

ANNEX A

PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 44-102 *SHELF DISTRIBUTIONS*

1. *National Instrument 44-102 Shelf Distributions is amended by this Instrument.*

2. *Part 9 is replaced with the following:*

PART 9 – AT-THE-MARKET DISTRIBUTIONS OF EQUITY SECURITIES UNDER SHELF

9.1 Definitions

In this Part

“ATM exchange” means

- (a) a short form eligible exchange, or
- (b) a marketplace outside of Canada;

“ATM prospectus” means

- (a) a short form prospectus that is a base shelf prospectus for an at-the-market distribution,
- (b) a shelf prospectus supplement to a base shelf prospectus referred to in paragraph (a), and
- (c) a shelf prospectus supplement establishing an at-the-market distribution;

“highly-liquid security” means, in relation to an at-the-market distribution, a listed security or quoted security that:

- (a) has traded, in total, on one or more marketplaces, as reported on a consolidated market display during a 60-day period ending not earlier than 10 days prior to the distribution:
 - (i) an average of at least 100 times per trading day, and
 - (ii) with an average trading value of at least \$1,000,000 per trading day; or
- (b) at the time of the distribution is subject to Regulation M under the 1934 Act and is considered to be an “actively-traded security” under that regulation.

“investment dealer” has the meaning ascribed to it in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

“marketplace” has the meaning ascribed to it in National Instrument 21-101 *Marketplace Operation*.

9.2 Provisions not applicable to at-the-market distributions

(1) The following provisions do not apply to an issuer distributing a security under an ATM prospectus:

- (a) section 7.2 of NI 41-101;
- (b) Item 20 of Form 44-101F1;
- (c) item 8 of section 5.5 of this Instrument.

(2) The following provisions do not apply to an investment dealer acting as an underwriter in connection with the distribution of a security under an ATM prospectus:

- (a) section 6.7 or a similar provision under securities legislation;

- (b) item 8 of section 5.5 of this Instrument.

9.3 Requirements for issuers and underwriters conducting at-the-market distributions

- (1) An issuer may distribute a security under an ATM prospectus as part of an at-the-market distribution if all of the following apply:

[OPTION 1 – LIQUIDITY TEST:

- (a) either:
 - (i) the security being distributed is a highly-liquid security, or
 - (ii) the aggregate number of securities of the class distributed on all ATM exchanges under the ATM prospectus on the day of the distribution does not exceed 25% of the trading volume of that class on all marketplaces on that day;]

[OPTION 2 – NO LIQUIDITY TEST: paragraph (a) will not be adopted]

- (b) the security being distributed is an equity security;
- (c) the security is distributed through an investment dealer acting as an underwriter in connection with the distribution;
- (d) with respect to any agreement with an investment dealer referred to in paragraph (c) to distribute the security, the issuer
 - (i) has issued and filed a news release
 - (A) announcing that the issuer has entered into the agreement,
 - (B) indicating that an ATM prospectus has been filed, or will be filed, on SEDAR, and
 - (C) specifying where and how a purchaser of a security under the at-the-market distribution may obtain a copy of the agreement and the ATM prospectus; and
 - (ii) has filed a copy of the agreement on SEDAR;
- (e) the ATM prospectus discloses the material terms of any agreement referred to in paragraph (d);
- (f) the issuer distributes the security through an ATM exchange;
- (g) the issuer has disclosed the distribution if it constitutes a material fact or material change;
- (h) the cover page of the base shelf prospectus states that it may qualify an at-the-market distribution;
- (i) the ATM prospectus states in substantially the following words:

“Securities legislation in some provinces [and territories] of Canada provides purchasers of securities with the right to withdraw from an agreement to purchase securities and with remedies for rescission or, in some jurisdictions, revisions of the price, or damages if the prospectus, prospectus supplements relating to securities purchased by a purchaser

and any amendment are not delivered to the purchaser, provided that the remedies are exercised by the purchaser within the time limit prescribed by securities legislation. However, purchasers of [describe securities] distributed under an at-the-market distribution by [name of issuer] do not have the right to withdraw from an agreement to purchase the [describe securities] and do not have remedies of rescission or, in some jurisdictions, revisions of the price, or damages for non-delivery of the prospectus supplement, the accompanying prospectus and any amendment thereto relating to [describe securities] purchased by such purchaser because the prospectus supplement, the accompanying prospectus and any amendment thereto relating to the [describe securities] purchased by such purchaser will not be delivered, as permitted under Part 9 of National Instrument 44-102 Shelf Distributions.

