, or to reflect changes in staff's views.

In 2002, staff will assess the first year's experience with the new prospectus rules and consider whether changes, in addition to those suggested in this staff notice, would be appropriate.

This document is also being published on The Manitoba Securities Commission website (www.msc.gov.mb.ca).

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A. ONTARIO SECURITIES COMMISSION RULE 41-501 GENERAL PROSPECTUS REQUIREMENTS

A1. Subsection 2.2(2) of Rule 41-501 – Significant Acquisitions

If an issuer (Company A) has acquired Company B, which in turn had recently acquired Company C, how should Company A apply the significance tests to the acquisition of Company C?

Rule 41-501 does not specifically discuss "multi-tier" or "indirect" acquisitions, however the significance of Company C should be based on Company A's proportionate interest in Company C through Company B. If Company A acquired 50% of Company B, and Company B had previously acquired 80% of Company C, Company A's proportionate interest in Company C for the purposes of the significance test should therefore be 40%.

A2. Paragraph 2.2(3)3 of Rule 41-501 – Optional Significance Tests Subsequent to the Date of Acquisition – Calculating the Income Test

The optional income test set out in paragraph 3 of subsection 2.2(3) of Rule 41-501 appears to preclude the use of interim or annual financial statements for a period which ended less than 60 or 90 days, respectively, from the date of the prospectus. Is this interpretation correct?

No. An issuer is not prohibited from including in a prospectus its own financial statements or financial statements of a business acquired or to be acquired for a period more recent than that required by the Rule. Staff encourage issuers to include more recent information in a prospectus if it is available. The companion policy explains the rationale underlying the 60 and 90 day thresholds, but those thresholds do not prevent an issuer from including more recent financial statements in a prospectus or using those financial statements for purposes of applying the significance tests.

A3. Section 4.6 of Rule 41-501 – Interim Financial Statements of the Issuer

Should an issuer include its third quarter interim financial statements (eg. September, 20X0) in a prospectus even if the annual financial statements for the year ended December 31, 20X0 are included in a prospectus?

Although section 4.6 requires the third quarter interim financial statements to be included in a prospectus, staff believe that the duplication of information would not be helpful. In such circumstances, staff will look favourably upon an application for an exemption from this provision. Upon request, staff will also recommend the waiver of any relevant application fee.

Staff intend to recommend that Rule 41-501 be amended to address this issue.

A4. Paragraphs 6.2(1)1 and 6.3(1)1 and 2 of Rule 41-501 – Financial Statement Disclosure for Significant Acquisitions Completed During the Issuer's Three Most Recently Completed Financial Years and Current Financial Year

Should an issuer include the annual financial statements of an acquired business for years that ended subsequent to the date of acquisition but more than 90 days before the date of the prospectus?

Although paragraphs 6.2(1)2 and 6.3(1)3 require financial statements for only the most recently completed interim period of the acquired business that ended before the date of the acquisition, similar wording is not included in paragraphs 6.2(1)1 or 6.3(1)1 with respect to the required annual financial statements. Notwithstanding that the rule does not provide a corresponding exemption for post-acquisition annual financial statements, such information would not normally be necessary. Staff will therefore favourably consider an application for exemptive relief from such provisions. Upon request, staff will also recommend the waiver of any application fee.

Staff intend to recommend that Rule 41-501 be amended to address this issue.

A5. Subsection 6.6(1) of Rule 41-501 – Reporting Periods — Exception to Requirement to Include Financial Statements

Subsection 6.6(1) provides an exemption from the requirement to include financial statements for an acquired business in a prospectus if, among other things, the results of the business for a complete financial year have been reflected in the audited consolidated financial statements of the issuer that are included in the prospectus. Would an exemption be available if the issuer's annual audited financial statements included six months of operating results for the acquired business and the subsequent audited interim financial statements of the issuer included at least six months of operating results of the acquired business?

As this would provide 12 months of audited financial information about the acquired business, staff would view such a request for an exemption favourably. However, the 12 months of audited financial information must be presented in the same manner (in other words, it would not suffice to present six months of audited information relating solely to the acquired business together with six months of consolidated financial information).

