

Unofficial consolidation – projected to be in effect as of January 1, 2011 – for financial years beginning *on or after* January 1, 2011

This document is one of two versions of unofficial consolidations of National Instrument 44-102 *Shelf Distributions* and its companion policy as they are projected to be in effect as of January 1, 2011. This version generally applies to financial years beginning *on or after* January 1, 2011, as described more fully below.

The document reflects amendments relating to the changeover to International Financial Reporting Standards in Canada. Approval of these amendments is being sought from the Ontario Minister of Finance as part of a statutory approval process. They were included in an amendment instrument published in the October 1, 2010 Ontario Securities Commission Bulletin.

The published amendments apply in relation to a preliminary base shelf prospectus, an amendment to a preliminary base shelf prospectus, a base shelf prospectus, an amendment to a base shelf prospectus or a shelf prospectus supplement of an issuer which includes or incorporates by reference financial statements of the issuer in respect of periods relating to financial years beginning *on or after* January 1, 2011, other than in respect of periods to which section 5 of the amendment instrument applies. The legal effect of the published amendments is subject to the statutory approval process and the time period set out for the approval process is still running.

The document is provided for the convenience of stakeholders needing to make preparations in anticipation of the published amendments coming into effect. It is provided for reference purposes only and is not an official statement of the law.

**NATIONAL INSTRUMENT 44-102
*SHELF DISTRIBUTIONS***

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PART 1 — DEFINITIONS AND INTERPRETATION

1.1 Definitions — (1) In this Instrument

"acting jointly or in concert" has the meaning ascribed to that phrase in securities legislation;

"at-the-market distribution" means a non-fixed price distribution of equity securities under the shelf procedures into a pre-existing trading market in which securities of the same class are traded;

"base shelf prospectus" means a short form prospectus that is prepared in the form required under NI 44-101, as varied in accordance with this Instrument;

"clearing corporation" has the meaning ascribed to that term in National Instrument 81-102 *Mutual Funds*;

"conventional convertible security" means a security of an issuer that is, according to its terms, convertible into, or exchangeable for, other securities of the issuer, or of an affiliate of the issuer;

"conventional warrant or right" means a security of an issuer, other than a clearing corporation, that gives the holder the right to purchase securities of the issuer or of an affiliate of the issuer;

"index participation unit" means a security traded on a stock exchange in Canada or the United States and issued by an issuer the only purpose of which is to

(a) hold the securities that are included in a specified widely quoted market index in substantially the same proportion as those securities are reflected in the index; or

(b) invest in a manner that causes the issuer to replicate the performance of that index;

"method 1" means the method described in Appendix A of providing forward looking forms of prospectus certificates in a base shelf prospectus or in a shelf prospectus supplement that establishes an MTN program or continuous distribution;

"method 2" means the method described in Appendix B of providing non-forward looking forms of prospectus certificates in a base shelf prospectus and a shelf prospectus supplement;

"MTN program" means a continuous distribution of debt securities in which the specific variable terms of the individual debt securities and the method of distribution of those securities are determined at the time of the distribution;

"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

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(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;

"pricing supplement" means a shelf prospectus supplement that contains the price of securities distributed under an MTN program or other continuous distribution using the shelf procedures;

"shelf information" means the information permitted by this Instrument to be omitted from a base shelf prospectus;

"shelf procedures" means the requirements in this Instrument for the distribution of securities under a base shelf prospectus and a shelf prospectus supplement;

"shelf prospectus supplement" means a supplement to a base shelf prospectus, containing some or all of the information omitted from the base shelf prospectus as permitted by this Instrument;

"specified derivative" means an instrument, agreement or security, the market price, value or payment obligations of which are derived from, referenced to, or based on an underlying interest, other than one that is also

(a) a conventional convertible security,

(b) a specified asset-backed security,

(c) an index participation unit,

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- (d) a government or corporate strip bond,
- (e) a capital, equity dividend or income share of a subdivided equity or fixed income security,
- (f) a conventional warrant or right, or
- (g) a special warrant; and

"stabilization provisions" means those provisions of securities legislation that prohibit an issuer, selling securityholder, underwriter or dealer, or an affiliate of any of the foregoing persons or companies, or any person or company acting jointly or in concert with any of them from trading in securities being distributed by way of prospectus during the period of distribution.

1.1(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.

Amendments

1.2 References in this Instrument, other than in Appendix A and Appendix B, to an amendment to a prospectus include both an amendment that does not fully restate the text of a prospectus and an amended and restated prospectus.

1.3 [Repealed]

PART 2 – SHELF QUALIFICATION AND PERIOD OF RECEIPT EFFECTIVENESS

General

2.1 An issuer shall not file a short form prospectus that is a base shelf prospectus, unless the issuer is qualified to do so under this Instrument.

Shelf qualification for distributions qualified under section 2.2 of NI 44-101 (Basic Qualification)

2.2(1) An issuer is qualified to file a preliminary short form prospectus that is a preliminary base shelf prospectus if, at the time of filing, the issuer is qualified under section 2.2 of NI 44-101 to file a prospectus in the form of a short form prospectus.

2.2(2) An issuer that has filed a preliminary base shelf prospectus in reliance on the qualification criteria in subsection (1) is qualified to file a short form prospectus that is the corresponding base shelf prospectus.

2.2(3) A receipt issued for a base shelf prospectus of an issuer qualified under subsection (2) is effective until the earliest of

- (a) the date 25 months from the date of its issue;
- (b) the time immediately before the entering into of an agreement of purchase and sale for a security to be sold under the base shelf prospectus, if at that time
- (i) the issuer does not have current annual financial statements and does not satisfy the requirements of the exemption in either of subsection 2.7(1) or (2) of NI 44-101,

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(ii) the issuer does not have a current AIF and does not satisfy the requirements of the exemption in either of subsection 2.7(1) or (2) of NI 44-101,

(iii) the issuer's equity securities are not listed or posted for trading on a short form eligible exchange,

(iv) the issuer is an issuer

(A) whose operations have ceased, or

(B) whose principal asset is cash, cash equivalents, or its exchange listing, or

(v) the issuer has withdrawn its notice declaring the issuer's intention to be qualified to file a short form prospectus under NI 44-101; and

(c) in Ontario, the lapse date prescribed by securities legislation.

