

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Nova Scotia Securities Commission

Jo-Anne Bund, Co-Chair of the CSA's Prospectus Systems Committee
Alberta Securities Commission
e-mail: joanne.bund@seccom.ab.ca

Charles MacCready, Co-Chair of the CSA's Prospectus Systems Committee
Ontario Securities Commission
e-mail: cmaccready@osc.gov.on.ca

Anne-Marie Beaudoin, Directrice du secrétariat
Autorite des marches financiers
e-mail: consultation-en-cours@autorite.qc.ca

April 12, 2005

Dear Sirs/Mesdames:

Proposed Repeal and Replacement of National Instrument 44-102 Shelf Distributions

We are pleased to provide our comments on the proposed changes to this Instrument. In our response to the proposed changes to National Instrument 44-101 Short Form Distributions we supported broadening the access to the short form distribution system. This in turn may significantly increase the number of shelf distributions under this Instrument. Most of our response outlines our concerns about the need to improve the clarity and guidance on the nature and timing of an auditor's involvement with continuous distributions under this Instrument. Our concerns echo those presently being raised on certain aspects of the SEC's Securities Offering Reform, which as drafted would attach Section 11 liability to prospectus supplements without any requirement for updated consents from independent accountants.

Page 2

We would welcome the opportunity to discuss with you any aspect of our response.

Yours very truly



Gordon C. Fowler
Partner, KPMG LLP
National Assurance and Professional Practice
416-777-3490



Alan G. Van Weelden
Associate Partner, KPMG LLP
National Assurance and Professional Practice
416-777-8080

Auditor Involvement with MTN or other Continuous Distributions

We support the proposal in NI 44-101 and the corresponding proposal in NI 44-102 to eliminate the requirement for filing an auditor's comfort letter on interim financial statements included or incorporated by reference in a short form prospectus. We understand the CSA's intention is to rely on the professional standards in CICA Handbook Section 7110 for an auditor's involvement with offering documents, which include a requirement for review of interim financial statements. ***We believe, however, there is room for improvement in both Section 7110 and NI 44-102 in providing clarity and guidance on the timing and nature of an auditor's involvement with a continuous distribution of securities.***

Auditor's responsibilities for interim financial statements subsequently filed and incorporated by reference

There are at least two reasons why the issuer of securities offered on a continuous basis might conclude that no auditor involvement is necessary with interim financial statements filed after the filing of the base shelf prospectus or shelf prospectus supplement establishing the continuous distribution. Firstly, there already are other documents that may subsequently be filed and incorporated by reference without the auditor's involvement. For example, CICA Handbook paragraph 7110.65 states: "The auditor may not be required to issue a new consent when a client files either a shelf prospectus supplement or a supplemented PREP prospectus." In such a case the paragraph goes on to state: "...there is no requirement...to perform additional procedures with respect to this document". Secondly, in the analogous circumstance of a continuous distribution of mutual fund units under NI 81-102 the auditor's review of the fund's interim financial statements filed after the date of the simplified prospectus is not required even though such statements are incorporated by reference into the fund's simplified prospectus (section 3.1 of Form 81-102F1). Section 2.12 of NI 81-106 requires only a notification by the issuer that the interim financial statements have not been reviewed by an auditor.

We believe the preparation of interim financial statements is a significantly more complex process for a POP issuer making a continuous distribution under NI 44-102 than it is for a mutual fund issuer. Accordingly we believe a distinction can be made between these two types of issuers and continuous offerings. ***We recommend an amendment to NI 44-102 to mandate an auditor review of interim financial statements included or incorporated by reference in the short form prospectus or supplements thereto that establishes a continuous distribution.***

Auditor's responsibilities for other documents subsequently filed and incorporated by reference