A6. Section 6.15 of Rule 41-501 – Exception to Audit Requirement for Financial Statements of a Business Included in a Previous Prospectus without an Audit Opinion

Section 6.15 allows an issuer to omit from its prospectus an auditor's report for the annual financial statements of a business included in a prospectus if the financial statements were previously included in a final prospectus without an auditor's report pursuant to an exemption from Rule 41-501. Should an issuer also include an auditor's report where the annual financial statements were included in a final prospectus without an auditor's report pursuant to an exemption from the statutory requirements granted before Rule 41-501 came into force (i.e. prior to December 31, 2000)?

No. Although the wording of section 6.15 refers to an exemption under Rule 41-501, staff are of the view that an issuer need not include an auditor's report if annual financial statements had previously been included in a prospectus without an auditor's report as a result of an exemption from the statutory requirements granted prior to December 31, 2000.

A7. Section 9.1 of Rule 41-501 – Generally Accepted Accounting Principles

Some of the financial statement requirements contained in the Rule appear to be inconsistent with Canadian GAAP. Should the financial statements in a prospectus be prepared in accordance with Canadian GAAP?

Yes. Section 9.1 provides that the financial statements of a person or company that are included in a prospectus shall (or may, in the case of a foreign issuer) be prepared in accordance with Canadian GAAP. However, there are specific requirements contained in Rule 41-501 that permit the following departures from Canadian GAAP presentation requirements:

- (a) omission of a balance sheet of a business acquired during the issuer's three most recently completed financial years when the financial position of the acquired business is included in the balance sheet of the issuer provided in the prospectus;*
- (b) omission of comparative statements of income, retained earnings and cash flows of the acquired business for an interim period ended on the most recent financial quarter end preceding the date of acquisition, when comparative statements are provided for the "pre-acquisition period" (which is the period from the prior financial year end of the acquired business to the date of acquisition); and*
- (c) omission of comparative statements of income, retained earnings and cash flows for the three-month period ended on the date of the most recent interim statements included in the prospectus when comparative statements are provided for the year-to-date interim period.*

Section 1500.09 of the CICA Handbook states that "when it is meaningful, financial statements should be prepared on a comparative basis showing the figures for the corresponding period". Staff are of the view that financial statements of an acquired business which satisfies the significance tests between 20% and 40% threshold may be included for only the most recently completed financial year, without comparative figures.

For more information, see "The Auditor's Consent and Comfort in Connection with Securities Offering Documents" AuG-30, para. 10 in the Handbook.

A8. Section 9.4 of Rule 41-501 – Foreign Auditor's Report

Where financial statements included in a prospectus are accompanied by a foreign auditor's report, section 9.4 provides that the report shall be accompanied by a statement from the auditor disclosing any material differences in the form and content of the report and confirming that the auditing standards applied are substantially equivalent to Canadian GAAS. How should this statement be presented in the prospectus?

Staff expect the required statement to be presented either directly beneath the auditor's report (i.e. on the same page) or, where foreign auditing standards would prohibit such presentation, on a page immediately following the auditor's report.

A9. Paragraph 13.2(2)7 of Rule 41-501 – Comfort Letter Regarding Foreign Auditor's Report

If a Canadian auditor issues an opinion on financial statements prepared in accordance with foreign GAAP, or has conducted an audit in accordance with foreign GAAS (other than U.S. GAAS), is the Canadian auditor required to deliver to securities regulators a comfort letter prepared in accordance with paragraph 13.2(2)7 of Rule 41-501?

No. A Canadian auditor is not required to provide such a comfort letter as paragraph 13.2(2)7 expressly applies only to foreign auditors. However, staff encourages auditors in this situation to provide such a letter to securities regulators to assist us in understanding the Canadian auditor's expertise to opine on financial statements prepared and audited in accordance with foreign accounting principles and auditing standards.

Auditors are reminded that Section 5610 of the CICA Handbook requires them to accept an engagement under that Section only after determining that they have or will be able to obtain adequate knowledge of the generally accepted accounting principles and generally accepted auditing standards selected.

A10. Part 15 of Rule 41-501 – Exemptions

How should an issuer apply for an exemption from Rule 41-501? Must a formal application be made?

No. Part 15 of Rule 41-501 sets out the process for applying for an exemption from the Rule. Issuers need not file a formal application, but should include a request for relief in a letter which accompanies the preliminary filing materials. The letter should specify the portions of the Rule from which the issuer is seeking an exemption and provide submissions that justify the granting of the exemption. Where the securities regulatory authority or regulator consents to the request, the exemption will be evidenced by the issuance of a receipt for the final prospectus or an amendment to the prospectus, as the case may be.

