

NOVA SCOTIA SECURITIES COMMISSION

**RULE 41-101 (AMENDMENT)
GENERAL PROSPECTUS REQUIREMENTS
AND RELATED AMENDMENTS TO
RULE 44-101 SHORT FORM PROSPECTUS DISTRIBUTIONS,
RULE 44-102 SHELF DISTRIBUTIONS AND
RULE 44-103 POST-RECEIPT PRICING**

-AND-

**AMENDMENT INSTRUMENT FOR NATIONAL INSTRUMENT 44-101
SHORT FORM PROSPECTUS DISTRIBUTIONS,
AMENDMENT INSTRUMENT FOR NATIONAL INSTRUMENT 44-102
SHELF DISTRIBUTIONS AND AMENDMENT INSTRUMENT FOR
NATIONAL INSTRUMENT 44-103 POST-RECEIPT PRICING
(collectively, the Rule)**

-AND-

**CHANGES TO COMPANION POLICY 44-101CP TO NATIONAL
INSTRUMENT 44-101 SHORT FORM PROSPECTUS DISTRIBUTIONS,
CHANGES TO COMPANION POLICY 44-102CP TO NATIONAL
INSTRUMENT 44-102 SHELF DISTRIBUTIONS, CHANGES TO
COMPANION POLICY 44-103CP TO NATIONAL
INSTRUMENT 44-103 POST-RECEIPT PRICING,
CHANGES TO NATIONAL POLICY 41-201 INCOME TRUSTS
AND OTHER INDIRECT OFFERINGS AND CHANGES TO NATIONAL
POLICY 47-201 TRADING SECURITIES USING THE INTERNET
AND OTHER ELECTRONIC MEANS
(collectively, the Companion Policy)**

WHEREAS:

1. Pursuant to section 150 of the *Securities Act*, R.S.N.S. 1989, chapter 418, as amended (the Act), the Nova Scotia Securities Commission (the Commission) has power to make rules subject to compliance with the requirements of the Act;
2. Pursuant to section 19 of the Act, the Commission has power to issue and publish policy statements;


3. The Rule and Companion Policy, copies of which are attached hereto, have been made a rule by one or more of the Canadian securities regulatory authorities; and

4. The Commission is of the opinion that the attainment of the purpose of the Act is advanced by this Instrument.


NOW THEREFORE the Commission hereby:

- (a) pursuant to the authority contained in section 150 of the Act and subject to compliance with the requirements of section 150A of the Act, approves the Rule and makes the same a rule of the Commission;
- (b) pursuant to the authority contained in section 19 of the Act and subject to publication on the Commission's website, issues the Companion Policy as a policy statement of the Commission; and
- (c) declares that the rule approved and made pursuant to clause (a) and the issuance of the policy statement pursuant to clause (b) shall both take effect on **August 13, 2013**, unless the Minister disapproves the rule or returns it to the Commission in accordance with subsection 150A(3) of the Act in which event the rule and the policy statement shall not be effective until the rule is approved by the Minister.

IN WITNESS WHEREOF this Instrument has been signed by the Chair and Vice-chair of the Commission, being the members of the Commission prescribed by the Chair pursuant to subsection 15(3) of the Act to attend the hearing of this matter and the quorum with respect to this matter, this 30th day of May, 2013.



Sarah P. Bradley, Chair



Paul Radford, Q.C., Vice-chair

Attachments

**Amendment Instrument for
National Instrument 44-101 *Short Form Prospectus Distributions***

1. *National Instrument 44-101 Short Form Prospectus Distributions is amended by this Instrument.*
2. *Subsection 4.1(1) is amended*
 - (a) *by adding the following after subparagraph (a)(vi):*
 - (vii) **Marketing Materials** – a copy of any template version of the marketing materials required to be filed under paragraph 7.6(1)(e) of this Instrument or paragraph 13.7(1)(e) of NI 41-101 that has not previously been filed; and,
 - (b) *in subparagraph (b)(ii) by replacing “Handbook.” with “Handbook; and”, and*
 - (c) *by adding the following after subparagraph (b)(ii):*
 - (iii) **Marketing Materials** – a copy of any template version of the marketing materials required to be delivered under paragraph 7.6(4)(c) or 7.8(2)(c) of this Instrument or paragraph 13.7(4)(c) or 13.12(2)(c) of NI 41-101 that has not previously been delivered..
3. *Section 4.2 is amended*
 - (a) *by deleting “and” after subparagraph (a)(x.1),*
 - (b) *by adding the following after subparagraph (a)(xi):*
 - (xii) **Marketing Materials** – a copy of any template version of the marketing materials required to be filed under paragraph 7.6(1)(e) or 7.6(7)(a) of this Instrument or paragraph 13.7(1)(e), 13.7(7)(a) or 13.8(1)(e) of NI 41-101 that has not previously been filed; and,
 - (c) *by deleting “and” after subparagraph (b)(i),*
 - (d) *in subparagraph (b)(ii), by replacing “listing of the exchange.” with “listing of the exchange, and”, and*
 - (e) *by adding the following after subparagraph (b)(ii):*
 - (iii) a copy of any template version of the marketing materials required to be delivered under paragraph 7.6(4)(c) or 7.8(2)(c) of this Instrument or paragraph 13.7(4)(c) or 13.12(2)(c) of NI 41-101 that has not previously been delivered..

4. *Part 7 is amended by replacing sections 7.1 and 7.2 with the following:*

7.1 **Definitions and Interpretations**

(1) In this Part:

“bought deal agreement” means a written agreement

- (a) under which one or more underwriters has agreed to purchase all securities of an issuer that are to be offered in a distribution under a short form prospectus on a firm commitment basis, other than securities issuable on the exercise of an over-allotment option,
- (b) that does not have a market-out clause,
- (c) that, other than an over-allotment option, does not provide an option for any party to increase the number of securities to be purchased, and
- (d) that, other than what is agreed to under a confirmation clause that complies with section 7.4, is not conditional on one or more additional underwriters agreeing to purchase any of the securities offered;

“comparables” means information that compares an issuer to other issuers;

“confirmation clause” means a provision in a bought deal agreement that provides that the agreement is conditional on the lead underwriter confirming that one or more additional underwriters has agreed to purchase certain of the securities offered;

“market-out clause” means a provision in an agreement which permits an underwriter to terminate its commitment, or underwriters to terminate their commitment, to purchase securities in the event that the securities cannot be marketed profitably due to market conditions;

“U.S. cross-border offering” means an offering of securities of an issuer being made contemporaneously in the United States of America and Canada by way of a prospectus filed with a securities regulatory authority in a jurisdiction of Canada and a U.S. prospectus filed with the SEC;

“U.S. prospectus” means a prospectus that has been prepared in accordance with the disclosure and other requirements of U.S. federal securities law for an offering of securities registered under the 1933 Act.

- (2) In this Part, for greater certainty, a reference to “provides” includes showing a document to a person without allowing the person to retain or make a copy of the document.

