

**THE MANITOBA SECURITIES COMMISSION**  
**MSC Rule No. 2013-3**  
(Section 149.1, *The Securities Act*)

**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 was formed 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 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".*

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. *Section 2.7 is amended by adding the following subsection after subsection 2.7(1):*

**"2.7(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."

7. *Subsection 2.7(2) 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)".*

8. *Paragraph 2.7(2)(a) is amended by adding "or the reorganization described in paragraph (b) of the definition of "successor issuer", " after "transaction".*

9. *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", and*

*(b) adding "or reorganization" after "an issuer that was a party to the restructuring transaction".*

10. *Subparagraph 2.7(2)(b)(ii) is amended by adding "in the case of a restructuring transaction," before "included".*

11. *Section 2.7 is amended by adding the following subsection after subsection 2.7(2):*

**"2.7(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) 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, the 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 the qualifying transaction; or

(ii) in the case of a TSX Venture Exchange filing statement, other than a CPC filing statement, the 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 the reverse takeover."

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 *Subsection 2.8(5) is repealed.*

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

**"2.8(6)** The 10 business day period referred to in subsection (1) does not apply if

- (a) an issuer is relying on section 2.4 or 2.5 and the following requirements are met:
  - (i) the issuer satisfies 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) an issuer is a successor issuer and the following requirements are met:
  - (i) the issuer satisfies
    - (A) section 2.2, 2.3 or 2.6, and
    - (B) 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 person or company that
    - (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)."

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

15. Subparagraph 4.1(1)(b)(i) is amended by

- (a) replacing "Appendix A to NI 41-101" with "personal information form", and
- (b) deleting "for whom the issuer has not previously filed or delivered,".

16. Clause 4.1(1)(b)(i)(D) is amended by replacing "promoter," with "promoter;".

17. Clause 4.1(1)(b)(i)(E) is repealed.

18. Clause 4.1(1)(b)(i)(F) is repealed.

19. Clause 4.1(1)(b)(i)(G) is repealed.

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

**"4.1(2)** Despite subparagraph (1)(b)(i), an issuer is not required to deliver to the regulator a personal information form for an individual if the issuer, another issuer or, if the issuer is an investment fund, the manager of the investment fund issuer or another investment fund issuer, previously delivered a personal information form for the individual and all of the following are satisfied:

(a) the certificate and consent included in or attached to the personal information form was executed by the individual within three years preceding the date of filing of the preliminary short form prospectus;

(b) the responses given by the individual to questions 6 through 10 of the individual's personal information form are correct as at a date that is within 30 days of the filing of the preliminary short form prospectus;

(c) if the personal information form was previously delivered to the regulator by another issuer, the issuer delivers to the regulator, concurrently with the filing of the preliminary short form prospectus, a copy of the previously delivered personal information form, or alternative information that is satisfactory to the regulator.

**4.1(3)** Until May 14, 2016, subparagraph (1)(b)(i) does not apply to an issuer in respect of the delivery of a personal information form for an individual if the issuer or, if the issuer is an investment fund, the manager of the investment fund issuer, previously delivered to the regulator a predecessor personal information form for the individual and all of the following are satisfied:

(a) the certificate and consent included in or attached to the predecessor personal information form was executed by the individual within three years preceding the date of filing of the preliminary short form prospectus;

(b) the responses given by the individual to questions 4(B) and (C) and questions 6 through 9 or, in the case of a TSX/TSXV personal information form in effect after September 8, 2011, questions 6 through 10, of the individual's predecessor personal information form are correct as at a date that is within 30 days of the filing of the preliminary short form prospectus."

21. 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,".

22. 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;".

23. 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) does not need to 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".

24. 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".

25. 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".

26. Subsection 1.6(2) of Form 44-101F1 Short Form Prospectus is amended by replacing

"**1.6(2)** If there is an over-allotment option or an option to increase the size of the distribution before closing,

(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:

"**1.6(2)** Describe the terms of any over-allotment option or any option to increase the size of the distribution before closing.".

27. Section 1.6 of Form 44-101F1 is amended by adding the following subsection after Subsection 1.6(2):

"**1.6(2.1)** If there may be an over-allocation position 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.".

