

## Appendix C

### Schedule C-1

#### Amendments to National Instrument 44-101 *Short Form Prospectus Distributions*

1. *National Instrument 44-101 Short Form Prospectus Distributions is amended by this Instrument.*

2. *Section 1.1 is amended by*

(a) *after the definition of “permitted supranational agency”, adding the following definition:*

““reverse takeover acquiree” has the same meaning as in section 1.1 of NI 51-102;”, *and*

(b) *replacing the definition of “successor issuer” with the following:*

““successor issuer” means

(a) except for an issuer which, in the case where the restructuring transaction involved a divestiture of a portion of a reporting issuer’s business, succeeded to or otherwise acquired less than substantially all of the business divested, an issuer that meets any of the following requirements:

(i) it was a reverse takeover acquiree in a completed reverse takeover;

(ii) it exists as a result of a completed restructuring transaction;

(iii) it participated in a restructuring transaction and its existence continued following the completion of the restructuring transaction;  
or

(b) an issuer that issued securities to the securityholders of a second issuer that was a reporting issuer, in a reorganization that did not alter those securityholders’ proportionate interest in the second issuer or the second issuer’s proportionate interest in its assets;”.

3. *Section 2.7 is amended by*

- (a) **replacing** “Exemptions for New Reporting Issuers and Successor Issuers” **in the title with** “Exemptions for Reporting Issuers that Previously Filed a Prospectus and Successor Issuers”, **and**
- (b) **adding the following subsection after subsection (1):**
  - “(1.1) Subparagraphs 2.2(d)(ii), 2.3(1)(d)(ii) and 2.6(1)(b)(ii) do not apply to an issuer if
    - (a) the issuer has filed annual financial statements as required under the applicable CD rule, and
    - (b) unless the issuer is seeking qualification under section 2.6, the issuer has filed and obtained a receipt for a final prospectus that included the issuer’s or each predecessor entity’s comparative annual financial statements for its most recently completed financial year or the financial year immediately preceding its most recently completed financial year, together with the auditor’s report accompanying those financial statements and, if there has been a change of auditors since the comparative period, an auditor’s report on the financial statements for the comparative period.”.
- 4. **Subsection 2.7(1) is amended by replacing** “Paragraph 2.2(d), paragraph 2.3(1)(d) and paragraph 2.6(1)(b)” **with** “Paragraphs 2.2(d), 2.3(1)(d) and 2.6(1)(b)”.
- 5. **Paragraph 2.7(1)(a) is amended by adding** “any” **after** “has not yet been required under the applicable CD rule to file”.
- 6. **Paragraph 2.7(2)(a) is amended by adding** “or the reorganization described in paragraph (b) of the definition of “successor issuer”,” **after** “transaction”.
- 7. **Paragraph 2.7(2)(b) is amended by**
  - (a) **replacing** “that” **with** “or the reorganization described in paragraph (b) of the definition of “successor issuer”, in which the successor issuer participated or which”,
  - (b) **adding** “or reorganization” **after** “an issuer that was a party to the restructuring transaction”, **and**
  - (c) **adding** “, in the case of a restructuring transaction” **after** “circular”.
- 8. **Section 2.7 is amended by adding the following subsection after subsection (2):**
  - “(3) Paragraphs 2.2(d), 2.3(1)(d) and 2.6(1)(b) do not apply to an issuer if

- (a) the issuer is not exempt from the requirement in the applicable CD rule to file annual financial statements within a prescribed period after its financial year end, but the issuer has not yet, since the completion of a qualifying transaction or reverse takeover (as both terms are defined in the TSX Venture Exchange Corporate Finance Manual as amended from time to time) been required under the applicable CD rule to file annual financial statements, and
- (b) a CPC filing statement (as defined in the TSX Venture Exchange Corporate Finance Manual as amended from time to time) or other filing statement of the TSX Venture Exchange was filed by the issuer, and
  - (i) in the case of a CPC filing statement, such statement
    - (A) was filed in connection with a qualifying transaction, and
    - (B) complied with the TSX Venture Exchange Corporate Finance Manual, as amended from time to time, in respect of that qualifying transaction; or
  - (ii) in the case of a TSX Venture Exchange filing statement, other than a CPC filing statement, such statement
    - (A) was filed in connection with a reverse takeover, and
    - (B) complied with TSX Venture Exchange Corporate Finance Manual, as amended from time to time, in respect of that reverse takeover.”

