

Annex D

Proposed Amendments to National Instrument 44-102 *Shelf Distributions*

1. *National Instrument 44-102 Shelf Distributions is amended by this Instrument.*
2. *Section 6.7 is amended by replacing “The” before “shelf prospectus supplement” with “Subject to Part 6A, the”.*
3. *The following Part is added:*

PART 6A ACCESS TO SHELF PROSPECTUS SUPPLEMENTS AND BASE SHELF PROSPECTUSES

6A.1 Application - This Part does not apply in respect of

- (a) a prospectus to distribute securities by way of an MTN program or other continuous distribution, and
- (b) a prospectus to distribute securities of an investment fund.

6A.2 Access equals delivery

- (1) This section does not apply in British Columbia.
- (2) The requirement under securities legislation to deliver or send a prospectus is satisfied when access to the shelf prospectus supplement, the corresponding base shelf prospectus, the preliminary base shelf prospectus or any amendment to the documents has been provided in accordance with subsection 6A.3(3) or (6).
- (3) The shelf prospectus supplement, the corresponding base shelf prospectus, the preliminary base shelf prospectus or any amendment to the documents is delivered or sent on the date that access to the document has been provided in accordance with subsection 6A.3(3) or (6).
- (4) The shelf prospectus supplement, the corresponding base shelf prospectus or any amendment to the documents is received on the date the document has been delivered or sent in accordance with subsection (3).
- (5) Except in Saskatchewan, if the shelf prospectus supplement, the corresponding base shelf prospectus or any amendment to the documents is delivered or sent in accordance with subsection 6A.3(3), the right to withdraw from, or in Quebec the right to rescind, an agreement to purchase a security provided to a purchaser

under securities legislation may be exercised within 2 business days after the later of

- (a) the date the document is received in accordance with subsection (4); and
 - (b) the date that the purchaser has entered into the agreement to purchase the security.
- (6)** In Saskatchewan, if the shelf prospectus supplement, the corresponding base shelf prospectus or any amendment to the documents has been delivered or sent in accordance with subsection 6A.3(3), a purchaser that is not a registrant may cancel a purchase if the purchaser has not sold or otherwise transferred beneficial ownership of the security and the person or company from whom the purchaser purchased the security receives notice in writing to cancel the agreement of purchase and sale for the security at any time up to 2 business days after the later of
- (a) the date that the document is received in accordance with subsection (4), and
 - (b) the date that the purchaser has entered into the agreement to purchase the security.

6A.3 Procedures

- (1)** This section does not apply in British Columbia.
- (2)** A shelf prospectus supplement, the corresponding base shelf prospectus or any amendment to the documents must be delivered or sent by providing access to the document, unless the document is delivered or sent pursuant to another procedure prescribed by securities legislation.
- (3)** Access to the shelf prospectus supplement, the corresponding base shelf prospectus or any amendment to the documents has been provided if
 - (a) the base shelf prospectus or any amendment has been filed on SEDAR and a receipt has been issued for the document,
 - (b) the shelf prospectus supplement or any amendment has been filed on SEDAR, and
 - (c) on the same day the shelf prospectus supplement or any amendment was filed, a news release has been issued and filed on SEDAR that states

- (i) in the title of the news release, that the shelf prospectus supplement, the corresponding base shelf prospectus or any amendment to the documents is available,
 - (ii) that the shelf prospectus supplement, the corresponding base shelf prospectus or any amendment to the documents is accessible at www.sedar.com,
 - (iii) the securities that are offered under the shelf prospectus supplement, and
 - (iv) the following:

“An electronic or paper copy of the shelf prospectus supplement, the corresponding base shelf prospectus or any amendment to the documents may be obtained, without charge, from [*insert contact information for the issuer or dealer, as applicable*] by providing the contact with an email address or address, as applicable.”
- (4) If a prospective purchaser requests a copy of the preliminary base shelf prospectus or any amendment, or a purchaser requests a copy of the shelf prospectus supplement, the corresponding base shelf prospectus or any amendment to the documents, from the issuer or dealer, a copy of the document must be sent by the issuer or dealer within 2 business days and without charge to the prospective purchase or purchaser at the email address or address specified in the request.
- (5) Except if a prospective purchaser indicates an interest in purchasing a security and requests a copy of the preliminary base shelf prospectus or any amendment, such document that is required to be delivered or sent must be delivered or sent by providing access to the document, unless the document is delivered or sent pursuant to another procedure prescribed by securities legislation.
- (6) Access to the preliminary base shelf prospectus or any amendment has been provided if the issuer has filed on SEDAR, and a receipt has been issued for, the document.