The SEC is proposing significant changes to U.S. securities legislation in a proposed rule entitled "Securities Offering Reform". In one of the proposed changes issuers would have to agree that information filed in prospectus supplements are deemed to be part of and included in the relevant registration statements and that new effective dates would occur. Our U.S. firm is concerned about the absence of a corresponding requirement for an updated consent from the issuer's independent accountants in such circumstances. In their submission to the SEC our U.S. firm argued that independent accountants named as experts in the original registration statement or post-effective amendment must be given the opportunity to perform the procedures required under AU Section 711 (the equivalent of our CICA Handbook Section 7110) as part of a reasonable investigation and to reconfirm their ability or desire to be associated with that registration statement. Our U.S. firm is calling for clarification of the circumstances under which consents would and would not be required, bearing in mind the professional standards in AU Section 711. They acknowledge that changes to these professional standards may be necessary to address changes in the auditor's responsibilities under the Proposed Rule. Similar concerns are expressed in the response letters submitted to the SEC by PricewaterhouseCoopers, Deloitte & Touche, Ernst & Young and BDO Seidman.

We believe it is impossible for an auditor to be continuously updating his or her reasonable investigation throughout the period of a continuous distribution. It is also impracticable and contrary to the objectives of a continuous distribution system to require an issuer to obtain an updated auditor's consent every time additional information is deemed to be incorporated by reference into the base shelf prospectus. NI 44-102 presently requires the issuer and underwriter to provide forward looking prospectus certificates that are "...as of the date of the last supplement to this prospectus relating to the securities offered by this prospectus and the supplement(s)". ***We believe the CSA should amend NI 44-102 to align the consent requirements of auditors and other experts associated with the continuous offering with the related certificate requirements of the issuer and underwriter (and promoter and credit supporter, where applicable). This is consistent with the view that the due diligence process entailed in a securities offering represents a collective effort of the issuer and its counsel, the underwriter and their counsel, the auditors and others.*** If the CSA determines that in certain circumstances (e.g., a pricing supplement under NI 44-103) an auditor's consent requirement may unduly delay the offering process, then the Instrument should clearly indicate that the auditor's prospectus liability is not extended in such circumstances. Similarly, an expert should not be required to provide a consent that is dated subsequent to the date of the most recent certificates provided by the issuer and underwriters.

Since the AIF disclosure requirements under NI 51-102 have been upgraded to a level comparable to a non-offering prospectus, ***we believe the CSA should regard the filing of the AIF as the filing of an amended prospectus, and add a requirement to file updated prospectus certificates and experts'***

consents when it is incorporated into a base shelf prospectus underlying a continuous distribution of securities.

We would like to see securities legislation amended to accept the inclusion in the prospectus or prospectus supplement of the form of auditor's consent in CICA Handbook Section 7110 as satisfying the applicable regulatory consent requirements such as those in existing section 10.4 of NI 44-101 and section 7.2 of NI 44-102.

Guidance on Auditor's Consents

The consent requirements in section 7.2 of NI 44-102 have been a source of on-going confusion to many of our partners and other professionals. We support the efforts of the CSA to provide an example illustrating the application of the requirements. However, after circulating the guidance in proposed section 2.6.1 of the Companion Policy to a group of experienced securities partners, the guidance was found to be of limited help in clarifying the requirements in section 7.2.

We present below for your consideration our attempt to illustrate these requirements.

Type of Prospectus Filed	Timing of inclusion of expert's report	Timing of filing of expert's consent
MTN or non-MTN base shelf prospectus	Expert's report included in the base shelf prospectus at the date the base shelf prospectus is filed.	Expert's consent is filed at the date the prospectus is filed.
MTN base shelf prospectus	Expert's report included in a Document, filed after the base shelf prospectus is filed, that is incorporated by reference into the prospectus.	Expert's consent is filed at the date the Document is filed.
Non-MTN base shelf prospectus "in distribution"	Expert's report included in a Document, filed after the base shelf prospectus is filed, that is incorporated by reference into the prospectus.	Expert's consent is filed at the date the Document is filed.
Non-MTN base shelf prospectus "out of distribution"	Expert's report included in a Document, filed after the base shelf prospectus is filed, that is incorporated by reference into the prospectus.	Expert's consent is filed no later than the date of filing of the next prospectus supplement corresponding to the base shelf prospectus. (Note)

Note: In the case of an auditor, the auditor's consent normally would be filed at the date of filing of the next prospectus supplement upon completion of all of the applicable procedures in Section 7110 of the Handbook.