28. 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 (a) 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.""**

29. Subsection 1.9(1) of Form 44-101F1 is amended by adding "or series" after "class".

30. Section 1.11 of Form 44-101F1 is amended by replacing

**"International issuers**

If the issuer, a selling securityholder, or any person or company required to provide a certificate under Part 5 of NI 41-101 or other securities legislation, is incorporated, continued, or otherwise organized under the laws of a foreign jurisdiction or resides outside of Canada, state the following on the cover page or under a separate heading elsewhere in the short form prospectus, with the bracketed information completed:

"The [issuer, selling securityholder, person or company signing a certificate under Part 5 of NI 41-101 or securities legislation] is incorporated, continued or otherwise organized under the laws of a foreign jurisdiction or resides outside of Canada. Although [the person or company described above] has appointed [name(s) and address(es) of agent(s) for service] as its agent(s) for service of process in [list jurisdictions] it may not be possible for investors to enforce judgements obtained in Canada against [the person or company described above]."

with the following:

**"Enforcement of Judgments Against Foreign Persons or Companies**

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 or other securities legislation, or any person or company for whom the issuer is required to file a consent under Part 10 of NI 41-101, is incorporated, continued, or otherwise organized under the laws of a foreign jurisdiction or resides outside of Canada, state the following on the cover page or under a separate heading elsewhere in the prospectus, with the bracketed information completed:

"The [issuer, director of the issuer, selling securityholder, or other person or company] is incorporated, continued or otherwise organized under the laws of a foreign jurisdiction or resides outside of Canada.

[the person or company named below] has appointed the following agent(s) for service of process:

Name of Person or Company	Name and Address of Agent

Purchasers are advised that it may not be possible for investors to enforce judgments obtained in Canada against any person or company that is incorporated, continued or otherwise organized under the laws of a foreign jurisdiction or resides outside of Canada, even if the party has appointed an agent for service of process. "

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

- (a) replacing "subscription" with "offering amount", and
- (b) replacing "subscriptions" with "offering amounts".

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

**4.2(3)** If 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 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.

**4.2(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 each threshold 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 15% of the offering or less."*

33. 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".

34. Section 7.6 of Form 44-101F1 is amended by replacing "disclose that holders of such securities have been provided with a contractual right of rescission and provide the following disclosure in the short form prospectus, with the bracketed information completed" with "state the following".

35. 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".

36. Paragraph 7A.1(a) of Form 44-101F1 is amended by adding "sold by the" before "selling securityholder".

37. Paragraph 7A.1(b) of Form 44-101F1 is amended by adding "or sold" after "issued".

38. Paragraph 7A.1(c) of Form 44-101F1 is amended by adding "or sold" after "issued".

39. 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."

40. 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."

41. Subsection 11.1(2) of Form 44-101F1 is amended by adding "applicable portions of" after "clarify that".

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

**"11.1(3)** Despite paragraph 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 abandoned or completed."

43. Subsection 11.3(2) of Form 44-101F1 is amended by

(a) adding "or 2.7(3)" after "2.7(2)" and

(b) 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) Section 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 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."

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

45. 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".

46. 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) must be presented in a way that supplements, but does not replace, the disclosure required to be made for a transaction that constitutes a significant acquisition for the issuer or a reverse takeover in which the issuer was involved."

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

**"Additional disclosure for issuers of asset-backed securities**

**11.5** If the issuer has not filed or has not been required to file interim financial statements and related MD&A in respect of an interim period 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."

48. Section 15.3 of Form 44-101F1 is amended by

(a) replacing "that" with "the", and

(b) adding "and the disclosure is correct as at the date of the prospectus" after "AIF".

49. Section 20.1 of Form 44-101F1 is amended by replacing "revisions of the price of damages" with "revisions of the price or damages".

50. Item 20 of Form 44-101F1 is amended by adding the following section after section 20.2:

**"Convertible, exchangeable or exercisable securities**

**20.3** In the case of an offering of convertible, exchangeable or exercisable securities in which additional amounts are payable or may become payable upon conversion, exchange or exercise, 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 [and 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 [and 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 those provinces [and territories]. The purchaser should refer to any applicable provisions of the securities legislation of the purchaser's province [or territory] for the particulars of this right of action for damages or consult with a legal adviser."

*INSTRUCTION*

*For greater certainty, in the case of a short form prospectus that is a base shelf prospectus under NI 44-102, issuers must include the above statement, unless it is stated in the base shelf prospectus that no convertible, exchangeable or exercisable securities will be offered, or that such securities may be offered but no amounts will be payable to convert, exchange or exercise those securities."*

51. This Instrument comes into force on May 14, 2013.

52. This Instrument may be cited as MSC Rule 2013-3.