

**NOTICE AND REQUEST FOR COMMENT****Consequential Amendments Arising from the  
Proposed Repeal and Replacement of  
National Instrument 44-101 *Short Form Prospectus Distributions*****Proposed Amendments to National Instrument 44-102 *Shelf Distributions*,  
National Instrument 44-103 *Post-Receipt Pricing*,  
National Policy 43-201 *Mutual Reliance Review System for Prospectuses  
and Annual Information Forms* and  
National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*****January 7, 2005****Overview**

We, the Canadian Securities Administrators (CSA), are publishing this notice in conjunction with the Notice and Request for Comment on the proposed repeal and replacement of National Instrument 44-101 *Short Form Prospectus Distributions*, Form 44-101F3 *Short Form Prospectus* and Companion Policy 44-101CP (collectively, the “Proposed Short Form Rule”). The Proposed Short Form Rule is intended to replace the current short form prospectus distribution rule and related forms and companion policy (collectively, the “Current Short Form Rule”) that came into effect in all CSA jurisdictions on December 31, 2000. It will more fully integrate the disclosure regimes for the primary and secondary securities markets, and will address deficiencies or ambiguities in the Current Short Form Rule that we have identified over the past four years. Finally, we have proposed revisions to the qualification criteria that would broaden issuer access to the short form system.

A number of other national instruments build on the foundation of the Current Short Form Rule, or make reference to some of its requirements. As a consequence of the proposed repeal of the Current Short Form Rule and its replacement with the Proposed Short Form Rule, the CSA also propose to amend the following national instruments:

- National Instrument 44-102 *Shelf Distributions* (“NI 44-102”) and the related Companion Policy 44-102CP;
- National Instrument 44-103 *Post-Receipt Pricing* (“NI 44-103”) and the related Companion Policy 44-103CP;
- National Policy 43-201 *Mutual Reliance Review System for Prospectuses and Annual Information Forms* (“NP 43-201”); and
- National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* (“NI 51-101”).

The proposed consequential amendments are summarized below. With this notice, we are publishing a version of each of NI 44-102, NI 44-103 and NP 43-201, marked to indicate

the proposed consequential amendments. These documents can be obtained from websites of CSA members, including the following:

[www.albertasecurities.com](http://www.albertasecurities.com)  
[www.bcsc.bc.ca](http://www.bcsc.bc.ca)  
[www.msc.gov.mb.ca](http://www.msc.gov.mb.ca)  
[www.gov.ns.ca/nssc/](http://www.gov.ns.ca/nssc/)  
[www.osc.gov.on.ca](http://www.osc.gov.on.ca)  
[www.lautorite.qc.ca](http://www.lautorite.qc.ca)  
[www.sfsc.gov.sk.ca](http://www.sfsc.gov.sk.ca)

## **Summary of Proposed Consequential Amendments**

### ***NI 44-102***

We propose to amend NI 44-102 to update cross-references and definitions to be consistent with the Proposed Short Form Rule and to make a few other minor changes. The more significant proposed amendments to NI 44-102 are as follows:

- Amending the eligibility criteria contained in Part 2 to clarify that an issuer must be eligible to use the short form prospectus system established under the Proposed Short Form Rule in order to file and use a shelf prospectus.
- Amending subsection 6.4(1) to require that a shelf prospectus supplement be filed only in the jurisdictions in which securities are being distributed under the supplement.
- Deleting section 7.3, which addresses the filing of auditors' comfort letters, consistent with the elimination from the Proposed Short Form Rule of any requirement for auditors' comfort letters.
- Deleting Part 10 *Transitional Shelf Procedures* as it is no longer necessary to address transitional issues concerning NI 44-102's predecessor, National Policy 44.

We also propose to make corresponding changes to the related Companion Policy, including:

- Amending section 2.4 to provide additional guidance to issuers who propose to use the shelf procedures to distribute novel derivatives or asset-backed securities.
- Adding a new section 2.7 to provide additional guidance with respect to when an expert's consent must be filed under NI 44-102.
- Adding subsection (4) to section 3.1 to provide guidance as to how an issuer can increase the amount of securities that can be distributed under a previously filed shelf prospectus.

### ***NI 44-103***

We propose to amend NI 44-103 to update cross-references and definitions to be consistent with the Proposed Short Form Rule, to make other minor changes and to remove outdated transitional provisions. We also propose to make corresponding changes to the related companion policy.

### ***NP 43-201***

We propose to amend NP 43-201 to remove the provisions relating to the review and acceptance of annual information forms, and to make other minor changes to the policy. Annual information forms filed under National Instrument 51-102 *Continuous Disclosure Obligations* ("NI 51-102") will be subject to the national continuous disclosure review program.

### ***NI 51-101***

We propose to amend the definition of “annual information form” in NI 51-101 so that it refers to the definition of “annual information form” in NI 51-102. We also propose to make corresponding changes to the guidance given in the related companion policy about annual information forms.

### ***Local Instruments***

In addition to the amendments to the national instruments discussed above, consequential amendments may also be required for local instruments in some jurisdictions. Securities regulatory authorities in those jurisdictions will publish amendments to local instruments separately.

### **Anticipated Costs and Benefits**

We expect that the adoption of the Proposed Short Form Rule and the related consequential amendments will further enhance the efficiency of accessing capital for short form eligible reporting issuers. Harmonizing the short form system and related systems with the continuous disclosure rules will reduce costs of public securities offerings. There will be greater clarity regarding the application of the Proposed Short Form Rule and related instruments, including NI 44-102, and reduced circumstances requiring exemptive relief. To the extent that the amendments require additional disclosure, this disclosure will benefit investors to an extent that the benefit will outweigh the costs of these new requirements.

### **Alternatives Considered**

No other alternatives were considered.

### **Unpublished Materials**

No unpublished study, report or other written materials were relied on in proposing these amendments to existing national instruments.

### **Request for Comment**

We request your comments on the proposed amendments to NI 44-102, NI 44-103, NP 43-201 and NI 51-101.

### **How to Provide Your Comments**

Please provide your comments by April 8, 2005 by addressing your submission to the securities regulatory authorities listed below:

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

You do not need to deliver your comments to all of the CSA member commissions. Please deliver your comments to the three addresses that follow, and they will be distributed to all other jurisdictions by CSA staff.

