

*Note: [16 Apr 2024] - Amendments to NI 44-102. Refer to Annex E of the CSA Notice announcing amendments to Implement an Access Model for Prospectuses of Non-Investment Fund Reporting Issuers dated 11 Jan 2024.*

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

- 1. *National Instrument 44-102 Shelf Distributions is amended by this Instrument.***
- 2. *Section 6.7 is amended by replacing “The” before “shelf prospectus supplement” with “Subject to Part 6A, the”.***
- 3. *The following part is added after Part 6:***

### **PART 6A      ACCESS TO SHELF PROSPECTUS SUPPLEMENTS AND BASE SHELF PROSPECTUSES**

#### **6A.1 Application**

- (1) Subject to subsection (2), this Part applies in respect of a prospectus and any amendment if access to the document is provided in accordance with the requirements under section 6A.5 or the conditions under section 6A.6.
- (2) This Part does not apply in respect of
  - (a) a prospectus to distribute securities by way of an MTN program or other continuous distribution, and
  - (b) a prospectus to distribute securities of an investment fund.

#### **6A.2 Access to Shelf Prospectus Supplements and Base Shelf Prospectuses**

- (1) This section does not apply in British Columbia, Alberta, Québec and New Brunswick.
- (2) The requirement under securities legislation to deliver or send a prospectus and any amendment may be satisfied by providing access to the shelf prospectus supplement, the corresponding base shelf prospectus, the preliminary base shelf prospectus and any amendment to the documents in accordance with subsection 6A.5(2) or (3).
- (3) The shelf prospectus supplement, the corresponding base shelf prospectus, the preliminary base shelf prospectus and any amendment to the documents is delivered or sent on the date that access to the document has been provided in accordance with subsection 6A.5(2) or (3).

- (4) The shelf prospectus supplement, the corresponding base shelf prospectus and any amendment to the documents is received on the date that the document has been delivered or sent in accordance with subsection (3).

### **6A.3 Access to Shelf Prospectus Supplements and Base Shelf Prospectuses – Alberta**

In Alberta, the requirement under securities legislation to provide access to a prospectus and any amendment is satisfied by providing access to the shelf prospectus supplement, the corresponding base shelf prospectus, the preliminary base shelf prospectus and any amendment to the documents in accordance with subsection 6A.5(2) or (3).

### **6A.4 Right of Withdrawal, Revocation or Cancellation**

- (1) This section does not apply in British Columbia, Québec and New Brunswick.
- (2) Except in Alberta and Saskatchewan, if the shelf prospectus supplement, the corresponding base shelf prospectus or any amendment to the documents is delivered or sent in accordance with subsection 6A.5(2), the right to withdraw from an agreement to purchase a security under securities legislation may be exercised by a purchaser within 2 business days after the later of
  - (a) the date that the document is received in accordance with subsection 6A.2(4), and
  - (b) the date that the purchaser has entered into the agreement to purchase the security.
- (3) In Alberta, if access to the shelf prospectus supplement, the corresponding base shelf prospectus or any amendment to the documents is provided in accordance with subsection 6A.5(2), pursuant to section 130 of the *Securities Act* (Alberta), the agreement to purchase securities is not binding on the purchaser if the dealer from whom the purchaser purchases the security receives written notice sent by the purchaser, evidencing the intention of the purchaser not to be bound by the agreement to purchase, not later than 2 business days after the later of
  - (a) the date that access to the document is provided in accordance with section 6A.5(2), and
  - (b) the date that the purchaser or subscriber has entered into the agreement to purchase or the subscription or contract to purchase the security.
- (4) In Saskatchewan, if the shelf prospectus supplement, the corresponding base shelf prospectus or any amendment to the documents is delivered or sent in accordance with subsection 6A.5(2), a purchaser that is not a registrant may cancel a purchase if the purchaser has not sold or otherwise transferred beneficial ownership of the security and the person or company from whom the purchaser purchased the

security receives notice in writing to cancel the agreement of purchase and sale for the security at any time up to 2 business days after the later of

- (a) the date that the document is received in accordance with subsection 6A.2(4), and
- (b) the date that the purchaser has entered into the agreement to purchase the security.

