

ANNEX B

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

1. *Companion Policy 44-102CP to National Instrument 44-102 Shelf Distributions is changed by this Document.*
2. *The following Part is added:*

PART 5 – AT-THE-MARKET DISTRIBUTIONS OF EQUITY SECURITIES UNDER SHELF

5.1 Purpose

The purpose of Part 9 of NI 44-102 is to provide exemptions from certain regulatory requirements, subject to conditions, so that issuers and underwriters may distribute securities under an ATM prospectus.

5.2 Definition of highly-liquid security

It is the issuer's responsibility to determine if a security is a highly-liquid security. The definition of "highly-liquid security" is intended to be identical in substance to the one found in IIROC's Universal Market Integrity Rules (UMIR) except that, in relation to an at-the-market distribution, the determination is made at the time of each at-the-market distribution. The definition includes the expression "consolidated market display", which is also defined in UMIR. To assist an issuer in making such a determination, IIROC maintains a list of highly-liquid securities. The definition of "consolidated market display" and the list of highly-liquid securities prepared by IIROC are available on IIROC's website at www.iroc.ca.

5.3 Disclosure of Intention to Qualify At-the-Market Distribution

(1) Paragraph 9.3(1)(h) of Part 9 of NI 44-102 requires that an issuer disclose on the cover page of its base shelf prospectus that the prospectus may qualify an at-the-market distribution. An at-the-market distribution cannot be established by shelf prospectus supplement unless the base shelf prospectus has met this requirement. The securities regulatory authorities are of the view that a base shelf prospectus that is intended to qualify an at-the-market distribution may result in additional review respecting sufficiency of proceeds, an issuer's business or a recent reverse take-over of former shell companies. In connection with this review, the securities regulatory authorities may consider a number of factors, including

- (a) the number of securities that may be qualified by the base shelf prospectus;
- (b) the total number of issued and outstanding securities of the same class; and
- (c) the trading volume of the securities of the same class.

(2) An issuer should qualify the statements required by paragraphs 2 and 3 of section 5.5 of NI 44-102 in its base shelf prospectus to indicate that delivery is not required where an exemption from the delivery requirements referred to in these provisions is available.

5.4 Material Fact or Material Change

(1) In determining whether a proposed distribution of securities under an ATM prospectus would constitute a material fact or material change under paragraph 9.3(1)(g) of NI 44-102, the issuer should take into account a number of factors including

- (a) the parameters of the proposed distribution, including the number of securities proposed to be distributed and any price or timing restrictions that the issuer may impose with respect to the proposed distribution;
- (b) the percentage of the outstanding securities of the same class that the number of securities proposed to be distributed represents;
- (c) previous, and cumulative, distributions of securities under the ATM prospectus;
- (d) whether the investment dealer has advised the issuer that the proposed distribution may have a significant impact on the market price of securities of the same class;
- (e) trading volume and volatility of securities of the same class;
- (f) recent developments in the business, operations or capital of the issuer; and
- (g) prevailing market conditions generally.

(2) The issuer will have an interest in minimizing the market impact of an at-the-market distribution. If a proposed distribution of securities under an ATM prospectus could have a significant impact on the market price of securities of the same class as the securities proposed to be distributed, the proposed distribution may disrupt a fair and orderly market. The investment dealer selected by the issuer will have experience and expertise in managing orders to limit any negative effect on market integrity. An investment dealer is prohibited from engaging in conduct that may disrupt a fair and orderly market under IIROC rules and standards of conduct.

5.5 Selling Agent

It is best practice to include language in an ATM prospectus that a purchaser's rights and remedies under applicable securities legislation against the dealer underwriting or acting as an agent for the issuer in an at-the-market distribution will not be affected by that dealer's decision to effect the distribution directly or through a selling agent.

5.6 Designated News Releases

To ensure an ATM prospectus includes full, true and plain disclosure of all material facts related to the securities distributed under the ATM prospectus, the issuer may file a designated news release rather than filing a prospectus supplement or an amended prospectus. If an issuer disseminates a news release disclosing information that, in the issuer's determination, constitutes a "material fact", the issuer should identify the news release as a "designated news release" for the purposes of the ATM prospectus. This designation should be made on the face page of the version of the news release filed on SEDAR. An ATM prospectus should provide that any such designated news release will be deemed to be incorporated by reference into the ATM prospectus.

5.7 Prospectus Certificates

The certificates required to be filed under paragraph 9.3(1)(l) of NI 44-102 in the form required under sections 9.5 and 9.6 of NI 44-102, as applicable, are forward looking certificates confirming that the ATM prospectus provides full, true and plain disclosure of all material facts relating to the securities distributed under the ATM prospectus as of the date of each distribution under an ATM prospectus. For promoters of an at-the-market distribution, the certificate of promoter required under Part 5 of NI 41-101 should be in the form required by section 9.5 or 9.6 of NI 44-102, as applicable.

5.8 Filing Jurisdictions

Issuers are required to file a prospectus in every jurisdiction where a distribution will occur. However, because purchases in an at-the-market distribution are made directly on a securities exchange, it is difficult to determine where a distribution will occur because issuers and dealers are unable to determine where a purchaser is located at the time of the trade. As a result, it is possible that purchasers under an at-the-market distribution can be located in any jurisdiction of Canada.

3. These changes become effective on ●.