Jo-Anne Bund, Co-Chair of the Prospectus Systems Committee  
Alberta Securities Commission  
4<sup>th</sup> Floor, 300 – 5<sup>th</sup> Avenue S.W.  
Calgary, Alberta T2P 3C4  
Fax: (403) 297-6156  
e-mail: [joanne.bund@seccom.ab.ca](mailto:joanne.bund@seccom.ab.ca)

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Ontario Securities Commission  
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Fax: (416) 593-3683  
e-mail: [cmaccready@osc.gov.on.ca](mailto:cmaccready@osc.gov.on.ca)

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Fax: (514) 864-6381  
e-mail: [consultation-en-cours@autorite.qc.ca](mailto:consultation-en-cours@autorite.qc.ca)

If you are not sending your comments by e-mail, please send a diskette containing your comments (in DOS or Windows format, preferably Word).

We cannot keep submissions confidential because securities legislation in certain provinces requires that a summary of the written comments received during the comment period be published.

### **Questions**

Please refer your questions to any of:

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**Proposed Amendment Instrument  
for  
National Instrument 44-102  
*Shelf Distributions***

1. This Instrument amends National Instrument 44-102 *Shelf Distributions*.
2. “National Instrument 44-101 Short Form Prospectus Distributions” and “National Instrument 44-101” are struck out wherever they occur and “NI 44-101” is substituted.
3. Section 1.1 is amended
  - (a) in subsection (1),
    - (i) by adding the following definition immediately after the definition of “MTN program”:

“ “NI 44-101” means National Instrument 44-101 *Short Form Prospectus Distributions*”;
    - (ii) in the definition of “novel”, by adding “,” immediately after “means”; and
    - (iii) by repealing the definition of “special warrant”; and
  - (b) in subsection (2), by striking out “National Instrument” wherever it occurs and substituting “NI”.
4. Section 1.3 is amended by striking out “2.9” and substituting “2.8”.
5. Part 2 is repealed and the following is substituted:

**“PART 2      SHELF QUALIFICATION AND PERIOD OF RECEIPT  
EFFECTIVENESS**

- 2.1      General** - An issuer shall not file a short form prospectus that is a base shelf prospectus, unless the issuer is qualified to do so under this Instrument or has been exempted from this section under section 11.1.
- 2.2      Shelf Qualification for Distributions Qualified under Section 2.2 (Basic Qualification) of NI 44-101**
  - (1) An issuer is qualified to file a preliminary short form prospectus that is a preliminary base shelf prospectus if, at the time of filing, the issuer is qualified under section 2.2 of NI 44-101 to file a prospectus in the form of a short form prospectus.

- (2) An issuer that has filed a preliminary base shelf prospectus in reliance on the qualification criteria in subsection (1) is qualified to file a short form prospectus that is the corresponding base shelf prospectus.
- (3) A receipt issued for a base shelf prospectus of an issuer qualified under subsection (2) is effective until the earliest of
  - (a) the date 25 months from the date of its issue;
  - (b) the time immediately before the entering into of an agreement of purchase and sale for a security to be sold under the base shelf prospectus, if at that time
    - (i) the issuer does not have current annual financial statements and does not satisfy the requirements of the exemption in either of subsections 2.9(1) or (2) of NI 44-101;
    - (ii) the issuer does not have a current AIF and does not satisfy the requirements of the exemption in either of subsections 2.9(1) or (2) of NI 44-101;
    - (iii) the aggregate market value of the issuer's equity securities, listed and posted for trading on an exchange in Canada, has not been \$75,000,000 or more on a date within 60 days before the date of the agreement [*for Alternative B*] the issuer's equity securities are not listed or posted for trading on a short form eligible exchange or the issuer is an issuer (A) whose operations have ceased, or (B) whose principal asset is cash, cash equivalents, or its exchange listing]; or
    - (iv) the issuer has withdrawn its notice declaring the issuer's intention to be qualified to file a short form prospectus under NI 44-101; and
  - (c) the lapse date, if any, prescribed by securities legislation, if relief has not been granted to the issuer extending the lapse date for the distribution.

**2.3 [Shelf Qualification for Distributions Qualified under Section 2.3 of NI 44-101 (Substantial Issuers) *[NTD: not necessary for Alternative B]***

- (1) An issuer is qualified to file a preliminary short form prospectus that is a preliminary base shelf prospectus if, at the time of filing, the issuer is



qualified under section 2.3 of NI 44-101 to file a prospectus in the form of a short form prospectus.

- (2) An issuer that has filed a preliminary base shelf prospectus in reliance on subsection (1) is qualified to file a short form prospectus that is the corresponding base shelf prospectus.
- (3) A receipt issued for a base shelf prospectus of an issuer qualified under subsection (2) is effective until the earliest of
  - (a) the date 25 months from the date of its issue;
  - (b) the time immediately before the entering into of an agreement of purchase and sale for a security to be sold under the base shelf prospectus, if at that time
    - (i) the issuer does not have current annual financial statements and does not satisfy the requirements of the exemption in either of subsections 2.9(1) or (2) of NI 44-101;
    - (ii) the issuer does not have a current AIF and does not satisfy the requirements of the exemption in either of subsections 2.9(1) or (2) of NI 44-101;
    - (iii) the aggregate market value of the issuer's equity securities, listed and posted for trading on an exchange in Canada, has not been \$300,000,000 or more on a date within 60 days before the date of the agreement; or
    - (iv) the issuer has withdrawn its notice declaring the issuer's intention to be qualified to file a short form prospectus under NI 44-101; and
  - (c) the lapse date, if any, prescribed by securities legislation, if relief has not been granted to the issuer extending the lapse date for the distribution.]