Shelf qualification for distributions qualified under section 2.3 of NI 44-101 (Approved Rating Non-Convertible Securities)

2.3(1) An issuer is qualified to file a preliminary short form prospectus that is a preliminary base shelf prospectus for approved rating non-convertible securities if, at the time of filing, the issuer

(a) is qualified under section 2.3 of NI 44-101 to file a prospectus in the form of a short form prospectus; and

(b) has reasonable grounds for believing that, if it were to distribute securities under the base shelf prospectus, the securities distributed would receive an approved rating and would not receive a rating lower than an approved rating from any approved rating organization.

2.3(2) An issuer that has filed a preliminary base shelf prospectus in reliance on the qualification criteria in subsection (1) is qualified to file a short form prospectus that is the corresponding base shelf prospectus if, at the time of the filing of the base shelf prospectus, the issuer has reasonable grounds for believing that, if it were to distribute non-convertible securities under the base shelf prospectus, the securities distributed would receive an approved rating and would not receive a rating lower than an approved rating from any approved rating organization.

2.3(3) A receipt issued for a base shelf prospectus of an issuer filed under subsection (2) is effective until the earliest of

(a) the date 25 months from the date of its issue;

(b) the time immediately before the entering into of an agreement of purchase and sale for a security to be sold under the base shelf prospectus, if at that time

(i) the issuer does not have current annual financial statements and does not satisfy the requirements of the exemption in either of subsection 2.7(1) or (2) of NI 44-101,

(ii) the issuer does not have a current AIF and does not satisfy the requirements of the exemption in either of subsection 2.7(1) or (2) of NI 44-101,

(iii) the issuer has withdrawn its notice declaring the issuer's intention to be qualified to file a short form prospectus under NI 44-101, or

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- (iv) the securities to which the agreement relates
 - (A) have not received a final approved rating,
 - (B) are the subject of an announcement by an approved rating organization, of which the issuer is or ought reasonably to be aware, that the approved rating given by the organization may be downgraded to a rating category that would not be an approved rating, or
 - (C) have received a provisional or final rating lower than an approved rating from any approved rating organization; and
- (c) in Ontario, the lapse date prescribed by securities legislation.

Shelf qualification for distributions under section 2.4 of NI 44-101 (Guaranteed Non-Convertible Debt Securities, Preferred Shares and Cash Settled Derivatives)

2.4(1) An issuer is qualified to file a short form prospectus that is a preliminary base shelf prospectus for non-convertible debt securities, non-convertible preferred shares or non-convertible cash settled derivatives if, at the time of filing, the issuer is qualified under section 2.4 of NI 44-101 to file a prospectus in the form of a short form prospectus.

2.4(2) An issuer that has filed a preliminary base shelf prospectus in reliance on subsection (1) is qualified to file a short form prospectus that is the corresponding base shelf prospectus.

2.4(3) A receipt issued for a base shelf prospectus of an issuer qualified under subsection (2) is effective until the earliest of

- (a) the date 25 months from the date of its issue;
- (b) the time immediately before the entering into of an agreement of purchase and sale for a security to be sold under the base shelf prospectus, if at that time
 - (i) a credit supporter has not provided full and unconditional credit support for the securities to which the shelf prospectus supplement relates,
 - (ii) unless the requirements of subparagraph 2.4(1)(b)(ii) of NI 44-101, but not the requirements of subparagraph 2.4(1)(b)(i) of NI 44-101, were satisfied at the time the issuer filed its base shelf prospectus, the credit supporter does not have current annual financial statements and does not satisfy the requirements of the exemption in either of subsection 2.7(1) or (2) of NI 44-101,
 - (iii) unless the requirements of subparagraph 2.4(1)(b)(ii) of NI 44-101, but not the requirements of subparagraph 2.4(1)(b)(i) of NI 44-101, were satisfied at the time the issuer filed its base shelf prospectus, the credit supporter does not have a current AIF and does not satisfy the requirements of the exemption in either of subsection 2.7(1) or (2) of NI 44-101,
- (iv) the issuer has withdrawn its notice declaring the issuer's intention to be qualified to file a short form prospectus under NI 44-101, or
- (v) either of the following is true
 - (A) the credit supporter's equity securities are not listed or posted for trading on a short form eligible exchange, or
 - (B) the credit supporter is a credit supporter

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- (I) whose operations have ceased, or
 - (II) whose principal asset is cash, cash equivalents, or its exchange listing, and
- either of the following is true:
- (C) the credit supporter does not have issued and outstanding non-convertible securities that
 - (I) have received an approved rating,
 - (II) have not been the subject of an announcement by an approved rating organization, of which the issuer is or ought reasonably to be aware, that the approved rating given by the organization may be down-graded to a rating category that would not be an approved rating, and
 - (III) have not received a rating lower than an approved rating from any approved rating organization, or
 - (D) the securities to which the agreement relates
 - (I) have not received a final approved rating,
 - (II) have been the subject of an announcement by an approved rating organization, of which the issuer is or ought reasonably to be aware, that the approved rating given by the organization may be down-graded to a rating category that would not be an approved rating, and
 - (III) have received a provisional or final rating lower than an approved rating from any approved rating organization; and
- (c) in Ontario, the lapse date prescribed by securities legislation.

Shelf qualification for distributions under section 2.5 of NI 44-101 (Guaranteed Convertible Debt Securities or Preferred Shares)

2.5(1) An issuer is qualified to file a short form prospectus that is a preliminary base shelf prospectus for convertible debt securities and convertible preferred shares if, at the time of filing, the issuer is qualified under section 2.5 of NI 44-101 to file a prospectus in the form of a short form prospectus.

2.5(2) An issuer that has filed a preliminary base shelf prospectus in reliance on subsection (1) is qualified to file a short form prospectus that is the corresponding base shelf prospectus.

2.5(3) A receipt issued for a base shelf prospectus qualified under subsection (2) is effective until the earliest of

- (a) the date 25 months from the date of its issue;
- (b) the time immediately before the entering into of an agreement of purchase and sale for a security to be sold under the base shelf prospectus, if at that time
 - (i) the securities to which the agreement relates are not convertible into securities of a credit supporter that has provided full and unconditional credit support for the securities being distributed,

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- (ii) the credit supporter does not have current annual financial statements and does not satisfy the requirements of the exemption in either of subsection 2.7(1) or (2) of NI 44-101,
 - (iii) the credit supporter does not have a current AIF and does not satisfy the requirements of the exemption in either of subsection 2.7(1) or (2) of NI 44-101,
 - (iv) the credit supporter's equity securities are not listed or posted for trading on a short form eligible exchange,
 - (v) the credit supporter is a credit supporter
 - (A) whose operations have ceased, or
 - (B) whose principal asset is cash, cash equivalents, or its exchange listing, or
 - (vi) the issuer has withdrawn its notice declaring the issuer's intention to be qualified to file a short form prospectus under NI 44-101; and
- (c) in Ontario, the lapse date prescribed by securities legislation.