7.2 **Solicitations of Expressions of Interest** – Subject to subsection 7.4(2), the prospectus requirement does not apply to a solicitation of an expression of interest made before the issuance of a receipt for a preliminary short form prospectus for securities to be qualified for distribution under a short form prospectus pursuant to this Instrument or for securities to be issued or transferred pursuant to an over-allotment option that are qualified for distribution under a short form prospectus pursuant to this Instrument, if

- (a) before the solicitation,
 - (i) the issuer has entered into a bought deal agreement;
 - (ii) the bought deal agreement has fixed the terms of the distribution, including, for greater certainty, the number and type of securities and the price per security, and requires that the issuer file a preliminary short form prospectus for the securities not more than four business days after the date that the bought deal agreement was entered into; and
 - (iii) immediately upon entering into the bought deal agreement, the issuer issued and filed a news release announcing the agreement,
- (b) the issuer files a preliminary short form prospectus for the securities pursuant to this Instrument within four business days after the date that the bought deal agreement was entered into,
- (c) upon issuance of a receipt for the preliminary short form prospectus, a copy of the preliminary short form prospectus is sent to each person or company that, in response to the solicitation, expressed an interest in acquiring the securities, and
- (d) except for a bought deal agreement under paragraph (a) or a more extended form of underwriting agreement referred to in subsection 7.3(6), no agreement of purchase and sale for the securities is entered into until the short form prospectus has been filed and a receipt has been issued.

7.3 **Amendment or Termination of Bought Deal Agreement**

- (1) Except as provided in subsections (2) to (7), a party to a bought deal agreement referred to in paragraph 7.2(a) must not agree to modify the terms of a distribution provided for under a bought deal agreement.
- (2) The parties to a bought deal agreement referred to in paragraph 7.2(a) may increase the number of securities to be purchased by an underwriter or underwriters, if
 - (a) the number of additional securities to be purchased does not exceed 100% of the total of the base offering contemplated by the original agreement plus any securities that would be acquired upon

- the exercise of an over-allotment option;
- (b) the type of securities to be purchased, and the price per security, is the same as under the original agreement;
 - (c) the issuer files a preliminary short form prospectus for the increased number of securities in accordance with this Instrument within four business days after the date that the original agreement was entered into;
 - (d) immediately upon agreeing to change the number of securities to be purchased, the issuer issued and filed a news release announcing the amendment;
 - (e) no previous amendment has been made to the original agreement to increase the number of securities to be purchased; and
 - (f) the amended agreement is a bought deal agreement and the conditions in section 7.2 are complied with.
- (3) The parties to a bought deal agreement referred to in paragraph 7.2(a) may reduce the number of securities to be purchased, or the price of the securities, if the amendment is made on or after the date which is four business days after the date the original agreement was entered into.
- (4) The parties to a bought deal agreement referred to in paragraph 7.2(a) may provide for a different type of securities to be purchased by the underwriter or underwriters, and a different price for the securities, if
- (a) in the case where a different type of securities is to be substituted in whole or in part for the securities that were the subject of the original agreement, or offered in addition to the securities that were the subject of the original agreement, the aggregate dollar amount of the securities to be purchased by the underwriter or underwriters on a firm commitment basis under the amended agreement is the same as the aggregate dollar amount of the securities that were to be purchased by the underwriter or underwriters on a firm commitment basis under the original agreement or under an agreement amended in accordance with subsection (2);
 - (b) before a solicitation of an expression of interest in the different type of securities and immediately upon entering into the amendment to the original agreement, the issuer issued and filed a news release announcing the amendment;
 - (c) the issuer files a preliminary short form prospectus for the different type of securities pursuant to this Instrument within four business

- days after the date that the original agreement was entered into;
- (d) no previous amendment has been made to the original agreement to provide for a different type of securities to be purchased; and
 - (e) the amended agreement is a bought deal agreement and the conditions in section 7.2 are complied with.
- (5) The parties to a bought deal agreement referred to in paragraph 7.2(a) may add or remove an underwriter or adjust the number of securities to be purchased by each underwriter on a proportionate basis, if
- (a) the aggregate dollar amount of the securities to be purchased by the underwriter or underwriters on a firm commitment basis under the amended agreement is the same as the aggregate dollar amount of the securities that were to be purchased by the underwriter or underwriters on a firm commitment basis under the original agreement or under an agreement amended in accordance with subsection (2); and
 - (b) the amended agreement is a bought deal agreement and the conditions in section 7.2 are complied with.
- (6) The parties to a bought deal agreement referred to in paragraph 7.2(a) may replace the bought deal agreement with a more extended form of underwriting agreement that includes, without limitation, termination rights, if the more extended form of underwriting agreement complies with the terms and conditions that apply to a bought deal agreement under this Part.
- (7) The parties to a bought deal agreement referred to in paragraph 7.2(a) may agree to terminate the agreement if the parties decide not to proceed with the distribution.

7.4 **Confirmation Clause**

- (1) A bought deal agreement referred to in paragraph 7.2(a) must not contain a confirmation clause unless
- (a) under the bought deal agreement, the lead underwriter must provide the issuer with a copy of the agreement that has been signed by the lead underwriter;
 - (b) the issuer signs the bought deal agreement on the same day that the lead underwriter provides the agreement in accordance with paragraph (a);
 - (c) the lead underwriter has discussions with other investment dealers regarding their participation in the distribution as additional

underwriters; and

(d) on the business day after the day that the lead underwriter provides the agreement in accordance with paragraph (a), the lead underwriter provides notice in writing to the issuer that

(i) the lead underwriter has confirmed the terms of the bought deal agreement, or

(ii) the lead underwriter will not be confirming the terms of the bought deal agreement and the agreement has been terminated.

(2) Where an issuer has entered into a bought deal agreement that has been confirmed in accordance with subsection (1), the prospectus requirement does not apply to a solicitation of an expression of interest made before the issuance of a receipt for a preliminary short form prospectus for securities to be qualified for distribution under a short form prospectus pursuant to this Instrument, or for securities to be issued or transferred pursuant to an over-allotment option that are qualified for distribution under a short form prospectus pursuant to this Instrument, if

(a) before the solicitation,

(i) the bought deal agreement has fixed the terms of the distribution, including, for greater certainty, the number and type of securities and the price per security, and requires that the issuer file a preliminary short form prospectus for the securities not more than four business days after the date that the lead underwriter provides the notice in accordance with subparagraph (1)(d)(i); and

(ii) immediately after the lead underwriter provides the notice in accordance with subparagraph (1)(d)(i), the issuer issues the news release referred to in subparagraph 7.2(a)(iii),

(b) the issuer files a preliminary short form prospectus for the securities pursuant to this Instrument within four business days after the date that the lead underwriter provides the notice in accordance with subparagraph (1)(d)(i),

(c) upon issuance of a receipt for the preliminary short form prospectus, a copy of the preliminary short form prospectus is sent to each person or company that, in response to the solicitation, expressed an interest in acquiring the securities, and

(d) except for a bought deal agreement under paragraph 7.2(a), no agreement of purchase and sale for the securities is entered into

until the short form prospectus has been filed and a receipt has been issued.

7.5 Standard Term Sheets after Announcement of Bought Deal but before a Receipt for a Preliminary Short Form Prospectus

- (1) An investment dealer that provides a standard term sheet to a potential investor before the issuance of a receipt for a preliminary short form prospectus is exempt from the prospectus requirement with respect to providing the standard term sheet if
 - (a) the standard term sheet complies with subsections (2) and (3);
 - (b) the issuer is relying on the exemption in section 7.2 and has complied with paragraph 7.2(a);
 - (c) other than contact information for the investment dealer or underwriters, all information in the standard term sheet concerning the issuer, the securities or the offering
 - (i) is disclosed in, or derived from,
 - (A) the news release described in subparagraph 7.2(a)(iii), or
 - (B) a document referred to in subsection 11.1(1) of Form 44-101F1 that the issuer has filed, or
 - (ii) will be disclosed in, or derived from, the preliminary short form prospectus that is subsequently filed; and
 - (d) the preliminary short form prospectus will be filed in the local jurisdiction.
- (2) A standard term sheet provided under subsection (1) must be dated and include the following legend, or words to the same effect, on the first page:

A preliminary short form prospectus containing important information relating to the securities described in this document has not yet been filed with the securities regulatory authorit[y/ies] in [each of/certain of the provinces/provinces and territories of Canada].