If the request for an exemption is made after the preliminary materials have been filed, the letter may still be filed on SEDAR but must be acknowledged, in writing, by the securities regulatory authority or regulator before the receipt for the prospectus or amendment to the prospectus will evidence the granting of the relief.

In some jurisdictions, applications must be accompanied by an appropriate fee. Issuers should consult the applicable legislation to determine whether a fee is payable.

A11. Item 6.4(5) of Form 41-501F1 (Prospectus) – Reserve Estimates

Item 6.4.5 states that estimated reserve volumes and discounted cash flow from such reserves should be provided "as at the most recent financial year end". This suggests that an issuer with a calendar year end filing a prospectus on January 20, 20X1 should include the reserve information for the year ended December 31, 20X0. Is this correct?

Yes. However, staff recognize that this may cause hardship to oil and gas resource issuers at certain times of the year. Upon application, staff will consider accepting reserve report information that is dated no earlier than the most recent annual financial statements of the issuer provided in the prospectus, and will also recommend the waiver of any application fee.

Staff intend to recommend that Rule 41-501 be amended to address this issue.

A12. Item 8.2(1) of Form 41-501F1 (Prospectus) – Quarterly Information

Item 8.2(1) requires information for "each of the eight most recently completed quarters ending at the end of the most recently completed financial year...". Is an issuer with a calendar year end that files a prospectus on January 20, 20X1 required to include information for the eight quarters ended December 31, 20X0 notwithstanding that the most recent financial statements otherwise required to be included in the prospectus are for the period ended September 30, 20X0?

Yes. However, staff believe that it is sufficient for issuers to include quarterly information up to the date of the most recent annual or interim financial statements included in the prospectus. Staff will therefore look favourably upon an application for exemptive relief in such circumstances and will also recommend the waiver of any application fee.

Staff intend to recommend that Rule 41-501 be amended to address this issue.

A13. Item 8.4 of Form 41-501F1 (Prospectus) – Foreign GAAP

Item 8.4 states that an issuer may present the selected consolidated financial information required by Item 8 on the basis of foreign GAAP if, among other things, the issuer's primary financial statements have been prepared in accordance with foreign GAAP. May an issuer that is incorporated in Canada designate its financial statements prepared in accordance with foreign GAAP as its "primary financial statements"?

No. Subsection 9.1(1) of Rule 41-501 requires the financial statements of a person or company incorporated or organized in a jurisdiction that are included in a prospectus to be prepared in accordance with Canadian GAAP. A "jurisdiction" is defined in National Instrument 44-101 Definitions as meaning a province or territory of Canada except when used in the term foreign jurisdiction. Accordingly, a company incorporated in Canada is required to prepare its "primary financial statements" for the purposes of Rule 41-501 in accordance with Canadian GAAP.

A foreign issuer, however, has two options. Subsection 9.1(2) of Rule 41-501 permits the financial statements of a person or company incorporated in a foreign jurisdiction that are included in a prospectus to be prepared in accordance with Canadian GAAP or foreign GAAP, subject to certain conditions. A "foreign jurisdiction" is defined as a country other than Canada or a political subdivision of a country other than Canada.

A14. Item 9 of Form 41-501F1 (Prospectus) – Earnings Coverage Ratios

Instructions (2)(e)(ii), (2)(e)(iii) and (3) regarding the calculation of the earnings coverage ratios appear to be contradictory. In particular, with respect to distributions of preferred shares, Instruction (2)(e)(ii) requires use of the prior deduction method but (2)(e)(iii) says that the combined method, and not the prior deduction method, should be used to calculate earnings coverage. Instruction (3) describes the problems with the prior deduction method although (2)(e)(ii) suggests it should be used. What is correct?

The method described in (2)(e)(ii) is incorrectly referred to as the "prior deduction method" but is actually a description of the "combined method". Although it is mentioned by name, there is no technical description of the prior deduction method in the prospectus rules given that its use is prohibited.

Staff intend to recommend that Rule 41-501 be amended to address this issue.

B. NATIONAL INSTRUMENT 44-101 SHORT FORM PROSPECTUS DISTRIBUTIONS**B1. Section 1.1 of NI 44-101 – Definition of 'Current AIF'**

The definition of "current AIF" provides that an issuer which filed an AIF within 140 days of the end of fiscal 20X0 has 140 days following the end of fiscal 20X1 to file a renewal AIF. What are the consequences of filing a "renewal AIF" late (i.e., more than 140 days after the most recent year end)?

