

**THE MANITOBA SECURITIES COMMISSION**  
**MSC Rule No. 2013-21**  
(Section 149.1, *The Securities Act*)

**AMENDMENT INSTRUMENT FOR  
NATIONAL INSTRUMENT 44-101  
SHORT FORM PROSPECTUS DISTRIBUTIONS**

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

2. *Subsection 4.1(1) is amended*

(a) *by adding the following after subparagraph (a)(vi):*

(vii) **Marketing Materials** – a copy of any template version of the marketing materials required to be filed under paragraph 7.6(1)(e) of this Instrument or paragraph 13.7(1)(e) of NI 41-101 that has not previously been filed; and,

(b) *in subparagraph (b)(ii) by replacing "Handbook." with "Handbook; and", and*

(c) *by adding the following after subparagraph (b)(ii):*

(iii) **Marketing Materials** – a copy of any template version of the marketing materials required to be delivered under paragraph 7.6(4)(c) or 7.8(2)(c) of this Instrument or paragraph 13.7(4)(c) or 13.12(2)(c) of NI 41-101 that has not previously been delivered.

3. *Section 4.2 is amended*

(a) *by deleting "and" after subparagraph (a)(x.1),*

(b) *by adding the following after subparagraph (a)(xi):*

(xii) **Marketing Materials** – a copy of any template version of the marketing materials required to be filed under paragraph 7.6(1)(e) or 7.6(7)(a) of this Instrument or paragraph 13.7(1)(e), 13.7(7)(a) or 13.8(1)(e) of NI 41-101 that has not previously been filed; and,

(c) *by deleting "and" after subparagraph (b)(i),*

(d) *in subparagraph (b)(ii), by replacing "listing of the exchange." with "listing of the exchange, and", and*

(e) *by adding the following after subparagraph (b)(ii):*

(iii) a copy of any template version of the marketing materials required to be delivered under paragraph 7.6(4)(c) or 7.8(2)(c) of this Instrument or paragraph 13.7(4)(c) or 13.12(2)(c) of NI 41-101 that has not previously been delivered..

4. *Part 7 is amended by replacing sections 7.1 and 7.2 with the following:*

**Definitions and interpretations**

**7.1(1)** In this Part:

"**bought deal agreement**" means a written agreement

(a) under which one or more underwriters has agreed to purchase all securities of an issuer that are to be offered in a distribution under a short form prospectus on a firm commitment basis, other than securities issuable on the exercise of an over-allotment option,

(b) that does not have a market-out clause,

(c) that, other than an over-allotment option, does not provide an option for any party to increase the number of securities to be purchased, and

(d) that, other than what is agreed to under a confirmation clause that complies with section 7.4, is not conditional on one or more additional underwriters agreeing to purchase any of the securities offered;

"**comparables**" means information that compares an issuer to other issuers;

"**confirmation clause**" means a provision in a bought deal agreement that provides that the agreement is conditional on the lead underwriter confirming that one or more additional underwriters has agreed to purchase certain of the securities offered;

"**market-out clause**" means a provision in an agreement which permits an underwriter to terminate its commitment, or underwriters to terminate their commitment, to purchase securities in the event that the securities cannot be marketed profitably due to market conditions;

"**U.S. cross-border offering**" means an offering of securities of an issuer being made contemporaneously in the United States of America and Canada by way of a prospectus filed with a securities regulatory authority in a jurisdiction of Canada and a U.S. prospectus filed with the SEC;

"**U.S. prospectus**" means a prospectus that has been prepared in accordance with the disclosure and other requirements of U.S. federal securities law for an offering of securities registered under the 1933 Act.

**7.1(2)** In this Part, for greater certainty, a reference to "provides" includes showing a document to a person without allowing the person to retain or make a copy of the document.

### **Solicitations of expressions of interest**

**7.2** Subject to subsection 7.4(2), the prospectus requirement does not apply to a solicitation of an expression of interest made before the issuance of a receipt for a preliminary short form prospectus for securities to be qualified for distribution under a short form prospectus pursuant to this Instrument or for securities to be issued or transferred pursuant to an over-allotment option that are qualified for distribution under a short form prospectus pursuant to this Instrument, if

(a) before the solicitation,

(i) the issuer has entered into a bought deal agreement;

(ii) the bought deal agreement has fixed the terms of the distribution, including, for greater certainty, the number and type of securities and the price per security, and requires that the issuer file a preliminary short form prospectus for the securities not more than four business days after the date that the bought deal agreement was entered into; and

(iii) immediately upon entering into the bought deal agreement, the issuer issued and filed a news release announcing the agreement,

(b) the issuer files a preliminary short form prospectus for the securities pursuant to this Instrument within four business days after the date that the bought deal agreement was entered into,

(c) upon issuance of a receipt for the preliminary short form prospectus, a copy of the preliminary short form prospectus is sent to each person or company that, in response to the solicitation, expressed an interest in acquiring the securities, and

(d) except for a bought deal agreement under paragraph (a) or a more extended form of underwriting agreement referred to in subsection 7.3(6), no agreement of purchase and sale for the securities is entered into until the short form prospectus has been filed and a receipt has been issued.