Copies of the preliminary short form prospectus may be obtained from *[insert contact information for the investment dealer or underwriters]*. There will not be any sale or any acceptance of an offer to buy the securities until a receipt for the final short form prospectus has been issued.

This document does not provide full disclosure of all material facts relating to the securities offered. Investors should read the preliminary short form prospectus, final short form prospectus and any amendment, for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.

- (3) A standard term sheet provided under subsection (1) may contain only the information referred to in subsection (2) and the information referred to in subsection 13.5(3) of NI 41-101.

7.6 Marketing Materials after Announcement of Bought Deal but before a Receipt for a Preliminary Short Form Prospectus

- (1) An investment dealer that provides marketing materials to a potential investor before the issuance of a receipt for a preliminary short form prospectus is exempt from the prospectus requirement with respect to providing the marketing materials if
 - (a) the marketing materials comply with subsections (2) to (8);
 - (b) the issuer is relying on the exemption in section 7.2 and has complied with paragraph 7.2(a);
 - (c) other than contact information for the investment dealer or underwriters and any comparables, all information in the marketing materials concerning the issuer, the securities or the offering
 - (i) is disclosed in, or derived from,
 - (A) the news release described in subparagraph 7.2(a)(iii), or
 - (B) a document referred to in subsection 11.1(1) of Form 44-101F1 that the issuer has filed, or
 - (ii) will be disclosed in, or derived from, the preliminary short form prospectus that is subsequently filed;
 - (d) a template version of the marketing materials is approved in writing by the issuer and the lead underwriter before the marketing materials are provided;
 - (e) a template version of the marketing materials is filed on or before the day that the marketing materials are first provided;
 - (f) the preliminary short form prospectus will be filed in the local

jurisdiction; and

- (g) upon issuance of a receipt for the preliminary short form prospectus, a copy of the preliminary short form prospectus is sent to each person or company that received the marketing materials and expressed an interest in acquiring the securities.
- (2) If a template version of the marketing materials is approved in writing by the issuer and lead underwriter under paragraph (1)(d) and filed under paragraph (1)(e), an investment dealer may provide a limited-use version of the marketing materials that
- (a) has a date that is different than the template version;
 - (b) contains a cover page referring to the investment dealer or underwriters or a particular investor or group of investors;
 - (c) contains contact information for the investment dealer or underwriters; or
 - (d) has text in a format, including the type's font, colour or size, that is different than the template version.
- (3) If a template version of the marketing materials is divided into separate sections for separate subjects and is approved in writing by the issuer and lead underwriter under paragraph (1)(d), and that template version is filed under paragraph (1)(e), an investment dealer may provide a limited-use version of the marketing materials that includes only one or more of those separate sections.
- (4) The issuer may remove any comparables, and any disclosure relating to those comparables, from the template version of the marketing materials before filing it under paragraph (1)(e) or (7)(a) if
- (a) the comparables, and any disclosure relating to the comparables, are in a separate section of the template version of the marketing materials;
 - (b) the template version of the marketing materials that is filed contains a note advising that the comparables, and any disclosure relating to the comparables, were removed in accordance with this subsection, provided that the note appears immediately after where the removed comparables and related disclosure would have been;
 - (c) if the preliminary short form prospectus is subsequently filed in the local jurisdiction, a complete template version of the marketing materials is delivered to the securities regulatory authority; and

(d) the complete template version of the marketing materials contains the disclosure referred to in paragraph 13.7(4)(d) of NI 41-101.

(5) Marketing materials provided under subsection (1) must be dated and include the following legend, or words to the same effect, on the first page:

A preliminary short form prospectus containing important information relating to the securities described in this document has not yet been filed with the securities regulatory authorit[y/ies] in [each of/certain of the provinces/provinces and territories of Canada]. A copy of the preliminary short form prospectus is required to be delivered to any investor that received this document and expressed an interest in acquiring the securities.

There will not be any sale or any acceptance of an offer to buy the securities until a receipt for the final short form prospectus has been issued.

This document does not provide full disclosure of all material facts relating to the securities offered. Investors should read the preliminary short form prospectus, final short form prospectus and any amendment, for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.

(6) If marketing materials are provided before the issuance of a receipt for a preliminary short form prospectus under subsection (1), the issuer must include the template version of the marketing materials filed under paragraph (1)(e) in its final short form prospectus or incorporate by reference the template version of the marketing materials filed under paragraph (1)(e) into its final short form prospectus in the manner described in subsection 11.6(1) of Form 44-101F1.

(7) If the final short form prospectus or any amendment modifies a statement of a material fact that appeared in marketing materials provided before the issuance of a receipt for the preliminary short form prospectus under subsection (1), the issuer must

(a) prepare and file, at the time the issuer files the final short form prospectus or any amendment, a revised template version of the marketing materials that is blacklined to show the modified statement, and

(b) include in the final short form prospectus, or any amendment, the disclosure required by subsection 11.6(3) of Form 44-101F1.

(8) A revised template version of the marketing materials filed under

subsection (7) must comply with section 13.8 of NI 41-101.

- (9) If marketing materials are provided before the issuance of a receipt for a preliminary short form prospectus under subsection (1) but the issuer does not comply with subsection (6), the marketing materials are deemed for purposes of securities legislation to be incorporated into the issuer's final short form prospectus as of the date of the final short form prospectus to the extent not otherwise expressly modified or superseded by a statement contained in the final short form prospectus.

7.7 Road Shows after Announcement of Bought Deal but before a Receipt for a Preliminary Short Form Prospectus

- (1) An investment dealer that conducts a road show for potential investors before the issuance of a receipt for a preliminary short form prospectus is exempt from the prospectus requirement with respect to the road show if
 - (a) the road show complies with subsections (2) to (4);
 - (b) the issuer is relying on the exemption in section 7.2 and has complied with paragraph 7.2(a); and
 - (c) the preliminary short form prospectus will be filed in the local jurisdiction.
- (2) Subject to section 7.8, an investment dealer must not provide marketing materials to an investor attending a road show conducted under subsection (1) unless the marketing materials are provided in accordance with section 7.6.
- (3) If an investment dealer conducts a road show, the investment dealer must establish and follow reasonable procedures to
 - (a) ask any investor attending the road show in person, by telephone conference call, on the internet or by other electronic means to provide their name and contact information;
 - (b) keep a record of any information provided by the investor; and
 - (c) upon issuance of a receipt for the preliminary prospectus, provide the investor with a copy of the preliminary prospectus and any amendment.
- (4) If an investment dealer permits an investor, other than an accredited investor, to attend a road show, the investment dealer must commence the road show with the oral reading of the following statement or a statement to the same effect:

This presentation does not provide full disclosure of all material

facts relating to the securities offered. Investors should read the preliminary prospectus, the final prospectus and any amendment for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.