An AIF that is filed more than 140 days after an issuer's most recently completed financial year will not meet the definition of a renewal AIF under section 1.1 of NI 44-101, as the renewal must be filed while the "old" AIF is still current (i.e. up to 140 days following the financial year in which the "old" AIF was filed). By definition, therefore, an AIF filed after the 140 day period has expired is an initial AIF. This procedure differs from that under National Policy 47, as the "late renewal AIF" will now be subject to the initial AIF review procedures and must be accepted by the appropriate securities regulatory authority in accordance with the procedures described in Part 3 of the Companion Policy to NI 44-101 before an issuer files a preliminary short form prospectus.

B2. Subsection 1.2(2) of NI 44-101 – Significant Acquisitions

If an issuer (Company A) has acquired Company B, which in turn had recently acquired Company C, how should Company A apply the significance tests to the acquisition of Company C?

Please refer to A1, above, where an answer is provided for a corresponding question regarding Rule 41-501.

B3. Paragraph 1.2(3)3 of NI 44-101 – Optional Significance Tests Subsequent to the Date of Acquisition – Calculating the Income Test

The optional income test set out in paragraph 3 of subsection 1.2(3) of NI 44-101 appears to preclude the use of interim or annual financial statements for a period which ended less than 60 or 90 days, respectively, from the date of the short form prospectus. Is this interpretation correct?

No. Please refer to A2, above, where an answer is provided for a corresponding question regarding Rule 41-501.

B4. Subsections 3.1(2) and 3.2(7) of NI 44-101; Item 1.3 of Form 44-101F1 – Revisions to an Initial or Renewal AIF

Part 3 of NI 44-101 requires an issuer that revises an initial or renewal AIF to promptly file the revised AIF in all jurisdictions in which the initial or renewal AIF was originally filed, together with a blacklined copy to show what changes were made. An issuer must also send a copy of the revised AIF to each person or company who received the original AIF. Do these requirements apply to any significant change, correction or revision made to an AIF, or only those resulting from comments of the appropriate securities regulatory authority or regulator?

Any significant change, correction or revision to an issuer's AIF should result in the document being re-filed in each applicable jurisdiction and redistributed to each person or company that was sent the original AIF. For additional clarity, staff would prefer that the revised AIF be identified as such (eg. as "1st Revised AIF", "2nd Revised AIF", etc.) and dated accordingly.

B5. Paragraphs 4.2(1)1 and 4.3(1)1 and 2 of NI 44-101 – Financial Statement Disclosure for a Significant Acquisition During the Issuer's Three Most Recently Completed Financial Years or its Current Financial Year

Should an issuer include annual financial statements of an acquired business for years that ended subsequent to the date of acquisition but more than 90 days before the date of the prospectus?

Please refer to A4, above, where an answer is provided for a corresponding question regarding Rule 41-501.

B6. Subsection 4.6(1) of NI 44-101 – Reporting Periods – Exception to Requirement to Include Financial Statements

Subsection 4.6(1) provides an exemption from the requirement to include financial statements for an acquired business in a short form prospectus if, among other things, the results of the business for a complete financial year have been reflected in the audited consolidated financial statements of the issuer included in the short form prospectus. Would an exemption be available if the issuer's annual financial statements included six months of operating results for the acquired business and subsequent audited interim financial statements of the issuer included at least six months of operating results of the acquired business?

Please refer to A5, above, where an answer is provided for a corresponding question regarding Rule 41-501.

B7. Section 4.15 of NI 44-101 – Exception to Audit Requirement for Financial Statements of a Business Included in a Previous Prospectus without an Audit Opinion

Section 4.15 permits an issuer to omit from its prospectus an auditor's report for the annual financial statements of a business included in a prospectus if the financial statements were previously included in a final prospectus without an auditor's report pursuant to an exemption from NI 44-101. Should an issuer also include an auditor's report where the annual financial statements were included in a final prospectus without an auditor's report pursuant to an exemption from the statutory requirements granted before NI 44-101 came into force (i.e. prior to December 31, 2000)?

No. Please refer to A6, above, where an answer is provided for a corresponding question regarding Rule 41-501.

