

APPENDIX D

1. ***This Instrument amends National Instrument 44-102 Shelf Distributions.***
2. ***National Instrument 44-102 Shelf Distributions is amended by striking out “security holder” wherever it occurs and substituting “securityholder”.***
3. ***Section 1.1(1) is amended***
 - (a) ***in the definition of “method 1”, by adding “forms of” before “prospectus certificates”;***
 - (b) ***in the definition of “method 2”, by adding “forms of” before “prospectus certificates”;***
 - (c) ***by repealing the definition of “NI 44-101”; and***
 - (d) ***by repealing the definition of “novel” and substituting the following:***

“novel” means,

 - (a) for a specified derivative proposed to be distributed using the shelf procedures and that has an underlying interest that is not a security of the issuer,
 - (i) a derivative of a type that has not been distributed by the issuer by way of prospectus in a jurisdiction of Canada before the proposed distribution, or
 - (ii) a derivative of a type that has been distributed by the issuer by way of prospectus in a jurisdiction of Canada before the proposed distribution if
 - (A) the attributes of the derivative differ materially from the attributes of derivatives of the same type previously distributed by the issuer by way of prospectus,
 - (B) the structure and contractual arrangements underlying the derivative differ materially from the structure and contractual arrangements underlying derivatives of the same type previously distributed by the issuer by way of prospectus, or
 - (C) the type of the underlying interest for the derivative differs materially from the type of underlying interest for derivatives of the same type previously distributed by the issuer by way of prospectus, and
 - (b) for an asset-backed security proposed to be distributed using the shelf procedures,
 - (i) a security of a type that has not been distributed by way of prospectus in a jurisdiction of Canada before the proposed distribution, or
 - (ii) a security of a type that has been distributed by way of prospectus in a jurisdiction of Canada before the proposed distribution if
 - (A) the attributes of the security differ materially from the attributes of securities of the same type previously distributed by way of prospectus,
 - (B) the structure and contractual arrangements underlying the security differ materially from the structure and contractual arrangements underlying securities of the same type previously distributed by way of prospectus, or
 - (C) the type of financial assets servicing the security differ materially from the type of financial assets servicing securities of the same type previously distributed by way of prospectus;”.- 4. ***Section 1.1(2) is repealed and the following is substituted:***

“(2) Every term that is defined or interpreted in NI 41-101 or NI 44-101, the definition or interpretation of which is not restricted to a specific portion of NI 41-101 or NI 44-101, has, if used in this Instrument, the meaning ascribed to it in NI 41-101 or NI 44-101, unless otherwise defined or interpreted in this Instrument.”.
- 5. ***Part 2 is amended by striking out “the lapse date, if any, prescribed by securities legislation” wherever it occurs and substituting “in Ontario, the lapse date prescribed by securities legislation”.***

6. **Section 2.8 is repealed.**

7. **Subparagraph 4.1(2)(b)(ii) is amended by striking out “21” and substituting “10 business”.**

8. **Paragraph 8. of section 5.5 is repealed and the following is substituted:**

“8. The prospectus certificates required by Part 5 of NI 41-101 or other securities legislation, in the issuer certificate form or underwriter certificate form prescribed by

- (a) method 1, if
 - (i) the base shelf prospectus is being used to establish an MTN program or other continuous distribution, or
 - (ii) method 2 has not been elected; or
- (b) method 2, if method 2 has been elected.”

9. **Section 5.8 is repealed and the following is substituted:**

“5.8 **Amendments** – if a material change occurs at a time when no securities are being distributed under a base shelf prospectus, the provisions in Part 6 of NI 41-101 or other securities legislation that require the filing of an amendment to a prospectus if a material change occurs are satisfied by

- (a) the filing of a material change report, and
- (b) the incorporation by reference in the base shelf prospectus of the material change report.”

