

THE MANITOBA SECURITIES COMMISSION
MSC Rule No. 2013-22
(Section 149.1, *The Securities Act*)

**AMENDMENT INSTRUMENT FOR
NATIONAL INSTRUMENT 44-102
*SHELF DISTRIBUTIONS***

1. *National Instrument 44-102 Shelf Distributions is amended by this Instrument.*
2. *The following new Part 9A is added after section 9.2:*

PART 9A – Marketing in Connection with Shelf Distributions

Definitions

9A.1(1) In this Part,

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

"**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.

9A.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.

Standard term sheets after a receipt for a final base shelf prospectus

9A.2(1) An investment dealer must not provide a standard term sheet to a potential investor after a receipt for a final base shelf prospectus or any amendment is issued unless

- (a) the standard term sheet complies with subsections (2) and (3);
- (b) 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, the final base shelf prospectus, any amendment or an applicable shelf prospectus supplement that has been filed, or
 - (ii) will be disclosed in, or derived from, an applicable shelf prospectus supplement that is subsequently filed; and
- (c) a receipt for the final base shelf prospectus has been issued in the local jurisdiction.

9A.2(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 authorit[y/ies] in [each of/certain of the provinces/provinces and territories of Canada].

Copies of the final base shelf prospectus, and any applicable shelf prospectus supplement, 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 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.

9A.2(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 a receipt for a final base shelf prospectus

9A.3(1) An investment dealer must not provide marketing materials to a potential investor after a receipt for a final base shelf prospectus or any amendment is issued unless

- (a) the marketing materials comply with subsections (2) to (8);
- (b) 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, the final base shelf prospectus, any amendment or an applicable shelf prospectus supplement that has been filed, or
 - (ii) will be disclosed in, or derived from, an applicable shelf prospectus supplement that is subsequently filed;
- (c) other than prescribed language, the marketing materials contain the same cautionary language in bold type as contained on the cover page, and in the summary, of the final base shelf prospectus;
- (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) a receipt for the final base shelf prospectus has been issued in the local jurisdiction; and
- (g) the investment dealer provides a copy of the final base shelf prospectus, any amendment and any applicable shelf prospectus supplement that has been filed, with the marketing materials.

9A.3(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.

9A.3(3) If a template version of the marketing materials is divided into 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.

9A.3(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 subparagraph (7)(b)(ii) 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 prospectus is filed in the local jurisdiction, a complete template version of the marketing materials containing the comparables, and any disclosure relating to the comparables, 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.

9A.3(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]. A copy of the final base shelf prospectus, any amendment to the final base shelf prospectus and any applicable shelf prospectus supplement that has been filed, is required to be delivered with this document.

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 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.

9A.3(6) An investment dealer must not provide marketing materials under subsection (1) after a receipt for the final base shelf prospectus is issued and after the applicable shelf prospectus supplement is filed unless the issuer

(a) has included the template version of the marketing materials filed under paragraph (1)(e) in the applicable shelf prospectus supplement, or incorporated by reference the template version of the marketing materials filed under paragraph (1)(e) into the applicable shelf prospectus supplement in the manner described in paragraph 4 of subsection 6.3(1), or

(b) has included in the applicable base shelf prospectus a statement that any template version of the marketing materials filed after the date of the shelf prospectus supplement and before the termination of the distribution is deemed to be incorporated into the shelf prospectus supplement.

9A.3(7) If marketing materials are provided under subsection (1) after a receipt for the final base shelf prospectus is issued but before the applicable shelf prospectus supplement is filed, the issuer must

(a) include the template version of the marketing materials filed under paragraph (1)(e) in the applicable shelf prospectus supplement, or incorporate by reference the template version of the marketing materials filed under paragraph (1)(e) into the applicable shelf prospectus supplement in the manner described in paragraph 4 of subsection 6.3(1); and

(b) if the applicable shelf prospectus supplement modifies a statement of material fact that appeared in marketing materials provided earlier under subsection (1),

(i) indicate in the shelf prospectus supplement that the template version of the marketing materials is not part of the shelf prospectus supplement 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 shelf prospectus supplement,

(ii) prepare and file, at the time the issuer files the shelf prospectus supplement, a revised template version of the marketing materials that is blacklined to show the modified statement,

(iii) provide details in the shelf prospectus supplement of how the statement in the marketing materials has been modified, and

(iv) disclose in the shelf prospectus supplement that pursuant to subsection (7),

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

(B) the revised template version of the marketing materials can be viewed under the issuer's profile on www.sedar.com.

9A.3(8) Any revised template version of the marketing materials filed under subsection (7) must comply with this section.

9A.3(9) If marketing materials are provided under subsection (1) but the issuer did not comply with subsection (6) or paragraph (7)(a), as applicable, the marketing materials are deemed for purposes of securities legislation to be incorporated into the applicable shelf prospectus supplement as of the date of the shelf prospectus supplement to the extent not otherwise expressly modified or superseded by a statement contained in the shelf prospectus supplement.

Road shows after a receipt for a final base shelf prospectus

9A.4(1) An investment dealer must not conduct a road show for potential investors after a receipt for a final base shelf prospectus or any amendment is issued unless

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

(b) a receipt for the final base shelf prospectus has been issued in the local jurisdiction.

9A.4(2) Subject to section 9A.5, an investment dealer must not provide marketing materials to investors attending a road show conducted under subsection (1) unless the marketing materials are provided in accordance with section 9A.3.

9A.4(3) If any 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) provide the investor with a copy of the final base shelf prospectus, any amendment to the final base shelf prospectus and any applicable shelf prospectus supplement that has been filed.

9A.4(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 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.

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

9A.5(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 9A.3(1)(e);
- (b) subsections 9A.3(6) to (9).

9A.5(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 base shelf prospectus or the applicable shelf prospectus supplement 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 base shelf 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.

9A.5(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.

9A.5(4) For greater certainty, subsection (1) does not apply to marketing materials other than the marketing materials provided in connection with the road show..

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

4. This Instrument may be cited as MSC Rule 2013-22.