#### **2.4 Shelf Qualification for Distributions Qualified under Section 2.4 [2.3] of NI 44-101 (Approved Rating Non-Convertible Securities)**

- (1) An issuer is qualified to file a preliminary short form prospectus that is a preliminary base shelf prospectus for approved rating non-convertible securities if, at the time of filing, the issuer
  - (a) is qualified under section 2.4 [2.3] of NI 44-101 to file a prospectus in the form of a short form prospectus; and

- (b) has reasonable grounds for believing that, if it were to distribute securities under the base shelf prospectus, the securities distributed would receive an approved rating and would not receive a rating lower than an approved rating from any approved rating organization.
- (2) An issuer that has filed a preliminary base shelf prospectus in reliance on the qualification criteria in subsection (1) is qualified to file a short form prospectus that is the corresponding base shelf prospectus if, at the time of the filing of the base shelf prospectus, the issuer has reasonable grounds for believing that, if it were to distribute non-convertible securities under the base shelf prospectus, the securities distributed would receive an approved rating and would not receive a rating lower than an approved rating from any approved rating organization.
- (3) A receipt issued for a base shelf prospectus of an issuer filed under subsection (2) is effective until the earliest of
  - (a) the date 25 months from the date of its issue;
  - (b) the time immediately before the entering into of an agreement of purchase and sale for a security to be sold under the base shelf prospectus, if at that time
    - (i) the issuer does not have current annual financial statements and does not satisfy the requirements of the exemption in either of subsections 2.9(1) or (2) of NI 44-101;
    - (ii) the issuer does not have a current AIF and does not satisfy the requirements of the exemption in either of subsections 2.9(1) or (2) of NI 44-101;
    - (iii) the issuer has withdrawn its notice declaring the issuer's intention to be qualified to file a short form prospectus under NI 44-101; or
  - (iv) the securities to which the agreement relates
    - (A) have not received a final approved rating,
    - (B) are the subject of an announcement by an approved rating organization of which the issuer is or ought to be aware that the approved rating given by the organization may be down-graded to

a rating category that would not be an approved rating, or

- (C) have received a provisional or final rating lower than an approved rating from any approved rating organization; and

- (c) the lapse date, if any, prescribed by securities legislation, if relief has not been granted to the issuer extending the lapse date for the distribution.

**2.5 Shelf Qualification for Distributions made under Section 2.5 [2.4] of NI 44-101 (Guaranteed Non-Convertible Debt Securities, Preferred Shares and Cash Settled Derivatives)**

- (1) An issuer is qualified to file a short form prospectus that is a preliminary base shelf prospectus for non-convertible debt securities, non-convertible preferred shares or non-convertible cash settled derivatives if, at the time of filing, the issuer is qualified under section 2.5 [2.4] of NI 44-101 to file a prospectus in the form of a short form prospectus.
- (2) An issuer that has filed a preliminary base shelf prospectus in reliance on subsection (1) is qualified to file a short form prospectus that is the corresponding base shelf prospectus.
- (3) A receipt issued for a base shelf prospectus of an issuer qualified under subsection (2) is effective until the earliest of
  - (a) the date 25 months from the date of its issue;
  - (b) the time immediately before the entering into of an agreement of purchase and sale for a security to be sold under the base shelf prospectus, if at that time
    - (i) a credit supporter has not provided full and unconditional credit support for the securities to which the shelf prospectus supplement relates;
    - (ii) unless the requirements of subparagraph 2.5(1)2(c) [2.4(1)2(b)] of NI 44-101, but not the requirements of subparagraphs [subparagraph] 2.5(1)2(a) or (b) [2.4(1)2(a)] of NI 44-101, were satisfied at the time the issuer filed its base shelf prospectus, the credit supporter does not have current annual financial statements and does not satisfy the requirements of the exemption in either of subsections 2.9(1) or (2) of NI 44-101;

- (iii) unless the requirements of subparagraph 2.5(1)2(c) *[2.4(1)2(b)]* of NI 44-101, but not the requirements of subparagraphs *[subparagraph]* 2.5(1)2(a) or (b) *[2.4(1)2(a)]* of NI 44-101, were satisfied at the time the issuer filed its base shelf prospectus, the credit supporter does not have a current AIF and does not satisfy the requirements of the exemption in either of subsections 2.9(1) or (2) of NI 44-101;
- (iv) the credit supporter has withdrawn its notice declaring its intention to be qualified to file a short form prospectus under NI 44-101;
- (v) the issuer has withdrawn its notice declaring the issuer's intention to be qualified to file a short form prospectus under NI 44-101; or
- (vi) the aggregate market value of the equity securities of the credit supporter, listed and posted for trading on an exchange in Canada, has not been \$75,000,000 or more on a date within 60 days before the date of the agreement *[{for Alternative B} the credit supporter's equity securities are not listed or posted for trading on a short form eligible exchange or the credit supporter is an issuer (A) whose operations have ceased, or (B) whose principal asset is cash, cash equivalents, or its exchange listing]*, and either of the following is true:
  - (A) the credit supporter does not have issued and outstanding non-convertible securities that
    - (I) have received an approved rating,
    - (II) have not been the subject of an announcement by an approved rating organization of which the issuer is or ought to be aware that the approved rating given by the organization may be downgraded to a rating category that would not be an approved rating, and
    - (III) have not received a rating lower than an approved rating from any approved rating organization, or
  - (B) the securities to which the agreement relates
    - (I) have not received a final approved rating,

- (II) have been the subject of an announcement by an approved rating organization of which the issuer is or ought to be aware that the approved rating given by the organization may be down-graded to a rating category that would not be an approved rating, and
- (III) have received a provisional or final rating lower than an approved rating from any approved rating organization; and
- (c) the lapse date, if any, prescribed by securities legislation, if relief has not been granted to the issuer extending the lapse date for the distribution.

**2.6 Shelf Qualification for Distributions made under Section 2.6 [2.5] of NI 44-101 (Guaranteed Convertible Debt Securities or Preferred Shares)**

- (1) An issuer is qualified to file a short form prospectus that is a preliminary base shelf prospectus for convertible debt securities and convertible preferred shares if, at the time of filing, the issuer is qualified under section 2.6 [2.5] of NI 44-101 to file a prospectus in the form of a short form prospectus.
- (2) An issuer that has filed a preliminary base shelf prospectus in reliance on subsection (1) is qualified to file a short form prospectus that is the corresponding base shelf prospectus.
- (3) A receipt issued for a base shelf prospectus qualified under subsection (2) is effective until the earliest of
  - (a) the date 25 months from the date of its issue;
  - (b) the time immediately before the entering into of an agreement of purchase and sale for a security to be sold under the base shelf prospectus, if at that time
    - (i) the securities to which the agreement relates are not convertible into securities of a credit supporter that has provided full and unconditional credit support for the securities being distributed;
    - (ii) the credit supporter does not have current annual financial statements and does not satisfy the requirements of the exemption in either of subsections 2.9(1) or (2) of NI 44-101;