6A.4 Exemption from requirement to send prospectus - British Columbia

- (1) In British Columbia, a dealer is exempt from a requirement under securities legislation to send a prospectus or any amendment if
- (a) the base shelf prospectus or any amendment has been filed on SEDAR and a receipt has been issued for the document,
 - (b) the shelf prospectus supplement or any amendment has been filed on SEDAR, and

- (c) on the same day the shelf prospectus supplement or any amendment was filed, a news release has been issued and filed on SEDAR that states
 - (i) in the title of the news release, that the shelf prospectus supplement, the corresponding base shelf prospectus or any amendment to the documents is available,
 - (ii) that the shelf prospectus supplement, the corresponding base shelf prospectus or any amendment to the documents is accessible at www.sedar.com,
 - (iii) the securities that are offered under the shelf prospectus supplement, and
 - (iv) the following:

“An electronic or paper copy of the shelf prospectus supplement, the corresponding base shelf prospectus or any amendment to the documents may be obtained, without charge, from [*insert contact information for the issuer or dealer, as applicable*] by providing the contact with an email address or address, as applicable.”
- (2) In British Columbia, a dealer or issuer that solicits an expression of interest from a prospective purchaser is exempt from the requirement in securities legislation to send a copy of the preliminary base shelf prospectus or any amendment to the prospective purchaser if the document has been filed on SEDAR and a receipt has been issued for the document.
- (3) If a purchaser requests a copy of the shelf prospectus supplement, the corresponding base shelf prospectus or any amendment to the documents from the issuer or dealer, a copy of the document must be sent by the issuer or dealer within 2 business days and without charge to the purchaser at the email address or address specified in the request.
- (4) If a dealer relies on subsection (1), an agreement of purchase and sale is not binding on a purchaser if the dealer from whom the purchaser purchases the security receives written notice sent by the purchaser, evidencing the intention of the purchaser not to be bound by the agreement, not later than 2 business days after the later of
 - (a) the date that conditions referred to in subsection (1) are satisfied, and
 - (b) the date of the agreement.
- (5) Subsection (4) does not apply if the purchaser

- (a) is a registrant, or
 - (b) disposes of the beneficial ownership of the security referred to in subsection (4), otherwise than to realize on collateral given for debt, before the end of the time referred to in subsection (4).
- (6) For the purposes of this section, receipt of the notice referred to in subsection (4) by a dealer that acted as agent of the seller with respect to the sale of the security referred to in subsection (1) is deemed to be receipt by the seller on the date on which the dealer received the notice..

4. Subsection 9.2(1) is replaced with the following:

- (1) The following provisions do not apply to an issuer distributing a security under an ATM prospectus:
- (a) section 7.2 of NI 41-101;
 - (b) section 1.9A of Form 44-101F1;
 - (c) item 20 of Form 44-101F1;
 - (d) item 8 of section 5.5 of this Instrument;
 - (e) Part 6A of this Instrument..

5. Subsection 9A.2(2) is replaced with the following:

- (2) A standard term sheet provided under subsection (1) must be dated and include the following legend, or words to the same effect, on the first page:

A final base shelf prospectus containing important information relating to the securities described in this document has been filed with the securities regulatory authorit[y/ies] in [each of/certain of the provinces/provinces and territories of Canada].

The final base shelf prospectus, any amendment and any applicable shelf prospectus supplement are available on SEDAR. Copies of the documents may be obtained from [insert contact information for the investment dealer or underwriters].

This document does not provide full disclosure of all material facts relating to the securities offered. Investors should read the final base shelf prospectus, any amendment and any applicable shelf prospectus supplement for disclosure of

those facts, especially risk factors relating to the securities offered, before making an investment decision..

6. Paragraph 9A.3(1)(g) is replaced with the following:

- (g) the investment dealer
 - (i) includes, in the marketing materials, a statement that the final base shelf prospectus, any amendment and any applicable shelf prospectus supplement are available on SEDAR, or
 - (ii) provides, with the marketing materials, a copy of the final base shelf prospectus, any amendment and any applicable shelf prospectus supplement that have been filed..

7. Subsection 9A.3(5) is replaced with the following:

- (5) Marketing materials provided under subsection (1) must be dated and include the following legend, or words to the same effect, on the first page:

A final base shelf prospectus containing important information relating to the securities described in this document has been filed with the securities regulatory authority[ies] in [each of/certain of the provinces/provinces and territories of Canada].

The final base shelf prospectus, any amendment and any applicable shelf prospectus supplement are available on SEDAR. Copies of the documents may be obtained from [*insert contact information for the investment dealer or underwriters*].

This document does not provide full disclosure of all material facts relating to the securities offered. Investors should read the final base shelf prospectus, any amendment and any applicable shelf prospectus supplement for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision..

8. Paragraph 9A.4(3)(c) is replaced with the following:

- (c) make an oral statement at the commencement of the road show that the final base shelf prospectus, any amendment and any applicable shelf prospectus supplement are available on SEDAR, or provide the investor with a copy of the final base shelf prospectus, any amendment and any applicable shelf prospectus supplement that have been filed..

9. Subsection 9A.4(4) is amended by adding “The final base shelf prospectus, any amendment and any applicable shelf prospectus supplement are available on SEDAR.”

after “Investors should read the final base shelf prospectus, any amendment and any applicable shelf prospectus supplement for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.”.

10. (1) This Instrument comes into force on •.
- (2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after •, this Instrument come into force on the day on which it is filed with the Registrar of Regulations.