B8. Section 7.1 of NI 44-101 – Generally Accepted Accounting Principles

Some of the financial statement requirements contained in the National Instrument appear to be inconsistent with Canadian GAAP. Does Canadian GAAP still apply to financial statements contained in short form prospectus?

Yes. Please refer to A7, above, where an answer is provided for a corresponding question regarding Rule 41-501.

B9. Section 7.5 of NI 44-101 – Foreign Auditor's Report

Where financial statements included in a prospectus are accompanied by a foreign auditor's report, section 7.5 provides that the report shall be accompanied by a statement by the auditor disclosing any material differences in the form and content of the report and confirming that the auditing standards applied are substantially equivalent to Canadian GAAS. How should this statement be presented in the prospectus?

Please refer to A8, above, where an answer is provided for a corresponding question regarding Rule 41-501.

B10. Paragraph 10.2(b)7 of NI 44-101 – Comfort Letter Regarding Foreign Auditor's Reports

If a Canadian auditor issues an opinion on financial statements prepared in accordance with foreign GAAP or has conducted an audit in accordance with foreign GAAS (other than U.S. GAAS), is the Canadian auditor required to deliver to securities regulators a comfort letter prepared in accordance with section 10.2(b)7 of NI 44-101?

No. Please refer to A9, above, where an answer is provided for a corresponding question regarding Rule 41-501.

B11. Paragraph 10.3(a)7 and Section 10.7 of NI 44-101 – Material Contracts

Section 10.7 instructs an issuer to make available all material contracts referred to in a short form prospectus for inspection at a reasonable time and place during the distribution of securities under the prospectus. Paragraph 10.3(a)7 requires an issuer to file copies of all material contracts to which the issuer is a party that have not been previously filed. Are these requirements any different from those that apply to long form prospectuses?

No. As in the case of a long form prospectus, staff expect an issuer to file those material contracts, other than contracts entered into in the ordinary course of business, that have been entered into within two years before the date of the preliminary short form prospectus by the issuer or a subsidiary of the issuer.

B12. Part 15 of NI 44-101 – Exemptions

How do you apply for exemptions from NI 44-101? Do I need to make a formal application?

No. Please refer to A10, above, where an answer is provided for a corresponding question regarding Rule 41-501.

B13. Item 4.4(5) of Form 44-101F1 (AIF) – Reserve Estimates

Item 4.4(5) states that estimated reserve volumes and discounted cash flow from such reserves should be provided "as at the most recent financial year end". This suggests that an issuer with a calendar year end filing a prospectus on January 20, 20X1 should include the reserve information for the year ended December 31, 20X0. Is this correct?

Yes. However, please refer to A11, above, where an answer is provided for a corresponding question regarding Rule 41-501.

An issuer considering the application of Item 4.4(5) should also consult Alberta Securities Commission Staff Notice 44-701 Oil and Gas Reserves Disclosure in NI 44-101 AIFs.

B14. Item 5 of Form 44-101F1 (AIF) – Reverse Take-Overs

If an issuer has been involved in a business combination which is accounted for as a reverse take-over in accordance with Item 12.7 of Form 44-101F3, which entity's financial information should be included in the AIF? What if the reverse take-over occurred during the issuer's most recently completed financial year to which the AIF relates or subsequent to that year end but prior to the date of the AIF?

When an acquisition is accounted for as a reverse take-over, the business acquired by the issuer is the legal subsidiary which, for accounting purposes, is the continuing entity. Accordingly, the financial information required by certain sections of Form 44-101F1, including Items 5 and 6, should generally be based on the legal subsidiary's financial statements for the year. If the reverse takeover occurred subsequent to the issuer's most recently completed financial year but before the AIF is filed, the financial information disclosed in the AIF should be of the legal parent; however, separate information about the legal subsidiary will likely be necessary in order to provide full, plain and true disclosure.

B15. Item 5.3 of Form 44-101F1 (AIF) – Foreign GAAP

Item 5.3 states that an issuer may present the selected consolidated financial information required by Item 5 on the basis of foreign GAAP if, among other things, the issuer's primary financial statements have been prepared in accordance with foreign GAAP. May an issuer that is incorporated in Canada designate its financial statements prepared in accordance with foreign GAAP as its primary financial statements?

No. Please refer to A13, above, where an answer is provided for a corresponding question regarding Rule 41-501.