Shelf qualification for distributions under section 2.6 of NI 44-101 (Asset-Backed Securities)

2.6(1) An issuer that is qualified under section 2.6 of NI 44-101 to file a prospectus in the form of a short form prospectus may file a preliminary base shelf prospectus for asset-backed securities if, at the time of filing, the issuer has reasonable grounds for believing that

- (a) all asset-backed securities that it may distribute under the base shelf prospectus will receive an approved rating; and
- (b) no asset-backed securities that it may distribute under the base shelf prospectus will receive a rating lower than an approved rating from any approved rating organization.

2.6(2) An issuer that has filed a preliminary base shelf prospectus in reliance on the qualification criteria in section 2.6 of NI 44-101 may file the corresponding base shelf prospectus if, at the time of the filing of the base shelf prospectus, the issuer has reasonable grounds for believing that

- (a) all asset-backed securities that it may distribute under the base shelf prospectus will receive an approved rating; and
- (b) no asset-backed securities that it may distribute under the base shelf prospectus will receive a rating lower than an approved rating from any approved rating organization.

(3) A receipt issued for a base shelf prospectus qualified under subsection (2) is effective for a distribution of asset-backed securities until the earliest of

- (a) the date 25 months from the date of its issue;
- (b) the time immediately before the entering into of an agreement of purchase and sale for an asset-backed security to be sold under the base shelf prospectus, if at that time
 - (i) the issuer does not have current annual financial statements and does not satisfy the requirements of the exemption in either of subsection 2.7(1) or (2) of NI 44-101,

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(ii) the issuer does not have a current AIF and does not satisfy the requirements of the exemption in either of subsection 2.7(1) or (2) of NI 44-101, or

(iii) the asset-backed securities to which the agreement relates

(A) have not received a final approved rating,

(B) have been the subject of an announcement by an approved rating organization, of which the issuer is or ought reasonably to be aware, that the approved rating given by the organization may be down-graded to a rating category that would not be an approved rating, or

(C) have received a provisional or final rating lower than an approved rating from any approved rating organization; and

(c) in Ontario, the lapse date prescribed by securities legislation.

Lapse Date – Ontario

2.7 In Ontario, the lapse date prescribed by securities legislation for a receipt issued for a base shelf prospectus is extended to the date 25 months from the date of issuance of the receipt.

2.8 [Repealed]

Limitation on offerings

2.9 Despite any provision in this Instrument, the shelf procedures shall not be used for a distribution of rights under a rights offering.

PART 3 — UNALLOCATED SHELF

Unallocated shelf permitted

3.1 A base shelf prospectus may pertain to more than one type of security for which the issuer is qualified to file a prospectus in the form of a short form prospectus.

Distributions of equity securities under unallocated shelf

3.2 An issuer or selling securityholder that forms a reasonable expectation that a distribution of a tranche of equity securities will proceed under a base shelf prospectus that is not specifically restricted to equity securities shall immediately issue a news release that announces the intention to proceed with the distribution.

PART 4 – DISTRIBUTIONS OF NOVEL DERIVATIVES OR ASSET-BACKED SECURITIES UNDER SHELF

Distributions of Novel Derivatives or Asset-Backed Securities Under Shelf

4.1(1) If a base shelf prospectus pertains to specified derivatives or asset-backed securities, the issuer or the selling securityholder, as the case may be, shall file before or concurrently with the base shelf prospectus an undertaking that it will not distribute in the local jurisdiction under the base shelf prospectus specified derivatives or asset-backed securities, as the case may be, that, at the time of distribution, are novel without pre-clearing with the regulator in accordance with subsection (2) the disclosure to be contained in a shelf prospectus supplement pertaining to the distribution of the novel specified derivatives or asset-backed securities.

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4.1(2) The undertaking referred to in subsection (1) shall state that the issuer or the selling securityholder, as the case may be, shall not distribute in the local jurisdiction specified derivatives or asset-backed securities that, at the time of distribution, are novel, unless

(a) the draft shelf prospectus supplement or, if more than one shelf prospectus supplement is to be used, the draft shelf prospectus supplements, pertaining to the distribution of the novel specified derivatives or asset-backed securities have been delivered to the regulator in substantially final form; and

(b) either

(i) the regulator has confirmed his or her acceptance of each draft shelf prospectus supplement in substantially final form or each shelf prospectus supplement in final form, or

(ii) 10 business days have elapsed since the date of delivery to the regulator of each draft shelf prospectus supplement in substantially final form and the regulator has not provided written comments on the draft shelf prospectus supplement.

PART 5 — BASE SHELF PROSPECTUSES

Opting out of the shelf procedures after a preliminary prospectus has been receipted

5.1 An issuer that has filed a preliminary base shelf prospectus shall not file a short form prospectus for the distribution that is not a base shelf prospectus unless the issuer files

(a) either

(i) an amended preliminary short form prospectus in accordance with NI 44-101 that is not a preliminary base shelf prospectus, or

(ii) a new preliminary short form prospectus that is not a preliminary base shelf prospectus; and

(b) a covering letter stating that the issuer or the selling securityholder, as the case may be, has decided not to use the shelf procedures for the distribution.

Opting into the shelf procedures after a preliminary prospectus has been receipted

5.2 An issuer that has filed a preliminary short form prospectus that is not a preliminary base shelf prospectus shall not file a base shelf prospectus for the distribution unless the issuer files

(a) either

(i) an amended preliminary base shelf prospectus in accordance with this Instrument, or

(ii) a new preliminary short form prospectus that is a preliminary base shelf prospectus in accordance with this Instrument; and

(b) a covering letter stating that the issuer or the selling securityholder, as the case may be, has decided to use the shelf procedures for the distribution.

Form of base shelf prospectus

5.3 Despite NI 44-101, a short form prospectus that is a base shelf prospectus may vary from Form 44-101F1 to the extent required or permitted by this Instrument.

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Dollar value of securities

5.4 A base shelf prospectus shall pertain to no more than the dollar value of securities that the issuer or selling securityholder proposing to distribute securities under the base shelf prospectus reasonably expects, at the time the base shelf prospectus is filed, to distribute within 25 months after the date of the receipt for the base shelf prospectus.