10. **Section 6.1 is amended by striking out “and, in Québec, to contain no misrepresentation that is likely to affect the value or the market price of the securities to be distributed.”.**

11. **Section 6.2 is amended**

(a) **in subsection (3),**

(i) **by striking out “Any unaudited financial statements of an issuer or an acquired business” and substituting “Subject to subsection (4), any unaudited financial statements, other than *pro forma* financial statements,”; and**

(ii) **by striking out “an entity’s” and substituting “a person or company’s”;**

(b) **by repealing subsection (4) and substituting the following:**

“(4) If NI 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* permits the financial statements of the person or company in subsection (3) to be audited in accordance with

- (a) U.S. GAAS, the unaudited financial statements may be reviewed in accordance with U.S. review standards,
- (b) International Standards on Auditing, the unaudited financial statements may be reviewed in accordance with International Standards on Review Engagement issued by the International Auditing and Assurance Standards Board, or
- (c) auditing standards that meet the foreign disclosure requirements of the designated foreign jurisdiction to which the issuer is subject, the unaudited financial statements
 - (i) may be reviewed in accordance with review standards that meet the foreign disclosure requirements of the designated foreign jurisdiction, or
 - (ii) do not have to be reviewed if
 - (A) the designated foreign jurisdiction does not have review standards for unaudited financial statements, and
 - (B) the base shelf prospectus includes disclosure that the unaudited financial statements have not been reviewed.”; **and**

(c) *in subsection (5), by adding “, if applicable,” after “The review specified in subsection (3)”.*

12. Subsection 6.3(1) is amended

(a) *in paragraph 3., by adding “required by Part 5 of NI 41-101 and other securities legislation, in the issuer certificate form or underwriter certificate form” after “The prospectus certificates”; and*

(b) *in subparagraph 3.(b), by striking out “certificates” and substituting “certificate forms” before “prescribed by method 1”.*

13. Section 6.7 is amended by striking out “and, in Quebec, contain no misrepresentation that is likely to affect the value or the market price of the securities to be distributed,”.

14. The following section 6.8 is added after section 6.7:

“6.8 Disclosure that may be Omitted – A shelf prospectus supplement may omit any prospectus certificates required by Part 5 of NI 41-101 or other securities legislation, if the person or company required to sign the certificate signed a prospectus certificate in the issuer certificate form or underwriter certificate form prescribed by method 1 included in a base shelf prospectus or a shelf prospectus supplement qualifying the securities being distributed.”.

15. Subsection 7.2(1) is amended

(a) *by adding “notary in Québec,” before “solicitor”;*

(b) *by adding “or business” after “whose profession”;*

(c) *by striking out “report or valuation” wherever it occurs and substituting “report, valuation, statement or opinion”;* and

(d) *by repealing paragraph (b) and substituting the following:*

“(b) named in the document

(i) as having prepared or certified any part of the base shelf prospectus, amendment or shelf prospectus supplement,

(ii) as having opined on financial statements from which selected information included in the base shelf prospectus, amendment or shelf prospectus supplement has been derived and which audit opinion is referred to in the base shelf prospectus, amendment or shelf prospectus supplement directly or in a document incorporated by reference, or

(iii) as having prepared or certified a report, valuation, statement or opinion referred to in the base shelf prospectus, amendment or shelf prospectus supplement, directly or in a document incorporated by reference.”.

16. Section 9.1 is amended by striking out “percent” and substituting “%” after “does not exceed 10”.

17. Section 9.2 is amended

(a) *by repealing subsection 9.2(2) and substituting the following:*

“(2) For the purposes of subsection (1), in calculating the total number of equity securities of a class outstanding, an issuer shall exclude those equity securities of the class that are beneficially owned, or controlled or directed, directly or indirectly, by persons or companies that, alone or together with their respective affiliates and associated parties, beneficially own, or control or direct, directly or indirectly, more than 10% of the outstanding equity securities of the issuer.”; and

(b) *by repealing subsection 9.2(3) and substituting the following:*

“(3) Despite subsection (2), if a portfolio manager of a pension fund or investment fund, alone or together with its affiliates and associated parties, exercises control or direction, directly or indirectly, in the aggregate over more than 10% of the outstanding equity securities of an issuer, and the fund beneficially owns, or controls or directs, directly or indirectly, 10% or less of the issued and outstanding equity securities of the issuer, the securities that the fund beneficially owns, or controls

or directs, directly or indirectly, are not excluded unless the portfolio manager is an affiliate of the issuer.”.

18. Section 11.1 is amended by adding the following subsection (2.1) after subsection (2):

“(2.1) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.”.