**Amendment or termination of bought deal agreement**

**7.3(1)** Except as provided in subsections (2) to (7), a party to a bought deal agreement referred to in paragraph 7.2(a) must not agree to modify the terms of a distribution provided for under a bought deal agreement.

**7.3(2)** The parties to a bought deal agreement referred to in paragraph 7.2(a) may increase the number of securities to be purchased by an underwriter or underwriters, if

(a) the number of additional securities to be purchased does not exceed 100% of the total of the base offering contemplated by the original agreement plus any securities that would be acquired upon the exercise of an over-allotment option;

(b) the type of securities to be purchased, and the price per security, is the same as under the original agreement;

(c) the issuer files a preliminary short form prospectus for the increased number of securities in accordance with this Instrument within four business days after the date that the original agreement was entered into;

(d) immediately upon agreeing to change the number of securities to be purchased, the issuer issued and filed a news release announcing the amendment;

(e) no previous amendment has been made to the original agreement to increase the number of securities to be purchased; and

(f) the amended agreement is a bought deal agreement and the conditions in section 7.2 are complied with.

**7.3(3)** The parties to a bought deal agreement referred to in paragraph 7.2(a) may reduce the number of securities to be purchased, or the price of the securities, if the amendment is made on or after the date which is four business days after the date the original agreement was entered into.

**7.3(4)** The parties to a bought deal agreement referred to in paragraph 7.2(a) may provide for a different type of securities to be purchased by the underwriter or underwriters, and a different price for the securities, if

(a) in the case where a different type of securities is to be substituted in whole or in part for the securities that were the subject of the original agreement, or offered in addition to the securities that were the subject of the original agreement, the aggregate dollar amount of the securities to be purchased by the underwriter or underwriters on a firm commitment basis under the amended agreement is the same as the aggregate dollar amount of the securities that were to be purchased by the underwriter or

underwriters on a firm commitment basis under the original agreement or under an agreement amended in accordance with subsection (2);

(b) before a solicitation of an expression of interest in the different type of securities and immediately upon entering into the amendment to the original agreement, the issuer issued and filed a news release announcing the amendment;

(c) the issuer files a preliminary short form prospectus for the different type of securities pursuant to this Instrument within four business days after the date that the original agreement was entered into;

(d) no previous amendment has been made to the original agreement to provide for a different type of securities to be purchased; and

(e) the amended agreement is a bought deal agreement and the conditions in section 7.2 are complied with.

**7.3(5)** The parties to a bought deal agreement referred to in paragraph 7.2(a) may add or remove an underwriter or adjust the number of securities to be purchased by each underwriter on a proportionate basis, if

(a) the aggregate dollar amount of the securities to be purchased by the underwriter or underwriters on a firm commitment basis under the amended agreement is the same as the aggregate dollar amount of the securities that were to be purchased by the underwriter or underwriters on a firm commitment basis under the original agreement or under an agreement amended in accordance with subsection (2); and

(b) the amended agreement is a bought deal agreement and the conditions in section 7.2 are complied with.

**7.3(6)** The parties to a bought deal agreement referred to in paragraph 7.2(a) may replace the bought deal agreement with a more extended form of underwriting agreement that includes, without limitation, termination rights, if the more extended form of underwriting agreement complies with the terms and conditions that apply to a bought deal agreement under this Part.

**7.3(7)** The parties to a bought deal agreement referred to in paragraph 7.2(a) may agree to terminate the agreement if the parties decide not to proceed with the distribution.

**Confirmation clause**

**7.4(1)** A bought deal agreement referred to in paragraph 7.2(a) must not contain a confirmation clause unless

(a) under the bought deal agreement, the lead underwriter must provide the issuer with a copy of the agreement that has been signed by the lead underwriter;

(b) the issuer signs the bought deal agreement on the same day that the lead underwriter provides the agreement in accordance with paragraph (a);

(c) the lead underwriter has discussions with other investment dealers regarding their participation in the distribution as additional underwriters; and

(d) on the business day after the day that the lead underwriter provides the agreement in accordance with paragraph (a), the lead underwriter provides notice in writing to the issuer that

(i) the lead underwriter has confirmed the terms of the bought deal agreement, or

(ii) the lead underwriter will not be confirming the terms of the bought deal agreement and the agreement has been terminated.

