

**Nova Scotia Securities Commission**

**Rule 44-101(Amendment)  
Amendments to National Instrument 44-101  
Short Form Prospectus Distributions and Form 44-101F3  
and Revocation of Form 44-101F1 and Form 44-101F2**

**-And-**

**Amendments to National Instrument 44-101  
Short Form Prospectus Distributions and Form 44-101F3  
and Revocation of Form 44-101F1 and Form 44-101F2**

**-And-**

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

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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 Revocation of Form 44-101F1 and Form 44-101F2, 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 adopted as 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;

(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; 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 **March 30, 2004** 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 one member 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 14<sup>th</sup> day of January, 2004.

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

"R. Daren Baxter"  
R. Daren Baxter

Attachments

**Amendments to  
National Instrument 44-101  
Short Form Prospectus Distributions  
Form 44-101F3 and Companion Policy 44-101CP  
And Revocation of  
Form 44-101F1 and Form 44-101F2**

**Part 1 Amendments to National Instrument 44-101**

**1.1 Amendments to Part 1 of NI 44-101 - *Part 1 of National Instrument 44-101 is amended by,***

- (a) *in section 1.1, repealing the definition of “AIF” and substituting the following:*

“AIF” means an annual information form

- (a) in Form 51-102F2,
- (b) in Form 51-102F2 or Form 44-101F1, if the annual information form was filed in respect of financial years beginning before January 1, 2004, or
- (c) in the form referred to in section 3.4;

- (b) *in the definition of “current AIF” in section 1.1, adding “, Form 10-KSB,” after the words “Form 10-K”, wherever they appear;*

- (c) *in section 1.1, adding immediately after the definition of “foreign GAAS” and immediately before the definition of “44-101 regulator” the following:*

“Form 51-102F1” means Form 51-102F1 *Management’s Discussion and Analysis*;

“Form 51-102F2” means Form 51-102F2 *Annual Information Form*;

- (d) *in section 1.1, repealing the definition of “MD&A” and substituting the following:*

“MD&A” means the management’s discussion and analysis of financial condition and results of operations of an issuer

- (a) in Form 51-102F1, or

- (b) for financial years beginning before January 1, 2004,
  - (i) in Form 51-102F1, or
  - (ii) required to be disclosed in an AIF in respect of financial years beginning before January 1, 2004;
- (e) ***in section 1.1, adding immediately after the definition of “MRRS” and immediately before the definition of “non-convertible” the following:***

“NI 51-102” means National Instrument 51-102 *Continuous Disclosure Obligations*;

**1.2 Amendments to Part 3 of NI 44-101 - *Part 3 of National Instrument 44-101 is amended by***

***(a) repealing subsection 3.1(1) and substituting the following:***

- (1) An issuer filing an initial AIF under this Instrument shall file the AIF
  - (a) in Form 51-102F2;
  - (b) in respect of financial years beginning before January 1, 2004, in Form 51-102F2 or Form 44-101F1; or
  - (c) in the form referred to in section 3.4.

***(b) repealing subsection 3.2(1) and substituting the following:***

- (1) An issuer filing a renewal AIF under this Instrument shall file the AIF
  - (a) in Form 51-102F2;
  - (b) in respect of financial years beginning before January 1, 2004, in Form 51-102F2 or Form 44-101F1; or
  - (c) in the form referred to in section 3.4.

***(c) repealing subsection 3.2(5) and substituting the following:***

- (5) Upon receipt of a notice from the 44-101 regulator that its renewal AIF is being reviewed, an issuer shall promptly file the renewal AIF again, in all jurisdictions in which the renewal AIF was filed, with

- (a) the following statement added in bold type to the cover page of the renewal AIF, if the renewal AIF is in Form 51-102F2, until the issuer is notified that the review has been completed:

**“This annual information form is currently under review by the provincial and territorial securities regulatory authorities of one or more jurisdictions. Information contained in this form is subject to change.”**, or (b) the statement required under Item 1.2 of Form 44-101F1, if the renewal AIF is in Form 44-101F1.

*(d) repealing subsection 3.3(2) and substituting the following:*

- (2) An issuer that files an AIF under this Instrument shall file an undertaking with the regulator to the effect that, when the securities of the issuer are in the course of a distribution under a preliminary short form prospectus or a short form prospectus, the issuer will provide to any person or company, upon request to the secretary of the issuer,
  - (a) one copy of the AIF of the issuer, together with one copy of any document, or the pertinent pages of any document, incorporated by reference in the AIF,
  - (b) one copy of the financial statements of the issuer for its most recently completed financial year for which financial statements have been filed together with the accompanying report of the auditor and one copy of the most recent interim financial statements of the issuer that have been filed, if any, for any period after the end of its most recently completed financial year,
  - (c) one copy of the information circular of the issuer in respect of its most recent annual meeting of shareholders that involved the election of directors, and
  - (d) one copy of any other documents that are incorporated by reference into the preliminary short form prospectus or the short form prospectus and are not required to be provided under paragraphs (a), (b) or (c).

