

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

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PART 1 INTRODUCTION

1.1 Implementation of the Instrument - Certain jurisdictions have implemented National Instrument 44-103 *Post-Receipt Pricing* (the “Instrument”) by one or more instruments forming part of securities legislation or securities directions in the jurisdiction. As a result, the provisions of the Instrument apply in those jurisdictions to the extent provided by, and except as modified by, the implementing law of the jurisdiction.

1.2 Availability of PREP Procedures - Access to the PREP procedures is not restricted to issuers qualified to file a prospectus in the form of a short form prospectus. Any issuer that wishes to use the PREP procedures, or enable a selling securityholder to use the PREP procedures, to distribute securities may file a prospectus that is a base PREP prospectus.

1.3 Relationship of the Instrument to Securities Legislation

(1) Issuers are reminded that the rules and procedures contained in the Instrument for distributions made using the PREP procedures should be read in conjunction with other provisions of securities legislation in each jurisdiction in which a distribution is being made.

(2) A distribution under a short form prospectus using the PREP procedures is subject to all the requirements of National Instrument 44-101 *Short Form Prospectus Distributions*, some of the requirements of National Instrument 41-101 *General Prospectus Requirements* and other provisions of securities legislation, as supplemented or varied by the Instrument and the implementing law of the jurisdiction. Reference is made to Part 1 of the Companion Policy to NI 44-101 for a discussion of the relationship between NI 44-101 and various other pieces of securities legislation and section 1.2 of the Companion Policy to NI 41-101 for a discussion of the relationship between NI 41-101 and various other pieces of securities legislation.

(3) Similarly, a distribution using the PREP procedures not made under a short form prospectus is subject to securities legislation, as

supplemented or varied by the Instrument and the implementing law of the jurisdiction, including NI 41-101.

1.4 Electronic transmission

National Instrument 13-103 *System for Electronic Data Analysis and Retrieval + (SEDAR+)* prescribes that each document that is required or permitted to be provided to a securities regulatory authority or regulator must be transmitted to the securities regulatory authority or regulator electronically through the System for Electronic Data Analysis and Retrieval + (SEDAR+).

The reference to a document includes any report, form, application, information, material and notice, as well as a copy thereof, and applies to documents that are required or permitted to be filed or deposited with, or delivered, furnished, sent, provided, submitted or otherwise transmitted to, a securities regulatory authority or regulator.

To reflect the phased implementation of SEDAR+, the Appendix of National Instrument 13-103 *System for Electronic Data Analysis and Retrieval + (SEDAR+)* sets out securities legislation under which documents are excluded from being filed or delivered in SEDAR+.

National Instrument 13-103 *System for Electronic Data Analysis and Retrieval + (SEDAR+)* should be consulted when providing any document to a securities regulatory authority or regulator under the Instrument and this policy.

- 1.5 Revocation of Purchase – Alberta** – In Alberta, section 130 of the *Securities Act* (Alberta) provides that an agreement to purchase securities is not binding on the purchaser if the dealer receives notice in writing that the purchaser does not intend to be bound by the agreement to purchase within the timelines set out in the regulations. If access to the supplemented PREP prospectus or any amendment is provided in accordance with subsection 2A.5(2) of the Instrument, the applicable timeline is that set forth in section 2A.4(3) of the Instrument. Otherwise, the applicable timeline is that set forth in Alberta Securities Commission Rule 46-503 *Revocation of Purchase*.

PART 2 PROSPECTUS AMENDMENTS

2.1 Prospectus Amendments

- (1) Section 4.4 of the Instrument provides that the size of an offering may be increased or decreased by up to 20% between the filing of

the prospectus and the filing of the supplemented PREP prospectus. The section further provides that, in cases where such a change in the size of the offering constitutes a material change, the requirement in Part 6 of NI 41-101 or other securities legislation to file an amendment if a material change occurs may be satisfied by filing the supplemented PREP prospectus. The form of certificates required in the supplemented PREP prospectus are those set out in subsection 4.5(2) of the Instrument. For changes in the size of the offering by more than 20% that constitute a material change, this flexibility in filing of the amendment is not available.

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

PART 2A ACCESS TO SUPPLEMENTED PREP PROSPECTUSES

2A.1 Delivery Obligation – Securities legislation generally requires a dealer who receives an order to purchase a security offered in a distribution to deliver or send to the purchaser a copy of the prospectus and any amendment. Securities legislation generally requires a dealer who solicits expressions of interest from a prospective purchaser to deliver or send to the prospective purchaser a copy of the preliminary prospectus and any amendment.

