

**PROPOSED REGULATION TO AMEND THE REGULATION ENTITLED  
NATIONAL INSTRUMENT 44-102,  
SHELF DISTRIBUTIONS**

1. This Regulation amends the Regulation entitled National Instrument 44-102, *Shelf Distributions*.
2. “National Instrument 44-101 Short Form Prospectus Distributions” and “National Instrument 44-101” are struck out wherever they occur and “Regulation 44-101” is substituted.
3. Section 1.1 is amended
  - (a) in subsection (1),
    - (i) by adding the following definition immediately after the definition of “MTN program”:

“ Regulation 44-101” means *Regulation 44-101 respecting Short Form Prospectus Distributions*”;
    - (ii) in the definition of “novel”, by adding “,” immediately after “means”; and
    - (iii) by repealing the definition of “special warrant”; and
  - (b) in subsection (2), by striking out “National Instrument” wherever it occurs and substituting “Regulation”.
4. Section 1.3 is amended by striking out “2.9” and substituting “2.8”.
5. Part 2 is repealed and the following is substituted:

“PART 2 SHELF QUALIFICATION AND PERIOD OF RECEIPT EFFECTIVENESS

**2.1 General**

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 Regulation or has been exempted from this section under section 11.1.

**2.2 Shelf Qualification for Distributions Qualified under Section 2.2 (Basic Qualification) of Regulation 44-101**

- (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 Regulation 44-101 to file a prospectus in the form of a short form prospectus.
- (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.
- (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 subsections 2.9(1) or (2) of Regulation 44-101;
  - (ii) the issuer does not have a current AIF and does not satisfy the requirements of the exemption in either of subsections 2.9(1) or (2) of Regulation 44-101;
  - (iii) the aggregate market value of the issuer's equity securities, listed and posted for trading on an exchange in Canada, has not been \$75,000,000 or more on a date within 60 days before the date of the agreement *[[for Alternative B] the issuer's equity securities are not listed or posted for trading on a short form eligible exchange or the issuer is an issuer (A) whose operations have ceased, or (B) whose principal asset is cash, cash equivalents, or its exchange listing];* or
  - (iv) the issuer has withdrawn its notice declaring the issuer's intention to be qualified to file a short form prospectus under Regulation 44-101; and
- (c) the lapse date, if any, prescribed by securities legislation, if relief has not been granted to the issuer extending the lapse date for the distribution.

**2.3 [Shelf Qualification for Distributions Qualified under Section 2.3 of Regulation 44-101 (Substantial Issuers) [NTD: not necessary for Alternative B]**

- (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 2.3 of Regulation 44-101 to file a prospectus in the form of a short form prospectus.
- (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.
- (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 subsections 2.9(1) or (2) of Regulation 44-101;

- (ii) the issuer does not have a current AIF and does not satisfy the requirements of the exemption in either of subsections 2.9(1) or (2) of Regulation 44-101;
  - (iii) the aggregate market value of the issuer's equity securities, listed and posted for trading on an exchange in Canada, has not been \$300,000,000 or more on a date within 60 days before the date of the agreement; or
  - (iv) the issuer has withdrawn its notice declaring the issuer's intention to be qualified to file a short form prospectus under Regulation 44-101; and
- (c) the lapse date, if any, prescribed by securities legislation, if relief has not been granted to the issuer extending the lapse date for the distribution.]

**2.4 Shelf Qualification for Distributions Qualified under Section 2.4 [2.3] of Regulation 44-101 (Approved Rating Non-Convertible Securities)**

- (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 2.4 [2.3] of Regulation 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) 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.
- (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 subsections 2.9(1) or (2) of Regulation 44-101;
    - (ii) the issuer does not have a current AIF and does not satisfy the requirements of the exemption in either of subsections 2.9(1) or (2) of Regulation 44-101;

- (iii) the issuer has withdrawn its notice declaring the issuer's intention to be qualified to file a short form prospectus under Regulation 44-101; or
- (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 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) the lapse date, if any, prescribed by securities legislation, if relief has not been granted to the issuer extending the lapse date for the distribution.

**2.5 Shelf Qualification for Distributions made under Section 2.5 [2.4] of Regulation 44-101 (Guaranteed Non-Convertible Debt Securities, Preferred Shares and Cash Settled Derivatives)**

- (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 2.5 [2.4] of Regulation 44-101 to file a prospectus in the form of a short form prospectus.
- (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.
- (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 2.5(1)2(c) [2.4(1)2(b)] of Regulation 44-101, but not the requirements of subparagraphs [subparagraph] 2.5(1)2(a) or (b) [2.4(1)2(a)] of Regulation 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 subsections 2.9(1) or (2) of Regulation 44-101;