B16. Item 2(1) of Form 44-101F2 (MD&A) – Quarterly Information

Item 2(1) requires management's discussion and analysis to disclose, for each of the eight most recently completed quarters ending at the most recently completed financial year, the selected information required in paragraphs 1, 2 and 3 of Item 5.1 of Form 44-101F1. Former National Policy 47 required similar disclosure in the AIF. As the disclosure requirement has been moved to the MD&A Form 44-101F2, are issuers now expected to discuss quarterly results in their annual MD&A?

No. As certain jurisdictions may require quarterly MD&A to be filed concurrently with interim financial statements on a continuous basis, such disclosure would likely be duplicative if provided in an AIF. However, Item 1(2) of Form 44-101F2 specifically requires a quantification and discussion of any items or events that materially affected the issuer's financial results for its most recently completed year because there is no requirement to file fourth quarter financial results or to specifically discuss that period. If the quarterly information reveals a significant trend in one of more of the items presented, the issuer may choose to discuss that trend.

B17. Item 4.2 of Form 44-101F3 (Prospectus)– Financial Information of the Issuer Released

Item 4.2 states that if, before the short form prospectus is filed, financial information about an issuer for a period for which financial statements are required to be filed is publicly disseminated by or on behalf of the issuer through a news releases or otherwise, a short form prospectus must include the content of such news release or public communication. Does the "period" extend to cover all the financial statements required to be incorporated in the prospectus?

No. Staff would consider Item 4.2 to have been complied with where the prospectus includes disclosure of those press releases and other communications that have been made subsequent to the filing of its most recent annual or interim financial statements.

B18. Item 7 of Form NI 44-101F3 (Prospectus) – Earnings Coverage Ratios

Instructions (2)(e)(ii), (2)(e)(iii) and (3) regarding the calculation of the earnings coverage ratios appear to be contradictory. In particular, with respect to distributions of preferred shares, Instruction (2)(e)(ii) requires use of the prior deduction method but (2)(e)(iii) says that the combined method, and not the prior deduction method, should be used to calculate earnings coverage. Instruction (3) describes the problems with the prior deduction method although (2)(e)(ii) suggests it should be used. What is correct?

Please refer to A14, above, where an answer is provided for a corresponding question regarding Rule 41-501.

B19. Item 12.1(1)3 of Form NI 44-101F3 (Prospectus) – Mandatory Incorporation by Reference of Interim Financial Statements of the Issuer

Item 12.1(1)3 requires an issuer to incorporate by reference its comparative interim financial statements for its most recently completed financial period (eg. September, 20X0), even if the comparative audited financial statements for the year ending December 31, 20X0 are incorporated by reference into the prospectus under Item 12.1(1)4. Is this correct?

Although item 12.1(1)3 requires the third quarter interim financial statements to be incorporated by reference into a short form prospectus, staff believe that such duplication of information would not be helpful. Accordingly, in such circumstances, staff will look favourably upon an application for exemptive relief from this provision. Upon request, staff will also recommend the waiver of any application fee.

Staff intend to recommend that NI 44-101 be amended in the future to address this issue.

Item 12.1(1)3 also requires issuers to incorporate the comparative interim financial statements for the issuer's most recently completed period for which the issuer files interim financial statements. Previously, comparative financial statements for each interim period were required. Is this an error in Item 12.1(1)3?

No. In order to eliminate a filing discrepancy between long form and short form issuers, NI 44-101 now requires comparative financial statements for the most recently completed interim period. Instruction (1) to Item 12.1 clarifies that comparative interim financial statements are required for only the most recent 3, 6 or 9 month period. The issuer may choose to incorporate additional interim financial statements provided that the additional statements are accompanied by an auditor's comfort letter.

B20. Item 13.1(1)2 of Form NI 44-101F3 (Prospectus) – Issues of Guaranteed Securities – Issuer Disclosure

Item 13.1(1)2 provides that if an issuer is a wholly owned subsidiary of a credit supporter but has more than minimal operations that are independent of the credit supporter, summary financial information relating to the issuer's operations should be disclosed in a note to the most recently audited financial statements of the credit supporter included in the short form prospectus. What type of information should be included in the summary?

Issuers should refer to Item 5.2 of Rule 41-501 for guidance with respect to the items which should be included in the summary financial information, which represents the minimum amount of information that should be disclosed.

