

Annex D

Changes to Companion Policy 44-102CP *Shelf Distributions*

1. *Companion Policy 44-102CP Shelf Distributions is changed by this Document.*
2. *The following Part is added:*

PART 5 AT-THE-MARKET DISTRIBUTIONS OF EQUITY SECURITIES UNDER SHELF

5.1 Purpose - The purpose of Part 9 of NI 44-102 is to provide exemptions from certain regulatory requirements, subject to conditions, so that issuers and underwriters may distribute securities under an ATM prospectus.

5.2 Disclosure of Intention to Qualify At-the-Market Distribution

- (1) Paragraph 9.3(1)(g) of Part 9 of NI 44-102 requires that an issuer disclose on the cover page of its base shelf prospectus that the prospectus may qualify an at-the-market distribution. An at-the-market distribution cannot be established by shelf prospectus supplement unless the base shelf prospectus has met this requirement. The securities regulatory authorities are of the view that a base shelf prospectus that is intended to qualify an at-the-market distribution may result in further review of certain factors that are considered during the review of a base shelf prospectus, such as the sufficiency of proceeds, an issuer's business or a recent reverse take-over of former shell companies. In connection with this review, the securities regulatory authorities may consider a number of factors, including
 - (a) the number of securities that may be qualified by the base shelf prospectus;
 - (b) the total number of issued and outstanding securities of the same class; and
 - (c) the trading volume of the securities of the same class.
- (2) An issuer should qualify the statements required by paragraphs 2 and 3 of section 5.5 of NI 44-102 in its base shelf prospectus to indicate that delivery is not required where an exemption from the delivery requirements referred to in these provisions is available.

5.3 Material Fact or Material Change

- (1) In determining whether a proposed distribution of securities under an ATM prospectus would constitute a material fact or material change under

paragraph 9.3(1)(f) of NI 44-102, the issuer should take into account a number of factors including

- (a) the parameters of the proposed distribution, including the number of securities proposed to be distributed and any price or timing restrictions that the issuer may impose with respect to the proposed distribution;
 - (b) the percentage of the outstanding securities of the same class that the number of securities proposed to be distributed represents;
 - (c) previous, and cumulative, distributions of securities under the ATM prospectus;
 - (d) whether the investment dealer has advised the issuer that the proposed distribution may have a significant impact on the market price of securities of the same class;
 - (e) trading volume and volatility of securities of the same class;
 - (f) recent developments in the business, operations or capital of the issuer; and
 - (g) prevailing market conditions generally.
- (2) The issuer will have an interest in minimizing the market impact of an at-the-market distribution. If a proposed distribution of securities under an ATM prospectus could have a significant impact on the market price of securities of the same class as the securities proposed to be distributed, the proposed distribution may disrupt a fair and orderly market. The investment dealer selected by the issuer will have experience and expertise in managing orders to limit any negative effect on market integrity. An investment dealer is prohibited from engaging in conduct that may disrupt a fair and orderly market under IIROC rules and standards of conduct.

5.4 Selling Agent - It is best practice to include language in an ATM prospectus that a purchaser's rights and remedies under applicable securities legislation against the dealer underwriting or acting as an agent for the issuer in an at-the-market distribution will not be affected by that dealer's decision to effect the distribution directly or through a selling agent.

5.5 Designated News Releases - To ensure an ATM prospectus includes full, true and plain disclosure of all material facts related to the securities distributed under the ATM prospectus, the issuer may file a designated news release rather than filing a prospectus supplement or an amended prospectus. If an issuer disseminates a news release disclosing information that, in the issuer's determination, constitutes a "material fact", the issuer should identify the news release as a "designated news release" for the purposes of the ATM prospectus.

This designation should be made on the face page of the version of the filed news release. An ATM prospectus should provide that any such designated news release will be deemed to be incorporated by reference into the ATM prospectus.

- 5.6 Prospectus Certificates** - The certificates required to be filed under paragraph 9.3(1)(k) of NI 44-102 or other securities legislation in the forms required under sections 9.5 and 9.6 of NI 44-102, as applicable, are forward-looking certificates confirming that the ATM prospectus provides full, true and plain disclosure of all material facts relating to the securities distributed under the ATM prospectus as of the date of each distribution under an ATM prospectus. For promoters of an at-the-market distribution, the certificate of promoter required under Part 5 of NI 41-101 should be in the form required by section 9.5 or 9.6 of NI 44-102, as applicable.
- 5.7 Filing Jurisdictions** - Issuers are required to file a prospectus in every jurisdiction where a distribution will occur. However, because purchases in an at-the-market distribution are made directly on a securities exchange, it is difficult to determine where a distribution will occur because issuers and dealers are unable to determine where a purchaser is located at the time of the trade. As a result, it is possible that a purchaser under an at-the-market distribution can be located in any jurisdiction of Canada.
- 5.8 Transition Period** - An issuer with an outstanding base shelf prospectus filed prior to August 31, 2020 under which the issuer is qualified to make an at-the-market distribution pursuant to a discretionary relief order, will not be required to re-file the base shelf prospectus to comply with the cover page disclosure in paragraph 9.3(1)(g) of NI 44-102. Any other provisions of Part 9 of NI 44-102 that do not mirror the issuer's discretionary relief order may be addressed in the prospectus supplement..
3. These changes become effective on August 31, 2020.