

Nova Scotia Securities Commission
Rule 44-101(Amendment)
Amendments to National Instrument 44-101
Short Form Prospectus Distributions and Form 44-101F3

-And-

Amendments to National Instrument 44-101
Short Form Prospectus Distributions and Form 44-101F3

-And-

Amendments to Companion Policy 44-101CP to
National Instrument 44-101 Short Form Prospectus Distributions

WHEREAS:

1. Pursuant to section 150 of the *Securities Act*, R.S.N.S. 1989, chapter 418, as amended (the "Act"), the Nova Scotia Securities Commission (the "Commission") has power to make rules subject to compliance with the requirements of the Act;
2. Pursuant to section 19 of the Act, the Commission has power to issue and publish policy statements;
3. Amendments to National Instrument 44-101 Short Form Prospectus Distributions and Form 44-101F3, and Amendments to Companion Policy 44-101CP to National Instrument 44-101 Short Form Prospectus Distributions, copies of which are attached hereto and are hereinafter called the "Rule" and "Companion Policy" respectively, have been made a rule by one or more of the Canadian securities regulatory authorities; and
4. The Commission is of the opinion that the attainment of the purpose of the Act is advanced by this Instrument.

NOW THEREFORE the Commission hereby:

- (a) pursuant to the authority contained in section 150 of the Act and subject to compliance with the requirements of section 150A of the Act, approves the Rule and makes the same a rule of the Commission except insofar as the Rule contains coming into force or effective date provisions;

(b) pursuant to the authority contained in section 19 of the Act and subject to publication in the *Royal Gazette*, issues the Companion Policy as a policy statement of the Commission except insofar as the Companion Policy contains coming into force or effective date provisions; and

(c) declares that the rule approved and made pursuant to clause (a) and the policy statement issued pursuant to clause (b) shall both take effect on **January 24, 2005**, unless the Governor-in-Council disapproves the rule or returns it to the Commission in accordance with subsection 150A(3) of the Act in which event the rule and the policy statement shall not be effective until the rule is approved by the Governor-in-Council.

IN WITNESS WHEREOF this Instrument has been signed by the Chair and Vice-Chair of the Commission, being the members of the Commission prescribed by the Chair pursuant to subsection 15(3) of the Act to attend the hearing of this matter and the quorum with respect to this matter, on the 10th day of November, 2004.

"H. Leslie O'Brien"
H. Leslie O'Brien

"R. Daren Baxter"
R. Daren Baxter

Attachments

National Instrument 44-101
Short Form Prospectus Distributions

Amendment Instrument

1. This Instrument amends National Instrument 44-101 *Short Form Prospectus Distributions*.
2. Section 1.1 is amended
 - (a) by repealing the definitions of “auditor’s report”, “foreign auditor’s report”, “foreign GAAP”, “foreign GAAS” and “U.S. GAAS”;
 - (b) by repealing the definition of “executive officer” and substituting the following:

“executive officer” with respect to a person or company means an individual who is

 - (a) a chair of the person or company,
 - (b) a vice-chair of the person or company,
 - (c) the president of the person or company,
 - (d) a vice-president of the person or company in charge of a principal business unit, division or function including sales, finance or production,
 - (e) an officer of the person or company or any of its subsidiaries, who performed a policy-making function in respect of the person or company,
 - or
 - (f) any other individual who performed a policy-making function in respect of the person or company;
 - (c) by adding the following definitions:

“issuer’s GAAP” means the accounting principles used to prepare an issuer’s financial statements, as permitted by NI 52-107;

“NI 52-107” means National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*;

“US GAAP” means generally accepted accounting principles in the United States of America that the SEC has identified as having substantial authoritative support as supplemented by Regulation S-X and S-B under the 1934 Act.
3. Subsection 1.2(9) is repealed and the following substituted:

1.2(9) Application of Significance Tests – Accounting Principles and Currency – For the purposes of the significance tests in subsections (2) and (3), financial statements of the business or related businesses must be reconciled to the accounting principles used to

prepare the issuer's financial statements and translated into the same reporting currency as that used in the issuer's financial statements.

4. Section 4.12 is amended by striking out "shall be accompanied by an auditor's report without a reservation of opinion" and substituting "must be audited".

5. Section 4.13 is repealed and the following substituted:

Despite section 4.12, interim financial statements of a business included in a short form prospectus under this Part do not have to be audited.

6. Section 4.14 is repealed and the following substituted:

Despite section 4.12, an issuer may omit from its short form prospectus an audit report for the annual financial statements referred to in subsection 4.8(3) if the financial statements have not been audited.

7. Section 4.15 is amended

- (a) in paragraph (a) by striking out "auditor's report" and substituting "audit report", and

- (b) by repealing paragraph (b) and substituting "the financial statements have not been audited".