Staff recognize that it may be difficult for some credit supporters to include such a note in their financial statements if such statements have already been filed. In those circumstances, staff will be willing to accept the provision of summary financial information presented, including the audit report thereon, in the prospectus or incorporated by reference into the prospectus. If the summary of financial information is

not included in a note to the audited financial statements, it is required to be audited nonetheless. Accordingly, the requirement will not be satisfied by including it in its pro forma financial statements or unaudited financial statements.

C. NATIONAL INSTRUMENT 44-102 SHELF DISTRIBUTIONS

C1. Section 3.2 of NI 44-102 and Section 2.3 of Companion Policy to 44-102 – Distributions of Equity Securities Under Unallocated Shelf

Section 3.2 of NI 44-102 requires that an issuer or selling security holder that forms a "reasonable expectation" that a distribution of equity securities will proceed under a base shelf prospectus that is not restricted to equity securities shall immediately issue a news release that announces the intention to proceed with the distribution. Section 2.3 of the Companion Policy to 44-102 states that an issuer or selling security holder will generally only have formed such a reasonable expectation upon having discussions with an underwriter concerning the distribution "of some specificity and certainty". Can you provide further guidance regarding the timing of the press release for a bought deal and for a marketed deal?

For a bought deal of equity securities from an unallocated shelf, a news release should be issued upon the signing of the underwriting agreement (which signing is not unduly delayed). For a marketed offering of equity securities, a news release should be issued just prior to the commencement of marketing. If a preliminary prospectus supplement is to be used, the press release should be issued prior to using this document.

Does the press release requirement in section 3.2 of NI 44-102 apply to preferred shares, eg. does the definition of "equity securities" in 44-102 include preferred shares?

NI 44-102 does not define "equity securities". However, subsection 1.1(2) states that all terms defined in NI 44-101 and not defined in NI 44-102 have the meanings ascribed to them in NI 44-101. According to NI 44-101, "equity securities" means securities of the issuer that carry a residual right to participate in the earnings of the issuer and upon the liquidation or winding up of the issuer, in its assets.

The answer to the question of whether a preferred share is an equity security is fact specific. Some preferred shares are equity securities (eg. if they have an additional participation in earnings and assets) and others are more like debt securities. An issuer and its counsel should consider the characteristics of the preferred shares being offered and determine whether they fall within the definition of equity securities.

C2. Section 7.1 of NI 44-102 – Shelf Supporting Documents – General

Section 7.1 states that the provisions of NI 44-101 which require the filing of supporting documents with a preliminary short form prospectus, a short form prospectus or a prospectus amendment do not apply to a filing of a preliminary base shelf prospectus, a base shelf prospectus or an amendment to a preliminary base shelf prospectus or a base shelf prospectus, except as varied by Part 7 of NI 44-102. Is this a typographical error?

Yes. Section 7.1 should say that the provisions of NI 44-101 do apply, unless otherwise varied by Part 7 of NI 44-102. Part 7 merely modifies the supporting document provisions of NI 44-101 to make it applicable to the shelf prospectus regime.

Staff intend to recommend that NI 44-102 be amended to address this issue in the future.

C3. Section 7.3 of NI 44-102 – Auditors' Comfort Letters

Section 7.3 requires an auditor's comfort letter to be filed concurrently with all unaudited financial statements incorporated into a base shelf prospectus that are filed after the base shelf prospectus is filed. However, it does not address unaudited financial statements filed before the base shelf prospectus is filed which are incorporated by reference into the base shelf prospectus. Is it the case that no comfort letter is required until the supplement is filed regardless of whether the comfort letter relates to unaudited financial statements filed before or after the date of filing base shelf prospectus?

No. Section 7.1 provides that an issuer filing a preliminary base shelf prospectus, a base shelf prospectus, or an amendment to a preliminary base shelf prospectus or to a base shelf prospectus should comply with the filing provisions set out in NI 44-101 except as varied by Part 7. Accordingly, if an unaudited financial statement is incorporated by reference into the base shelf prospectus, an auditor's comfort letter should be filed at the time the base shelf prospectus is filed. Comfort letters for unaudited financial statements filed after the base shelf prospectus is filed should be filed when the unaudited financial statements are filed, if the distribution is an MTN program or some other continuous distribution, and at the very latest, when the next supplement is filed.

March 15, 2002