19. Subsection 11.2(2) is repealed and the following is substituted:

“(2) The issuance of a receipt for a base shelf prospectus or an amendment to a base shelf prospectus is not evidence that the exemption is being granted unless

- (a) the person or company that sought the exemption sent to the regulator
 - (i) the letter or memorandum referred to in subsection 11.1(3), on or before the date of the filing of the base shelf prospectus or an amendment to a base shelf prospectus, or
 - (ii) the letter or memorandum referred to in subsection 11.1(3) after the date of the filing of the base shelf prospectus or an amendment to a base shelf prospectus and received a written acknowledgement from the regulator that the exemption may be evidenced in the manner set out in subsection (1), and
- (b) the regulator has not before, or concurrently with, the issuance of the receipt sent notice to the person or company that sought the exemption, that the exemption sought may not be evidenced in the manner set out in subsection (1).”.

20. Appendix A is amended

(a) in the title,

(i) by adding “Form of” before “Shelf Prospectus Certificates”, and

(ii) by adding “FORM OF” before “CERTIFICATES”;

(b) by repealing section 1.1 and substituting the following:

“1.1 **Issuer Certificate Form** – If a base shelf prospectus establishes an MTN program or other continuous distribution, or if method 2 has not been elected by an issuer, an issuer certificate form in the preliminary base shelf prospectus and the base shelf prospectus must state:

“This short form prospectus, together with the documents incorporated in this prospectus by reference, will, as of the date of the last supplement to this prospectus relating to the securities offered by this prospectus and the supplement(s), constitute full, true and plain disclosure of all material facts relating to the securities offered by this prospectus and the supplement(s) as required by the securities legislation of [insert name of each jurisdiction in which qualified].”;

(c) by repealing section 1.2 and substituting the following:

“1.2 **Underwriter Certificate Form** – If the base shelf prospectus establishes an MTN program or other continuous distribution or if method 2 has not been elected by the underwriter, an underwriter certificate form in the preliminary base shelf prospectus and the base shelf prospectus must state:

“To the best of our knowledge, information and belief, this short form prospectus, together with the documents incorporated in this prospectus by reference will, as of the date of the last supplement to this prospectus relating to the securities offered by this prospectus and the supplement(s), constitute full, true and plain disclosure of all material facts relating to the securities offered by this prospectus and the supplement(s) as required by the securities legislation of [insert name of each jurisdiction in which qualified].”;

(d) by repealing section 1.3;

(e) by repealing section 1.4 and substituting the following:

“1.4 Amendments

- (1) For an amendment to a base shelf prospectus in respect of a base shelf prospectus that included the issuer certificate form and underwriter certificate form in sections 1.1 and 1.2, and if the amendment does not restate the prospectus, change “this short form prospectus” to “the short form prospectus dated [insert date] as amended by this amendment” wherever it appears in the statements in sections 1.1 and 1.2.
- (2) For an amended and restated base shelf prospectus in respect of a base shelf prospectus that included the issuer certificate form and underwriter certificate form in sections 1.1 and 1.2, change “this short form prospectus” and replace it with “this amended and restated short form prospectus” wherever it appears in the statements in sections 1.1 and 1.2.”;

(f) by repealing section 2.1 and substituting the following:

“2.1 Issuer Certificate Form – If an issuer certificate form described in section 1.1 was not included in the corresponding base shelf prospectus, an issuer certificate form in a shelf prospectus supplement that establishes an MTN program or other continuous distribution must state:

“The short form prospectus, together with the documents incorporated in the prospectus by reference, as supplemented by the foregoing, will, as of the date of the last supplement to the prospectus relating to the securities offered by the prospectus and the supplement(s), constitute full, true and plain disclosure of all material facts relating to the securities offered by the prospectus and the supplement(s) as required by the securities legislation of [insert name of each jurisdiction in which qualified].”;

(g) by repealing section 2.2 and substituting the following:

“2.2 Underwriter Certificate Form – If an underwriter’s certificate form described in section 1.2 was not included in the corresponding base shelf prospectus, an underwriter certificate form in a shelf prospectus supplement that establishes an MTN program or other continuous distribution must state:

“To the best of our knowledge, information and belief, the short form prospectus, together with the documents incorporated in the prospectus by reference, as supplemented by the foregoing, will, as of the date of the last supplement to the prospectus relating to the securities offered by the prospectus and the supplement(s), constitute full, true and plain disclosure of all material facts relating to the securities offered by the prospectus and the supplement as required by the securities legislation of [insert name of jurisdiction in which qualified].”;