7.8 Exception from Filing and Incorporation Requirements for Road Shows for Certain U.S. Cross-border Offerings

- (1) Subject to subsections (2) to (4), if an investment dealer provides marketing materials to a potential investor in connection with a road show for a U.S. cross-border offering, the following provisions do not apply to the template version of the marketing materials relating to the road show:
 - (a) paragraph 7.6(1)(e);
 - (b) subsections 7.6(6) to (9);
 - (c) paragraphs 11.6(1)(b) and (c), paragraph 11.6(3)(b) and subsection 11.6(4) of Form 44-101F1.
- (2) Subsection (1) does not apply unless
 - (a) the underwriters have a reasonable expectation that the securities offered under the U.S. cross-border offering will be sold primarily in the United States of America;
 - (b) the issuer and the underwriters who sign the final short form prospectus filed in the local jurisdiction provide a contractual right containing the language set out in subsection 36A.1(5) of Form 41-101F1, or words to the same effect, except that the language may specify that the contractual right does not apply to any comparables provided in accordance with subsection (3); and
 - (c) if the prospectus is filed in the local jurisdiction, the template version of the marketing materials relating to the road show is delivered to the securities regulatory authority.
- (3) If the template version of the marketing materials relating to the road show contains comparables, the template version of the marketing materials must contain the disclosure referred to in paragraph 13.7(4)(d) of NI 41-101.
- (4) For greater certainty, subsection (1) does not apply to marketing materials other than the marketing materials provided in connection with the road show..

- 5. Section 5.1 of Form 44-101F1 is amended in paragraph (a), by replacing “[its/their] assessment of the state of the financial markets” with “[describe any “market out”, “disaster out”, “material change out” or similar provision]”.**

6. *Item 11 of Form 44-101F1 is amended by adding the following after section 11.5:*

11.6 Marketing Materials

- (1) If marketing materials were provided under subsection 7.6(1) of the Instrument or subsection 13.7(1) or 13.8(1) of NI 41-101, the issuer must
 - (a) include a section under the heading “Marketing Materials” proximate to the beginning of the short form prospectus that contains the disclosure required by this Item,
 - (b) subject to subsection (2), include the template version of the marketing materials filed under the Instrument or NI 41-101 in the final short form prospectus, or incorporate by reference the template version of the marketing materials filed under the Instrument or NI 41-101 into the final short form prospectus, and
 - (c) indicate that the template version of the marketing materials is not part of the final short form prospectus to the extent that the contents of the template version of the marketing materials have been modified or superseded by a statement contained in the final short form prospectus.
- (2) An issuer may comply with paragraph (1)(b) by including the template version of the marketing materials filed under the Instrument or NI 41-101 in the section of the short form prospectus under the heading “Marketing Materials” or in an appendix to the short form prospectus that is referred to in that section.
- (3) If the final short form prospectus or any amendment modifies a statement of material fact that appeared in marketing materials provided earlier,
 - (a) provide details of how the statement in the marketing materials has been modified, and
 - (b) disclose that, pursuant to subsection 7.6(7) of the Instrument or subsection 13.7(8) or 13.8(8) of NI 41-101,
 - (i) the issuer has prepared a revised template version of the marketing materials which has been blacklined to show the modified statement, and
 - (ii) the revised template version of the marketing materials can be viewed under the issuer’s profile on www.sedar.com.
- (4) State that any template version of the marketing materials filed under NI 41-101 after the date of the final short form prospectus and before the termination of the distribution is deemed to be incorporated into the final

short form prospectus.

- (5) If the issuer relies on the exception in subsection 7.8(1) of the Instrument or subsection 13.12(1) of NI 41-101, include the statement set out in subsection 36.A.1(5) of Form 41-101F1, or words to the same effect.

GUIDANCE

Marketing materials do not, as a matter of law, amend a preliminary short form prospectus, a final short form prospectus or any amendment..

- 7. *This Instrument comes into force on August 13, 2013.***

**Amendment Instrument for
National Instrument 44-102 Shelf Distributions**

1. *National Instrument 44-102 Shelf Distributions is amended by this Instrument.*
2. *The following new Part 9A is added after section 9.2:*

PART 9A: Marketing in Connection with Shelf Distributions

Definitions

9A.1(1) In this Part,

“comparables” means information that compares an issuer to other issuers;

“U.S. cross-border offering” means an offering of securities of an issuer being made contemporaneously in the United States of America and Canada by way of a prospectus filed with a securities regulatory authority in a jurisdiction of Canada and a U.S. prospectus filed with the SEC;

“U.S. prospectus” means a prospectus that has been prepared in accordance with the disclosure and other requirements of U.S. federal securities law for an offering of securities registered under the 1933 Act.

- (2) In this Part, for greater certainty, a reference to “provides” includes showing a document to a person without allowing the person to retain or make a copy of the document.

Standard Term Sheets after a Receipt for a Final Base Shelf Prospectus

9A.2(1) An investment dealer must not provide a standard term sheet to a potential investor after a receipt for a final base shelf prospectus or any amendment is issued unless

- (a) the standard term sheet complies with subsections (2) and (3);
- (b) other than contact information for the investment dealer or underwriters, all information in the standard term sheet concerning the issuer, the securities or the offering
 - (i) is disclosed in, or derived from, the final base shelf prospectus, any amendment or an applicable shelf prospectus supplement that has been filed, or
 - (ii) will be disclosed in, or derived from, an applicable shelf prospectus supplement that is subsequently filed; and
- (c) a receipt for the final base shelf prospectus has been issued in the

local jurisdiction.

- (2) A standard term sheet provided under subsection (1) must be dated and include the following legend, or words to the same effect, on the first page:

A final base shelf prospectus containing important information relating to the securities described in this document has been filed with the securities regulatory authorit[y/ies] in [each of/certain of the provinces/provinces and territories of Canada].

Copies of the final base shelf prospectus, and any applicable shelf prospectus supplement, may be obtained from *[insert contact information for the investment dealer or underwriters]*.

This document does not provide full disclosure of all material facts relating to the securities offered. Investors should read the final base shelf prospectus, any amendment and any applicable shelf prospectus supplement for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.

- (3) A standard term sheet provided under subsection (1) may contain only the information referred to in subsection (2) and the information referred to in subsection 13.5(3) of NI 41-101.