**9. Subsection 2.8(5) is repealed.**

**10. Section 2.8 is amended by adding the following subsection after subsection (5):**

- “(6) For the purposes of this section, an issuer is exempted from the requirement to wait at least 10 business days between filing the notice referred to in subsection (1) and filing its first preliminary short form prospectus if
  - (a) in the case of an issuer that is relying on section 2.4 or 2.5 in order to qualify to file a short form prospectus, the following requirements are met:
    - (i) the issuer satisfies the requirements of section 2.4 or 2.5, as applicable, at the time of filing its short form prospectus;

- (ii) the issuer files its notice of intention before or concurrently with the filing of its preliminary short form prospectus; and
- (iii) the issuer's credit supporter
  - (A) previously filed a notice of intention under subsection (1) which has not been withdrawn; or
  - (B) is deemed to have filed a notice of intention under subsection (4); or
- (b) in the case of an issuer that is a successor issuer, the following requirements are met:
  - (i) the issuer satisfies the requirements of any of section 2.2, 2.3 or 2.6 and subsection 2.7(2);
  - (ii) the issuer files its notice of intention before or concurrently with the filing of its preliminary short form prospectus; and
  - (iii) the issuer has acquired substantially all of its business from a predecessor entity which
    - (A) previously filed a notice of intention under subsection (1) which has not been withdrawn; or
    - (B) is deemed to have filed a notice of intention under subsection (4).”.

**11. Section 4.1 is amended by renumbering it as subsection 4.1(1).**

**12. Subparagraph 4.1(1)(b)(i) is amended by**

- (a) **replacing** “Appendix A to NI 41-101” **with** “personal information form”, **and**
- (b) **deleting** “;” **after** “for”.

**13. Clause 4.1(1)(b)(i)(D) is amended by**

- (a) **replacing** “executive officer of the promoter,” **with** “executive officer of the promoter; and”, **and**
- (b) **deleting** “for whom the issuer has not previously filed or delivered,”.

**14. Clause 4.1(1)(b)(i)(E) is repealed.**

**15. Clause 4.1(1)(b)(i)(F) is repealed.**

**16. Clause 4.1(1)(b)(i)(G) is repealed.**

**17. Section 4.1 is amended by adding the following after subsection (1):**

- “(2) Despite subparagraph (1)(b)(ii), an issuer is not required to file a personal information form for an individual if all of the following are satisfied:
- (a) a personal information form of the individual has been executed by the individual within three years preceding the date of the filing of the preliminary short form prospectus;
  - (b) the personal information form was delivered to the regulator or, in Québec, the securities regulatory authority
    - (i) by an issuer on behalf of the individual on or after [insert effective date of amendments]; or
    - (ii) by the issuer on behalf of the individual after March 16, 2008 but before [insert effective date of amendments] in the form set out in Appendix A to NI 41-101 in effect during this period;
  - (c) the information concerning the individual contained in the responses to
    - (i) questions 6 through 10 of the personal information form referenced in subparagraph (b)(i) remain correct as at the date of the certificate referred to in paragraph (d); or
    - (ii) questions 4(B) and (C) and questions 6 through 9 of the personal information form referenced in subparagraph (b)(ii) remain correct as at the date of the certificate referred to in paragraph (d);
  - (d) the issuer delivers to the regulator or, in Québec, the securities regulatory authority, concurrently with the filing of the preliminary short form prospectus, a certificate of the issuer in the form set out in Schedule 4 of Appendix A to NI 41-101 stating that the individual has provided the issuer with confirmation in respect of the requirement contained in paragraph (c);
  - (e) the certificate referenced in paragraph (d) is dated no earlier than 30 days before the filing of the preliminary short form prospectus.”.