- (iii) unless the requirements of subparagraph 2.5(1)2(c) [2.4(1)2(b)] of Regulation 44-101, but not the requirements of subparagraphs [subparagraph] 2.5(1)2(a) or (b) [2.4(1)2(a)] of Regulation 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 subsections 2.9(1) or (2) of Regulation 44-101;
- (iv) the credit supporter has withdrawn its notice declaring its intention to be qualified to file a short form prospectus under Regulation 44-101;
- (v) the issuer has withdrawn its notice declaring the issuer's intention to be qualified to file a short form prospectus under Regulation 44-101; or
- (vi) the aggregate market value of the equity securities of the credit supporter, listed and posted for trading on an exchange in Canada, has not been \$75,000,000 or more on a date within 60 days before the date of the agreement [{"for Alternative B the credit supporter's equity securities are not listed or posted for trading on a short form eligible exchange or the credit supporter is an issuer (A) whose operations have ceased, or (B) whose principal asset is cash, cash equivalents, or its exchange listing}], and either of the following is true:
  - (A) 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 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, and
    - (III) have not received a rating lower than an approved rating from any approved rating organization, or
  - (B) 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 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) the lapse date, if any, prescribed by securities legislation, if relief has not been granted to the issuer extending the lapse date for the distribution.

**2.6 Shelf Qualification for Distributions made under Section 2.6 [2.5] of Regulation 44-101 (Guaranteed Convertible Debt Securities or Preferred Shares)**

(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 2.6 [2.5] of Regulation 44-101 to file a prospectus in the form of a short form prospectus.

(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.

(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;

(ii) the credit supporter does not have current annual financial statements and does not satisfy the requirements of the exemption in either of subsections 2.9(1) or (2) of Regulation 44-101;

(iii) the credit supporter does not have a current AIF and does not satisfy the requirements of the exemption in either of subsections 2.9(1) or (2) of Regulation 44-101;

(iv) the aggregate market value of the credit supporter's equity securities, listed and posted for trading on an exchange in Canada, has not been \$75,000,000 or more on a date within 60 days before the date of the agreement *[[for Alternative B] the credit supporter's equity securities are not listed or posted for trading on a short form eligible exchange or the issuer is an issuer (A) whose operations have ceased, or (B) whose principal asset is cash, cash equivalents, or its exchange listing];*

- (v) the credit supporter has withdrawn its notice declaring the credit supporter's intention to be qualified to file a short form prospectus under Regulation 44-101; or
  - (vi) the issuer has withdrawn its notice declaring the issuer's intention to be qualified to file a short form prospectus under Regulation 44-101; and
- (c) the lapse date, if any, prescribed by securities legislation, if relief has not been granted to the issuer extending the lapse date for the distribution.

**2.7 Shelf Qualification for Distributions made under Section 2.7 [2.6] of Regulation 44-101 (Asset-Backed Securities)**

- (1) An issuer that is qualified under section 2.7 [2.6] of Regulation 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 from any approved rating organization; 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) An issuer that has filed a preliminary base shelf prospectus in reliance on the qualification criteria in section 2.7 [2.6] of Regulation 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 subsections 2.9(1) or (2) of Regulation 44-101;
    - (ii) the issuer does not have a current AIF and does not satisfy the requirements of the exemption in either of subsections 2.9(1) or (2) of Regulation 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) the lapse date, if any, prescribed by securities legislation, if relief has not been granted to the issuer extending the lapse date for the distribution.

## **2.8 Lapse Date - Ontario**

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.

## **2.9 Lapse Date - Alberta**

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

## **2.10 Prohibited Offerings**

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

6. Subsections 4.1(1) and (2) are amended by moving “in the local jurisdiction” to immediately after “distribute”.
7. Section 5.1 is amended in the preamble by adding “for the distribution” immediately after “a short form prospectus”.
8. Sections 5.3 and 5.6 are amended by striking out “44-101F3” wherever it occurs and substituting “44-101F1”.
9. Section 5.4 is amended by striking out “person or company” and substituting “issuer or selling securityholder”.
10. Section 6.1 is amended by adding “and, in Québec, to contain no misrepresentation that is likely to affect the value or the market price of the securities to be distributed” immediately after “distributed under the prospectus”.
11. Section 6.2(1) is amended by adding “,” immediately after “base shelf prospectus” wherever it occurs.
12. Section 6.4(1) is repealed the following is substituted:
  - “(1) A shelf prospectus supplement shall be filed in the local jurisdictions in which securities are distributed using the shelf prospectus supplement.”



13. Section 6.5 is amended by striking out “securities legislation that regulate conflicts of interest in connection with a distribution of securities of a registrant, a connected issuer of a registrant or a related issuer of a registrant” and substituting “National Instrument 33-105, *Underwriting Conflicts* and, in Québec, the applicable securities legislation”.
14. Section 6.7 is amended by adding “and, in Québec, contain no misrepresentation that is likely to affect the value or the market price of the securities to be distributed,” immediately after “distributed”.
15. Section 7.1 is amended by striking out “do not”.
16. Subsection 7.2(1) is amended by striking out “that use of the” and substituting “the use of that”.
17. Section 7.3 is repealed.
18. Subsection 8.2(1) is amended by striking out “5.5” and substituting “5.6”.
19. Subsection 9.1(1) is amended
  - (a) by striking out “11.1” and substituting “6.1”; and
  - (b) by striking out “2.9” and substituting “2.8”.
20. Part 10 is repealed.
21. Subsection 11.1(2) is amended by striking out “and Alberta”.
22. The title is replaced by *Regulation 44-102 respecting Shelf Distributions*.
23. This Regulation comes into force on ●, 2005.