

Note: [17 Mar 2008] – Changes to 44-102CP arising from NI 41-101. Refer to Appendix E of CSA Notice announcing repeal and replacement of NI 41-101 dated 21 Dec 2007.

CHANGES TO COMPANION POLICY 44-102CP TO NATIONAL INSTRUMENT 44-102 *SHELF DISTRIBUTIONS*

Companion Policy 44-102CP to National Instrument 44-102 *Shelf Distributions* is changed as follows:

- 1. Companion Policy 44-102CP to National Instrument 44-102 *Shelf Distributions* is amended by striking out “security holder” wherever it occurs and substituting “securityholder”.**
- 2. Subsection 1.1(2) is repealed and the following is substituted:**

“(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.”.
- 3. Subsection 2.2(1) is amended by striking out “the lapse date of the receipt, if any, prescribed by securities legislation” and substituting the following “in Ontario, the lapse date of the receipt prescribed by securities legislation”.**
- 4. Section 2.4 is amended**
 - (a) in subsection (2), by striking out “Particularly in the area of distributions of novel specified derivatives and asset-backed securities, the securities regulatory authorities wish to encourage adequate prospectus disclosure, either in the base shelf prospectus or the shelf prospectus supplement, of the attributes of and the risks associated with these products” and substituting “All material attributes of the products, and the risks associated with them, should be disclosed in either the base shelf prospectus or the shelf prospectus supplement”;**
 - (b) in subsection (3), by striking out “section 4.1” and substituting “section 4.1 of NI 44-102”; and**

(c) by repealing subsections (4) and (5) and substituting the following:

- “(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 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.”.

5. **Section 2.6.1 is amended by striking out “opinion, report or valuation” and substituting “report, valuation, statement or opinion”.**

6. **Section 3.1 is amended**

(a) **in subsection (1), by striking out “Securities legislation in a number of jurisdictions” and substituting “Part 6 of NI 41-101 or other securities legislation”;**

(b) **by repealing subsection (2) and substituting the following:**

“(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.”; **and**

(c) **in subsection (3), by adding “NI 41-101 or other” after “The requirement of”.**

7. **Subsection 4.1(1) is amended**

(a) **in subsection (1),**

- (i) **by striking out** “executing” **and substituting** “preparing forms of” and by striking out “by an issuer, credit supporter and underwriter”, **and**
 - (ii) **by striking out** “The method selected by an issuer applies to a promoter.”;
- (b) **by repealing subsection (2) and substituting the following:**
- “(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.”; **and**
- (c) **in subsection (3), by striking out** “forward looking certificates” **and substituting** “forward-looking forms of certificates”.