Required disclosure

5.5 A base shelf prospectus shall contain the following:

1. A statement at the top of the cover page identifying the short form prospectus as a base shelf prospectus.
2. The following statement in red ink in *italics* on the cover page:

This short form prospectus has been filed under legislation in [insert name[s] of the jurisdiction[s] where qualified] that permits certain information about these securities to be determined after this prospectus has become final and that permits the omission from this prospectus of that information. The legislation requires the delivery to purchasers of a prospectus supplement containing the omitted information within a specified period of time after agreeing to purchase any of these securities.

3. A statement that all shelf information omitted from the base shelf prospectus will be contained in one or more shelf prospectus supplements that will be delivered to purchasers together with the base shelf prospectus.
4. A statement that each shelf prospectus supplement will be incorporated by reference into the base shelf prospectus for the purposes of securities legislation as of the date of the shelf prospectus supplement and only for the purposes of the distribution of the securities to which the shelf prospectus supplement pertains.
5. A statement of the aggregate dollar amount of securities that may be raised under the base shelf prospectus.
6. Disclosure of the types of securities that may be distributed under the base shelf prospectus.
7. If an undertaking is required to be filed under subsection 4.1(1), a statement that the issuer or the selling securityholder, as the case may be, has filed an undertaking that it will not distribute specified derivatives or asset-backed securities, as the case may be, that, at the time of distribution, are novel without pre-clearing with the regulator the disclosure to be contained in the shelf prospectus supplement pertaining to the distribution of the novel specified derivatives or asset-backed securities.
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. List all exemptions from the provisions of this Instrument granted to the issuer applicable to the base shelf prospectus, including all exemptions to be evidenced by the issuance of a receipt for the base shelf

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prospectus pursuant to section 11.2.

Disclosure that may be omitted

5.6 If the specified circumstances exist, a base shelf prospectus may omit the following information:

1. The variable terms of the securities that may be distributed under the base shelf prospectus, if not known on the date the base shelf prospectus is filed.
2. The dollar amount, size and other specific terms of each tranche of securities that may be distributed under the base shelf prospectus, if not known on the date the base shelf prospectus is filed.
3. The variable terms of the plans of distribution for the securities that may be distributed under the base shelf prospectus, if not known on the date the base shelf prospectus is filed.
4. The name and prospectus certificate of an underwriter if, at the time of the filing of the base shelf prospectus, no underwriter is, and it is not known to the issuer that a particular underwriter will be, in a contractual relationship with the issuer or selling securityholder requiring the underwriter to distribute under the base shelf prospectus.
5. If one or more underwriters have agreed to purchase the securities to be distributed under the base shelf prospectus at a specified price, the statement required under Form 44-101F1 that the securities are to be taken up by the underwriters, if at all, on or before a specified date.
6. If the securities to be distributed under the base shelf prospectus are underwritten on a best efforts basis for which a minimum amount of funds are required by an issuer, the disclosure required under Form 44-101F1 concerning the maximum length of time for which the distribution may continue and concerning the disposition of subscription funds.
7. Any other information that pertains only to a specific distribution of securities under the base shelf prospectus, if not known on the date the base shelf prospectus is filed.
8. Any other information required under NI 44-101 or other securities legislation that is not known and cannot be ascertained at the time of filing of the base shelf prospectus.

Issue of receipt

5.7 Despite the omission of shelf information, the regulator may issue a receipt for a base shelf prospectus.

Amendments

5.8 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.

PART 6 - SHELF PROSPECTUS SUPPLEMENTS

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Requirement to use shelf prospectus supplements

6.1 An issuer or selling securityholder that distributes securities under a base shelf prospectus shall supplement the disclosure in the base shelf prospectus with a shelf prospectus supplement, or more than one shelf prospectus supplement, in order for the prospectus to contain full, true and plain disclosure of all material facts relating to the securities distributed under the prospectus.

Incorporation by Reference

6.2(1) An issuer shall incorporate by reference in the corresponding base shelf prospectus, by means of a statement in the base shelf prospectus, each shelf prospectus supplement referred to in section 6.1 as of the date of the shelf prospectus supplement and only for purposes of the distribution to which the shelf prospectus supplement pertains.

6.2(2) If an issuer does not incorporate by reference in a base shelf prospectus a shelf prospectus supplement required to be incorporated by reference under subsection (1), the shelf prospectus supplement is conclusively deemed for purposes of securities legislation to be incorporated by reference in the issuer's base shelf prospectus as of the date of the shelf prospectus supplement and only for purposes of the distribution to which the shelf prospectus supplement pertains.

6.2(3) Subject to subsection (4), any unaudited financial statements, other than *pro forma* financial statements, incorporated by reference into the base shelf prospectus but filed after the date of filing the base shelf prospectus must have been reviewed in accordance with the relevant standards set out in the Handbook for a review of financial statements by a person or company's auditor or a public accountant's review of financial statements.

6.2(4) If NI 52-107 permits the financial statements of the person or company in subsection (3) to be audited in accordance with

(a) U.S. AICPA GAAS, the unaudited financial statements may be reviewed in accordance with the review standards issued by the American Institute of Certified Public Accountants,

(a.1) U.S. PCAOB GAAS, the unaudited financial statements may be reviewed in accordance with the review standards issued by the Public Company Accounting Oversight Board (United States of America),

(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.

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6.2(5) The review specified in subsection (3), if applicable, must have been completed

(a) if the base shelf prospectus established an MTN program or other continuous offering, no later than filing of the unaudited financial statements; or

(b) in all other circumstances, no later than the next filing of a shelf supplement.

6.3 Shelf Prospectus Supplement Disclosure - (1) A shelf prospectus supplement shall contain the following:

1. The name of the issuer on the cover page.

2. The dates of the corresponding base shelf prospectus and of each previously filed shelf prospectus supplement corresponding to the same base shelf prospectus and pertaining to the same distribution, on the cover page.

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

(a) method 1, if the shelf prospectus supplement establishes an MTN program or other continuous distribution; or

(b) method 2, if the prospectus certificate forms prescribed by method 1 have not been included in the corresponding base shelf prospectus and if method 1 is not mandatory under paragraph (a).

4. A list of each document that is incorporated by reference into the corresponding base shelf prospectus as of the date of the shelf prospectus supplement and provides disclosure pertaining to the securities being distributed under the shelf prospectus supplement.