**18. Subparagraph 4.2(a)(vi) is amended by**

- (a) *deleting “and” in clause (A),*
- (b) *adding the following clause after clause (A):*

“(A.1) each director of the issuer, and”, *and*

- (c) *replacing* “each person or company required to provide a certificate under Part 5 of NI 41-101 or other securities legislation, other than an issuer,” *in clause (B) with* “any other person or company that provides or signs a certificate under Part 5 of NI 41-101 or other securities legislation, other than an issuer,”.

**19. Subparagraph 4.2(a)(x) is amended by**

- (a) *after* “Undertaking to File”, *replacing* “Documents and Material Contracts” *with* “Agreements, Contracts and Material Contracts”,
- (b) *replacing* “a document referred to in subparagraph (iii) or (iii.1)” *with* “an agreement or contract referred to in subparagraph (iii) or a material contract under subparagraph (iii.1)”,
- (c) *deleting* “or become effective” *wherever it appears*,
- (d) *adding* “final” *before* “short form prospectus”, *and*
- (e) *replacing* “file the document promptly and in any event within seven days after the completion of the distribution; and” *with* “file the agreement, contract or material contract promptly and in any event no later than seven days after the execution of the agreement, contract or material contract;”.

**20. Paragraph 4.2(a) is amended by adding the following subparagraph after subparagraph (x):**

“(x.1) **Undertaking to File Unexecuted Documents** – if a document referred to in subparagraph (iii) will not be executed in order to become effective and has not become effective before the filing of the final short form prospectus, but will become effective on or before the completion of the distribution, the issuer must file with the securities regulatory authority, no later than the time of filing of the final short form prospectus, an undertaking of the issuer to the securities regulatory authority to file the document promptly and in any event no later than seven days after the document becomes effective; and”.

- 21. Section 7.1 is amended by replacing** “filing of a preliminary short form prospectus” *with* “issuance of a receipt for a preliminary short form prospectus”.
- 22. Section 7.2 is amended by replacing** “filing of a preliminary short form prospectus” *with* “issuance of a receipt for a preliminary short form prospectus”.
- 23. Subsection 1.6(2) of Form 44-101F1 Information Required in a Prospectus is amended by replacing**

- “(a) disclose that a purchaser who acquires securities forming part of the underwriters’ over-allocation position acquires those securities under this short form prospectus, regardless of whether the over-allocation position is ultimately filled through the exercise of the over-allotment option or secondary market purchases, and
- (b) describe the terms of the option.”

***with the following:***

- “(a) describe the terms of the option, and
- (b) provide the following disclosure:

“A purchaser who acquires [*insert type of securities qualified for distribution under the prospectus*] forming part of the underwriters’ over-allocation position acquires those securities under this short form prospectus, regardless of whether the over-allocation position is ultimately filled through the exercise of the over-allotment option or secondary market purchases.””

- 24. Subsection 1.6(3) of Form 44-101F1 is amended by replacing “, provide totals for both the minimum and maximum subscriptions, if applicable.” with the following:**

“and a minimum offering amount

- (a) is required for the issuer to achieve one or more of the purposes of the offering, provide totals for both the minimum and maximum offering amount, or
- (b) is not required for the issuer to achieve any of the purposes of the offering, state the following in boldface type:

**“There is no minimum amount of funds that must be raised under this offering. This means that the issuer could complete this offering after raising only a small proportion of the offering amount set out above.””**

- 25. Subsection 1.9(1) of Form 44-101F1 is amended by adding “or series” after “class”.**

- 26. Section 1.11 of Form 44-101F1 is amended by**

- (a) ***replacing “International Issuers” with “Enforcement of Judgments against Foreign Persons or Companies”,***



**(b) replacing**

“If the issuer, a selling securityholder, or any person or company required to provide a certificate under Part 5 of NI 41-101”