- (iii) the credit supporter does not have a current AIF and does not satisfy the requirements of the exemption in either of subsections 2.9(1) or (2) of NI 44-101;
  - (iv) the aggregate market value of the credit supporter's equity securities, listed and posted for trading on an exchange in Canada, has not been \$75,000,000 or more on a date within 60 days before the date of the agreement *[{for Alternative B} the credit supporter's equity securities are not listed or posted for trading on a short form eligible exchange or the issuer is an issuer (A) whose operations have ceased, or (B) whose principal asset is cash, cash equivalents, or its exchange listing];*
  - (v) the credit supporter has withdrawn its notice declaring the credit supporter's intention to be qualified to file a short form prospectus under NI 44-101; or
  - (vi) the issuer has withdrawn its notice declaring the issuer's intention to be qualified to file a short form prospectus under NI 44-101; and
- (c) the lapse date, if any, prescribed by securities legislation, if relief has not been granted to the issuer extending the lapse date for the distribution.

**2.7 Shelf Qualification for Distributions made under Section 2.7 [2.6] of NI 44-101 (Asset-Backed Securities)**

- (1) An issuer that is qualified under section 2.7 [2.6] of NI 44-101 to file a prospectus in the form of a short form prospectus may file a preliminary base shelf prospectus for asset-backed securities if, at the time of filing, the issuer has reasonable grounds for believing that
  - (a) all asset-backed securities that it may distribute under the base shelf prospectus will receive an approved rating from any approved rating organization; and
  - (b) no asset-backed securities that it may distribute under the base shelf prospectus will receive a rating lower than an approved rating from any approved rating organization.
- (2) An issuer that has filed a preliminary base shelf prospectus in reliance on the qualification criteria in section 2.7 [2.6] of NI 44-101 may file the corresponding base shelf prospectus if, at the time of the filing of the base shelf prospectus, the issuer has reasonable grounds for believing that

- (a) all asset-backed securities that it may distribute under the base shelf prospectus will receive an approved rating; and
  - (b) no asset-backed securities that it may distribute under the base shelf prospectus will receive a rating lower than an approved rating from any approved rating organization.
- (3) A receipt issued for a base shelf prospectus qualified under subsection (2) is effective for a distribution of asset-backed securities until the earliest of
- (a) the date 25 months from the date of its issue;
  - (b) the time immediately before the entering into of an agreement of purchase and sale for an asset-backed security to be sold under the base shelf prospectus, if at that time
    - (i) the issuer does not have current annual financial statements and does not satisfy the requirements of the exemption in either of subsections 2.9(1) or (2) of NI 44-101;
    - (ii) the issuer does not have a current AIF and does not satisfy the requirements of the exemption in either of subsections 2.9(1) or (2) of NI 44-101; or
    - (iii) the asset-backed securities to which the agreement relates
      - (A) have not received a final approved rating,
      - (B) have been the subject of an announcement by an approved rating organization of which the issuer is or ought reasonably to be aware that the approved rating given by the organization may be down-graded to a rating category that would not be an approved rating, or
      - (C) have received a provisional or final rating lower than an approved rating from any approved rating organization; and
  - (c) the lapse date, if any, prescribed by securities legislation, if relief has not been granted to the issuer extending the lapse date for the distribution.

- 2.8 Lapse Date - Ontario** - In Ontario, the lapse date prescribed by securities legislation for a receipt issued for a base shelf prospectus is extended to the date 25 months from the date of issuance of the receipt.
- 2.9 Lapse Date - Alberta** - In Alberta, the lapse date prescribed by securities legislation for a receipt issued for a base shelf prospectus is the date 25 months from the date of the issuance of the receipt.
- 2.10 Prohibited Offerings** - Despite any provision in this Instrument, the shelf procedures shall not be used for a distribution of rights under a rights offering.”
6. Subsections 4.1(1) and (2) are amended by moving “in the local jurisdiction” to immediately after “distribute”.
  7. Section 5.1 is amended in the preamble by adding “for the distribution” immediately after “a short form prospectus”.
  8. Sections 5.3 and 5.6 are amended by striking out “44-101F3” wherever it occurs and substituting “44-101F1”.
  9. Section 5.4 is amended by striking out “person or company” and substituting “issuer or selling securityholder”.
  10. Section 6.1 is amended by adding “and, in Québec, to contain no misrepresentation that is likely to affect the value or the market price of the securities to be distributed” immediately after “distributed under the prospectus”.
  11. Section 6.2(1) is amended by adding “,” immediately after “base shelf prospectus” wherever it occurs.
  12. Section 6.4(1) is repealed the following is substituted:  
    “(1) A shelf prospectus supplement shall be filed in the local jurisdictions in which securities are distributed using the shelf prospectus supplement.”
  13. Section 6.5 is amended by striking out “securities legislation that regulate conflicts of interest in connection with a distribution of securities of a registrant, a connected issuer of a registrant or a related issuer of a registrant” and substituting “National Instrument 33-105 *Underwriting Conflicts* and, in Québec, the applicable securities legislation”.
  14. Section 6.7 is amended by adding “and, in Québec, contain no misrepresentation that is likely to affect the value or the market price of the securities to be distributed,” immediately after “distributed”.
  15. Section 7.1 is amended by striking out “do not”.



16. Subsection 7.2(1) is amended by striking out “that use of the” and substituting “the use of that”.
17. Section 7.3 is repealed.
18. Subsection 8.2(1) is amended by striking out “5.5” and substituting “5.6”.
19. Subsection 9.1(1) is amended
  - (a) by striking out “11.1” and substituting “6.1”; and
  - (b) by striking out “2.9” and substituting “2.8”.
20. Part 10 is repealed.
21. Subsection 11.1(2) is amended by striking out “and Alberta”.
22. This Instrument comes into force on ●, 2005.