Securities legislation in some provinces [and territories] of Canada further provides purchasers with remedies for rescission or, in some jurisdictions, revisions of the price or damages if the prospectus, prospectus supplements relating to securities purchased by a purchaser and any amendment contains a misrepresentation. Those remedies must be exercised by the purchaser within the time limit prescribed by securities legislation. Any remedies under securities legislation that a purchaser of [describe securities] distributed under an at-the-market distribution by [name of issuer] may have against [name of issuer] or its agents for rescission or, in some jurisdictions, revisions of the price, or damages if the prospectus supplement, the accompanying prospectus and any amendment thereto relating to securities purchased by a purchaser and any amendment contain a misrepresentation will remain unaffected by the non-delivery of the prospectus referred to above.

A purchaser should refer to any applicable securities legislation for the particulars of these rights and should consult a legal adviser.”;

- (j) if there has been any previous statement of a purchaser's rights contained in a previous version of the ATM prospectus, the issuer discloses in the ATM prospectus that, solely with regards to the at-the-market distribution, the statement of rights required to be included in the ATM prospectus under paragraph (i) supersedes and replaces the previous statement;

- (k) the ATM prospectus states:

“No underwriter of the at-the-market distribution, nor any person or company acting jointly or in concert with an underwriter, may enter into any transaction that is intended to stabilize or maintain the market price of the securities or securities of the same class as the securities distributed under the ATM prospectus, including selling an aggregate number or principal amount of securities that would result in the underwriter creating an over-allocation position in the securities.”;

- (l) the ATM prospectus includes the certificates required under Part 5 of NI 41-101 or other securities legislation in the form required under section 9.5 or 9.6 of this Instrument, as applicable.
- (2) An underwriter of an at-the-market distribution, or a person or company acting jointly or in concert with the underwriter, must not enter into any transaction that is intended to stabilize or maintain the market price of the same class of securities distributed under the at-the-market distribution, including for greater certainty, trading a security that would result in the underwriter creating an over-allocation position in that class of securities.

9.4 Reporting

- (1) Subject to subsection (2), for each month during which the issuer distributes securities under an ATM prospectus, the issuer, within 7 days after the end of the month, files a report on SEDAR, disclosing
 - (a) the number and average price of the securities distributed under the ATM prospectus, and
 - (b) the aggregate gross and net proceeds raised, and the aggregate commissions paid or payable, under the ATM prospectus to date.
- (2) If each security distributed under an ATM prospectus is a highly-liquid security at the time of the at-the-market distribution, subsection (1) does not apply to the distribution if, in its annual financial statements, interim financial reports, and management discussion and analysis filed on SEDAR, for the year and period immediately following the distribution, the issuer discloses
 - (a) the number and average price of the securities distributed under the ATM prospectus, and
 - (b) the aggregate gross and net proceeds raised, and the aggregate commissions paid or payable, under the ATM prospectus to date.

9.5 Form of certificates – base shelf prospectus establishing an at-the-market distribution

- (1) If a base shelf prospectus establishes an at-the-market distribution, the issuer certificate form required under paragraph 9.3(1)(l) must state the following:

“This short form prospectus, together with the documents incorporated in this prospectus by reference, will, as of the date of a particular distribution of securities under the prospectus, constitute full, true and plain disclosure of all material facts relating to the securities offered by this prospectus and the supplement(s) as required by the securities legislation of [insert name of each jurisdiction in which qualified]. “
- (2) If a base shelf prospectus establishes an at-the-market distribution, the underwriter certificate form required under paragraph 9.3 (1) (l) must state the following:

“To the best of our knowledge, information and belief, this short form prospectus, together with the documents incorporated in this prospectus by reference, will, as of the date of a particular distribution of securities under the prospectus, constitute full, true and plain disclosure of all material facts relating to the securities offered by this prospectus and the supplement(s) as required by the securities legislation of [insert name of each jurisdiction in which qualified].”

- (3) For an amendment to a base shelf prospectus that includes the form of certificates required under subsections (1) and (2), if the amendment does not restate the base shelf prospectus,

- (a) the issuer certificate form must state the following:

“The short form prospectus dated [insert date] as amended by this amendment, together with the documents incorporated in this prospectus by reference, will, as of the date of a particular distribution of securities under the prospectus, constitute full, true and plain disclosure of all material facts relating to the securities offered by this prospectus and the supplement(s) as required by the securities legislation of [insert name of each jurisdiction in which qualified]. “

- (b) the underwriter certificate form must state the following:

“To the best of our knowledge, information and belief, the short form prospectus dated [insert date] as amended by this amendment, together with the documents incorporated in this prospectus by reference, will, as of the date of a particular distribution of securities under the prospectus, constitute full, true and plain disclosure of all material facts relating to the securities offered by this prospectus and the supplement(s) as required by the securities legislation of [insert name of each jurisdiction in which qualified].”