**with the following:**

“If the issuer, a director of the issuer, a selling securityholder, or any other person or company that is signing or providing a certificate under Part 5 of NI 41-101”,

**(c) replacing**

“[issuer, selling securityholder, person or company signing a certificate under Part 5 of NI 41-101 or securities legislation]”

**with the following:**

“[issuer, director of the issuer, selling securityholder, or any other person or company signing or providing a certificate under Part 5 of NI 41-101 or other securities legislation]”, **and**

**(d) replacing “addresses” with “address(es)”.**

**27. Subsection 4.2(2) of Form 44-101F1 is amended by**

**(a) replacing “subscription” with “offering amount”, and**

**(b) replacing “subscriptions” with “offering amounts”.**

**28. Section 4.2 of Form 44-101F1 is amended by adding the following subsections after subsection (2):**

**“(3) If all of the following apply, disclose how the proceeds will be used by the issuer, with reference to various potential thresholds of proceeds raised, in the event that the issuer raises less than the maximum offering amount:**

- (a) the closing of the distribution is not subject to a minimum offering amount;**
- (b) the distribution of the securities is to be on a best efforts basis; and**
- (c) the issuer has significant short-term non-discretionary expenditures including those for general corporate purposes, or significant short-term capital or contractual commitments, and may not have other readily accessible resources to satisfy those expenditures or commitments.**

- (4) If the issuer is required to provide disclosure under subsection (3), the issuer must discuss, in respect of each threshold, the impact (if any) of raising this amount on its liquidity, operations, capital resources and solvency.

**INSTRUCTIONS**

*If the issuer is required to disclose the use of proceeds at various thresholds under subsections 4.2(3) and (4), include as an example a threshold that reflects the receipt of a small portion of the offering.”*

- 29. Subsection 4.10(1) of Form 44-101F1 is amended by**
- (a) **replacing** “acquired on a short-form prospectus-exempt basis” **with** “acquired on a prospectus-exempt basis”, **and**
  - (b) **replacing** “proceeds of the short-form prospectus-exempt financing” **with** “proceeds of the prospectus-exempt financing”.
- 30. Section 7.6 of Form 44-101F1 is amended by**
- (a) **replacing** “disclose” **with** “provide the following disclosure in the short form prospectus to indicate”, **and**
  - (b) **deleting** “and provide the following disclosure in the short form prospectus, with the bracketed information completed”.
- 31. Section 7A.1 of Form 44-101F1 is amended by**
- (a) **adding** “or series” **after** “each class”,
  - (b) **adding** “or exchangeable” **after** “convertible”, **and**
  - (c) **adding** “or series” **after** “those classes”.
- 32. Paragraph 7A.1(a) of Form 44-101F1 is amended by adding** “sold by the” **before** “selling securityholder”.
- 33. Paragraph 7A.1(b) of Form 44-101F1 is amended by adding** “or sold” **after** “issued”.
- 34. Paragraph 7A.1(c) of Form 44-101F1 is amended by adding** “or sold” **after** “issued”.
- 35. Subsection 7A.2(1) of Form 44-101F1 is amended by**
- (a) **replacing** “each class of” **with** “the following”,
  - (b) **replacing** “is” **with** “are”,

(c) **adding** “for the securities” **after** “quotation”, **and**

(d) **replacing** “generally occurs.” **with the following**:

“generally occurs:

- (a) each class or series of securities of the issuer distributed under the short form prospectus;
- (b) securities of the issuer into which those classes or series of securities are convertible or exchangeable.”.

**36. Subsection 7A.2(2) of Form 44-101F1 is amended by**

(a) **replacing** “If a class of” **with** “For the following”,

(b) **replacing** “is” **with** “that are”,

(c) **replacing** “but is traded” **with** “but are traded”,

(d) **adding** “for the securities” **after** “quotation”, **and**

(e) **replacing** “generally occurs.” **with the following**:

“generally occurs:

- (a) each class or series of securities of the issuer distributed under the short form prospectus;
- (b) securities of the issuer into which those classes or series of securities are convertible or exchangeable.”.

