

## APPENDIX E

### Schedule 1 Amendments to National Instrument 44-102 *Shelf Distributions*

#### PART 1:

**1.1 National Instrument 44-102 *Shelf Distributions* is amended by this Instrument.**

**1.2 Section 1.1(1) is amended**

**(a) by adding the following definition before “NI 44-101”:**

“NI 41-101” means National Instrument 41-101 *General Prospectus Requirements*;

**(b) 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 at least one jurisdiction before the proposed distribution,  
or

(ii) a derivative of a type that has been distributed by the issuer by way of prospectus in at least one jurisdiction before the proposed distribution, but

(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 at least one jurisdiction before the proposed distribution, or

(ii) a security of a type that has been distributed by way of prospectus in at least one jurisdiction before the proposed distribution, but

(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;

**1.3 Section 1.1(2) is amended by adding “NI 41-101 and” before “NI 44-101” wherever it occurs.**

**1.4 The following sections are amended by repealing sections 2.2(3)(c), 2.3(3)(c), 2.4(3)(c) 2.5(3)(c) and 2.6(3)(c) and by substituting “In Ontario, the lapse date prescribed by securities legislation.”**

**1.5 Section 2.8 is repealed.**

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

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

**1.8 Section 6.2 is amended**

- (a) **in subsection (3) 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 by striking out “an entity” 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.
- (c) **in subsection (5) by adding “, if applicable” after “The review specified in subsection (3)”.**

**1.9 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.”.**

**1.10 Section 7.2(1) is amended**

- (a) **by adding “notary in Quebec,” before “solicitor” and by adding “or business” before “whose profession”;**
- (b) **by striking out “report or valuation” wherever it occurs and substituting “report, valuation, statement or opinion”.**
- (c) **by adding the following after paragraph (b):**
  - (c) named in the document as having opined on financial statements from which selected information included in the base shelf prospectus or shelf prospectus supplement has been derived and which audit opinion is referred to in the base shelf prospectus or shelf prospectus supplement directly or in a document incorporated by reference

**1.11 Section 11.1 is amended by adding the following 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.

**1.12 Section 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 base shelf prospectus or an amendment to a base shelf prospectus and received a written acknowledgement from the regulator that the exemption may be evidence 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).

**1.13 PART 12 is repealed.**

**1.14 Appendix A to NI 44-102 is amended**

- (a) **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, the preliminary base shelf prospectus and the base shelf prospectus shall contain an issuer certificate form stating:

“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].”

**(b) by repealing section 1.2 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, the preliminary base shelf prospectus and a base shelf prospectus shall contain an underwriter’s certificate form stating:

“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].”

**(c) by repealing section 1.3 and substituting the following:**

**1.3 Credit Supporter’s Certificate** - A preliminary base shelf prospectus and base shelf prospectus shall contain a certificate in the form described in section 1.1, if

- (a) NI 41-101 or securities legislation requires a certificate from the credit supporter; and
- (b) either
  - (i) the base shelf prospectus establishes an MTN program or other continuous distribution, or
  - (ii) method 2 has not been elected by the credit supporter.

**(d) 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, a shelf prospectus supplement that establishes an MTN program or other continuous distribution shall contain an issuer certificate form stating:

“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].”

(e) **by repealing section 2.2 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, a shelf prospectus supplement that establishes an MTN program or other continuous distribution shall contain an underwriter’s certificate form stating:

“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].”

(f) **by repealing section 2.3 and substituting the following:**

**2.3 Credit Supporter’s Certificate** - A shelf prospectus supplement that establishes an MTN program or other continuous distribution program shall contain a certificate in the form described in section 2.1, if

- (a) NI 41-101 or securities legislation requires a certificate from the credit supporter; and
- (b) a certificate of the credit supporter in the form described in section 1.3 was not included in the corresponding base shelf prospectus.

**1.15 Appendix B to NI 44-102 is amended**

- (a) **by repealing section 1.1 and substituting the following:**

**1.1 Issuer Certificate Form** - If method 2 is elected by an issuer, the preliminary base shelf prospectus and the base shelf prospectus shall contain an issuer certificate form stating:

“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].”

- (b) **by repealing section 1.2 substituting the following:**

**1.2 Underwriter Certificate Form** - If method 2 is elected by an underwriter, a preliminary base shelf prospectus and a base shelf prospectus shall contain an underwriter’s certificate form stating:

“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].”

- (c) **by repealing section 1.3 and substituting the following:**

**1.3 Credit Supporter’s Certificate** - A base shelf prospectus shall contain a certificate described in section 1.1, if



- (a) NI 41-101 or securities legislation requires a certificate of the credit supporter, and
- (b) method 2 is elected by the credit supporter
- (d) **in section 1.4(1), by repealing paragraph (b) and substituting the following:**
  - (b) the certificate described in section 1.2 signed by each underwriter who has elected method 2.

- (e) **by repealing section 2.1 and substituting the following:**

**2.1 Issuer Certificate Form** - If method 2 is elected by an issuer, each shelf prospectus supplement shall contain an issuer certificate form stating:

“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].”

- (f) **by repealing section 2.2 substituting the following:**

**2.2 Underwriter Certificate Form** - If method 2 is elected by an underwriter, a shelf prospectus supplement shall contain an underwriter’s certificate form stating:

“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].”

- (g) **by repealing section 2.3 and substituting the following:**

**2.3 Credit Supporter’s Certificate** - Each shelf prospectus supplement shall contain a certificate in form described in section 2.1, if

(a) NI 41-101 or securities legislation requires a certificate of a credit supporter;  
and

(b) method 2 is elected by the credit supporter.

**(h) in section 2.4(1), by repealing paragraph (b) and substituting the following:**

(b) the certificate described in section 2.2 signed by each underwriter who has elected method 2.

**1.16 This Instrument comes into force on ....**

## 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.”**