**Proposed Amendments to  
Companion Policy 44-102CP  
to National Instrument 44-102 *Shelf Distributions***

Companion Policy 44-102CP to National Instrument 44-102 *Shelf Distributions* is amended as follows:

1. “National Instrument” is struck out wherever it occurs and substituted with “NI” other than in subsection 1.1(1) and in subsection 1.1(2) in the phrase “National Instrument 44-101 *Short Form Prospectus Distributions*”.
2. Subsection 1.1(2) is amended by striking out “5” and substituting “6”.
3. Section 2.2 is amended
  - (a) in subsection (1) by adding “, the time” immediately after “(ii)”;
  - (b) in subsection (2) by striking out “At the time of the coming into force of this Policy New Brunswick has a lapse date provision in its securities legislation and has not provided blanket relief for shelf distributions.”; and
  - (c) by repealing subsection (3).
4. Subsection 2.3(1) is amended by striking out “POP” and substituting “short form prospectus distributions”.
5. Section 2.4 is amended
  - (a) in the title, by adding “Novel” immediately after “of”;
  - (b) in subsection (2), by adding the following immediately after “The securities regulatory authorities”:

“also want to ensure that prospectus investors of such products are entitled to the appropriate rights at the time of their investment as contemplated by applicable securities laws. Reference is made to section 4.8 of Companion Policy NI 44-101CP for a discussion of these issues. The securities regulatory authorities”;
  - (c) in subsection (3)
    - (i) by striking out “issues” and substituting “distributions”; and
    - (ii) by adding the following immediately after “prospectus.”:

“This includes any circumstances where a base shelf prospectus, including, if applicable, an unallocated shelf prospectus, may be

used together with a prospectus supplement to qualify novel products.”;

- (d) in subsection (4), by adding the following to the end:

“However, in circumstances where an issuer or its advisor is uncertain if a product is novel, the securities regulatory authorities encourage the issuer to either treat products as novel or to seek input from staff prior to filing a base shelf prospectus or prospectus supplement, as the case may be.”; and

- (e) in subsection (5), by adding the following to the end:

“The securities regulatory authorities also believe that the rights provided to investors in such products should be no less comprehensive than the rights provided in offerings previously reviewed by a securities regulatory authority in a jurisdiction.”

6. Subsection 2.5(3) is amended by striking out “These terms” and substituting “This information”.
7. The following section is added immediately after section 2.6 as section 2.6.1:

**2.6.1 Expert’s Consent** – Section 7.2 of NI 44-102 provides that if a document (the “Document”) containing an expert’s opinion, report or valuation is incorporated by reference into a base shelf prospectus and filed after the filing of the base shelf prospectus, the issuer must file the written consent of the expert in accordance with deadlines that vary with the circumstances. For example, issuers are reminded that separate auditor’s consents are required at the filing of the base shelf prospectus and in each subsequent shelf prospectus supplement for each set of audited financial statements incorporated by reference. The following is intended to illustrate the required timing for the filing of the expert’s consents:

	date the base shelf prospectus is filed	date the Document is filed	date the prospectus supplement is filed
MTN base shelf prospectus	(1)	(1)	
non-MTN base shelf prospectus		(2)	(2)

- (1) a consent is required to be filed no later than the date of filing of the base shelf prospectus and the Document.
- (2) a consent is required to be filed no later than the date of the filing of the Document and the prospectus supplement.

8. Section 3.1 is amended

(a) in subsection (2)

(i) by striking out “subsection 5.8(1)” wherever it occurs and substituting “section 5.8”; and

(ii) by striking out “6.5” and substituting “3.4”; and

(b) by adding the following as subsection (4):

“If an issuer wishes to add securities to its base shelf prospectus it may do so prior to issuing all of the securities qualified by the base shelf prospectus by filing an amendment to the base shelf prospectus. This will not extend the life of the base shelf prospectus.”

**Proposed Amendment Instrument  
for  
National Instrument 44-103  
*Post-Receipt Pricing***

1. This Instrument amends National Instrument 44-103 *Post-Receipt Pricing*.
2. Subsection 3.2(1) is amended
  - (a) in paragraph 5
    - (i) in clause (a)(ii) by striking out “and” and substituting “or”; and
    - (ii) in paragraph (b) by striking out “otherwise,”;
  - (b) in subparagraph 7(c) by striking out “[insert in the case of short form prospectus distributions – “simplified prospectus, as supplemented by the permanent information record,”]”; and
  - (c) in paragraph 8 by striking out “[insert in the case of short form prospectus distributions – “simplified prospectus, as supplemented by the permanent information record,”]”.
3. Section 3.3 is amended in paragraph 8 by striking out “44-101F3” and substituting “44-101F1”.
4. Section 3.6 is amended in paragraph 2 by moving “to the document” to immediately after “reference”.
5. Section 4.1 is amended by adding “and, in Québec, to contain no misrepresentation that is likely to affect the value or the market price of the securities to be distributed” immediately after “under the prospectus”.
6. Subsection 4.5(2) is amended
  - (a) by repealing subparagraph 3(c) and substituting the following:

“(c) any person or company who is a promoter of the issuer:

“This [insert, if applicable, “short form”] prospectus, [insert in the case of a short form prospectus distribution – “together with the documents incorporated herein by reference,”] constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required under securities legislation of [insert name of each jurisdiction in which qualified]. [Insert if distribution made in Québec - “For the purpose of the Province of Québec, this [describe document], contains no misrepresentation likely to affect the value or the market price of the securities to be distributed.”]”

(b) by repealing item 4 and substituting the following:

“4. Instead of the prospectus certificate required under paragraph 8 of subsection 3.2(1), a certificate in the following form signed by each underwriter, if any, who for the securities to be distributed under the prospectus, is in a contractual relationship with the issuer or selling security holder:

“To the best of our knowledge, information and belief, this [insert, if applicable, “short form”] prospectus [insert in the case of a short form prospectus distribution - “, together with the documents incorporated herein by reference,”] constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required under the securities legislation of [insert name of each jurisdiction in which qualified]. [Insert if distribution made in Québec - “For the purpose of the Province of Québec, this [describe document] contains no misrepresentation that is likely to affect the value or the market price of the securities to be distributed.”]”

7. Part 5 is repealed.
8. Subsection 6.1(2) is amended by striking out “and Alberta”.
9. This Instrument comes into force on ●, 2005.