Marketing Materials after a Receipt for a Final Base Shelf Prospectus

9A.3(1) An investment dealer must not provide marketing materials to a potential investor after a receipt for a final base shelf prospectus or any amendment is issued unless

- (a) the marketing materials comply with subsections (2) to (8);
- (b) other than contact information for the investment dealer or underwriters and any comparables, all information in the marketing materials concerning the issuer, the securities or the offering
 - (i) is disclosed in, or derived from, the final base shelf prospectus, any amendment or an applicable shelf prospectus supplement that has been filed, or
 - (ii) will be disclosed in, or derived from, an applicable shelf prospectus supplement that is subsequently filed;
- (c) other than prescribed language, the marketing materials contain the same cautionary language in bold type as contained on the cover page, and in the summary, of the final base shelf prospectus;

- (d) a template version of the marketing materials is approved in writing by the issuer and the lead underwriter before the marketing materials are provided;
 - (e) a template version of the marketing materials is filed on or before the day that the marketing materials are first provided;
 - (f) a receipt for the final base shelf prospectus has been issued in the local jurisdiction; and
 - (g) the investment dealer provides a copy of the final base shelf prospectus, any amendment and any applicable shelf prospectus supplement that has been filed, with the marketing materials.
- (2) If a template version of the marketing materials is approved in writing by the issuer and lead underwriter under paragraph (1)(d) and filed under paragraph (1)(e), an investment dealer may provide a limited-use version of the marketing materials that
- (a) has a date that is different than the template version;
 - (b) contains a cover page referring to the investment dealer or underwriters or a particular investor or group of investors;
 - (c) contains contact information for the investment dealer or underwriters; or
 - (d) has text in a format, including the type's font, colour or size, that is different than the template version.
- (3) If a template version of the marketing materials is divided into separate sections for separate subjects and is approved in writing by the issuer and lead underwriter under paragraph (1)(d), and that template version is filed under paragraph (1)(e), an investment dealer may provide a limited-use version of the marketing materials that includes only one or more of those separate sections.
- (4) The issuer may remove any comparables, and any disclosure relating to those comparables, from the template version of the marketing materials before filing it under paragraph (1)(e) or subparagraph (7)(b)(ii) if
- (a) the comparables, and any disclosure relating to the comparables, are in a separate section of the template version of the marketing materials;
 - (b) the template version of the marketing materials that is filed contains a note advising that the comparables, and any disclosure

relating to the comparables, were removed in accordance with this subsection, provided that the note appears immediately after where the removed comparables and related disclosure would have been;

- (c) if the prospectus is filed in the local jurisdiction, a complete template version of the marketing materials containing the comparables, and any disclosure relating to the comparables, is delivered to the securities regulatory authority; and
 - (d) the complete template version of the marketing materials contains the disclosure referred to in paragraph 13.7(4)(d) of NI 41-101.
- (5) Marketing materials provided under subsection (1) must be dated and include the following legend, or words to the same effect, on the first page:

A final base shelf prospectus containing important information relating to the securities described in this document has been filed with the securities regulatory authorit[y/ies] in [each of/certain of the provinces/provinces and territories of Canada]. A copy of the final base shelf prospectus, any amendment to the final base shelf prospectus and any applicable shelf prospectus supplement that has been filed, is required to be delivered with this document.

This document does not provide full disclosure of all material facts relating to the securities offered. Investors should read the final base shelf prospectus, any amendment and any applicable shelf prospectus supplement for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.

- (6) An investment dealer must not provide marketing materials under subsection (1) after a receipt for the final base shelf prospectus is issued and after the applicable shelf prospectus supplement is filed unless the issuer
- (a) has included the template version of the marketing materials filed under paragraph (1)(e) in the applicable shelf prospectus supplement, or incorporated by reference the template version of the marketing materials filed under paragraph (1)(e) into the applicable shelf prospectus supplement in the manner described in paragraph 4 of subsection 6.3(1), or
 - (b) has included in the applicable base shelf prospectus a statement that any template version of the marketing materials filed after the date of the shelf prospectus supplement and before the termination of the distribution is deemed to be incorporated into the shelf prospectus supplement.

- (7) If marketing materials are provided under subsection (1) after a receipt for the final base shelf prospectus is issued but before the applicable shelf prospectus supplement is filed, the issuer must
- (a) include the template version of the marketing materials filed under paragraph (1)(e) in the applicable shelf prospectus supplement, or incorporate by reference the template version of the marketing materials filed under paragraph (1)(e) into the applicable shelf prospectus supplement in the manner described in paragraph 4 of subsection 6.3(1); and
 - (b) if the applicable shelf prospectus supplement modifies a statement of material fact that appeared in marketing materials provided earlier under subsection (1),
 - (i) indicate in the shelf prospectus supplement that the template version of the marketing materials is not part of the shelf prospectus supplement to the extent that the contents of the template version of the marketing materials have been modified or superseded by a statement contained in the shelf prospectus supplement,
 - (ii) prepare and file, at the time the issuer files the shelf prospectus supplement, a revised template version of the marketing materials that is blacklined to show the modified statement,
 - (iii) provide details in the shelf prospectus supplement of how the statement in the marketing materials has been modified, and
 - (iv) disclose in the shelf prospectus supplement that pursuant to subsection (7),
 - (A) the issuer has prepared a revised template version of the marketing materials which has been blacklined to show the modified statement, and
 - (B) the revised template version of the marketing materials can be viewed under the issuer's profile on www.sedar.com.
- (8) Any revised template version of the marketing materials filed under subsection (7) must comply with this section.
- (9) If marketing materials are provided under subsection (1) but the issuer did not comply with subsection (6) or paragraph (7)(a), as applicable, the

marketing materials are deemed for purposes of securities legislation to be incorporated into the applicable shelf prospectus supplement as of the date of the shelf prospectus supplement to the extent not otherwise expressly modified or superseded by a statement contained in the shelf prospectus supplement.

Road Shows after a Receipt for a Final Base Shelf Prospectus

9A.4(1) An investment dealer must not conduct a road show for potential investors after a receipt for a final base shelf prospectus or any amendment is issued unless

- (a) the road show complies with subsections (2) to (4); and
- (b) a receipt for the final base shelf prospectus has been issued in the local jurisdiction.

(2) Subject to section 9A.5, an investment dealer must not provide marketing materials to investors attending a road show conducted under subsection (1) unless the marketing materials are provided in accordance with section 9A.3.

(3) If any investment dealer conducts a road show, the investment dealer must establish and follow reasonable procedures to

- (a) ask any investor attending the road show in person, by telephone conference call, on the internet or by other electronic means to provide their name and contact information;
- (b) keep a record of any information provided by the investor; and
- (c) provide the investor with a copy of the final base shelf prospectus, any amendment to the final base shelf prospectus and any applicable shelf prospectus supplement that has been filed.

(4) If an investment dealer permits an investor, other than an accredited investor, to attend a road show, the investment dealer must commence the road show with the oral reading of the following statement or a statement to the same effect:

This presentation does not provide full disclosure of all material facts relating to the securities offered. Investors should read the final base shelf prospectus, any amendment and any applicable shelf prospectus supplement for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.

Exception from Filing and Incorporation Requirements for Road Shows for Certain U.S. Cross-border Offerings

- 9A.5(1) Subject to subsections (2) to (4), if an investment dealer provides marketing materials to a potential investor in connection with a road show for a U.S. cross-border offering, the following provisions do not apply to the template version of the marketing materials relating to the road show:
- (a) paragraph 9A.3(1)(e);
 - (b) subsections 9A.3(6) to (9).
- (2) Subsection (1) does not apply unless
- (a) the underwriters have a reasonable expectation that the securities offered under the U.S. cross-border offering will be sold primarily in the United States of America;
 - (b) the issuer and the underwriters who sign the base shelf prospectus or the applicable shelf prospectus supplement filed in the local jurisdiction provide a contractual right containing the language set out in subsection 36A.1(5) of Form 41-101F1, or words to the same effect, except that the language may specify that the contractual right does not apply to any comparables provided in accordance with subsection (3); and
 - (c) if the base shelf prospectus is filed in the local jurisdiction, the template version of the marketing materials relating to the road show is delivered to the securities regulatory authority.
- (3) If the template version of the marketing materials relating to the road show contains comparables, the template version of the marketing materials must contain the disclosure referred to in paragraph 13.7(4)(d) of NI 41-101.
- (4) For greater certainty, subsection (1) does not apply to marketing materials other than the marketing materials provided in connection with the road show..