8. Section 5.6 is amended by striking out "shall be accompanied by an auditor's report without a reservation of opinion" and substituting "must be audited".

9. Section 5.7 is repealed and the following substituted:

Despite section 5.6, interim financial statements of a business included in a short form prospectus under this Part do not have to be audited.

10. Section 5.8 is repealed and the following substituted:

Despite section 5.6, an issuer may omit from its short form prospectus an audit report for the annual financial statements referred to in subsection 5.3(2) if the financial statements have not been audited.

11. The title to Part 7 is repealed and the following substituted:

Part 7 Audit Requirement for Financial Statements of an Issuer

12. Section 7.1 is repealed and the following substituted:

7.1 Audit Requirement

The financial statements of an issuer included in a short form prospectus must be audited.

13. Section 7.2 is repealed.

14. Section 7.3 is repealed and the following substituted:

7.3 Exception to Audit Requirement — Despite section 7.1, the following financial statements do not have to be audited:

1. Comparative interim financial statements required to be incorporated by reference under paragraph (1)3 of Item 12.1 or paragraph 2 of 12.2 of Form 44-101F3.
2. The comparative annual financial statements of the issuer for the most recently completed financial year if
 - (a) the financial statements are required to be incorporated by reference in a short form prospectus solely by reason of paragraph (1) 5 of Item 12.1 of Form 44-101F3;
 - (b) the auditor of the issuer has not issued an audit report on the financial statements; and
 - (c) comparative financial statements for the year preceding the most recently completed financial year are audited and are included in the short form prospectus.
3. The comparative interim financial statements of a credit supporter required to be incorporated by reference under Item 13.2 of Form 44-101F3.

15. Sections 7.4 and 7.5 are repealed.

16. Paragraph 10.2(b) is amended

- (a) in item 6 by striking out “auditor’s report” and substituting “audit report”, and
- (b) by repealing item 7.

17. Form 44-101F3 *Short Form Prospectus* is amended

- (a) in paragraphs (c) and (d) of paragraph 7.1(2) by striking out “in the Handbook” and substituting “in accordance with the issuer’s GAAP”;
- (b) in paragraph 7.1(3) by striking out “under Canadian GAAP”;
- (c) in Instruction (2)(d) of Item 7 by striking out “generally accepted accounting principles” and substituting “the issuer’s GAAP”;

- (d) in paragraph 12.1(3)
 - (i) by repealing paragraph (b) and substituting “is required by subsection 4.1(1) of NI 52-107 to provide a reconciliation to Canadian GAAP”;
 - (ii) by striking out “other than in accordance with Canadian GAAP” in paragraph (c) and “substituting in accordance with US GAAP”; and
 - (iii) by striking out “foreign GAAP” and substituting “US GAAP”; and
- (e) by repealing Item 20 and substituting the following:

If the short form prospectus includes financial statements not prepared in accordance with Canadian GAAP and the short form prospectus does not include a reconciliation to Canadian GAAP, include any reconciliation to Canadian GAAP required under NI 52-107.

18. This Instrument comes into force on January 4, 2005.

National Instrument 44-101
Short Form Prospectus Distributions
Companion Policy 44-101CP

Amendments to Companion Policy

1. Companion Policy 44-101CP to National Instrument 44-101 *Short Form Prospectus Distributions* is amended as follows.

2. Section 4.3 is repealed and the following substituted:

4.3 Audit Report for All Financial Statements Included in the Short Form Prospectus – 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. NI 52-107 further requires that all audited financial statements be accompanied by an audit report. Issuers are reminded that the audit report requirement extends to financial statements of subsidiaries and other entities even if the financial statements are not required to be included in the short form prospectus but have been included at the discretion of the issuer.

3. Section 4.4 is amended by striking out “auditor’s report” and substituting “audit report” wherever it occurs.

4. Subsection 4.6(3) is amended by striking out “auditor’s report ” and substituting “audit report” wherever it occurs.

5. Section 5.8 is amended by

- (a) striking out “foreign GAAP” and substituting “GAAP that is not the issuer’s GAAP” wherever it occurs; and
- (b) striking out “Canadian GAAP” and substituting “the issuer’s GAAP”.

6. Subsections 5.20(3) and (4) are amended by striking out “auditor’s report ” and substituting “audit report” wherever it occurs.

7. Section 6.1 is repealed and the following substituted:

6.1 GAAP and GAAS – The financial statements of a person or company that are included or incorporated by reference in a short form prospectus must be prepared in accordance with NI 52-107.

8. Section 6.2 is repealed.

9. These amendments come into force on January 4, 2005.