

**Staff Notice 43-304, 62-302, and 81-308****Prospectus Filing Matters – Arthur Andersen LLP Consent****Purpose**

The purpose of this Notice is to provide guidance to former clients of Arthur Andersen LLP – Canada (Andersen Canada) with respect to the inclusion in prospectuses, securities exchange take-over bid circulars and issuer bid circulars of financial statements audited by Andersen Canada.

**Discussion**

On June 3, 2002, Andersen Canada ceased practising public accounting. As a result, Andersen Canada will no longer consent to the use of previously issued auditors' reports for purposes of securities filings, including prospectuses, securities exchange take-over bid circulars and issuer bid circulars.

When an auditor is named in a prospectus as having opined on financial statements included in the prospectus, securities legislation requires the issuer to file, no later than the time the prospectus is filed, the written consent of the auditor to being named and to the use of their report(s). The auditor's consent provides to purchasers of securities offered under the prospectus a statutory right of action for damages against the auditor with respect to reports, opinions or statements made by them.

CSA staff believe that the inability of issuers formerly audited by Andersen Canada to obtain a consent letter is an exceptional situation that is outside the control of the issuer. In staff's view, the efficient functioning of capital markets is best served by permitting these issuers to continue to access the capital markets on a timely basis provided that investors receive appropriate disclosure of the effects on their legal rights resulting from the lack of consent. This approach allows the affected issuers to make their own decisions about the cost effectiveness of proceeding on a timely basis without a consent as opposed to retaining a new auditor to re-audit prior years and complying with the consent requirements. Where issuers proceed without a consent, investors will be provided with the disclosure required to make appropriate investment decisions and will not lose investment opportunities that might otherwise be postponed or perhaps lost altogether.

## **Staff Guidance**

### **Non-Mutual Fund Prospectuses**

Where required by securities legislation, any audit reports previously issued by Andersen Canada should be included in a prospectus.

CSA staff will consider applications from issuers to waive the requirement to obtain the consent of Andersen Canada for audit reports relating to financial statements included in a prospectus provided that the prospectus includes prominent disclosure immediately before the financial statements indicating:

- (i) that the prospectus includes financial statements audited by Andersen Canada for which consent of Andersen Canada to the use of its report was not obtained;
- (ii) the reasons why consent of Andersen Canada can not be obtained;
- (iii) the limitations on investors' legal remedies resulting from the lack of consent from Andersen Canada; and
- (iv) that Andersen Canada may not have sufficient assets available to satisfy any judgements against it.

In addition, the disclosure required by item (i) and (iii) should appear prominently on the cover page with a cross-reference to the disclosure in the body of the prospectus.

When financial statements audited by Andersen Canada are incorporated by reference into a prospectus or prospectus supplement, the disclosure outlined above should be made immediately prior to the listing of documents incorporated by reference. Shelf prospectus supplements that rely on a consent previously issued by Andersen Canada should include disclosure of the fact that Andersen Canada has ceased to practise public accounting. The supplement should also disclose that Andersen Canada may not have sufficient assets available to satisfy any judgements against it.

### **Simplified Prospectus Disclosure for Mutual Funds**

Mutual funds that are required to file a simplified prospectus in accordance with National Instrument 81-101 will need to address this issue by the inclusion of the following disclosure items:

- (i) Part A, Item 4 of NI 81-101F1 - *General Investment Risks*. There should be additional risk disclosure:
  - (a) stating that the simplified prospectus includes financial statements audited by Andersen Canada for which consent of Andersen Canada to the use of its report was not obtained;
  - (b) the reasons why consent of Andersen Canada can not be obtained;

- (c) addressing the limitations on investors' legal remedies resulting from the lack of consent from Andersen Canada; and
- (d) stating that Andersen Canada may not have sufficient assets available to satisfy any judgements against it.

Overall, this risk disclosure should address management's responsibility for the financial statements.

- (ii) Part B, Item 13 of NI 81-102F1 – *Financial Highlights*. A separate paragraph should be presented above the financial highlights table and it should be presented in **bold type** so that it clearly stands out from other information. This paragraph must disclose the following:
  - (a) the financial information was audited by Andersen Canada however Andersen Canada did not provide a consent for inclusion in the simplified prospectus; and
  - (b) a detailed description of the issue is provided in the General Risk Section of Part A of the simplified prospectus.

This added disclosure **must** be included for each fund in a multiple prospectus.

- (iii) Item 10 of NI 81-101F2 – *Responsibility for Mutual Fund Operations*. The Annual Information Form should disclose who the new auditor is and the circumstances under which they became the auditor.

## General

Issuers are reminded that they remain responsible for ensuring full, true and plain disclosure of all material facts relating to securities of the issuer and the specific contents of the disclosure in the circumstances of any particular issuer remain the responsibility of the issuer.

Applications for relief from the consent requirement in connection with prospectus filings where Andersen Canada was the issuer's auditor in jurisdictions other than Quebec can be made in the covering letter to the preliminary prospectus. The final receipt will evidence the relief granted. Applications for relief in connection with prospectus filings in Quebec must be filed separately from the preliminary prospectus and relief will be granted by way of ruling. Applications in connection with securities exchange take-over bids or issuer bids should be made under the normal procedures for exemptive relief applications. Staff expect that in normal circumstances, they will recommend granting relief providing that the issuer makes disclosure similar to that noted above.

The guidance in this Notice applies to consents required from Andersen Canada only. Applications for relief from the requirement for consent in situations involving Arthur Andersen firms other than Andersen Canada will be dealt with on a case by case basis. Any relief granted will require cautionary language similar to the disclosure noted above.

## Questions

Please refer your questions to any of the following people:

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