(h) by repealing section 2.3; and

(i) by repealing section 2.4 and substituting the following:

“2.4 Amendments

- (1) For an amendment to a shelf prospectus supplement in respect of a shelf prospectus supplement that included the issuer certificate form and underwriter certificate form in sections 2.1 and 2.2, and if the amendment does not restate the prospectus, add “, as it amends the shelf prospectus supplement dated [insert date]” after “the foregoing,” wherever it appears in the statements in sections 2.1 and 2.2.
- (2) For an amended and restated shelf prospectus supplement in respect of a shelf prospectus supplement that included the issuer certificate form and underwriter certificate form in sections 2.1 and 2.2, include the issuer certificate form and the underwriter certificate form in sections 2.1 and 2.2.”.

21. Appendix B is amended

(a) in the title,

- (i) **by adding** “Form of” **before** “Shelf Prospectus Certificates”, **and**
- (ii) **by adding** “FORM OF” **before** “PROSPECTUS CERTIFICATES”;

(b) by repealing section 1.1 and substituting the following:

“1.1 Issuer Certificate Form – If method 2 is elected by an issuer, an issuer certificate form in the preliminary base shelf prospectus and the base shelf prospectus must state:

“This short form prospectus, together with the documents incorporated in this prospectus by reference, constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by the securities legislation of [insert name of each jurisdiction in which qualified].”;

(c) by repealing section 1.2 and substituting the following:

“1.2 Underwriter Certificate Form – If method 2 is elected by an underwriter, an underwriter certificate form in the preliminary base shelf prospectus and the base shelf prospectus must state:

“To the best of our knowledge, information and belief, this short form prospectus, together with the documents incorporated in this prospectus by reference, constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by the securities legislation of [insert name of each jurisdiction in which qualified].”;

(d) by repealing section 1.3;

(e) by repealing section 1.4 and substituting the following:

“1.4 Amendments

(1) For an amendment to a base shelf prospectus in respect of a base shelf prospectus that included the issuer certificate form and underwriter certificate form in sections 1.1 and 1.2, and if the amendment does not restate the prospectus, change “this short form prospectus” to “the short form prospectus dated [insert date] as amended by this amendment” wherever it appears in the statements in sections 1.1 and 1.2.

(2) For an amended and restated base shelf prospectus in respect of a base shelf prospectus that included the issuer certificate form and underwriter certificate form in sections 1.1 and 1.2, change “this short form prospectus” to “this amended and restated short form prospectus” wherever it appears in the statements in sections 1.1 and 1.2.”;

(f) by repealing section 2.1 and substituting the following:

“2.1 Issuer Certificate Form – If method 2 is elected by an issuer, an issuer certificate form in a shelf prospectus supplement must state:

“The short form prospectus, together with the documents incorporated in the prospectus by reference, as supplemented by the foregoing, constitutes full, true and plain disclosure of all material facts relating to the securities offered by the prospectus and this supplement as required by the securities legislation of [insert name of each jurisdiction in which qualified].”;

(g) by repealing section 2.2 and substituting the following:

“2.2 Underwriter Certificate Form – If method 2 is elected by an underwriter, an underwriter certificate form in a shelf prospectus supplement must state:

“To the best of our knowledge, information and belief, the short form prospectus, together with the documents incorporated in the prospectus by reference, as supplemented by the foregoing, constitutes full, true and plain disclosure of all material facts relating to the securities offered by the prospectus and this supplement as required by the securities legislation of [insert name of jurisdiction in which qualified].”;

(h) by repealing section 2.3; and

(i) by repealing section 2.4 and substituting the following:

“2.4 Amendments

- (1)** For an amendment to a shelf prospectus supplement in respect of a shelf prospectus supplement that included the issuer certificate form and underwriter certificate form in sections 2.1 and 2.2, and if the amendment does not restate the prospectus, add “, as it amends the shelf prospectus supplement dated [insert date]” after “the foregoing,” wherever it appears in the statements in sections 2.1 and 2.2.
- (2)** For an amended and restated shelf prospectus supplement in respect of a shelf prospectus supplement that included the issuer certificate form and underwriter certificate form in sections 2.1 and 2.2, include the issuer certificate form and the underwriter certificate form in sections 2.1 and 2.2..