**37. Subsection 11.1(2) of Form 44-101F1 is amended by adding** “applicable portions of” **after** “clarify that”.

**38. Section 11.1 of Form 44-101F1 is amended by adding the following subsection after subsection (2):**

“(3) Despite item (7.) of subsection (1), an issuer may exclude from its short form prospectus a report, valuation, statement or opinion of a person or company contained in an information circular prepared in connection with a special meeting of securityholders of the issuer and any references therein, if:

- (a) the report is not an auditor’s report in respect of financial statements of a person or company; and

- (b) the report, valuation, statement or opinion was prepared in respect of a specific transaction contemplated in the information circular, unrelated to the distribution of securities under the short form prospectus, and that transaction has been previously abandoned or completed.”.

**39. Subsection 11.3(2) of Form 44-101F1 is amended by replacing “Item 14.2 or 14.5 of Form 51-102F5 in the information circular referred to in paragraph 2.7(2)(b) of the Instrument.” with the following:**

- “(a) Item 14.2 or 14.5 of Form 51-102F5 in the information circular referred to in paragraph 2.7(2)(b) of the Instrument; or
- (b) the policies and requirements of the TSX Venture Exchange prescribed for disclosure of a qualifying transaction in a CPC filing statement or a reverse takeover in a filing statement referred to in paragraph 2.7(3)(b) of the Instrument.”.

**40. The INSTRUCTION section of section 11.3 of Form 44-101F1 is amended by numbering the existing text as subsection (1).**

**41. Subsection (1) of the INSTRUCTION section of section 11.3 is amended by**

- (a) adding “11.3” before “(2)”, and
- (b) adding “, CPC filing statement or other filing statement of the TSX Venture Exchange” after “information circular”.

**42. The INSTRUCTION section of section 11.3 of Form 44-101F1 is amended by adding the following subsection after subsection (1):**

- “(2) The disclosure referenced in instruction (1) above must be presented in a way that supplements, but does not replace, the disclosure prescribed for a transaction that also constitutes a significant acquisition for the issuer or a reverse takeover in which the issuer was involved, if applicable.”.

**43. Item 11 of Form 44-101F1 is amended by adding the following after the INSTRUCTION section of section 11.4:**

**“11.5 Additional Disclosure for Issuers of Asset-Backed Securities**

If the issuer has not filed or been required to file interim financial statements and related MD&A in respect of an interim period, if any, subsequent to the financial year in respect of which it has included annual financial statements in the short form prospectus because it is not a reporting issuer and is qualifying to file the short form prospectus under section 2.6 of the Instrument, include the interim

financial statements and related MD&A that the issuer would have been required to incorporate by reference under paragraph 3 of subsection 11.1(1) if the issuer were a reporting issuer at the relevant time.”

44. *Section 15.3 of Form 44-101F1 is amended by adding “and that disclosure is correct as at the date of the prospectus” after “AIF”.*
45. *Section 20.1 of Form 44-101F1 is amended by replacing “revisions of the price of damages” with “revisions of the price or damages”.*
46. *Item 20 of Form 44-101F1 is amended by adding the following section after section 20.2:*

**“20.3 Convertible, Exchangeable or Exercisable Securities** - In the case of an offering of convertible, exchangeable or exercisable securities, provide a statement in the following form:

“In an offering of [state name of convertible, exchangeable or exercisable securities], investors are cautioned that the statutory right of action for damages for a misrepresentation contained in the prospectus is limited, in certain provincial [or territorial] securities legislation, to the price at which the [state name of convertible, exchangeable or exercisable securities] is offered to the public under the prospectus offering. This means that, under the securities legislation of certain provinces [or territories], if the purchaser pays additional amounts upon [conversion, exchange or exercise] of the security, those amounts may not be recoverable under the statutory right of action for damages that applies in such provinces [or territories]. The purchaser should refer to the applicable provisions of the purchaser’s province [or territory] for the particulars of this right of action for damages or consult with a legal adviser.””

47. This Instrument comes into force on ●, 2012.