

APPENDIX D

Amendments to National Instrument 44-101 *Short Form Prospectus Distributions* and Form 44-101F1 *Short Form Prospectus* of National Instrument 44-101 *Short Form Prospectus Distributions*

Schedule 1 Amendments To National Instrument 44-101 *Short Form Prospectus Distributions*

1.1 National Instrument 44-101 *Short Form Prospectus Distributions* is amended by this Instrument.

1.2 Section 1.1 is amended by repealing the following definitions:

- (a) “alternative credit support”;
- (b) “asset backed security”;
- (c) “business acquisition report”;
- (d) “convertible”
- (e) “credit supporter”;
- (f) “derivative”;
- (g) “designated foreign jurisdiction”;
- (h) “equity securities”;
- (i) “executive officer”;
- (j) “foreign disclosure requirements”;
- (k) “Form 44-101F1”;
- (l) “Form 51-102F2”;

- (m) “Form 51-102F3”;
- (n) “Form 51-102F4”;
- (o) “Form 51-102F5”;
- (p) “full and unconditional credit support”;
- (q) “information circular”;
- (r) “interim period”
- (s) “investment fund”;
- (t) “mineral project”;
- (u) “NI 13-101”;
- (v) “NI 43-101”;
- (w) “NI 44-102”;
- (x) “NI 51-102”;
- (y) “NI 52-107”;
- (z) “NI 81-106”;
- (aa) “non-convertible”
- (bb) “reorganization”;
- (cc) “special warrant”;
- (dd) “U.S. GAAS”.

1.3 Section 1.1 is amended

- (a) **in the definition of “AIF” by striking out “NI 51-102” and substituting “National Instrument 51-102 *Continuous Disclosure Obligations*” and by**

**striking out “NI 81-106” and substituting “National Instrument 81-106
Investment Fund Continuous Disclosure”;**

(b) in the definition of “material change” by striking out “Form 51-102F3” and substituting “Form 51-102F3 *Material Change Report* of NI 51-102”.

(c) by repealing the definition of “restricted security” and substituting the following:

“restricted security” has the same meaning as in Part 12 of NI 41-101;

(d) in the definition of “successor issuer” by striking out “reorganization” and substituting “restructuring transaction” wherever it occurs;

(e) in paragraph (e) of the definition of “U.S. credit supporter” by adding “as defined in National Instrument 71-101 *The Multijurisdictional Disclosure System*” after “is not a commodity pool issuer”.

1.4 The following is added after section 1.1:

1.1.1 Definitions NI 41-101 - Every term that is defined or interpreted in National Instrument 41-101 *General Prospectus Requirements*, the definition or interpretation of which is not restricted to a specific portion of NI 41-101, except for Part 12 of NI 41-101, has, if used in this Instrument, the meaning ascribed to it in NI 41- 101.

1.5 Section 1.5 is repealed.

1.6 The following is added after section 1.5:

1.6 Referencing Instruments - In this Instrument, a reference to

(a) a national instrument, after its first citation, may be made by citing the number of the instrument preceded by “NI”, and

(b) a form in a national instrument, after its first citation, may be made by citing the number of the Form preceded by “Form”.

1.7 Section 2.1(1) is amended by striking out “Form 44-101F1” and substituting “Form 44-101F1 *Short Form Prospectus* of this Instrument”.

1.8 Section 2.2(a) is amended by striking out “NI 13-101” and substituting “National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*”.

1.9 Section 2.3(2) is amended by striking out “NI 44-102” and substituting “National Instrument 44-102 *Shelf Distributions*.”