- (4) For an amended and restated base shelf prospectus in respect of a base shelf prospectus that includes the certificates required under subsections (1) and (2),

- (a) the issuer certificate form must state the following:

“This amended and restated short form prospectus, together with the documents incorporated in this prospectus by reference, will, as of the date of a particular distribution of securities under the prospectus, constitute full, true and plain disclosure of all material facts relating to the securities offered by this prospectus and the supplement(s) as required by the securities legislation of [insert name of each jurisdiction in which qualified]. “

(b) the underwriter certificate form must state the following:

“To the best of our knowledge, information and belief, this amended and restated short form prospectus, together with the documents incorporated in this prospectus by reference, will, as of the date of a particular distribution of securities under the prospectus, constitute full, true and plain disclosure of all material facts relating to the securities offered by this prospectus and the supplement(s) as required by the securities legislation of [insert name of each jurisdiction in which qualified].”

9.6 Form of certificates – shelf prospectus supplement establishing an at-the-market distribution

(1) If the form of certificate required under subsection 9.5(1) was not included in the corresponding base shelf prospectus, the issuer certificate form required under paragraph 9.3(1)(l) must, in a shelf prospectus supplement that establishes an at-the-market distribution, state the following:

“The short form prospectus, together with the documents incorporated in the prospectus by reference, as supplemented by the foregoing, will, as of the date of a particular distribution of securities under the prospectus, constitute full, true and plain disclosure of all material facts relating to the securities offered by the prospectus and the supplement(s) as required by the securities legislation of [insert name of jurisdiction in which qualified].”

(2) If the form of certificate required under subsection 9.5(2) was not included in the corresponding base shelf prospectus, the underwriter certificate form required under paragraph 9.3(1)(l) must, in a shelf prospectus supplement that establishes an at-the-market distribution, state the following:

“To the best of our knowledge, information and belief, the short form prospectus, together with the documents incorporated in the prospectus by reference, as supplemented by the foregoing, will, as of the date of a particular distribution of securities under the prospectus, constitute full, true and plain disclosure of all material facts relating to the securities offered by the prospectus and the supplement(s) as required by the securities legislation of [insert name of jurisdiction in which qualified].”

(3) For an amendment to a shelf prospectus supplement in respect of a shelf prospectus supplement that includes the certificates required under subsections (1) and (2), if the amendment does not restate the shelf prospectus supplement,

(a) the issuer certificate form must state the following:

“The short form prospectus, together with the documents incorporated in the prospectus by reference, as supplemented by the foregoing as it amends the shelf prospectus supplement dated [insert date], will, as of the date of a particular distribution of securities under the prospectus,

constitute full, true and plain disclosure of all material facts relating to the securities offered by the prospectus and the supplement(s) as required by the securities legislation of [insert name of jurisdiction in which qualified].”

(b) the underwriter certificate form must state the following:

“To the best of our knowledge, information and belief, the short form prospectus, together with the documents incorporated in the prospectus by reference, as supplemented by the foregoing as it amends the shelf prospectus supplement dated [insert date], will, as of the date of a particular distribution of securities under the prospectus, constitute full, true and plain disclosure of all material facts relating to the securities offered by the prospectus and the supplement(s) as required by the securities legislation of [insert name of jurisdiction in which qualified].”

(4) For an amended and restated shelf prospectus supplement in respect of a shelf prospectus supplement that includes the certificates required under subsections (1) and (2),

(a) the issuer certificate form must state the following:

“The short form prospectus, together with the documents incorporated in the prospectus by reference, as supplemented by the foregoing, will, as of the date of a particular distribution of securities under the prospectus, constitute full, true and plain disclosure of all material facts relating to the securities offered by the prospectus and the supplement(s) as required by the securities legislation of [insert name of jurisdiction in which qualified].”

(b) the underwriter certificate form must state the following:

“To the best of our knowledge, information and belief, the short form prospectus, together with the documents incorporated in the prospectus by reference, as supplemented by the foregoing, will, as of the date of a particular distribution of securities under the prospectus, constitute full, true and plain disclosure of all material facts relating to the securities offered by the prospectus and the supplement(s) as required by the securities legislation of [insert name of jurisdiction in which qualified].”

3. These amendments come into force on ●.