April 8, 2005

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Dear Sirs and Mesdames:

RE: REQUEST FOR COMMENTS — SHORT FORM PROSPECTUS DISTRIBUTIONS

This letter is submitted in response to the request for comment published January 7, 2005 by the Canadian Securities Administrators ("CSA") on proposed amendments to National Instrument 44-101 *Short Form Prospectus Distributions*, Form 44-101F1 *Short Form Prospectus* and Companion Policy 44-101CP (collectively, the "Short Form Prospectus Rules").

This submission is provided by the Securities Law Subcommittee (the "OBA Subcommittee") of the Business Law Section of the Ontario Bar Association (the "OBA"). The members of the OBA Subcommittee are listed in the attached Appendix. Please note that not all of the members of the OBA Subcommittee participated in or reviewed this submission, and that the views expressed are not necessarily those of the firms and organizations represented by members of the OBA Subcommittee. As well, the OBA approval process for this submission has not been completed. We will be pleased to notify you once OBA approval has been granted.

General

In general, we support the proposed amendments to the Short Form Prospectus Rules and the initiative to harmonize them with the continuous disclosure rules and eliminate redundant disclosure. We offer the following specific comments.

We note that the CSA has stated that adopting the proposed changes to the Short Form Prospectus Rules should not affect eligibility for Canadian issuers to use the Multijurisdictional Disclosure System ("MJDS"). Should the CSA receive any indication of concern about the

proposed amendments from the U.S. Securities and Exchange Commission or its staff, we strongly urge the CSA to consider and address these concerns prior to adopting these amendments.

Broadening Eligibility

Subject to our concern noted below, we support the proposal to broaden eligibility to use the short form prospectus to all listed issuers on the TSX and Tiers 1 and 2 of the TSX Venture Exchange. However, we believe that issuers listed on the Canadian Trading and Quotation System Inc. should also be eligible as they are subject to the same continuous disclosure rules. In general, we do not believe specific marketplaces should be "hard coded" into regulatory instruments, as this can make it difficult to accommodate new entrants, particularly as some jurisdictions do not have the ability to issue blanket orders. Instead of listing specific exchanges, we believe it would be preferable to allow any issuer that is listed on any stock exchange recognized in any jurisdiction to use a short form prospectus. If concerns about issuers listed on NEX cannot be addressed by the requirement that the issuer have an active business and that its principal asset not be cash or its exchange listing, NEX-listed issuers should explicitly be excluded. Furthermore, while we support broadening access, we question whether venture issuers (as defined in National Instrument 51-102 and other instruments) should be eligible without first complying with the more stringent disclosure and governance obligations that are placed on non-venture issuers.

While we support broadening eligibility generally, we question whether, absent pre-filing consultations, any issuer that proposes a distribution of novel securities should be eligible to use a short-form prospectus. Although this is covered off to some extent by section 5.3(20 of National Instrument 43-201, we believe that it is important that the terms and economic effect of securities that have not previously been marketed to the public in Canada be clearly and accurately disclosed so their investment attributes can be assessed by advisers, analysts and investors. Although novel securities are frequently offered by new issuers this is not always the case. Where it is not the case we are concerned that the limited review and market exposure provided by the short form prospectus system will not highlight the risks to investors of securities which the public may assume carry minimal risk because they are issued by established issuers.

Credit Supporter Disclosure

We believe that this issue is satisfactorily addressed in the continuous disclosure rule, where the issuer does not have to file continuous disclosure if the credit supporter does so. The filing of an undertaking would appear to result from the CSA taking the position that the guarantee is not a security and that continuous disclosure is the obligation of the issuer, not the guarantor. Although this is a somewhat awkward solution, it has worked well to date and we do not recommend any changes.

In practice, the indenture between the issuer and the credit supporter will contain covenants to ensure the credit supporter is in compliance with applicable rules. Therefore, the risk of the credit supporter not providing the required disclosure is minimal.

We also believe that the exemptions for certain issuers of guaranteed securities contained in Item 13 of proposed Form 44101-F1 are appropriate.

Disclosure of Expert Conflict of Interests

We believe the disclosure requirements contained in Item 15 of Proposed Form 44-101F1 are appropriate.

Possible Further Changes in Prospectus Regulation

At this time we do not support the development of a system which permits issuers to access public capital based solely on the filing of a final prospectus. We see at least two problems with this concept. First, we believe that it has adverse implications for MJDS since it does not parallel any offering system administered by the SEC, which could lead to the absurd result that only the very largest issuers are subject to a requirement to file a preliminary prospectus. Second, we are concerned that dispensing with all preliminary prospectus requirements may create a situation where an issuer who is (unknown to it) the subject of a pending investigation or continuous disclosure review that raises serious concerns sells securities without the buyers being made aware of the possible problems. While we acknowledge that investors may buy or sell securities of these issuers on stock exchanges while these investigations and reviews are ongoing, we believe that it is qualitatively different from both the issuers' and the investors' perspective if an issuer sells new securities without any disclosure of the potential problems.

In addition, if Alternative B is adopted we believe that the advantages of the proposed system will be provided by the shelf prospectus system. Once the eligibility criteria for filing a short form prospectus are eliminated, any issuer who has cleared a base shelf prospectus will be able to access the capital markets immediately. It will not need to file a preliminary prospectus or await prospectus review. There are some risks to eliminating the eligibility criteria for the shelf prospectus system. However, this approach does not raise the same concerns about the future of MJDS and should permit regulators to take steps to limit the potential for the completion of an offering without appropriate disclosure of an investigation or problematic continuous disclosure review. We acknowledge that senior issuers have not used the shelf system to market equity securities because of the perception that the market will treat the equity which may be issued under their shelf as having been issued. However, we believe that regulators should wait to see if this situation changes, after the eligibility criteria for the shelf prospectus system are eliminated, before introducing a new continuous market access system.

We thank you for this opportunity to comment. If you have any questions, please direct them to Susan McCallum (simccallum200650@aol.com, 416-483-6687) or Timothy S. Baikie (tbaikie@abanet.org; 416-995-7844).

Yours truly,

Securities Law Subcommittee
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Appendix
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