

## APPENDIX E

### Schedule 2

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

**1.1 Subsection 2.2(1) is amended by striking out** “(iii) the lapse date of the receipt, if any, prescribed by securities legislation” **and substituting the following** “in Ontario, the lapse date of the receipt prescribed by securities legislation”.

#### **1.2 Section 2.4 is amended**

- (a) **in subsection (2) by striking out** “Particularly in the area of distributions of novel specified derivatives and asset-backed securities, the securities regulatory authorities wish to encourage adequate prospectus disclosure, either in the base shelf prospectus or the shelf prospectus supplement, of the attributes of and the risks associated with these products” **and substituting** “All material attributes of the products, and the risks associated with them, should be disclosed in either the base shelf prospectus or the shelf prospectus supplement”;
- (b) **in subsection (3) by striking out** “section 4.1” **and substituting** “subsection 4.1(1) of NI 44-102”;
- (c) **by repealing subsections (4) and (5) and adding the following after subsection (3):**

(4) The term “novel” has a different meaning depending on whether it pertains to specified derivatives or asset-backed securities. In the case of asset-backed securities, the term is intended to apply to a distribution of asset-backed securities that is structured in a manner that differs materially from the manner in which any public distribution that has previously taken place in a jurisdiction was structured. In the case of specified derivatives, an issuer or selling security holder must pre-clear any distribution of derivative securities that are of a type that have not previously been distributed to the public by the issuer.

(5) The securities regulatory authorities are of the view that the definition of the term "novel" should be read relatively restrictively. A security would not be novel merely because a new underlying interest was used. For example, where the underlying interest is a market index, the use of a different market index would not be considered "novel", provided that information about the index methodology, the constituents that make up the index, as well as the daily index level, are available to the public. 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.

(6) If the product is not novel, then the shelf prospectus supplements concerning the product need not be reviewed by the securities regulatory authorities. The securities regulatory authorities are of the view that the disclosure in shelf prospectus supplements in such circumstances should be no less comprehensive than the disclosure that has previously been reviewed by a securities regulatory authority in a jurisdiction. 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.

(7) The securities regulatory authorities have a particular interest in reviewing novel specified derivatives that are functionally similar to investment fund products. These products have generally taken the form of linked notes issued under a medium term note program. These derivatives provide returns that are similar to investment fund products but are not necessarily subject to the investment funds regulatory regime. As a result, the securities regulatory authorities will review such offerings while keeping investment fund conflicts and disclosure concerns in mind.

(8) In circumstances where it is apparent to the issuer or selling security holder that a specified derivative that is subject to the pre-clearance process is similar to a specified derivative that has already been the subject to the pre-clearance process, the issuer or selling security holder is encouraged, for the purpose of expediting the pre-clearance process, to file along with the shelf prospectus supplement a blackline to the relevant precedent shelf prospectus supplement. The

issuer or selling security holder is also encouraged to provide a cover letter setting out the material attributes of the specified derivative that differ from the securities offered under the precedent shelf prospectus.

**1.3 Subsection 4.1 (1) is amended by striking out** “ by an issuer, credit supporter and underwriter” **and** “The method selected by an issuer applies to a promoter.”