

Our File: 999090

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BY ELECTRONIC MAIL

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Dear Sirs/Mesdames:

Re: Proposed Repeal and Replacement of National Instrument 44-101, Form 44-101F3 and Companion Policy 44-101CP

We have reviewed the proposed amended and restated National Instrument 44-101 *Short Form Prospectus Distributions* (the "Proposed NI 44-101"), the proposed amended and restated Form 44-101F1 *Short Form Prospectus* (the "Proposed Form 1") and the proposed amended and restated Companion Policy 44-101CP *Short Form Prospectus Distributions* and have the following comments.

Financial Statements - Significant Acquisitions

Section 4.3 of the current NI 44-101 requires the inclusion of interim financial statements in respect of significant acquisitions completed during the current financial year for the most recently completed interim period of the acquired business that ended before the date of the acquisition and more than 60 days before the date of the prospectus. As a result, if a significant acquisition of a business with a calendar year end is completed on April 30 and a prospectus filed on May 1, the interim financial statements of the business for the first quarter interim period ended March 31 would not be required, since less than 60 days had elapsed between the end of the most recently completed interim period (March 31) and the date of the prospectus (May 1).

Section 10.1(3) of the Proposed Form 1 will require the inclusion in a prospectus of the financial statements that would be required by Part 8 of NI 51-102 in respect of a significant acquisition for which no business acquisition report has yet been filed, if the inclusion of such financial statements is necessary in order for the prospectus to contain full, true and plain disclosure of all material facts. Section 8.4(2) of NI 51-102

requires that interim financial statements be included for the most recently completed interim period of the business that started after the year end and *ended before the date of the acquisition*.

Using the example described above, in respect of an acquisition completed on April 30, the Proposed Form 1 would appear to require the inclusion in a prospectus filed on May 1, of the financial statements for the first quarter interim period ended March 31, since the most recently completed interim period of the business that ended before the date of the acquisition would be the three month interim period ended March 31. As a result, the acquired business would be required to accelerate the preparation of its quarterly financial statements, which would otherwise be required to be filed on May 15, for purposes of the prospectus.

The Proposed Form 1 should only require the inclusion of interim financial statements of the business for the most recently completed interim period for which interim financial statements have been filed. The current NI 44-101 addresses this by including the 60 day period between the date of the prospectus and the end of the most recently completed interim period.

In addition, section 8.5 of NI 51-102 requires the inclusion of annual financial statements for the business for the most recently completed financial year of the business that ended more than 45 days before the date of the acquisition. If a significant acquisition is completed between 46 days and 90 days after the year end of the business and a prospectus filed during that period, section 10.1 of the Proposed Form 1 would appear to require the prospectus of the issuer to include annual financial statements of the business for the most recently completed financial year of the business, thereby accelerating the preparation and filing of such annual financial statements, which would otherwise be required to be filed within 90 days of year end.

Mandatory Incorporation by Reference

Section 11.1 of Proposed Form 1 requires the incorporation by reference of "any other disclosure document which the issuer has filed, or has undertaken to file pursuant to an undertaking to a provincial or territorial securities regulatory authority". The term "disclosure document" has not been defined. Would this addition to Proposed Form 1 require the incorporation by reference of those documents affecting the rights of security holders and material contracts filed under Part 12 of NI 51-102, or the notice of change in corporate structure required by section 4.9 of NI 51-102, for example? Any additional documents required to be incorporated by reference will also require translation into French for those issuers who are distributing securities in Québec as part of a short form offering. This will increase the time and expense involved in the offering.

Resource Property

Section 9.1 of the Proposed Form 1 requires the issuer to disclose the information required under section 5.5 of Form 51-102F2 if a material part of the proceeds of the distribution are to be expended on a particular resource property. Section 5.5 of Form 51-102F2 also requires the report on Form 51-101F2 *Report on Reserves Data by Independent Qualified Reserves Evaluator or Auditor* and the report on Form 51-101F3 *Report of Management and Directors on Oil and Gas Disclosure* in sections 5.5(2) and (3), respectively. Under the Proposed Form 1, will the issuer also be required to include the reports on Forms 51-101F2 and F3 in its prospectus?

In addition, some of the information required by Form 51-101F1, for example, Item 4.1 *Reserves Reconciliation*, which requires disclosure of changes in reserve estimates between the effective date and the previous year end, would arguably be irrelevant in the context of prospectus disclosure concerning an acquisition of resource property by an issuer.

Language of Documents

Section 4.5(3) of the Proposed NI 44-101 includes a requirement that, in Québec, any document incorporated by reference must be in the French language or in the French language and the English language. Under current practice, in the event the issuer is not able to complete the translation of all documents incorporated by reference prior to the time of filing the preliminary prospectus, the issuer was usually able to obtain exemptive relief directly from the Autorité des marchés financiers allowing the French translated documents incorporated by reference to be filed at the time of filing the final prospectus. Will the addition of section 4.5(3) now require an issuer to make application to the principal regulator for exemptive relief, either through the MRRS system or in the preliminary prospectus cover letter, rather than directly through the Autorité des marchés financiers?

Please contact me if you have any questions or require clarification on any of the foregoing comments.

Yours truly,

MACLEOD DIXON LLP

(Signed) Scott Negraiff