3. *This Instrument comes into force on August 13, 2013.*

**Amendment Instrument for
National Instrument 44-103 *Post-Receipt Pricing***

1. *National Instrument 44-103 Post-Receipt Pricing is amended by this Instrument.*
2. *The following new Part 4A is added after section 4.10:*

PART 4A: Marketing in Connection with the PREP Procedures

Definitions

4A.1(1) In this Part,

“comparables” means information that compares an issuer to other issuers;

“U.S. cross-border initial public offering” means an initial public offering of securities of an issuer being made contemporaneously in the United States of America and Canada by way of a prospectus filed with a securities regulatory authority in a jurisdiction of Canada and a U.S. prospectus filed with the SEC;

“U.S. cross-border offering” means an offering of securities of an issuer being made contemporaneously in the United States of America and Canada by way of a prospectus filed with a securities regulatory authority in a jurisdiction of Canada and a U.S. prospectus filed with the SEC, and includes a U.S. cross-border initial public offering;

“U.S. prospectus” means a prospectus that has been prepared in accordance with the disclosure and other requirements of U.S. federal securities law for an offering of securities registered under the 1933 Act.

- (2) In this Part, for greater certainty, a reference to “provides” includes showing a document to a person without allowing the person to retain or make a copy of the document.

Standard Term Sheets after a Receipt for a Final Base PREP Prospectus

4A.2(1) An investment dealer must not provide a standard term sheet to a potential investor after a receipt for a final base PREP prospectus or any amendment is issued unless

- (a) the standard term sheet complies with subsections (2) and (3);
- (b) other than contact information for the investment dealer or underwriters, all information in the standard term sheet concerning the issuer, the securities or the offering
 - (i) is disclosed in, or derived from, the final base PREP

prospectus, the supplemented PREP prospectus or any amendment that has been filed, or

- (ii) will be disclosed in, or derived from, the supplemented PREP prospectus that is subsequently filed; and
 - (c) a receipt for the final base PREP prospectus has been issued in the local jurisdiction.
- (2) A standard term sheet provided under subsection (1) must be dated and include the following legend, or words to the same effect, on the first page:

A [final base PREP prospectus/supplemented PREP prospectus] containing important information relating to the securities described in this document has been filed with the securities regulatory authorit[y/ies] in [each of/certain of the provinces/provinces and territories of Canada].

Copies of the [final base PREP prospectus/supplemented PREP prospectus] may be obtained from [*insert contact information for the investment dealer or underwriters*].

This document does not provide full disclosure of all material facts relating to the securities offered. Investors should read the supplemented PREP prospectus and any amendment for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.

- (3) A standard term sheet provided under subsection (1) may contain only the information referred to in subsection (2) and the information referred to in subsection 13.5(3) of NI 41-101.

Marketing Materials after a Receipt for a Final Base PREP Prospectus

4A.3(1) An investment dealer must not provide marketing materials to a potential investor after a receipt for a final base PREP prospectus or any amendment is issued unless

- (a) the marketing materials comply with subsections (2) to (9);
- (b) other than contact information for the investment dealer or underwriters and any comparables, all information in the marketing materials concerning the issuer, the securities or the offering
 - (i) is disclosed in, or derived from, the final base PREP prospectus, the supplemented PREP prospectus or any amendment that has been filed, or

- (ii) will be disclosed in, or derived from, the supplemented PREP prospectus that is subsequently filed;
 - (c) other than prescribed language, the marketing materials contain the same cautionary language in bold type as contained on the cover page, and in the summary, of the final base PREP prospectus;
 - (d) a template version of the marketing materials is approved in writing by the issuer and the lead underwriter before the marketing materials are provided;
 - (e) a template version of the marketing materials is filed on or before the day that the marketing materials are first provided;
 - (f) a receipt for the final base PREP prospectus has been issued in the local jurisdiction; and
 - (g) the investment dealer provides the marketing materials with a copy of
 - (i) the final base PREP prospectus and any amendment, or
 - (ii) if it has been filed, the supplemented PREP prospectus and any amendment.
- (2) A template version of the marketing materials filed under paragraph 1(e) may contain blank spaces for the PREP information set out in section 3.3, provided that the omitted information is contained in the supplemented PREP prospectus that is subsequently filed.
- (3) If a template version of the marketing materials is approved in writing by the issuer and lead underwriter under paragraph 1(d) and filed under paragraph 1(e), an investment dealer may provide a limited-use version of the marketing materials that
- (a) has a date that is different than the template version;
 - (b) contains a cover page referring to the investment dealer or underwriters or a particular investor or group of investors;
 - (c) contains contact information for the investment dealer or underwriters;
 - (d) has text in a format, including the type's font, colour or size, that is different than the template version; or
 - (e) contains the omitted information referred to in subsection (2),

provided that the omitted information is contained in the supplemented PREP prospectus that is subsequently filed.

- (4) If a template version of the marketing materials is divided into separate sections for separate subjects and is approved in writing by the issuer and lead underwriter under paragraph (1)(d), and that template version is filed under paragraph (1)(e), an investment dealer may provide a limited-use version of the marketing materials that includes only one or more of those separate sections.
- (5) The issuer may remove any comparables, and any disclosure relating to those comparables, from the template version of the marketing materials before filing it under paragraph (1)(e) or (8)(b) if
 - (a) the comparables, and any disclosure relating to the comparables, are in a separate section of the template version of the marketing materials;
 - (b) the template version of the marketing materials that is filed contains a note advising that the comparables, and any disclosure relating to the comparables, were removed in accordance with this subsection, provided that the note appears immediately after where the removed comparables and related disclosure would have been;
 - (c) if the prospectus is filed in the local jurisdiction, a complete template version of the marketing materials containing the comparables, and any disclosure relating to the comparables, is delivered to the securities regulatory authority; and
 - (d) the complete template version of the marketing materials contains the disclosure referred to in paragraph 13.7(4)(d) of NI 41-101.
- (6) Marketing materials provided under subsection (1) must be dated and include the following legend, or words to the same effect, on the first page:

A [final base PREP prospectus/supplemented PREP prospectus] containing important information relating to the securities described in this document has been filed with the securities regulatory authorit[y/ies] in [each of/certain of the provinces/provinces and territories of Canada]. A copy of the [final base PREP prospectus/supplemented PREP prospectus], and any amendment, is required to be delivered with this document.

This document does not provide full disclosure of all material facts relating to the securities offered. Investors should read the supplemented PREP prospectus and any amendment for disclosure of those facts, especially risk factors relating to the securities

offered, before making an investment decision.