(e) *repealing section 3.4 and substituting the following:*

**3.4 Alternative Forms of AIF** - An issuer that

- (a) has a class of securities registered under section 12 of the 1934 Act or is required to file reports under section 15(d) of the 1934 Act, and
- (b) is not registered or required to be registered as an investment company under the *Investment Company Act of 1940* of the United States of America,

may file an AIF in the form of an annual report or transition report under the 1934 Act on Form 10-K, Form 10-KSB or on Form 20-F.

**Part 2 Amendments to Companion Policy 44-101CP**

**2.1 Part 1 of Companion Policy 44-101CP is amended by,**

(a) *in section 1.7, adding the following as new subsection (1):*

- (1) **AIF** – The term “AIF” is defined to mean either a Form 51-102F2 or Form 44-101F1 *AIF*, depending on when the AIF is filed. Issuers may choose to file their annual information forms for financial years beginning before January 1, 2004 in either Form 51-102F2 or Form 44-101F1. For financial years beginning on or after January 1, 2004, issuers must use Form 51-102F2.

(b) *renumbering subsections 1.7(1) to (6) as subsections 1.7(2) to (7).*

**2.2 Part 8 of Companion Policy 44-101CP is amended by,**

(a) *in subsection 8.1(1),*

- (i) *striking the words “Item 4.2 of Form 44-101F1 specifies” and substituting “Item 4.2 of Form 44-101F1 and section 5.3 of Form 51-102F2 specify”; and*
- (ii) *striking the words “Form 44-101F1 leaves” in the second sentence and substituting “Form 44-101F1 and Form 51-102F2 leave”;*

(b) *in subsection 8.1(2),*

- (i) *striking the words “Item 4.2(b)(i) of Form 44-101F1 AIF requires” and substituting “Item 4.2(b)(i) of Form 44-101F1 AIF and section 5.3(2) of Form 51-102F2 require”; and*

- (ii) *striking the words “, the cash flows from which service the asset-backed securities”; and*
- (c) *in section 8.2,*
  - (i) *adding the words “and Item 10 of Form 51-102F2” after the words “Item 8 of Form 44-101F1” wherever they appear; and*
  - (ii) *striking the word “requires” and substituting “require”.*

### **Part 3 Revocation of Forms 44-101F1 AIF and 44-101F2 MD&A**

**3.1 Revocation of Form 44-101F1 AIF – Form 44-101F1 AIF is revoked.**

**3.2 Revocation of Form 44-101F2 MD&A – Form 44-101F2 MD&A is revoked.**

### **Part 4 Amendments to Form 44-101F3 Short Form Prospectus**

**4.1 Item 10 of Form 44-101F3 Short Form Prospectus is repealed and the following substituted:**

#### **Item 10: Resource Property**

**10.1 Resource Property** – If a material part of the proceeds of a distribution is to be expended on a particular resource property and if the current AIF does not contain the disclosure required under Item 4.3 or 4.4, as appropriate, of Form 44-101F1, or section 5.4 or 5.5, as appropriate, of Form 51-102F2, for the property or that disclosure is inadequate or incorrect due to changes, disclose the information required under section 5.4 or 5.5 of Form 51-102F2.

**4.2 Item 12 of Form 44-101F3 Short Form Prospectus is amended by**

(a) *striking subparagraph 12.1(1)7. and substituting the following:*

7. MD&A relating to the issuer’s interim financial statements included in the short form prospectus.

(b) *in subparagraph 12.1(1)8., adding the words “for financial years beginning before January 1, 2004,” after the words “information circulars or,”;*

(c) *striking subparagraph 12.1(3)(a) and substituting the following*

(a) has filed an AIF in a form of current annual report on Form 10-K, Form 10-KSB or Form 20-F under the 1934 Act, as permitted under section 3.4 of National Instrument 44-101 and under NI 51-102.

- (d) *in subparagraph 12.2 4., adding the words “for financial years beginning before January 1, 2004,” after the words “information circulars or;”;*  
*and*
- (e) *in clause 13.1(2)(b)(ii), striking the words “Form 10-K or Form 20-F”*  
*and substituting “Form 10-K, Form 10-KSB or Form 20-F”.*

## **Part 5 Effective Date**

### **5.1 Effective Date**

- (1) This Amendment, except for Part 3, comes into force on March 30, 2004.
- (2) Part 3 of this Amendment comes into force on May 19, 2005.