1.10 Section 2.7 is amended

- (a) **in subsection (1)(b) by adding “or each predecessor entity’s” before “comparative annual financial statements for its most recently completed financial year”;**
- (b) **by repealing subsection (2) and substituting the following:**
 - (2) Paragraph 2.2(d), paragraph 2.3(1)(d) and paragraph 2.6(1)(b) do not apply to a successor issuer if
 - (a) the successor issuer is not exempt from the requirement in the applicable CD rule to file annual financial statements within a prescribed period after its financial year end, but the successor issuer has not yet, since the completion of the restructuring transaction which resulted in the successor issuer, been required under the applicable CD rule to file annual financial statements, and
 - (b) an information circular relating to the restructuring transaction that resulted in the successor issuer was filed by the successor issuer or an issuer that was a party to the restructuring transaction, and such information circular
 - (i) complied with applicable securities legislation, and
 - (ii) included disclosure in accordance with Item 14.2 or 14.5 of Form 51-102F5 *Information Circular* to NI 51-102 for the successor issuer.

1.11 Section 4.1 is amended

(a) **by repealing subparagraph (a)(iv) and substituting the following:**

(iv) **Documents Affecting the Rights of Security Holders** - copies of all documents referred to in subsection 12.1(1) of NI 51-102 or section 16.4 of NI 81-106, as applicable, that relate to the securities being distributed, and that have not previously been filed;

(iv.1) **Material Contracts** -- copies of all material contracts referred to in section 12.2 of NI 51-102 or section 16.4 of NI 81-106 that have not previously been filed;

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

(b) deliver to the regulator, concurrently with the filing of the preliminary short form prospectus, the following:

(i) **Personal Information Form and Authorization to Collect, Use and Disclose Personal Information** –unless delivered within 3 years before filing of the preliminary short form prospectus, a completed Appendix A to NI 41-101 for

(A) each director and executive officer of an issuer;

(B) each director and executive officer of the manager of the issuer if the issuer is an investment fund;

(C) each promoter of the issuer and, except in Ontario, each substantial beneficiary of the offering; or

(D) if the promoter or substantial beneficiary of the offering is not an individual, each director and executive officer of the promoter or, except in Ontario, substantial beneficiary of the offering.

(ii) **Auditor's Comfort Letter regarding Audited Financial Statements** - if a financial statement of an issuer or a business included in a preliminary short form prospectus is accompanied by

an unsigned auditor's report, a signed letter addressed to the regulator from the auditor of the issuer or of the business, as applicable, prepared in accordance with the form suggested for this circumstance by the Handbook.

1.12 Section 4.2(a) is amended

- (a) **by repealing subparagraph (iii) and substituting the following:**
 - (iii) **Documents Affecting the Rights of Security Holders** - copies of any document described under subparagraph 4.1(a)(iv) that has not previously been filed;
 - (iii.1) **Material Contracts** – copies of any material contract described under subparagraph 4.1(a)(iv.1) that has not previously been filed;
- (b) **in paragraph (iv) by striking out “section 4.4” and substituting “section 10.1 of NI 41-101” and in subparagraph (B), by adding “or (vi)” after “subparagraph 4.1(a)(v)”;**
- (c) **in subparagraph (v), by striking out “Appendix C” and substituting “Appendix B of NI 41-101”;**
- (d) **by repealing subparagraph (vi) and substituting the following:**
 - (vi) **Non-Issuer's Submission to Jurisdiction** - a submission to jurisdiction and appointment of agent for service of process of
 - (A) each selling security holder, and
 - (B) each person or company required to provide a certificate under Part 5 of NI 41-101, other than an issuer,

in the form set out in Appendix C of NI 41-101, if the person or company is incorporated or organized under a foreign jurisdiction and does not have an office in Canada or is an individual who resides outside of Canada;

