

## COMMENT ON DRAFT NATIONAL INSTRUMENT 44-101 FORM 44-101F1 SHORT FORM PROSPECTUS

My comment on the draft is restricted to one recommendation - to exempt issuers from the requirement to file a prospectus, for secondary share offerings, in certain limited circumstances.

I applaud the great strides that Canadian securities regulators have taken in developing a transparent system of continuous disclosure in Canada. In fact, I believe that the continuous disclosure system has now developed to the point where, in the case of secondary offerings, the requirement for issuers to produce and file a prospectus is arguably redundant. In a world of continuous disclosure there must, by definition, be cases in which there is essentially nothing new left to disclose in a prospectus.

Given the existing continuous disclosure requirements, I recommend that Canadian regulators exempt secondary offerings, limited to a certain percentage of the existing outstanding shares, from the need to file any prospectus. This should be replaced by a requirement to file for permission to sell a limited number of shares to the public, through the stock exchange(s). This requirement would be a mirror image of the current requirement to file for permission before an issuer may buy back shares through the stock exchange(s).

That is, I propose that companies that already have shares trading on an exchange simply be allowed to directly sell, a limited amount of, additional shares to the public on a continuous basis without the need for a prospectus (with certain exceptions and with advance approval required).

The reasons that a prospectus should not be required for many secondary issues are the following:

1. The current continuous disclosure requirements obviate the need for additional information.
2. Investors who currently buy shares in the secondary market, without the benefit of a recent prospectus, are not second-class investors. The current requirement for a prospectus for **all** secondary share issues pre-supposes that an investor buying shares directly from an issuer needs and deserves more information than an investor buying shares from another investor. In my opinion, this is not true and if it is true it implies that investors who buy from other investors rather than directly from an issuer through a prospectus are second-class investors.

When I buy shares in the stock market I believe that I deserve full and continuous disclosure. And in fact Securities Laws now bring me that. Why then would I suddenly expect the company to have more information available when it wants to sell shares directly to the public? To the extent that the issuer has any material information to disclose in a prospectus, associated with a secondary issue, I

believe that the continuous disclosure rules already do (or should and could) require the information to be disclosed, even in the absence of a prospectus.

3. Issuers are currently allowed to enter into share buy backs, through the stock exchange, after obtaining the permission of regulators. Arguments of symmetry would then suggest that issuers should be able to sell shares directly to the public, through the stock exchange, in a similar manner. In fact it almost seems blatantly discriminatory that anyone can sell shares in an issuer without a prospectus, but the issuer itself cannot sell even one share directly to the public through the stock exchange! (Although it can grant shares to insiders and grant stock options and it can enter into private placements).
4. Given the status-quo, issuers sometimes see their shares rising to great heights in the market and yet this is of no immediate direct benefit to the issuer company unless it undertakes the somewhat arduous and expensive route of issuing shares through a prospectus or private placement. Private placements often require a large discount to the market price which often undermines the market price and which is clearly disadvantageous to public investors who cannot participate in private placements.
5. The ability to sell shares into the stock market would be an incredible boon to many smaller issuers. Companies could raise capital slowly and incrementally, without incurring large transaction fees and in a manner that is fair to all investors. Issuers would be able to directly benefit from a rise in their share prices, on a continuous basis.
6. This proposal would make Canada a more competitive economy as the process of raising capital for existing listed issuers would be rendered lower cost, faster and easier. This might provide an exceptional investment boon to Canada.
7. Such a process would be a mechanism for companies to easily signal (by selling shares) that it believes its stock price in the market is becoming too high. This could help to stabilize stock prices in some cases. Currently issuers can signal that their shares are attractively priced by buying back shares. The opportunity to sell shares easily through the stock market would provide an added ability to signal that is currently missing or more difficult to use.

Although my suggestion seems to be a natural extension of the work that regulators have done to provide continuous disclosure, some may view the suggestion as novel or radical.

Therefore I will address the predictable objections:

1. Canada should not allow this because other countries do not.

I am not aware if any other jurisdiction allows issuers to continuously sell, at least a limited amount of, shares through the stock market. But that is irrelevant, Canada should be prepared to be a leader.

2. Issuers have access to inside information and will take advantage of investors.

If that is true, it applies equally to stock buy backs. Restrictions could easily be placed on the process to insure that issuers do not sell shares when they are in possession of material non-disclosed inside information. More importantly this objection applies to insiders who exercise options and then sell stock to the public. If an insider is allowed to sell shares to the public without a prospectus then why isn't the issuer? They both have access to the same information.

3. Such a system would depress stock prices due to potential share issues at any time.

I don't believe that this is a valid objection, since the issuer would still be required to announce share issues and file for permission, just as is the case for share buy-backs. To the extent it depressed stock prices, in certain cases, it would likely be moving stock prices toward a rational level.

4. Investment bankers perform a vital service of distribution and this system would be undermined if issuers had low-cost direct access to the stock market to sell shares.

Naturally, I would expect loud protests from investment bankers that might lose fees under this proposal. However, the investment bankers would still be needed for larger issuers and for IPOs. Issuers would be free to undertake any secondary issue through investment banks if they chose to. These institutions would survive and adapt to the competitive challenge.

5. This exemption is not needed since issuers can simply use private placements

I believe that a direct share issue to the public, through the stock exchange, is preferable because private issues usually require an expensive discount to the market trading price and are, by definition, available to only certain investors and not to all investors.

6. There may not be a mechanism for issuers to access the stock exchange

I believe that the same mechanism by which companies currently buy back their own shares on the stock exchange could be used. If not, an appropriate mechanism can be put in place.

In conclusion, given the existing improved continuous disclosure system fostered by regulators, I recommend that NI 44-101 be amended to allow existing issuers, with equity shares trading on a stock exchange, to directly sell additional shares to the public through

the stock exchange, without a prospectus, with appropriate limitations placed on the percentage by which the outstanding number of shares is increased, and with appropriate advance permission from regulators.

Respectfully Submitted,

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Signed "Shawn Allen"

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