**7.4(2)** Where an issuer has entered into a bought deal agreement that has been confirmed in accordance with subsection (1), the prospectus requirement does not apply to a solicitation of an expression of interest made before the issuance of a receipt for a preliminary short form prospectus for securities to be qualified for distribution under a short form prospectus pursuant to this Instrument, or for securities to be issued or transferred pursuant to an over-allotment option that are qualified for distribution under a short form prospectus pursuant to this Instrument, if

(a) before the solicitation,

(i) the bought deal agreement has fixed the terms of the distribution, including, for greater certainty, the number and type of securities and the price per security, and requires that the issuer file a preliminary short form prospectus for the securities not more than four business days after the date that the lead underwriter provides the notice in accordance with subparagraph (1)(d)(i); and

(ii) immediately after the lead underwriter provides the notice in accordance with subparagraph (1)(d)(i), the issuer issues the news release referred to in subparagraph 7.2(a)(iii),

(b) the issuer files a preliminary short form prospectus for the securities pursuant to this Instrument within four business days after the date that the lead underwriter provides the notice in accordance with subparagraph (1)(d)(i),

(c) upon issuance of a receipt for the preliminary short form prospectus, a copy of the preliminary short form prospectus is sent to each person or company that, in response to the solicitation, expressed an interest in acquiring the securities, and

(d) except for a bought deal agreement under paragraph 7.2(a), no agreement of purchase and sale for the securities is entered into until the short form prospectus has been filed and a receipt has been issued.

**Standard term sheets after announcement of bought deal but before a receipt for a preliminary short form prospectus**

**7.5(1)** An investment dealer that provides a standard term sheet to a potential investor before the issuance of a receipt for a preliminary short form prospectus is exempt from the prospectus requirement with respect to providing the standard term sheet if

(a) the standard term sheet complies with subsections (2) and (3);

(b) the issuer is relying on the exemption in section 7.2 and has complied with paragraph 7.2(a);

(c) other than contact information for the investment dealer or underwriters, all information in the standard term sheet concerning the issuer, the securities or the offering

(i) is disclosed in, or derived from,

(A) the news release described in subparagraph 7.2(a)(iii), or

(B) a document referred to in subsection 11.1(1) of Form 44-101F1 that the issuer has filed, or

(ii) will be disclosed in, or derived from, the preliminary short form prospectus that is subsequently filed; and

(d) the preliminary short form prospectus will be filed in the local jurisdiction.

**7.5(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 preliminary short form prospectus containing important information relating to the securities described in this document has not yet been filed with the securities regulatory authorit[y/ies] in [each of/certain of the provinces/provinces and territories of Canada].

Copies of the preliminary short form prospectus may be obtained from [*insert contact information for the investment dealer or underwriters*]. There will not be any sale or any acceptance of an offer to buy the securities until a receipt for the final short form prospectus has been issued.

This document does not provide full disclosure of all material facts relating to the securities offered. Investors should read the preliminary short form prospectus, final short form prospectus and any amendment, for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.

**7.5(3)** A standard term sheet provided under subsection (1) may contain only the information referred to in subsection (2) and the information referred to in subsection 13.5(3) of NI 41-101.

**Marketing materials after announcement of bought deal but before a receipt for a preliminary short form prospectus**

**7.6(1)** An investment dealer that provides marketing materials to a potential investor before the issuance of a receipt for a preliminary short form prospectus is exempt from the prospectus requirement with respect to providing the marketing materials if

- (a) the marketing materials comply with subsections (2) to (8);
- (b) the issuer is relying on the exemption in section 7.2 and has complied with paragraph 7.2(a);
- (c) other than contact information for the investment dealer or underwriters and any comparables, all information in the marketing materials concerning the issuer, the securities or the offering
  - (i) is disclosed in, or derived from,
    - (A) the news release described in subparagraph 7.2(a)(iii), or
    - (B) a document referred to in subsection 11.1(1) of Form 44-101F1 that the issuer has filed, or
  - (ii) will be disclosed in, or derived from, the preliminary short form prospectus that is subsequently filed;
- (d) a template version of the marketing materials is approved in writing by the issuer and the lead underwriter before the marketing materials are provided;
- (e) a template version of the marketing materials is filed on or before the day that the marketing materials are first provided;
- (f) the preliminary short form prospectus will be filed in the local jurisdiction; and
- (g) upon issuance of a receipt for the preliminary short form prospectus, a copy of the preliminary short form prospectus is sent to each person or company that received the marketing materials and expressed an interest in acquiring the securities.

