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Registrar of Securities, Yukon
Registrar of Securities, Nunavut

c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West, Suite 800, Box 55
Toronto, Ontario M5H 3S8
E-Mail: jstevenson@osc.gov.on.ca

Denise Brosseau, Secretary
Commission des valeurs mobilières du Québec
Stock Exchange Tower, 800, Square Victoria
P.O. Box 246, 22nd Floor
Montréal, Québec H4Z 1G3
E-Mail: consultation-en-cours@cvmq.com

Dear Sirs/Mesdames:

Proposed Amendments to National Instrument 44-101 “Short Form Prospectus Distributions”

This letter is in response to the Request for Comment published at (2004) 27 OSCB 1383 concerning the proposed amendments to National Instrument 44-101 Short Form Prospectus Distributions (“NI 44-101”).

Amendments to NI 44-101

Section number references are to the section of NI 44-101 being amended.

1. **Section 1.1** – The definition of U.S. GAAS makes reference to “... generally accepted auditing standards in the United States of America, as supplemented by the SEC’s rules on auditor independence.” We acknowledge that the definition is being conformed to the definition of “US GAAS” in NI 52-107. However, we would note that the new Public Company Accounting Oversight Board (PCAOB) created under the Sarbanes-Oxley Act of 2002 also has authority to make auditor independence rules, and is a body that operates with authority separate from that of the SEC. You may wish to consider amending the proposed definition so that it includes both the PCAOB as well as the SEC, and at the next opportunity making a conforming change to the definition in NI 52-107.
2. **Section 4.14** – The purpose of this section is to provide relief from the requirement to provide an audit report with respect to the annual financial statements of an acquired business, if those statements have not been audited. The section begins with the words, “Despite section 4.12”. However, it is not section 4.12 of NI 44-101 that requires acquisition financial statements to be accompanied by an auditor’s report. That requirement is now found in section 6.2(3) of NI 52-107. Referring only to section 4.12 could create confusion, since the requirement from which relief is being granted is not found there. Further, it is not clear that a reference only to section 4.12 of NI 44-101 would have the legal effect of relieving an issuer of the obligation to comply with the requirements of section 6.2(3) of NI 52-107. We suggest the section be amended to say, “Despite section 4.12 and despite section 6.2(3) of NI 52-107, an issuer may omit...”.

Secondly, the section refers to “an audit report from the acquired business’ auditor”. By definition, any auditor who conducts an audit of the financial statements of the acquired business will be the “acquired business’ auditor”. Are the words “from the acquired business’ auditor” intended to serve any purpose by distinguishing a particular auditor from any other potential auditor? If so, clarification would be helpful. If not, we suggest that the words “from the acquired business’ auditor” should be deleted.

3. **Section 4.15** – Again, we suggest that this section should be amended to say, “Despite section 4.12 and despite section 6.2(3) of NI 52-107, an issuer may omit...”. Also, again we suggest that the words “from the acquired business’ auditor” should be deleted from the main section and from the end of subsection 4.15(b), unless they are intended to serve a specific purpose (which, if so, should be clarified).
4. **Section 5.8** – Again, we suggest that this section should be amended to say, “Despite section 5.6 and despite section 6.2(3) of NI 52-107, an issuer may omit...”. Further, it is not clear to us why there is a reference to “financial information or financial statements” rather than just a reference to financial statements. There is no reference to financial information in section 5.6 itself. Lastly, the section refers to “an audit report from the issuer’s auditor”. We suggest

that the words “from the issuer’s auditor” be deleted, as any auditor who issues an audit report on the issuer’s financial statements will, by definition, be the issuer’s auditor. Further, note that section 6.2(3) of NI 52-107, the requirement from which relief is actually being granted by section 5.8, refers simply to “an audit report”.

5. **Section 7.3 (to be renumbered Section 7.2)** – In addition to renumbering section 7.3 as section 7.2, we suggest these amendments provide an opportunity to amend the reference error in section 7.2(2)(a). The reference to paragraph (1)6 should say paragraph (1)5.

Amendment to Form 44-101F3 to NI 44-101

6. **Item 20** – The proposed amendment to this item refers to a requirement to “...include in the short form prospectus the reconciliation to Canadian GAAP required under paragraph 4.1 or 5.1 of NI 52-107”. We suggest that the words “if any” should be added at the end, since eventually no reconciliation will be required.

Amendment to Companion Policy 44-101CP

7. **Section 4.3** – The purpose of this paragraph is to remind issuers that audit reports are required for financial statements that are voluntarily included in a prospectus at the issuer’s discretion. The first sentence will be modified to say “the National Instrument requires that all financial statements included in a short form prospectus must be audited, except financial statements specifically exempted in the National Instrument.” We suggest you also add a new sentence that says, “National Instrument 52-107 further requires that all audited financial statements be accompanied by an audit report.” The next sentence should then be modified to say, “Issuers are reminded that the audit report requirement extends to...”.
8. **Section 6.1** – We believe this should say “The financial statements of a person or company that are included or incorporated by reference in a short form prospectus...”. NI 52-107 defines “included” to include incorporation by reference for the purposes of NI 52-107, but not for any other purpose (i.e., not for the purposes of 44-101CP). We are not aware of another definition of “included” that captures incorporation by reference which would apply here.

We appreciate the opportunity to have commented on the proposed amendments to NI 44-101. If you have any questions or comments please feel free to contact Rob Lando at (416) 862-5928.

Yours very truly,

OSLER, HOSKIN & HARCOURT LLP

JS:RCL;jlw
Enclosure