(2) If only one shelf prospectus supplement is used to supplement the disclosure in the corresponding base shelf prospectus pertaining to a distribution of securities, that shelf prospectus supplement shall contain the following, and if more than one shelf prospectus supplement is used to supplement the disclosure in the corresponding base shelf prospectus pertaining to a distribution of securities, the shelf prospectus supplements used shall, together, contain the following:

1. All of the shelf information pertaining to the distribution of securities that was not disclosed in the corresponding base shelf prospectus.

2. All material facts relating to the securities to be distributed and all other information required under securities legislation to be disclosed in a short form prospectus that is not disclosed, either directly or through incorporation by reference, in the corresponding base shelf prospectus.

6.4 Filing Requirement For Shelf Prospectus Supplements - (1) A shelf prospectus supplement shall be filed in the local jurisdiction if a base shelf prospectus to which the shelf prospectus supplement pertains was filed in the local jurisdiction.

(2) A shelf prospectus supplement that is required to be filed under subsection (1) shall be filed,

(a) if the shelf prospectus supplement pertains to a distribution of securities, other than an MTN program or other continuous distribution, on or before the earlier of

(i) the date the shelf prospectus supplement was first sent or delivered to a purchaser or a prospective purchaser, and

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- (ii) the date two business days after the offering price of the securities to which it pertains is determined; or
- (b) in all other circumstances, on or before the date two business days after the date the shelf prospectus supplement was first sent or delivered to a purchaser or a prospective purchaser.

6.5 Underwriters' Conflicts of Interest - For a distribution of securities under a base shelf prospectus, the provisions of National Instrument 33-105 *Underwriting Conflicts*

- (a) concerning the participation of independent underwriters shall be satisfied
 - (i) on a tranche-by-tranche basis for a distribution other than an MTN program or other continuous distribution, or
 - (ii) on the basis of the total dollar amount of securities that, at any given time, have been or are being distributed under the program or distribution for a distribution of securities under an MTN program or other continuous distribution; and
- (b) concerning disclosure, to the extent not previously satisfied in the base shelf prospectus, shall be satisfied by including the prescribed disclosure in a shelf prospectus supplement pertaining to the distribution.

6.6 Market Stabilization - The stabilization provisions shall be satisfied on a tranche-by-tranche basis for a non-continuous distribution of securities under a base shelf prospectus.

6.7 Delivery Requirement - The shelf prospectus supplement or supplements that, together with the corresponding base shelf prospectus, contain full, true and plain disclosure of all material facts relating to the securities being distributed shall be sent by prepaid mail or delivered to a purchaser of the securities with the base shelf prospectus.

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.

Part 7 - Shelf Supporting Documents

7.1 General - The provisions of NI 44-101 requiring the filing of supporting documents with a preliminary short form prospectus, a short form prospectus or a prospectus amendment apply to a filing of a preliminary base shelf prospectus, a base shelf prospectus or an amendment to a preliminary base shelf prospectus or to a base shelf prospectus, except to the extent varied in this Part.

7.2 Consents - (1) If any notary in Québec, solicitor, auditor, accountant, engineer or appraiser, or any other person or company whose profession or business gives authority to a statement made by that person or company, is

- (a) named in a document that is
 - (i) incorporated by reference into a base shelf prospectus, and
 - (ii) filed after the date of filing of the base shelf prospectus; and

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(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,

the issuer shall file the written consent of the person or company to being named and to the use of that report, valuation, statement or opinion in accordance with subsection (2).

(2) A consent of an expert required under subsection (1) shall be filed in accordance with the following:

1. If the document in which the expert is named is incorporated by reference into the base shelf prospectus by means of a statement to that effect in the base shelf prospectus, the consent shall be filed

(a) no later than the time the document is filed, if the base shelf prospectus establishes an MTN program or other continuous distribution; and

(b) in all other circumstances, no later than the time of the next filing of a shelf prospectus supplement corresponding to the base shelf prospectus.

2. If the document in which the expert is named is incorporated by reference into a shelf prospectus supplement by means of a statement to that effect in the shelf prospectus supplement and filed before or concurrently with the shelf prospectus supplement, the consent shall be filed no later than the time the shelf prospectus supplement is filed.

3. If the document in which the expert is named is incorporated by reference into a shelf prospectus supplement by means of a statement to that effect in the shelf prospectus supplement and filed after the shelf prospectus supplement is filed, the consent shall be filed no later than the time the document is filed.

7.3 [Repealed]

7.4 Underwriting Agreements - (1) If, at the time an issuer files a base shelf prospectus, no underwriter is in a contractual relationship with the issuer or selling securityholder requiring the underwriter to distribute securities under the base shelf prospectus, the issuer is not required to file a copy of an underwriting agreement with the base shelf prospectus.

(2) If an underwriter enters into a contractual relationship with an issuer or selling securityholder requiring the underwriter to distribute securities under a base shelf prospectus after the base shelf prospectus is filed, the issuer shall file a copy of the underwriting agreement pertaining to the distribution concurrently with the next shelf prospectus supplement filed pertaining to that distribution.

Part 8 - Medium Term Note Programs and Other Continuous Distributions Under Shelf

8.1 General - An issuer that is qualified under Part 2 to file a base shelf prospectus for securities may

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distribute those securities by way of an MTN program or other continuous distribution, if it files

(a) a base shelf prospectus or a shelf prospectus supplement that establishes the program or distribution; and

(b) a pricing supplement.

8.2 Additional Disclosure Requirements - (1) Despite section 5.6, a base shelf prospectus or shelf prospectus supplement that establishes an MTN program or other continuous distribution shall contain the following:

1. A description of the method of distribution, including the name of any underwriter involved in the distribution and the amount of any underwriting fee, discount or commission.

2. A description of the intended parameters of the terms of the MTN program or other continuous distribution.

3. At the option of the issuer or selling securityholder proposing to distribute securities under the MTN program or other continuous distribution, a statement that the issuer or selling securityholder, as the case may be, reserves the right to issue securities under the MTN program or other continuous distribution on terms outside the intended parameters disclosed under paragraph 2.

(2) A pricing supplement for an MTN program or other continuous distribution under the shelf procedures shall contain the following:

1. The terms of the securities distributed that are not disclosed in the base shelf prospectus or shelf prospectus supplement establishing the MTN program or other continuous distribution.

2. A list of each document that is incorporated by reference into the corresponding base shelf prospectus as of the date of the pricing supplement and that provides disclosure pertaining to the securities being distributed under the MTN program or other continuous distribution.