Part 2A of the Instrument provides alternative procedures whereby a dealer may provide access to a preliminary prospectus, final prospectus and any amendment. In British Columbia, Québec and New Brunswick, the alternative procedures are structured as an exemption from the delivery obligation, while in all other jurisdictions the alternative is structured as procedures to provide access to the preliminary prospectus, final prospectus and any amendment. The access procedures and the conditions of the exemption are substantially equivalent and both result in providing access to a preliminary prospectus, final prospectus and any amendment.

In jurisdictions except British Columbia, Alberta, Québec and New Brunswick, under subsection 2A.2(2) of the Instrument, a dealer may satisfy its delivery obligation under securities legislation if access to the supplemented PREP prospectus, the preliminary base PREP prospectus and any amendment is provided in accordance with subsection 2A.5(2) or (3) of the Instrument.

In Alberta, under section 2A.3 of the Instrument, a dealer may satisfy its access obligation under securities legislation if access to the documents is provided in accordance with subsection 2A.5(2) or (3) of the Instrument.

In British Columbia and New Brunswick, a dealer is provided with an exemption from the requirement in securities legislation to send a supplemented PREP prospectus, the preliminary base PREP prospectus and any amendment to the documents if the conditions set out in subsection 2A.6(1) or (2) of the Instrument are met.

In Québec, a dealer is provided with an exemption from the requirement in securities legislation to send a supplemented PREP prospectus and any amendment to the documents if the conditions set out in subsection 2A.6(1) of the Instrument are met. It is permissible to provide access to a preliminary base PREP prospectus and any amendment if the document has been filed on SEDAR+ and a receipt has been issued and posted on SEDAR+ for the document.

- 2A.2** **News Release** – To provide access to a supplemented PREP prospectus and any amendment under Part 2A of the Instrument, a news release including prescribed information must be issued and filed on SEDAR+ after the document is filed or within 2 business days before the date the document was filed. The requirements under paragraph 2A.5(2)(c) of the Instrument and the conditions under paragraph 2A.6(1)(c) of the Instrument may be satisfied by including the prescribed information in a news release that contains other information, for example a news release announcing the information omitted from the base PREP prospectus or other information with respect to the applicable offering.

PART 3 PREP PROCEDURES

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

3.2 Best Efforts Distributions - Similarly, paragraph 11 of section 3.3 of the Instrument provides that a base PREP prospectus for a distribution of securities underwritten on a best efforts basis for which a minimum amount of funds are required by an issuer is not required to include disclosure required under securities legislation concerning the maximum length of time for which the distribution may continue and concerning the disposition of subscription funds. Issuers are reminded, as in the previous subsection, that paragraph 1 of subsection 4.5(2) requires all information omitted from a base PREP prospectus to be included in a supplemented PREP prospectus. Therefore, it is necessary to comply with the relevant requirement of securities legislation in a supplemented PREP prospectus relating to specific distributions that are being effected on a best efforts basis. Issuers are also reminded that where PREP procedures are used in connection with securities offered on a best efforts basis for which a minimum amount of funds are required, the issuer may not reduce the size of the distribution pursuant to section 4.4 of the Instrument in a supplemented PREP prospectus to a size that would yield less than the minimum amount of funds.

3.3 Delivery Obligations – Purchaser’s or Subscriber’s Rights – The securities regulatory authorities are of the view that statutory rights of rescission or withdrawal commence from the time of the purchaser's receipt of a supplemented PREP prospectus. It is only at this time that the entire prospectus has been delivered.

Subsections 2A.4(2), 2A.4(3), 2A.4(4), 2A.6(4) and 2A.6(5) of the Instrument set out the period of time within which a purchaser’s or subscriber’s right to withdraw or rescind from, revoke or cancel an agreement to purchase a security or a contract to purchase or a subscription for a security must be exercised when access to a prospectus and any amendment is provided.

For the purposes of section 2A.4 and subsections 2A.6(4) and (5) of the Instrument, securities legislation in a jurisdiction sets out any provisions for who may exercise the right to provide a written notice, whether the notice is required and if so by when and to whom it must be provided, when receipt of the notice is deemed to be provided and who has the onus of proving time to provide a notice has expired.

If a purchaser or subscriber requests an electronic or paper copy of the supplemented PREP prospectus or any amendment from the issuer or dealer as permitted by subsections 2A.5(4) or 2A.6(3) of the Instrument, the request will not affect the calculation of the period of time during which the purchaser or subscriber may exercise these rights.

- 3.4** **Supplemented Prospectus not an Amendment** - The securities regulatory authorities do not consider a supplemented PREP prospectus to constitute an amendment to a prospectus within the meaning of Part 6 of NI 41-101 or other securities legislation.
- 3.5** **Marketing Activities** - Issuers and investment dealers should also refer to the guidance on marketing activities in Part 6 of the Companion Policy to NI 41-101. While the Instrument has provisions on marketing after a receipt for a final base PREP prospectus, NI 41-101 has general provisions that apply to marketing during the waiting period.

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