- (7) An investment dealer must not provide marketing materials under subsection (1) after a receipt for the final base PREP prospectus is issued unless the issuer
 - (a) has included the template version of the marketing materials filed under paragraph (1)(e) in the final base PREP prospectus, and any amendment, or incorporated by reference the template version of the marketing materials filed under paragraph (1)(e) into the final base PREP prospectus, and any amendment, in the manner described in subsection 36A.1(1) of Form 41-101F1 or subsection 11.6(1) of Form 44-101F1, as applicable, or
 - (b) has included in the final base PREP prospectus a statement that any template version of the marketing materials filed after the date of the final base PREP prospectus and before the termination of the distribution is deemed to be incorporated into the final base PREP prospectus.
- (8) If an amendment to a final base PREP prospectus or a supplemented PREP prospectus modifies a statement of material fact that appeared in marketing materials provided under subsection (1), the issuer must
 - (a) indicate in the amendment that the template version of the marketing materials is not part of the final base PREP prospectus or supplemented PREP prospectus, as amended, to the extent that the contents of the template version of the marketing materials have been modified or superseded by a statement contained in the amendment;
 - (b) prepare and file, at the time the issuer files the amendment to the final base PREP prospectus or supplemented PREP prospectus, as applicable, a revised template version of the marketing materials that is blacklined to show the modified statement; and
 - (c) include in the amendment to the final base PREP prospectus or supplemented PREP prospectus, as applicable, the disclosure required by subsection 36A.1(3) of Form 41-101F1 or subsection 11.6(3) of Form 44-101F1, as applicable.
- (9) Any revised template version of the marketing materials filed under subsection (8) must comply with this section.
- (10) If marketing materials are provided under subsection (1) but the issuer did not comply with subsection (7), the marketing materials are deemed for purposes of securities legislation to be incorporated into the final base PREP prospectus as of the date of the final base PREP prospectus to the

extent not otherwise expressly modified or superseded by a statement contained in the final base PREP prospectus.

Road Shows after a Receipt for a Final Base PREP Prospectus

- 4A.4(1) An investment dealer must not conduct a road show for potential investors after a receipt for a final base PREP prospectus or any amendment is issued unless
- (a) the road show complies with subsections (2) to (4); and
 - (b) a receipt for the final base PREP prospectus has been issued in the local jurisdiction.
- (2) Subject to section 4A.6, an investment dealer must not provide marketing materials to investors attending a road show conducted under subsection (1) unless the marketing materials are provided in accordance with section 4A.3.
- (3) If an investment dealer conducts a road show, the investment dealer must establish and follow reasonable procedures to
- (a) ask any investor attending the road show in person, by telephone conference call, on the internet or by other electronic means to provide their name and contact information;
 - (b) keep a record of any information provided by the investor; and
 - (c) provide the investor with a copy of
 - (i) the final base PREP prospectus and any amendment, or
 - (ii) if it has been filed, the supplemented PREP prospectus and any amendment.
- (4) If an investment dealer permits an investor, other than an accredited investor, to attend a road show, the investment dealer must commence the road show with the oral reading of the following statement or a statement to the same effect:

This presentation does not provide full disclosure of all material facts relating to the securities offered. Investors should read the supplemented PREP prospectus and any amendment for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.

Exception from Procedures for Road Shows for Certain U.S. Cross-border Initial Public Offerings

- 4A.5(1) Subject to subsection (2), paragraphs 4A.4(3)(a) and (b) do not apply to an

investment dealer that conducts a road show in connection with a U.S. cross-border initial public offering.

- (2) Subsection (1) does not apply unless
 - (a) the issuer is relying on the exemption from U.S. filing requirements in Rule 433(d)(8)(ii) under the 1933 Act in respect of the road show; and
 - (b) the investment dealer establishes and follows reasonable procedures to
 - (i) ask any investor attending the road show in person, by telephone conference call, on the internet or by other electronic means to voluntarily provide their name and contact information; and
 - (ii) keep a record of any information voluntarily provided by the investor.

Exception from Filing and Incorporation Requirements for Road Shows for Certain U.S. Cross-border Offerings

4A.6(1) Subject to subsections (2) to (4), if an investment dealer provides marketing materials to a potential investor in connection with a road show for a U.S. cross-border offering, the following provisions do not apply to the template version of the marketing materials relating to the road show:

- (a) paragraph 4A.3(1)(e);
 - (b) subsections 4A.3(7) to (10).
- (2) Subsection (1) does not apply unless
 - (a) the underwriters have a reasonable expectation that the securities offered under the U.S. cross-border offering will be sold primarily in the United States of America;
 - (b) the issuer and the underwriters who sign the base PREP prospectus or the supplemented PREP prospectus filed in the local jurisdiction provide a contractual right containing the language set out in subsection 36A.1(5) of Form 41-101F1, or words to the same effect, except that the language may specify that the contractual right does not apply to any comparables provided in accordance with subsection (3); and
 - (c) if the base PREP prospectus has been filed in the local jurisdiction, the template version of the marketing materials relating to the road show is delivered to the securities regulatory authority.

- (3) If the template version of the marketing materials relating to the road show contains comparables, the template version of the marketing materials must contain the disclosure referred to in paragraph 13.7(4)(d) of NI 41-101.
- (4) For greater certainty, subsection (1) does not apply to marketing materials other than the marketing materials provided in connection with the road show..

3. ***This Instrument comes into force on August 13, 2013.***

Changes to

Companion Policy 44-101CP to National Instrument 44-101 Short Form Prospectus Distributions

1. *The changes to Companion Policy 44-101CP to National Instrument 44-101 Short Form Prospectus Distributions are set out in this Schedule.*
2. *Part 1 is changed by adding the following after subsection 1.7(5):*
 - 1.8 **Bought Deal Provisions** - Issuers and investment dealers relying on the bought deal provisions in Part 7 of NI 44-101 should refer to the guidance in Part 6 of the Companion Policy to NI 41-101.
 - 1.9 **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 NI 44-101 has provisions on marketing after the announcement of a bought deal and before a receipt for a preliminary short form prospectus, NI 41-101 has general provisions that apply to marketing during the waiting period and after a receipt for a final prospectus..
3. *Section 3.6 is changed*
 - (a) *in the heading, by adding “or Marketing Materials” after “Reports”, and*
 - (b) *by adding the words “or a subsequently filed template version of marketing materials” after “a subsequently filed material change report”.*
4. *These changes become effective on August 13, 2013.*

Changes to
Companion Policy 44-102CP to National Instrument 44-102 Shelf Distributions

1. *The changes to Companion Policy 44-102CP to National Instrument 44-102 Shelf Distributions are set out in this Schedule.*
2. *Section 1.3 is replaced with the following:*

- 1.3 **Marketing before the Filing of a Shelf Prospectus Supplement** - After a receipt has been issued for a base shelf prospectus, we do not have the same regulatory concerns about “marketing” before the filing of a shelf prospectus supplement as we do about “pre-marketing” before the filing of a short form prospectus or a long form prospectus (see section 6.4 of Companion Policy 41-101CP).

A preliminary form of shelf prospectus supplement describing a tranche of securities to be offered under the shelf procedures (a draw-down) 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 in section 3.2 of National Instrument 44-102 to issue a news release once the issuer or selling securityholder has formed a reasonable expectation that the distribution will proceed.

Issuers should also consider whether the decision to pursue a draw-down under an allocated base shelf prospectus is a material change under applicable securities legislation. If the decision is a material change, the news release and material change report requirements in Part 7 of NI 51-102 and other securities legislation apply.

In order to address selective disclosure concerns, an issuer will generally file any preliminary form of shelf prospectus supplement on SEDAR and ask their principal regulator to make it public. However, staff of securities regulatory authorities will not be “pre-clearing” any preliminary form of shelf prospectus supplement (unless the issuer is filing a draft supplement pursuant to an undertaking previously given to securities regulatory authorities).

If an issuer does not issue a news release about a potential draw-down under a base shelf prospectus, then the relevant investment dealers should consider measures to ensure compliance with applicable securities laws relating to selective disclosure, insider trading and trading by “tippees” (these laws are summarized in sections 3.1 and 3.2 of National Policy 51-201 *Disclosure Standards*) before circulating a preliminary form of shelf prospectus supplement to investors.