**7.6(2)** If a template version of the marketing materials is approved in writing by the issuer and lead underwriter under paragraph (1)(d) and filed under paragraph (1)(e), an investment dealer may provide a limited-use version of the marketing materials that

- (a) has a date that is different than the template version;
- (b) contains a cover page referring to the investment dealer or underwriters or a particular investor or group of investors;
- (c) contains contact information for the investment dealer or underwriters; or
- (d) has text in a format, including the type's font, colour or size, that is different than the template version.

**7.6(3)** If a template version of the marketing materials is divided into separate sections for separate subjects and is approved in writing by the issuer and lead underwriter under paragraph (1)(d), and that template version is filed under paragraph (1)(e), an investment dealer may provide a limited-use version of the marketing materials that includes only one or more of those separate sections.

**7.6(4)** The issuer may remove any comparables, and any disclosure relating to those comparables, from the template version of the marketing materials before filing it under paragraph (1)(e) or (7)(a) if

- (a) the comparables, and any disclosure relating to the comparables, are in a separate section of the template version of the marketing materials;
- (b) the template version of the marketing materials that is filed contains a note advising that the comparables, and any disclosure relating to the comparables, were removed in accordance with this subsection, provided that the note appears immediately after where the removed comparables and related disclosure would have been;
- (c) if the preliminary short form prospectus is subsequently filed in the local jurisdiction, a complete template version of the marketing materials is delivered to the securities regulatory authority; and
- (d) the complete template version of the marketing materials contains the disclosure referred to in paragraph 13.7(4)(d) of NI 41-101.

**7.6(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 preliminary short form prospectus containing important information relating to the securities described in this document has not yet been filed with the securities regulatory authority[y/ies] in [each of/certain of the provinces/provinces and territories of Canada]. A copy of the preliminary short form prospectus is required to be delivered to any investor that received this document and expressed an interest in acquiring the securities.

There will not be any sale or any acceptance of an offer to buy the securities until a receipt for the final short form prospectus has been issued.

This document does not provide full disclosure of all material facts relating to the securities offered. Investors should read the preliminary short form prospectus, final short form prospectus and any amendment, for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.

**7.6(6)** If marketing materials are provided before the issuance of a receipt for a preliminary short form prospectus under subsection (1), the issuer must include the template version of the marketing materials filed under paragraph (1)(e) in its final short form prospectus or incorporate by reference the template version of the marketing materials filed under paragraph (1)(e) into its final short form prospectus in the manner described in subsection 11.6(1) of Form 44-101F1.

**7.6(7)** If the final short form prospectus or any amendment modifies a statement of a material fact that appeared in marketing materials provided before the issuance of a receipt for the preliminary short form prospectus under subsection (1), the issuer must

(a) prepare and file, at the time the issuer files the final short form prospectus or any amendment, a revised template version of the marketing materials that is blacklined to show the modified statement, and

(b) include in the final short form prospectus, or any amendment, the disclosure required by subsection 11.6(3) of Form 44-101F1.

**7.6(8)** A revised template version of the marketing materials filed under subsection (7) must comply with section 13.8 of NI 41-101.

**7.6(9)** If marketing materials are provided before the issuance of a receipt for a preliminary short form prospectus under subsection (1) but the issuer does not comply with subsection (6), the marketing materials are deemed for purposes of securities legislation to be incorporated into the issuer's final short form prospectus as of the date of the final short form prospectus to the extent not otherwise expressly modified or superseded by a statement contained in the final short form prospectus.

**Road shows after announcement of bought deal but before a receipt for a preliminary short form prospectus**

**7.7(1)** An investment dealer that conducts a road show for potential investors before the issuance of a receipt for a preliminary short form prospectus is exempt from the prospectus requirement with respect to the road show if

(a) the road show complies with subsections (2) to (4);

(b) the issuer is relying on the exemption in section 7.2 and has complied with paragraph 7.2(a); and

(c) the preliminary short form prospectus will be filed in the local jurisdiction.

**7.7(2)** Subject to section 7.8, an investment dealer must not provide marketing materials to an investor attending a road show conducted under subsection (1) unless the marketing materials are provided in accordance with section 7.6.