8.3 Filing Requirement - If an issuer sends or delivers to a purchaser or a prospective purchaser in the local jurisdiction a pricing supplement in a particular month, the issuer shall, despite section 6.4, file within seven days after the end of the month

(a) a copy of each pricing supplement sent or delivered to a purchaser or prospective purchaser during the month, if the pricing supplement had not previously been sent or delivered to any purchaser or prospective purchaser; or

(b) a summary of the information contained in each pricing supplement sent or delivered to a purchaser or prospective purchaser during the month, including

(i) a list of the pricing supplements referred to in paragraph (a),

(ii) the terms of the securities distributed under each pricing supplement sent or delivered to a purchaser or a prospective purchaser during the month, and

(iii) the aggregate amount of securities distributed under each pricing supplement sent or delivered to a purchaser or a prospective purchaser during the month.

8.4 Requirement to Update Earnings Coverage Ratios - An issuer distributing securities by way of an MTN program or other continuous distribution using the shelf procedures shall

(a) calculate updated earnings coverage ratios for the ratios contained in its base shelf prospectus each time

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the issuer prepares an interim financial report or audited annual financial statements, using the 12 month period that ended on the last day of the most recently completed financial period; and

(b) file the updated earnings coverage ratios, concurrently with the filing of its financial statements, either

(i) as an exhibit to the financial statements, or

(ii) as a shelf prospectus supplement corresponding to the base shelf prospectus.

Part 9 - At-the-Market Distributions of Equity Securities Under Shelf

9.1 At-the-Market Distributions of Equity Securities Under Shelf - (1) Despite section 6.1 of NI 44-101, equity securities may be distributed by way of an at-the-market distribution using the shelf procedures if the market value of equity securities distributed does not exceed 10% of the aggregate market value of the issuer's outstanding equity securities of the same class as the class of securities distributed, calculated in accordance with section 9.2, as at the last trading day of the month before the month in which the first trade under the at-the-market distribution is made.

(2) No underwriter or dealer distributing equity securities by way of an at-the-market distribution, or any affiliate of such an underwriter or dealer, or any person or company acting jointly or in concert with such an underwriter or dealer, shall, in connection with the distribution, over-allot the securities or effect a transaction that is intended to stabilize or maintain the market price of the securities.

(3) An issuer shall include in a base shelf prospectus or shelf prospectus supplement pertaining to an at-the-market distribution a statement that no underwriter or dealer involved in the distribution, no affiliate of such an underwriter or dealer and no person or company acting jointly or in concert with such an underwriter or dealer has over-allotted, or will over-allot, securities in connection with the distribution or effect any other transactions that are intended to stabilize or maintain the market price of the securities.

9.2 Market Value Calculation - (1) For the purposes of this Part,

(a) the aggregate market value of the equity securities of an issuer on a date is the aggregate of the market value of each class of its equity securities on the date, calculated by multiplying

(i) the total number of equity securities of the class outstanding on the date, by

(ii) the closing price on the date of the equity securities of the class on the exchange in Canada on which that class of equity securities is principally traded; and

(b) instalment receipts may, at the option of the issuer, be deemed to be equity securities if

(i) the instalment receipts are listed and posted for trading on an exchange in Canada, and

(ii) the outstanding equity securities, the beneficial ownership of which is evidenced by the instalment receipts, are not listed and posted for trading on an exchange in Canada.

(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.

(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

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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.

Part 10 - [Repealed]

Part 11 - Exemptions

11.1 Exemption - (1) The regulator or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.

(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.

(3) An application made to the securities regulatory authority or regulator for an exemption from this Instrument shall include a letter or memorandum describing the matters relating to the exemption, and indicating why consideration should be given to the granting of the exemption.

11.2 Evidence of Exemption — (1) Subject to subsection (2) and without limiting the manner in which an exemption under this Part may be evidenced, the granting under this Part of an exemption, other than an exemption, in whole or in part from Part 2, may be evidenced by the issuance of a receipt for a base shelf prospectus or an amendment to a base shelf prospectus.

(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).

Part 12 - Effective Date

12.1 Effective Date - This Instrument shall come into force on December 31, 2000.

APPENDIX A - METHOD 1 FOR FORM OF SHELF PROSPECTUS CERTIFICATES

METHOD 1: FORWARD LOOKING FORM OF CERTIFICATES TO BE INCLUDED IN BASE SHELF PROSPECTUSES OR SUPPLEMENTS ESTABLISHING AN MTN PROGRAM OR OTHER CONTINUOUS DISTRIBUTION

Part 1 — Base Shelf Prospectuses

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]."

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]."

1.3 — [Repealed]

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.

Part 2 — Shelf Prospectus Supplements establishing an MTN Program

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,

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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]."

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]."

2.3 — [Repealed]

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.

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APPENDIX B — METHOD 2 FOR FORM OF SHELF PROSPECTUS CERTIFICATES

METHOD 2: NON-FORWARD LOOKING FORM OF PROSPECTUS CERTIFICATES TO BE INCLUDED IN BOTH BASE SHELF PROSPECTUSES AND SUPPLEMENTS

Part 1 — Base Shelf Prospectus

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]."

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]."

1.3 — [Repealed]

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.

Part 2 — Shelf Prospectus Supplement

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]."

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

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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]."

2.3 — [Repealed]

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.

COMPANION POLICY 44-102CP
SHELF DISTRIBUTIONS

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Part 1 — General

1.1 Relationship of the National Instrument to Securities Legislation — (1) Issuers are reminded that the rules and procedures contained in National Instrument 44-102 for distributions made under the shelf 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 shelf procedures is subject to all the requirements of National Instrument 44-101 *Short Form Prospectus Distributions*, some of the requirements of National Instrument 41-101 *General Prospectus Requirements*, and other provisions of securities legislation, as supplemented or varied by NI 44-102 and the implementing law of the jurisdiction. Reference is made to section 1.5 of the Companion Policy to NI 44-101 for a discussion of the relationship between NI 44-101 and NI 44-102, and to subsection 1.2(5) of the Companion Policy to NI 41-101 for a discussion of the relationship among NI 41-101, NI 44-101 and NI 44-102.

1.2 Liability — (1) The securities regulatory authorities are of the view that an issuer's prospectus certificate contained in an amendment to a base shelf prospectus filed under the shelf procedures supersedes and replaces the issuer's certificate contained in the base shelf prospectus. Accordingly, an officer who signed the later dated certificate and the directors at the time the amendment was filed would be subject to statutory civil liability to purchasers of securities under the amended base shelf prospectus.