**Proposed Amendments to  
Companion Policy 44-103CP  
To National Instrument 44-103 *Post-Receipt Pricing***

Companion Policy 44-103CP to National Instrument 44-103 *Post-Receipt Pricing* is amended as follows:

1. Subsection 1.3(2) is amended by striking out “National Instrument” wherever it occurs and substituting “NI”.

**Proposed Amendments to  
National Policy 43-201  
*Mutual Reliance Review System for Prospectuses and Annual Information Forms***

National Policy 43-201, *Mutual Reliance Review System for Prospectuses and Annual Information Forms* is amended as follows:

1. The title to NP 43-201 is repealed and the following substituted:  
  
**“Mutual Reliance Review System for Prospectuses”**
2. Section 1.1 is amended by striking out “, annual information forms”.
3. Section 2.1 is amended
  - (a) in the definition of “applications policy”, by adding “,” immediately after “National Policy 12-201”;
  - (b) by repealing the definition of “initial AIF”;
  - (c) in the definitions of “local securities directions”, “local securities legislation”, and “local securities regulatory authority”, by adding “,” immediately after “National Instrument 14-101”;
  - (d) in the definition of “Q-28”, by striking out “Commission des valeurs mobilières du Québec” and substituting “Autorité des marchés financiers”;
  - (e) by repealing the definition of “renewal AIF”;
  - (f) in the definitions of “securities directions”, “securities legislation” and “securities regulatory authorities”, by adding “,” immediately after “National Instrument 14-101”; and
  - (g) in the definition of “SEDAR”, by adding “,” immediately after “National Instrument 13-101”.
4. Section 2.2 is amended by striking out “the Policy” and substituting “this Policy”.
5. Subsection 3.4(1) is amended
  - (a) in the preamble, by adding “:” immediately after “include”; and
  - (b) at the end of each of paragraphs (a) and (b), by striking out “,” and substituting “;”.



6. Section 4.3 is amended
  - (a) by striking out “or draft initial AIF”;
  - (b) by striking out “Quebec” and substituting “Québec”; and
  - (c) by striking out “or initial AIF”.
7. Section 5.2 is amended
  - (a) by repealing the title and substituting the following:

**“Review Period for Long Form Prospectuses and Renewal Shelf Prospectuses”**
  - (b) in subsections 5.2(1) and 5.2(2), by striking out “initial AIF materials or the”; and
  - (c) in subsection 5.2(3), by adding “:” immediately after “use its best efforts to”.
8. Subsection 5.3(1) is amended by adding “:” immediately after “on the working day following the date of issuance of the comment letter of the principal regulator, use its best efforts to”.
9. Section 5.6 is repealed.
10. Section 7.2 is amended
  - (a) in the preamble, by adding “:” immediately after “if”;
  - (b) in paragraph 1, by adding “and” immediately after “,”; and
  - (c) at the end of each of subparagraphs 2(a), (b) and (c), by striking out “,” and substituting “;”.
11. Section 7.4 is amended
  - (a) by repealing the title and substituting the following

**“Conditions to Issuance of Final MRRS Decision Document for Long Form Prospectus and Renewal Shelf Prospectus”**
  - (b) in the preamble, by striking out “a long-form prospectus, a renewal shelf prospectus or an initial AIF if” and substituting “a long-form prospectus or a renewal shelf prospectus if”;

- (c) in paragraph 1, by striking out “, being the interval of at least ten days,”;
  - (d) in paragraph 3, by striking out “,” and substituting “; and”;
  - (e) at the end of each of subparagraphs 4(a) and (b), by striking out “,” and substituting “;”; and
  - (f) in subparagraph 4(e), by striking out “except with respect to an initial AIF,”.
12. Section 7.6 is repealed.
13. Section 7.10 is amended
- (a) by repealing the title and substituting the following  
  
**“Refusal by Principal Regulator to Issue a Receipt”**  
  
and
  - (b) in subsection (1), by striking out “or notice of acceptance, as the case may be,”.
14. Subsection 9.3(1) is amended
- (a) in the preamble, by adding “:” immediately after “novel public policy concern”; and
  - (b) in paragraph (b), by striking out “their” and substituting “its”.
15. Subsection 10.1(2) is amended
- (a) in the preamble, by adding “:” immediately after “the cover letter accompanying the prospectus amendment materials statements that”;
  - (b) by striking out “Commission des valeurs mobilières du Québec” wherever it occurs and substituting “Autorité des marchés financiers”; and
  - (c) in paragraph (b), by striking out “Quebec” after “distribution of its securities in” and substituting “Québec”.
16. Section 10.2 is amended
- (a) in the preamble, by adding “:” immediately after “MRRS document if”; and
  - (b) in subsection 1, by adding “and” immediately after “;”.

17. Subsection 10.4(2) is amended
  - (a) in the preamble, by adding “:” immediately after “its comment letter”; and
  - (b) in paragraph (b), by adding “:” immediately after “within the later of”.
18. Subsection 10.4(3) is amended
  - (a) in the preamble, by adding “:” immediately after “its comment letter”;
  - (b) in paragraph (b), by striking out “within the later of” and substituting “by the later of:”; and
  - (c) in subparagraph (b)(i),
    - (i) by striking out “by”; and
    - (ii) by striking out “the prospectus amendment,” and substituting “the prospectus amendment;”.
19. Section 10.6 is amended
  - (a) in the preamble, by adding “:” immediately after “if”; and
  - (b) in subsection (3), by adding “and” immediately after ““MRRS – Opt Out” in the SEDAR “Filing Status” screen;”.
20. Appendix A of NP 43-201 is repealed and the following is substituted:

**APPENDIX A – MATERIALS REQUIRED TO BE FILED  
UNDER NATIONAL POLICY 43-201**

*Dated ●, 2005.*

The attached lists of documents, as varied in accordance with the following guidance, are those required to be filed or delivered under each category of filing to which the Policy applies.

The following guidance applies to all filings of materials under the MRRS:

1. Where a filing is to be made in the province of Québec, a French language version of the following documents must also be filed:
  - (a) the preliminary prospectus and the prospectus; and
  - (b) any amendment to a preliminary prospectus and any amendment to a prospectus.

The French language versions of all documents incorporated by reference, if not previously filed, must be filed at the time of filing of a preliminary short form prospectus.

2. The attached lists do not refer to the applicable filing and distribution fees required by the securities regulatory authorities. The filer should consult the fee schedules of the relevant securities legislation for the applicable fees.