**7.7(3)** If an investment dealer conducts a road show, the investment dealer must establish and follow reasonable procedures to

(a) ask any investor attending the road show in person, by telephone conference call, on the internet or by other electronic means to provide their name and contact information;

(b) keep a record of any information provided by the investor; and

(c) upon issuance of a receipt for the preliminary prospectus, provide the investor with a copy of the preliminary prospectus and any amendment.



**7.7(4)** If an investment dealer permits an investor, other than an accredited investor, to attend a road show, the investment dealer must commence the road show with the oral reading of the following statement or a statement to the same effect:

This presentation does not provide full disclosure of all material facts relating to the securities offered. Investors should read the preliminary prospectus, the final prospectus and any amendment for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.

**Exception from filing and incorporation requirements for road shows for certain u.s. cross-border offerings**

**7.8(1)** Subject to subsections (2) to (4), if an investment dealer provides marketing materials to a potential investor in connection with a road show for a U.S. cross-border offering, the following provisions do not apply to the template version of the marketing materials relating to the road show:

- (a) paragraph 7.6(1)(e);
- (b) subsections 7.6(6) to (9);
- (c) paragraphs 11.6(1)(b) and (c), paragraph 11.6(3)(b) and subsection 11.6(4) of Form 44-101F1.

**7.8(2)** Subsection (1) does not apply unless

- (a) the underwriters have a reasonable expectation that the securities offered under the U.S. cross-border offering will be sold primarily in the United States of America;
- (b) the issuer and the underwriters who sign the final short form prospectus filed in the local jurisdiction provide a contractual right containing the language set out in subsection 36A.1(5) of Form 41-101F1, or words to the same effect, except that the language may specify that the contractual right does not apply to any comparables provided in accordance with subsection (3); and
- (c) if the prospectus is filed in the local jurisdiction, the template version of the marketing materials relating to the road show is delivered to the securities regulatory authority.

**7.8(3)** If the template version of the marketing materials relating to the road show contains comparables, the template version of the marketing materials must contain the disclosure referred to in paragraph 13.7(4)(d) of NI 41-101.

**7.8(4)** For greater certainty, subsection (1) does not apply to marketing materials other than the marketing materials provided in connection with the road show..

*5. Section 5.1 of Form 44-101F1 is amended in paragraph (a), by replacing "[its/their] assessment of the state of the financial markets" with "[describe any "market out", "disaster out", "material change out" or similar provision]"*.

*6. Item 11 of Form 44-101F1 is amended by adding the following after section 11.5:*

**Marketing materials**

**11.6 (1)** If marketing materials were provided under subsection 7.6(1) of the Instrument or subsection 13.7(1) or 13.8(1) of NI 41-101, the issuer must

- (a) include a section under the heading "Marketing Materials" proximate to the beginning of the short form prospectus that contains the disclosure required by this Item,

(b) subject to subsection (2), include the template version of the marketing materials filed under the Instrument or NI 41-101 in the final short form prospectus, or incorporate by reference the template version of the marketing materials filed under the Instrument or NI 41-101 into the final short form prospectus, and

(c) indicate that the template version of the marketing materials is not part of the final short form prospectus to the extent that the contents of the template version of the marketing materials have been modified or superseded by a statement contained in the final short form prospectus.

**11.6(2)** An issuer may comply with paragraph (1)(b) by including the template version of the marketing materials filed under the Instrument or NI 41-101 in the section of the short form prospectus under the heading "Marketing Materials" or in an appendix to the short form prospectus that is referred to in that section.

**11.6 (3)** If the final short form prospectus or any amendment modifies a statement of material fact that appeared in marketing materials provided earlier,

(a) provide details of how the statement in the marketing materials has been modified, and

(b) disclose that, pursuant to subsection 7.6(7) of the Instrument or subsection 13.7(8) or 13.8(8) of NI 41-101,

(i) the issuer has prepared a revised template version of the marketing materials which has been blacklined to show the modified statement, and

(ii) the revised template version of the marketing materials can be viewed under the issuer's profile on [www.sedar.com](http://www.sedar.com).

**11.6(4)** State that any template version of the marketing materials filed under NI 41-101 after the date of the final short form prospectus and before the termination of the distribution is deemed to be incorporated into the final short form prospectus.

**11.6(5)** If the issuer relies on the exception in subsection 7.8(1) of the Instrument or subsection 13.12(1) of NI 41-101, include the statement set out in subsection 36.A.1(5) of Form 41-101F1, or words to the same effect.

*GUIDANCE*

*Marketing materials do not, as a matter of law, amend a preliminary short form prospectus, a final short form prospectus or any amendment..*

7. This Instrument comes into force on August 13, 2013.

8. This Instrument may be cited as MSC Rule 2013-21.