

Companion Policy 44-103CP
to
National Instrument 44-103
Post-Receipt Pricing

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PART 1 INTRODUCTION

- 1.1 Implementation of the Instrument** - Certain jurisdictions have implemented National Instrument 44-103 Post-Receipt Pricing (the "Instrument") by one or more instruments forming part of securities legislation or securities directions in the jurisdiction. As a result, the provisions of the Instrument apply in those jurisdictions to the extent provided by, and except as modified by, the implementing law of the jurisdiction.
- 1.2 Availability of PREP Procedures** - Access to the PREP procedures is not restricted to issuers qualified to file a prospectus in the form of a short form prospectus. Any issuer that wishes to use the PREP procedures, or enable a selling security holder to use the PREP procedures, to distribute securities may file a prospectus that is a base PREP prospectus.
- 1.3 Relationship of the Instrument to Securities Legislation**
- (1) Issuers are reminded that the rules and procedures contained in the Instrument for distributions made using the PREP procedures should be read in conjunction with other provisions of securities legislation in each jurisdiction in which a distribution is being made.
 - (2) A distribution under a short form prospectus using the PREP procedures is subject to all the requirements of National Instrument 44-101 Short Form Prospectus Distributions and other provisions of securities legislation, as supplemented or varied by the Instrument and the implementing law of the jurisdiction. Reference is made to Part 1 of the Companion Policy to NI 44-101 for a discussion of the relationship between NI 44-101 and various other pieces of securities legislation.
 - (3) Similarly, a distribution using the PREP procedures not made under a short form prospectus is subject to securities legislation, as supplemented or varied by the Instrument and the implementing law of the jurisdiction.

PART 2 PROSPECTUS AMENDMENTS

2.1 Prospectus Amendments

- (1) Section 4.4 of the Instrument provides that the size of an offering may be increased or decreased by up to 20 percent between the filing of the prospectus and the filing of the supplemented PREP prospectus. The section further provides that, in cases where such a change in the size of the offering constitutes a material change, the requirement in securities legislation to file an amendment if a material change occurs may be satisfied by filing the supplemented PREP prospectus. The certificates required in the supplemented PREP prospectus are those prescribed by subsection 4.5(2) of the Instrument. For changes in the size of the offering by more than 20 percent that constitute a material change, this flexibility in filing of the amendment is not available.

- (2) The securities regulatory authorities are of the view that an issuer's ability to use the PREP procedures does not prevent the filing of a prospectus amendment to make some or all of the changes to the prospectus that are permitted to be made by a supplemented PREP prospectus.

PART 3 PREP PROCEDURES

3.1 Firm Commitment Distributions - Paragraph 10 of section 3.3 of the Instrument provides that a base PREP prospectus for securities to be distributed by one or more underwriters that have agreed to purchase the securities at a specified price is not required to indicate that the securities are to be taken up by the underwriters, if at all, on or before a specified date. This subsection provides an exemption from the requirement of securities legislation that this disclosure must be contained in a prospectus. Issuers are reminded that paragraph 1 of subsection 4.5(2) requires all information omitted from a base PREP prospectus to be included in a supplemented PREP prospectus. Therefore, it is necessary to comply with the relevant requirement of securities legislation in a supplemented PREP prospectus relating to specific distributions that are being effected on a firm commitment basis.

3.2 Best Efforts Distributions - Similarly, paragraph 11 of section 3.3 of the Instrument provides that a base PREP prospectus for a distribution of securities underwritten on a best efforts basis for which a minimum amount of funds are required by an issuer is not required to include disclosure required under securities legislation concerning the maximum length of time

for which the distribution may continue and concerning the disposition of subscription funds. Issuers are reminded, as in the previous subsection, that paragraph 1 of subsection 4.5(2) requires all information omitted from a base PREP prospectus to be included in a supplemented PREP prospectus. Therefore, it is necessary to comply with the relevant requirement of securities legislation in a supplemented PREP prospectus relating to specific distributions that are being effected on a best efforts basis. Issuers are also reminded that where PREP procedures are used in connection with securities offered on a best efforts basis for which a minimum amount of funds are required, the issuer may not reduce the size of the distribution pursuant to section 4.4 of the Instrument in a supplemented PREP prospectus to a size that would yield less than the minimum amount of funds.

- 3.3 Rights of Rescission or Withdrawal** - The securities regulatory authorities are of the view that statutory rights of rescission or withdrawal commence from the time of the purchaser's receipt of a supplemented PREP prospectus. It is only at this time that the entire prospectus has been delivered.
- 3.4 Supplemented Prospectus not an Amendment** - The securities regulatory authorities do not consider a supplemented PREP prospectus to constitute an amendment to a prospectus within the meaning of securities legislation.
- 3.5 Certificates** - With respect to the certificate requirements in the Instrument, reference should be made to the provisions of securities legislation of a jurisdiction that provide for a right of action against every person who signs a prospectus or an amendment to a prospectus. The securities regulatory authorities recognize that, in certain circumstances, a credit supporter may consider that its knowledge of the affairs of the issuer is not such that it considers it appropriate to sign a certificate in the form specified by the Instrument. In these circumstances, if the credit supporter is not a promoter of the issuer or a selling security holder, the regulatory authorities may allow the credit supporter to sign a different form of certificate. Credit supporters who wish to make application should do so in accordance with Part 6 of the Instrument.

[Amended December 30, 2005]