#### **6A.5 Procedures**

- (1) This section does not apply in British Columbia, Québec and New Brunswick.
- (2) Access to the shelf prospectus supplement, the corresponding base shelf prospectus and any amendment to the documents has been provided on the date on which all of the following have been satisfied:
  - (a) the base shelf prospectus and any amendment is filed on SEDAR+ and a receipt is issued and posted on SEDAR+ for the document,
  - (b) the shelf prospectus supplement and any amendment is filed on SEDAR+, and
  - (c) after the shelf prospectus supplement and any amendment is filed, or within 2 business days before the date the document is filed, a news release is issued and filed on SEDAR+ that states
    - (i) in the title of the news release, that the shelf prospectus supplement, the corresponding base shelf prospectus and any amendment to the documents is accessible through SEDAR+, or will be accessible through SEDAR+ within 2 business days, as applicable,
    - (ii) that access to the shelf prospectus supplement, the corresponding base shelf prospectus and any amendment to the documents is provided in accordance with securities legislation relating to procedures for providing access to a shelf prospectus supplement, a base shelf prospectus and any amendment,
    - (iii) that the document is accessible, or will be accessible within 2 business days, as applicable, at [www.sedarplus.com](http://www.sedarplus.com),
    - (iv) the securities that are offered under the shelf prospectus supplement, and
    - (v) the following:

“An electronic or paper copy of the shelf prospectus supplement, the corresponding base shelf prospectus and any amendment to the documents may be obtained, without charge, from [*insert contact information for the issuer or dealer, as applicable*] by providing the contact with an email address or address, as applicable.”

- (3) Access to the preliminary base shelf prospectus and any amendment has been provided if the document has been filed on SEDAR+, and a receipt has been issued and posted on SEDAR+ for the document.
- (4) If a purchaser requests an electronic or paper copy of the shelf prospectus supplement, the corresponding base shelf prospectus or any amendment to the documents, from the issuer or dealer, a copy of the document in the format requested by the purchaser must be sent by the issuer or dealer within 2 business days from the date the request is received and without charge to the purchaser at the email address or address specified in the request.
- (5) If a prospective purchaser requests an electronic or paper copy of the preliminary base shelf prospectus or any amendment, from the issuer or dealer, in accordance with securities legislation, a copy of the document in the format requested by the purchaser must be sent by the issuer or dealer without charge to the prospective purchaser at the email address or address specified in the request.

#### **6A.6 Exemption from Requirement to Send Prospectus – British Columbia, Québec and New Brunswick**

- (1) In British Columbia, Québec and New Brunswick, a dealer is exempt from the requirement under securities legislation to send a final prospectus and any amendment if
  - (a) the base shelf prospectus and any amendment has been filed on SEDAR+ and a receipt has been issued and posted on SEDAR+ for the document,
  - (b) the shelf prospectus supplement and any amendment has been filed on SEDAR+, and
  - (c) after the shelf prospectus supplement and any amendment was filed, or within 2 business days before the date the document was filed, a news release has been issued and filed on SEDAR+ that states
    - (i) in the title of the news release, that the shelf prospectus supplement, the corresponding base shelf prospectus and any amendment to the documents is accessible through SEDAR+, or will be accessible through SEDAR+ within 2 business days, as applicable,

- (ii) that access to the shelf prospectus supplement, the corresponding base shelf prospectus and any amendment to the documents is provided in accordance with securities legislation relating to procedures for providing access to a shelf prospectus supplement, a base shelf prospectus and any amendment,
- (iii) that the document is accessible, or will be accessible within 2 business days, as applicable, at [www.sedarplus.com](http://www.sedarplus.com),
- (iv) the securities that are offered under the shelf prospectus supplement, and
- (v) the following:

“An electronic or paper copy of the shelf prospectus supplement, the corresponding base shelf prospectus and any amendment to the documents may be obtained, without charge, from [*insert contact information for the issuer or dealer, as applicable*] by providing the contact with an email address or address, as applicable.”