- (e) **in subparagraph (vii), by striking out “section 4.4” and substituting “section 10.1 of NI 41-101”.**
- (f) **in subparagraph (viii) by striking out “section 21.3 of Form 44-101F1” and substituting “section 5.12 of NI 41-101”;**
- (g) **by striking out “and” at the end of subparagraph (viii) and adding the following after subparagraph (viii):**
 - (ix) **Undertaking in Respect of Credit Supporter Disclosure** - an undertaking of the issuer, in a form acceptable to the regulators, to file the periodic and timely disclosure of a credit supporter similar to the disclosure provided under section 12.1 of Form 44-101F1, for so long as the securities being distributed are issued and outstanding;
 - (x) **Undertaking to File Documents and Material Contracts** – if any document described in subparagraph (iii), (iii.1) or (iv) has not been executed or become effective before the filing of the final short form prospectus but will be executed or become effective on or before the completion of the distribution, the issuer must file with the applicable securities regulatory authority, no later than the time of filing of the final short form prospectus, an undertaking of the issuer to the applicable securities regulatory authority to file the document promptly and in any event within 7 days after the completion of the distribution;
 - (xi) **Undertaking in Respect of Restricted Securities** – for distributions of non-voting securities, an undertaking of the issuer to give notice to holders of non-voting securities of a meeting of security holders if a notice of such meeting is given to its registered holders of voting securities; and

1.13 Section 4.2(b) is repealed and the following is substituted:

- (b) deliver to the regulators, no later than the filing of the final short form prospectus,
 - (i) a copy of the final short form prospectus, blacklined to show changes from the preliminary short form prospectus, and

- (ii) if the issuer has made an application to list the securities being distributed on an exchange, a copy of a communication in writing from the exchange stating that the application for listing has been made and has been accepted subject to the issuer meeting the requirements for listing of the exchange.

1.14 Section 4.3 is repealed and the following is substituted:

4.3 Review of Unaudited Financial Statements -

- (1) Subject to subsection (2), any unaudited financial statements, other than *pro forma* financial statements, included in or incorporated by reference into a short form prospectus must have been reviewed in accordance with the relevant standards set out in the Handbook for a review of financial statements by the person or company's auditor or a public accountant's review of financial statements.
- (2) If NI 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* permits the financial statements of the person or company in subsection (1) 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 short form prospectus includes disclosure that the unaudited financial statements have not been reviewed.

1.15 Section 4.4 is repealed.

1.16 Section 4.5 is repealed.

1.17 PART 5 is repealed.

1.18 PART 6 is repealed.

1.19 The following is added after section 7.1:

7.2 Solicitations of Expressions of Interest - Over-allotment Options – The prospectus requirement does not apply to solicitations of expressions of interest before the filing of a preliminary short form prospectus for securities to be issued pursuant to an over-allotment option that are qualified for distribution under a short form prospectus in accordance with this Instrument, if

- (a) the issuer has entered into an enforceable agreement with the underwriters, who have agreed to purchase the securities offered under a short form prospectus, other than the securities issuable on the exercise of an over-allotment option,
- (b) the agreement referred to in paragraph (a) has fixed the terms of the distribution and requires that the issuer file a preliminary short form prospectus for the securities and obtain from the regulator a receipt, dated as of a date that is not more than four business days after the date that the agreement is entered into, for the preliminary short form prospectus,
- (c) the issuer has issued and filed a news release announcing the agreement immediately upon entering into the agreement,

- (d) upon issuance of a receipt for the preliminary short form prospectus, a copy of the preliminary short form prospectus is sent to each person or company who has expressed an interest in acquiring the securities, and
- (e) except as provided in paragraph (a), no agreement of purchase and sale for the securities is entered into until the short form prospectus has been filed and a receipt obtained.

1.20 Section 8.2 is amended

- (a) **in subsection (1) by striking out “or subsection 4.5(3)”;**
- (b) **by repealing subsection (2) and substituting the following:**

(2) The issuance of a receipt for a final short form prospectus or an amendment to a final short form 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 8.1(3), on or before the date of the filing of the preliminary short form prospectus, or
 - (ii) the letter or memorandum referred to in subsection 8.1(3) after the date of the filing of the preliminary short form prospectus and received a written acknowledgement from the regulator that the exemption may be acknowledged 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).

1.21 Appendices B, C and D are repealed.

1.22 Effective Date - This Instrument comes into force on