(2) The securities regulatory authorities are of the view that an issuer's prospectus certificate contained in a shelf prospectus supplement filed under the shelf procedures supersedes and replaces the issuer's certificate contained in the base shelf prospectus for purposes of the distribution of securities under the shelf prospectus supplement. Accordingly, an officer who signed the later dated certificate and the directors at the time the supplement was filed would be subject to statutory civil liability to purchasers of securities under the shelf prospectus supplement.

1.3 Draft Supplements — A preliminary form of shelf prospectus supplement describing a tranche of securities may be used in marketing the securities before the public offering price is determined. Issuers are reminded that the ability to use a preliminary form of shelf prospectus supplement in this manner for a distribution of equity securities under an unallocated base shelf prospectus is subject to the requirement contained in section 3.2 of NI 44-102 to issue a news release once the issuer or the selling securityholder has formed a reasonable expectation that the distribution will proceed.

Part 2 — Shelf Procedures

2.1 Shelf Qualification — (1) The principle guiding the qualification provisions of NI 44-102 is that any distribution under a short form prospectus, other than rights offerings, may be effected using the shelf procedures.

(2) A distribution using the shelf procedures is necessarily a distribution under a short form prospectus. Therefore, issuers must be qualified to file a prospectus in the form of a short form prospectus under NI 44-101 and must satisfy the additional qualification criteria under Part 2 of NI 44-102.

2.2 Period of Receipt Effectiveness — (1) NI 44-102 provides that a receipt for a base shelf prospectus is effective until the earliest of the following three events: (i) the date 25 months from the date of the issuance of a receipt for the base shelf prospectus, (ii) the time immediately before selling the securities, if certain prescribed conditions relating to the issuer's qualification to file a prospectus in the form of a short form prospectus are not satisfied, and (iii) in Ontario, the lapse date of the receipt prescribed by securities legislation, if no relief has been granted to the issuer through a blanket ruling or upon application by the issuer. This receipt expiry mechanism is designed to impose a limit of, essentially, two years on shelf distributions under the same base shelf prospectus and to prevent distributions of securities under a base shelf prospectus if

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the issuer would no longer be qualified under NI 44-101.

(2) The securities legislation in some jurisdictions provides that a prospectus receipt does not continue to be effective for more than one year absent relief granted by the securities regulatory authority in that jurisdiction. Some of these jurisdictions have provided blanket relief for receipts issued for base shelf prospectuses.

2.3 Unallocated Shelf — (1) Section 3.1 of NI 44-102 provides that a base shelf prospectus may pertain to different types of securities. This allows a base shelf prospectus to be used to distribute any combination of debt securities, preferred shares, derivatives, asset-backed securities and equity securities, for which the issuer is eligible to participate in the short form prospectus distributions system.

(2) In the case of an unallocated base shelf prospectus, section 3.2 of NI 44-102 requires an issuer or a selling securityholder to issue a news release immediately upon having formed a reasonable expectation that a distribution of equity securities under the unallocated shelf prospectus will proceed. An issuer or selling securityholder will generally only have formed such a reasonable expectation upon having discussions with an underwriter concerning the distribution of some specificity and certainty.

2.4 Distributions of Novel Derivatives and Asset-Backed Securities using the Shelf Procedures — (1) The securities regulatory authorities recognize the utility of the shelf procedures for distributions of derivatives and asset-backed securities in order to permit tranches of these products to be priced and distributed expeditiously to take advantage of market opportunities, without the need for regulatory approval.

(2) However, the securities regulatory authorities are also aware of the complexities that may be associated with distributions of specified derivatives and asset-backed securities. 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. The securities regulatory authorities also want to ensure that prospectus investors of such products are entitled to the appropriate rights at the time of their investment as contemplated by applicable securities laws. Reference is made to section 4.8 of Companion Policy NI 44-101CP for a discussion of these issues. The securities regulatory authorities have attempted to balance these objectives in formulating NI 44-102.

(3) The requirements relating to the clearance of distributions of derivatives or asset-backed securities make a distinction between "novel" and "non-novel" products. If a base shelf prospectus pertains to specified derivatives or asset-backed securities, the issuer or selling securityholder, as the case may be, must file an undertaking under section 4.1 of NI 44-102 with its base shelf prospectus. This includes any circumstances where a base shelf prospectus, including, if applicable, an unallocated shelf prospectus, may be used together with a prospectus supplement to qualify novel products. The undertaking must state that the issuer or the selling securityholder, as the case may be, will not distribute under the base shelf prospectus specified derivatives or asset-backed securities that at the time of distribution are novel without pre-clearing the disclosure in shelf prospectus supplements with the regulator.

(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 securityholder 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

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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 securityholder that a specified derivative that is subject to the pre-clearance process is similar to a specified derivative that has already been subject to the pre-clearance process, the issuer or selling securityholder 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 securityholder 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.

2.5 Information that may be Omitted from a Base Shelf Prospectus — (1) Paragraph 1 of section 5.6 of NI 44-102 provides that a base shelf prospectus may omit the variable terms, if not known, of the securities that may be distributed under it. The types of variable information that may be omitted from the base shelf prospectus include

- (a) the designation of the tranche;
- (b) maturities;
- (c) denominations;
- (d) interest or dividend provisions;
- (e) purchase, redemption and retraction provisions;
- (f) conversion or exchange provisions;
- (g) the terms for extension or early repayment;
- (h) the currencies in which the securities are issued or payable;
- (i) sinking fund provisions; and
- (j) any special covenants or other terms applicable to the securities of the tranche.

(2) Paragraph 3 of section 5.6 of NI 44-102 provides that a base shelf prospectus may omit information, if not

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known, relating to the variable terms of the plans of distribution for the securities that may be distributed under the base shelf prospectus. These variable terms may include

- (a) if the shelf prospectus sets forth alternative methods of distribution, the method that will be applicable to each tranche of securities distributed under the shelf prospectus; and
- (b) for each tranche of securities distributed under the shelf prospectus, the specific terms not included in the description of the applicable method of distribution in the shelf prospectus, including, if applicable
 - (i) the names of any underwriters, and
 - (ii) the distribution spread and underwriting fees, discounts and commissions.

(3) Paragraph 7 of section 5.6 of NI 44-102 provides that a base shelf prospectus may omit other information, if not known, that pertains only to a specific distribution of securities under the base shelf prospectus. This information may include

- (a) the public offering price;
- (b) delivery dates;
- (c) legal opinions regarding the eligibility for investment of the securities and tax matters;
- (d) statements regarding listing of the securities;
- (e) actual amount of proceeds on the distribution; and
- (f) information about the use of proceeds.