- (2) In British Columbia and New Brunswick, a dealer or issuer that solicits an expression of interest from a prospective purchaser is exempt from the requirement in section 78 (2)(c) of the Securities Act (British Columbia) or subsection 82(2) of the Securities Act (New Brunswick) to send a copy of the preliminary base shelf prospectus to the prospective purchaser if the document has been filed on SEDAR+ and a receipt has been issued and posted on SEDAR+ for the document.
- (3) In British Columbia and New Brunswick, if a purchaser, or in Québec, if a purchaser or subscriber, requests an electronic or paper copy of the shelf prospectus supplement, the corresponding base shelf prospectus or any amendment to the documents from the issuer or dealer, a copy of the document in the format requested by the purchaser or subscriber must be sent by the issuer or dealer within 2 business days from the date the request is received, without charge, to the purchaser or subscriber at the email address or address specified in the request.
- (4) In British Columbia and New Brunswick, if a dealer relies on subsection (1), an agreement of purchase and sale is not binding on a purchaser if the dealer from whom the purchaser purchases the security receives written notice sent by the purchaser, evidencing the intention of the purchaser not to be bound by the agreement, not later than 2 business days after the later of
  - (a) the date that the conditions referred to in subsection (1) are satisfied, and
  - (b) the date that the purchaser entered into the agreement.

- (5) In Québec, if a dealer relies on subsection (1), a contract to purchase or a subscription is not binding on a purchaser or subscriber if the dealer from whom the purchaser or subscriber purchases or subscribes for the security receives written notice sent by the purchaser or subscriber, evidencing the intention of the purchaser or subscriber to rescind the contract or subscription, not later than 2 business days after the later of
  - (a) the date that the conditions referred to in subsection (1) are satisfied, and
  - (b) the date that the purchaser or subscriber entered into the contract or the date of the subscription.
- (6) In British Columbia and New Brunswick, subsection (4) does not apply if the purchaser
  - (a) is a registrant, or
  - (b) disposes of the beneficial ownership of the security referred to in subsection (4), otherwise than to realize on collateral given for debt, before the end of the time referred to in subsection (4).
- (7) In Québec, subsection (5) does not apply if the purchaser or subscriber
  - (a) is a dealer, or
  - (b) disposes of the securities before the end of the time referred to in subsection (5).
- (8) In British Columbia and New Brunswick, receipt of the notice referred to in subsection (4) by a dealer that acted as agent of the seller or vendor with respect to the sale of the security referred to in subsection (1) is deemed to be receipt by the seller or vendor on the date on which the dealer received the notice.
- (9) In Québec, the dealer is presumed to have received the notice of rescission referred to in subsection (5) in the ordinary course of mail..

**4. Subsection 9.2(1) is replaced with the following:**

- (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) section 1.9A of Form 44-101F1;
  - (c) item 20 of Form 44-101F1;

- (d) item 8 of section 5.5 of this Instrument;
- (e) Part 6A of this Instrument..

**5. Subsection 9A.2(2) is replaced with the following:**

- (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 authority[ies] in [each of/certain of the provinces/provinces and territories of Canada].

The final base shelf prospectus, any applicable shelf prospectus supplement and any amendment to the documents are accessible through SEDAR+. Copies of the documents 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 applicable shelf prospectus supplement and any amendment to the documents for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision..

**6. Section 9A.3 is amended by**

- (a) **replacing paragraph (1)(g) with the following:**

- (g) the investment dealer
  - (i) includes, in the marketing materials, a statement that the final base shelf prospectus, any applicable shelf prospectus supplement and any amendment to the documents are accessible through SEDAR+, or
  - (ii) provides, with the marketing materials, a copy of the final base shelf prospectus, applicable shelf prospectus supplement and any amendment to the documents that have been filed.; **and**

- (b) **replacing subsection (5) with the following:**

- (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].

The final base shelf prospectus, any applicable shelf prospectus supplement and any amendment to the documents are accessible through SEDAR+. Copies of the documents 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 applicable shelf prospectus supplement and any amendment to the documents for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision..

**7. Section 9A.4 is amended by**

**(a) replacing paragraph (3)(c) with the following:**

- (c) make an oral statement at the commencement of the road show that the final base shelf prospectus, any applicable shelf prospectus supplement and any amendment to the documents are accessible through SEDAR+, or provide the investor with a copy of the final base shelf prospectus, any applicable shelf prospectus supplement and any amendment to the documents that have been filed.; **and**

**(b) amending subsection (4) by adding “The final base shelf prospectus, any applicable shelf prospectus supplement and any amendment to the documents are accessible through SEDAR+.” after “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.”.**

**Effective date**

- 8. (1) This Instrument comes into force on April 16, 2024.
- (2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after April 16, 2024, this Instrument come into force on the day on which it is filed with the Registrar of Regulations.