For filers that are permitted to file materials in paper form under National Instrument 13-101, *System for Electronic Document Analysis and Retrieval (SEDAR)*, the payment of fees should be made by cheque payable as follows:

British Columbia - British Columbia Securities Commission  
Alberta - Alberta Securities Commission  
Saskatchewan - Minister of Finance  
Manitoba - Minister of Finance  
Ontario - Ontario Securities Commission  
Québec - Autorité des marchés financiers  
New Brunswick - Minister of Finance  
Nova Scotia - Minister of Finance  
Prince Edward Island - Provincial Secretary  
Newfoundland and Labrador - Newfoundland and Labrador  
Exchequer Account  
Northwest Territories - Government of the Northwest Territories  
Yukon Territory - Government of Yukon  
Nunavut - Nunavut Securities Registry

In all other cases, payment of filing fees should be transmitted electronically through SEDAR.

3. Additional filing requirements apply to certain types of offerings such as offerings using the shelf offering procedures (National Instrument 44-102), the post-receipt pricing procedures (National Instrument 44-103) or the multijurisdictional disclosure system (National Instrument 71-101). Reference should be made to the applicable provisions of national or local rules or policies for any additional filing requirements or procedures.
4. **[Further filing requirements for British Columbia are contained in BC Policy 41-601.]**
5. Further filing requirements for Alberta, for filings not filed in compliance with OSC 41-501 or NI 44-101, are contained in ASC Policy 4.7.
6. Further filing requirements for Québec are contained in local securities legislation and local securities directions.

7. Where the attached requirements refer to personal information regarding directors, executive officers and promoters of the filer, the filer should provide, for each director and executive officer of the filer and for each promoter of the filer (or in the case where the promoter is not an individual, for each director and executive officer of the promoter) the following information for security check purposes:
- (i) full name (including any previous name(s) if any);
  - (ii) position with or relationship to the issuer;
  - (iii) employer's name and address, if other than the issuer;
  - (iv) full residential address;
  - (v) date and place of birth; and
  - (vi) citizenship.

For any of the above noted individuals with a residential address outside of Canada, the filer should provide the following additional information:

- (i) previous address(es) (5 year history);
- (ii) dates residing in foreign country;
- (iii) height and weight;
- (iv) eye colour;
- (v) hair colour; and
- (vi) passport nationality and number.

Where the offering is made under the provisions of NI 44-101, a completed authorization form as per Appendix A of NI 44-101, «Authorization of Indirect Collection of Personal Information» must be filed. Where the offering is made under the provisions of OSC 41-501 a completed Form 41-501F2 «Authorization of Indirect Collection of Personal Information» must be filed. Where the offering is made in Québec under the provisions of Q-28, a completed form as per Appendix A of Q-28, *Authorization of Indirect Collection of Personal Information*, must be filed.

Where Saskatchewan, Manitoba or Nova Scotia is principal regulator, a RCMP GRC Securities Fraud Information Centre Request Form #2674 (89-07) must be filed. In connection with the filing of an initial public offering prospectus: (i) where Québec is principal regulator, a Form 4 under the

Regulation concerning securities made under the Securities Act (Québec) must be filed; and (ii) where British Columbia is principal regulator, the filer must file the personal information form required by BC Policy 41-601.

### **PRELIMINARY OR PRO FORMA LONG FORM PROSPECTUS**

An issuer that files a preliminary prospectus or a *pro forma* prospectus pursuant to OSC

41-501 or, in Québec pursuant to Q-28, shall file and/or deliver the documents required to be filed and/or delivered as set out in Section 13.2 of OSC 41-501 or, in Québec as set out in Section 13.2 of Q-28, along with:

1. Filing fees; and
2. A letter to the principal regulator prepared in accordance with section 7.2.2 of the Policy.

Issuers filing prospectuses and pro forma prospectuses outside Québec in accordance with OSC 41-501 will satisfy requirements in other jurisdictions governing the form and content of a long form prospectus and the accompanying filings and deliveries to the Commissions. Issuers should consult local rules or orders for details.

Issuers not filing in accordance with OSC 41-501 or, in Québec pursuant to Q-28, should look to local requirements to determine documents to be filed and/or delivered but in all cases should include the items set out in #1 and #2 above.

### **FINAL LONG FORM PROSPECTUS**

An issuer that files a final prospectus pursuant to OSC 41-501 or, in Québec pursuant to Q-28, shall file and/or deliver the documents required to be filed and/or delivered as set out in Section 13.3 of OSC 41-501 or, in Québec as set out in Section 13.3 of Q-28, along with:

- 1 Filing fees and other applicable fees including participation fees; and
2. A letter to the principal regulator prepared in accordance with section 7.4.4 of the Policy.

Issuers filing prospectuses and pro forma prospectuses outside Québec in accordance with OSC 41-501 will satisfy requirements in other jurisdictions governing the form and content of a long form prospectus and the accompanying filings and deliveries to the Commissions. Issuers should consult local rules or orders for details.

Issuers not filing in accordance with OSC 41-501 or, in Québec pursuant to Q-28, should look to local requirements to determine documents to be filed and/or

delivered but in all cases should include the items set out in #1 and #2 above.

### **PRELIMINARY SHORT FORM PROSPECTUS**

An issuer that files a preliminary short form prospectus pursuant to NI 44-101 shall file and/or deliver the documents required to be filed and/or delivered as set out in Section 4.2 of that instrument along with:

1. Filing fees; and
2. A letter to the principal regulator prepared in accordance with section 7.2.2 of the Policy.

### **FINAL SHORT FORM PROSPECTUS**

An issuer that files a final short form prospectus pursuant to NI 44-101 shall file and/or deliver the documents required to be filed and/or delivered as set out in Section 4.3 of that Instrument along with:

1. Filing fees and other applicable fees including participation fees; and
2. A letter to the principal regulator prepared in accordance with section 7.4.4 of the Policy.