2.6 Shelf Prospectus Supplements — (1) The ability to file a shelf prospectus supplement does not prevent the filing of a shelf prospectus amendment to supply some or all of the information that is permitted to be included in a prospectus supplement.

(2) Under subsection 6.3(2) of NI 44-102, the shelf prospectus supplements used in a distribution must contain all omitted shelf information as well as all information necessary for the base shelf prospectus to comply with the disclosure requirements for a short form prospectus. For example, if the securities being distributed using the shelf procedures are rated, that rating must be disclosed in a shelf prospectus supplement because NI 44-101 requires all ratings, including provisional ratings, received from one or more approved rating organizations for the securities to be distributed and continuing in effect, to be disclosed in a short form prospectus.

(3) Section 6.7 of NI 44-102 provides that all shelf prospectus supplements pertaining to the securities being distributed under a base shelf prospectus shall be sent by prepaid mail or delivered to purchasers of the securities concurrently with the base shelf prospectus. A shelf prospectus supplement may take the form of a "sticker", a "wrap-around" or a one or more page supplement to a base shelf prospectus.

2.6.1 Expert's Consent — Section 7.2 of NI 44-102 provides that if a document (the "Document") containing an expert's report, valuation, statement or opinion is incorporated by reference into a base shelf prospectus and filed after the filing of the base shelf prospectus, the issuer must file the written consent of the expert in accordance with deadlines that vary with the circumstances. For example, issuers are reminded that separate auditor's consents are required at the filing of the base shelf prospectus and in each subsequent shelf prospectus supplement for each set of audited financial statements incorporated by reference. The following is intended to illustrate the required timing for the filing of the expert's consents:

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Type of Prospectus Filed	Timing of inclusion of expert's report	Timing of filing of expert's consent
MTN or non-MTN base shelf prospectus	Expert's report included in the base shelf prospectus at the date the base shelf prospectus is filed.	Expert's consent is filed at the date the prospectus is filed.
MTN base shelf prospectus	Expert's report included in a Document, filed after the base shelf prospectus is filed, that is incorporated by reference into the prospectus.	Expert's consent is filed at the date the Document is filed.
Non-MTN base shelf prospectus	Expert's report included in a Document, filed after the base shelf prospectus is filed, that is incorporated by reference into the prospectus.	Expert's consent is filed no later than the date of filing of the next prospectus supplement corresponding to the base shelf prospectus or the date the Document is filed.

2.7 Firm Commitment Distributions — Paragraph 5 of section 5.6 of NI 44-102 provides that a base shelf prospectus for securities to be distributed by one or more underwriters that have agreed to purchase the securities at a specified price may omit the statement that the securities are to be taken up by the underwriters, if at all, on or before a specified date. This paragraph provides an exemption from the requirement of securities legislation that this disclosure be contained in a prospectus. Issuers are reminded that paragraph 1 of subsection 6.3(2) of NI 44-102 requires all information that was omitted from the base shelf prospectus to be included in a shelf prospectus supplement. Therefore, it is necessary to include in a shelf prospectus supplement the disclosure required under securities legislation relating to specific distributions that are being effected on a firm commitment basis.

2.8 Best Efforts Distributions — Paragraph 6 of section 5.6 of NI 44-102 similarly provides that a base shelf prospectus for a distribution of securities underwritten on a best efforts basis for which a minimum amount of funds are required by an issuer may omit disclosure required under securities legislation concerning the maximum length of time for which the distribution can continue and concerning the disposition of subscription funds. Issuers are reminded that paragraph 1 of subsection 6.3(2) of NI 44-102 requires all information that was omitted from the base shelf prospectus to be included in a shelf prospectus supplement. Therefore, it is necessary to include in a shelf prospectus supplement the disclosure required under securities legislation relating to specific distributions that are being effected on a best efforts basis.

2.9 Delivery Obligations — 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 all relevant shelf prospectus supplements. It is only at this time that the entire prospectus has been delivered.

Part 3 — Shelf Prospectus Amendments

3.1 Shelf Prospectus Amendments — (1) Part 6 of NI 41-101 or other securities legislation requires that an amendment to a prospectus be filed if a material change occurs after the receipt for the prospectus is obtained but before the completion of the distribution under that prospectus. These requirements apply to base shelf prospectuses.

(2) Section 5.8 of NI 44-102 permits, in limited circumstances, the requirement in Part 6 of NI 41-101 or other securities legislation to file an amendment to be satisfied by the incorporation by reference of material change reports filed after the base shelf prospectus has been receipted. This is an exception to the general principle set out in section 3.6 of the Companion Policy to NI 44-101. That section provides that the requirement in NI 41-101 or other securities legislation to file an amendment is not satisfied by the incorporation by reference of material change reports filed after the short form prospectus has been receipted. The exception in section 5.8 of the NI 44-102 is limited to periods in which no securities are being distributed under the base shelf prospectus.

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(3) If securities are being distributed under a base shelf prospectus, the general principle referred in subsection (2) applies. The requirement of NI 44-101 or other securities legislation to file an amendment to a prospectus if a material change occurs may be satisfied by filing an amendment which is also a material change report. In these circumstances, the material change report would:

(a) state that the base shelf prospectus is amended and supplemented by the contents of the material change report; and

(b) contain the certificates required to be contained in an amendment.

(4) If an issuer wishes to add securities to its base shelf prospectus it may do so prior to issuing all of the securities qualified by the base shelf prospectus by filing an amendment to the base shelf prospectus. This will not extend the life of the base shelf prospectus.

Part 4 — Prospectus Certificates

4.1 Prospectus Certificates — (1) Appendix A and Appendix B of NI 44-102 provide for two alternate methods of preparing forms of prospectus certificates. Unless a particular method is prescribed, the choice of method may be changed between the date of filing of the preliminary base shelf prospectus and the date of filing of the base shelf prospectus. Furthermore, the method elected need not be the same.

(2) Method 1 requires that forward-looking forms of prospectus certificates be included in a base shelf prospectus. Doing so allows the use of shelf prospectus supplements that do not contain prospectus certificates as set out in section 6.8 of NI 44-102. Method 2 requires forms of prospectus certificates that speak only to the present to be included in both the base shelf prospectus and each shelf prospectus supplement.

(3) Method 1 is mandatory for a base shelf prospectus that establishes an MTN program. If an MTN program is established in a shelf prospectus supplement, method 1 is mandatory and prescribes that forward-looking forms of certificates be included, unless they were already included in the base shelf prospectus.