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 NI 44-102 has

provisions on marketing after a receipt for a final base shelf prospectus, NI 41-101 has general provisions that apply to marketing during the waiting period..

3. ***These changes become effective on August 13, 2013.***

Changes to

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

1. *The changes to Companion Policy 44-103CP to National Instrument 44-103 Post-Receipt Pricing are set out in this Schedule.*

2. *Part 3 is changed by adding the following after section 3.4:*

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..

3. *These changes become effective on August 13, 2013.*

Changes to
National Policy 41-201 *Income Trusts and Other Indirect Offerings*

1. ***The changes to National Policy 41-201 Income Trusts and Other Indirect Offerings are set out in this Schedule.***
2. ***Section 5.1 is replaced with the following:***

5.1 What are our concerns about sales and marketing materials?

Registrants often solicit interest from potential investors during the “waiting period” between the issuance of a receipt for a preliminary prospectus and the issuance of a receipt for the prospectus, and in the period following the receipt for the prospectus until the primary distribution is completed. Along with the distribution of the preliminary prospectus (or prospectus, if then available) to potential investors, that process often involves the preparation and distribution of materials such as:

- green sheets, for the benefit of registered salespersons and banking group members; or
- standard term sheets or marketing materials prepared in accordance with National Instrument 41-101 *General Prospectus Requirements* and other prospectus rules.

The information included in green sheets is typically a simplified summary version of the disclosure in the prospectus, and should be limited to information included in, or directly derivable from, the prospectus (the exceptions are information about the basic terms of comparable offerings and general market information not specific to the issuer).

The information included in standard term sheets and marketing materials must comply with the conditions in National Instrument 41-101 *General Prospectus Requirements* and other prospectus rules.

Green sheets and marketing materials used in the context of income trust offerings often include prominent reference to “yield”. We are concerned that expressions of “yield” in these marketing materials may not be clearly understood, both because the term itself may have connotations or common usages that are not consistent with the attributes of income trust units and because the relationship between the “yield” described in the marketing materials and the information in the prospectus may not be clear.

“Yield” is generally used in the context of income trust offerings to refer to the return that would be generated over a one-year period, as a percentage of the offering price of the units, if the amounts intended to be distributed by the income trust according to its distribution policy are so distributed. In connection with

their ongoing approach to disclosure, issuers should carefully consider yield expectations previously communicated to investors through marketing materials or otherwise. Whether and to what extent those yield expectations are met are important aspects of overall disclosure of performance. Issuers should include in their interim and annual MD&A, where applicable, a comparison between the expected yield figure previously communicated and the actual yield..

3. *Section 5.2 is replaced with the following:*

5.2 What information do we expect green sheets and marketing materials to contain?

We are concerned that use of the term “yield” in green sheets and marketing materials may imply that the entitlement of unitholders to distributions is fixed. We expect expressions of yield to be accompanied by disclosure that, unlike fixed-income securities, there is no obligation of the income trust to distribute to unitholders any fixed amount, and reductions in, or suspensions of, cash distributions may occur that would reduce yield based on the offering price.

A related concern is that disclosure of a yield in green sheets may cause confusion because yield is not typically disclosed in the prospectus. If a green sheet contains an expression of yield, we expect the statement to be tied to the disclosure in the prospectus on which the marketing is based (including, in particular, the pro forma presentation of distributable cash in the prospectus). Specifically, expressions of yield in green sheets for income trust offerings should be accompanied by disclosure indicating the proportion of the pro forma distributable cash (as set out in the prospectus) that the stated yield would represent. Guidance for disclosure about distributable cash in green sheets is set out in section 6.5.2 of this policy.

Under National Instrument 41-101 *General Prospectus Requirements* and other prospectus rules, all information in marketing materials must generally be disclosed in, or derived from, the prospectus on which the marketing is based.

In addition, if reference is made to tax efficiencies that may be realized on distributions (such as returns of capital to investors), we expect that disclosure to be clear and, to the extent practical, quantified. For example, the estimated tax-deferred portion of distributions for the foreseeable period, and the tax implications, should be clearly stated or cross-referenced..

4. *Section 5.3 is changed*

- (a) *by adding in the title “and marketing materials” after “green sheets”,*
- (b) *by striking out “Yes.” at the beginning of the first paragraph, and*
- (c) *by adding the following as a new paragraph after the first paragraph:*

Under National Instrument 41-101 *General Prospectus Requirements* and other

prospectus rules, a template version of marketing materials must be filed on or before the day that the marketing materials are first provided..

5. *Section 6.5.2 is changed by replacing the last paragraph in section 6.5.2 with the following:*

In order to meet the requirements for MD&A, disclosure of an issuer's distributable cash for a period should be accompanied by the information referred to in sections 2.5, 2.6, 2.7 and 2.8, as applicable, as well as the above table and accompanying narrative. Issuers should also refer to the guidance in sections 2.5, 2.6, 2.7, 2.8 and 6.5.2 of this policy when considering how to present disclosure of an issuer's distributable cash, including disclosure contained in:

- annual and interim MD&A,
- news releases, and
- sales and other materials such as:
 - green sheets, and
 - marketing materials prepared in accordance with National Instrument 41-101 *General Prospectus Requirements* and other prospectus rules.

See also Part 5 of this policy..

6. *These changes become effective on August 13, 2013.*

Changes to

National Policy 47-201 *Trading Securities Using the Internet and Other Electronic Means*

1. *The changes to National Policy 47-201 Trading Securities Using the Internet and Other Electronic Means are set out in this Schedule.*
2. *Section 2.7 is replaced with the following:*

2.7 Road Shows

- (1) For the purposes of this Policy, “road show” has the meaning assigned in National Instrument 41-101 *General Prospectus Requirements*.
- (2) National Instrument 41-101 and other prospectus rules set out the circumstances in which an investment dealer may hold a road show in connection with a distribution of securities, including a road show held on the internet or by other electronic means.
- (3) Subsections 13.9(3) and 13.10(3) of National Instrument 41-101, subsection 7.7(3) of National Instrument 44-101 *Short Form Prospectus Distributions*, subsection 9A.4(3) of National Instrument 44-102 *Shelf Distributions* and subsection 4A.4(3) of National Instrument 44-103 *Post-Receipt Pricing* provide that the investment dealer conducting the road show must establish and follow reasonable procedures to:
 - ask any investor attending the road show in person, by telephone conference call, on the internet or by other electronic means to provide their name and contact information;
 - keep a record of any information provided by the investor; and
 - provide the investor with a copy of the relevant prospectus and any amendment.
- (4) In this connection, the following procedures are recommended for a road show held on the internet or by other electronic means:
 - (a) Pursuant to securities legislation, a copy of the filed prospectus is required to be made available to each viewer before each road show transmission, and each transmission should contain visual statements emphasizing that the information conveyed through the road show does not contain all of the information in the prospectus, which should be reviewed for complete information. A copy of the prospectus could be sent electronically to viewers in accordance with the guidelines contained in National Policy 11-201.
 - (b) Electronic access to the transmission of a road show on the internet

or by other electronic means should be controlled by the investment dealer conducting the road show, using such means as password protection or a similar mechanism, in order to ensure that all viewers are identified and have been offered a prospectus..

3. *These changes become effective on August 13, 2013.*