### **AMENDMENTS TO PRELIMINARY PROSPECTUS AND PROSPECTUS (SHORT FORM AND LONG FORM)**

An issuer that files an amendment pursuant to OSC 41-501 or, in Québec pursuant to Q-28, or pursuant to NI 44-101, shall file and/or deliver the documents required to be filed and/or delivered as set out in section 13.7 of OSC 41-501, section 13.6 of Q-28 or section 5.3 of NI 44-101, respectively, along with:

1. Filing fees;
2. A letter prepared in accordance with section 10.1(2) of the Policy, if applicable; and
3. A letter to the principal regulator:
  - (a) for a preliminary prospectus amendment, prepared in accordance with section 10.2.2 of the Policy; or
  - (b) for a prospectus amendment, prepared in accordance with section 10.6.4 of the Policy.

Issuers not filing in accordance with OSC 41-501 or, in Québec pursuant to Q-28, or NI 44-101 should look to local requirements to determine documents to be filed

and/or delivered but in all cases should include the items set out in #1, #2 and #3 above.

**PRELIMINARY SIMPLIFIED PROSPECTUS AND ANNUAL  
INFORMATION FORM FILED UNDER NI 81-101**

1. Preliminary simplified prospectus
2. Preliminary simplified prospectus - blacklined  
(where a new fund is being qualified by a separate prospectus but is to be part of an existing group of funds sold by prospectus, a blacklined version of the simplified prospectus should indicate any changes from the existing simplified prospectus for the group of funds)
3. Preliminary annual information form
4. Preliminary annual information form - blacklined  
(where a new fund is being qualified by a separate prospectus but is to be part of an existing group of funds sold by prospectus, a blacklined version of the annual information form should indicate any changes from the existing annual information form for the group of funds)
5. Copy or draft of all material contracts for the new mutual funds
6. For a new mutual fund in a new mutual fund group, personal information regarding individuals acting as trustees and promoters, and directors and senior officers of the fund, trustee, manager and promoter. If the mutual fund is a member of a mutual fund family for which this type of information was previously provided, the information would be required only for those persons for whom the information was not previously provided by other members of the mutual fund family
7. Financial statements, if applicable
8. Filing fees
9. A letter to the principal regulator prepared in accordance with section 7.2.2 of the Policy

**PRO FORMA SIMPLIFIED PROSPECTUS AND ANNUAL  
INFORMATION FORM FILED UNDER NI 81-101**

1. Pro forma simplified prospectus
2. Pro forma simplified prospectus - blacklined to indicate all changes from previous simplified prospectus



3. Pro forma annual information form
4. Pro forma annual information form - blacklined to indicate all changes from previous annual information form
5. Copy or draft of all material contracts not previously filed
6. Personal information regarding individuals acting as trustees and promoters, and directors and senior officers of the fund, trustee, manager and promoter where this information has not previously been provided for these persons in connection with a previous filing of the mutual fund family
7. Compliance report required under Part 12 of National Instrument 81-102, *Mutual Funds*
8. Filing fees

**FINAL SIMPLIFIED PROSPECTUS AND ANNUAL INFORMATION  
FORM FILED UNDER NI 81-101**

1. Final simplified prospectus
2. Final simplified prospectus - blacklined to show changes from preliminary or pro forma simplified prospectus, as the case may be
3. Final annual information form
4. Final annual information form - blacklined to show changes from preliminary or pro forma annual information form, as the case may be
5. Copy of all material contracts not previously filed
6. For new funds, audited financial statements if not previously filed
7. Auditors' consent letter re audited financial statements
8. Auditors' comfort letter re unaudited financial statements, if applicable
9. Consent of legal counsel or other experts
10. Certificate re proceeds of distribution in the jurisdiction (applicable to filings in B.C., Alberta, Ontario and Québec)
11. Filing fees

12. A letter to the principal regulator prepared in accordance with section 7.4.4 of the Policy

**AMENDMENT TO A SIMPLIFIED PROSPECTUS AND ANNUAL  
INFORMATION FORM FILED UNDER NI 81-101**

1. Amendment to simplified prospectus
2. Amendment to simplified prospectus - blacklined (where amendment is an amended and restated simplified prospectus)
3. Amendment to annual information form
4. Amendment to annual information form - blacklined (where amendment is an amended and restated annual information form)
5. Copy of all material contracts not previously filed
6. Auditors' consent letter, if applicable
7. Auditors' comfort letter, if applicable
8. Consent of legal counsel and other experts, if applicable
9. Filing fees
10. A letter to the principal regulator prepared in accordance with section 10.6.4 of the Policy

**Proposed Amendment Instrument**  
**for**  
**National Instrument 51-101**  
*Standards of Disclosure for Oil and Gas Activities*

1. This Instrument amends National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*.
2. Section 1.1 is amended by:
  - (a) repealing paragraph (a) and substituting the following:

“(a) “annual information form” has the same meaning as “AIF” in National Instrument 51-102 *Continuous Disclosure Obligations*,” ; and
  - (b) repealing paragraph (r).
3. This Instrument comes into force on ●, 2005.

**Proposed Amendments  
to  
Companion Policy 51-101CP  
to National Instrument 51-101  
*Standards of Disclosure for Oil and Gas Activities***

Companion Policy 51-101CP to National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* is amended as follows:

1. Section 2.4 is amended by:
  - (a) repealing paragraph (a) and substituting the following:

“(a) Meaning of “Annual Information Form” - *Annual information form* has the same meaning as “AIF” in National Instrument 51-102 *Continuous Disclosure Obligations*. Therefore, as set out in that definition, an *annual information* can be a completed Form 51-102F2 *Annual Information Form* or, in the case of an SEC issuer (as defined in NI 51-102), a completed Form 51-102F2 or an annual report or transition report under the 1934 Act on Form 10-K, Form 10-KSB or Form 20-F.”
  - (b) in paragraph (b) by striking out the first sentence and substituting the following:

“Form 51-102F2 *Annual Information Form* requires the information required by section 2.1 of NI 51-101 to be included in the *annual information form*. That information may be included either by setting out the text of the information in the *annual information form* or by incorporating it, by reference from separately filed documents.”
2. Appendix 1 is amended by:
  - (a) repealing the definition of “Annual information form” and substituting the following:

“ Annual information form      A completed Form 51-102F2 *Annual Information Form*, or in the case of an SEC issuer (as defined in National Instrument 51-102 *Continuous Disclosure Obligations*) a completed Form 51-102F2 or an annual report or transition report under the 1934 Act on Form 10-K, Form 10-KSB or Form 20-F. [NI 51-102]”
  - (b) repealing the definition of NI 44-101.

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