

**THE MANITOBA SECURITIES COMMISSION**  
**MSC RULE 2005-27**  
(Section 149.1, *The Securities Act*)

**Amendment Instrument**  
**for**  
**National Instrument 44-102**  
***Shelf Distributions***

1. This Instrument amends National Instrument 44-102 *Shelf Distributions*.
2. "National Instrument 44-101 Short Form Prospectus Distributions" and "National Instrument 44-101" are struck out wherever they occur and "NI 44-101" is substituted.
3. Subsection 1.1(1) is amended,
  - (a) by adding the following definition after the definition of "**MTN program**":

" **NI 44-101**" means National Instrument 44-101 *Short Form Prospectus Distributions*";
  - (b) in the definition of "**novel**", by adding "," after "means"; and
  - (c) by repealing the definition of "**special warrant**".
4. Section 1.3 is repealed.
5. Part 2 is repealed and the following is substituted:

"PART 2 – SHELF QUALIFICATION AND PERIOD OF RECEIPT EFFECTIVENESS

**General**

**2.1** An issuer shall not file a short form prospectus that is a base shelf prospectus, unless the issuer is qualified to do so under this Instrument.

**Shelf qualification for distributions qualified under section 2.2 of NI 44-101 (basic qualification)**

**2.2(1)** An issuer is qualified to file a preliminary short form prospectus that is a preliminary base shelf prospectus if, at the time of filing, the issuer is qualified under section 2.2 of NI 44-101 to file a prospectus in the form of a short form prospectus.

**2.2(2)** An issuer that has filed a preliminary base shelf prospectus in reliance on the qualification criteria in subsection (1) is qualified to file a short form prospectus that is the corresponding base shelf prospectus.

**2.2(3)** A receipt issued for a base shelf prospectus of an issuer qualified under subsection (2) is effective until the earliest of

(a) the date 25 months from the date of its issue;

(b) the time immediately before the entering into of an agreement of purchase and sale for a security to be sold under the base shelf prospectus, if at that time

(i) the issuer does not have current annual financial statements and does not satisfy the requirements of the exemption in either of subsection 2.7(1) or (2) of NI 44-101,

(ii) the issuer does not have a current AIF and does not satisfy the requirements of the exemption in either of subsection 2.7(1) or (2) of NI 44-101,

(iii) the issuer's equity securities are not listed or posted for trading on a short form eligible exchange,

(iv) the issuer is an issuer

(A) whose operations have ceased, or

(B) whose principal asset is cash, cash equivalents, or its exchange listing, or

(v) the issuer has withdrawn its notice declaring the issuer's intention to be qualified to file a short form prospectus under NI 44-101; and

(c) the lapse date, if any, prescribed by securities legislation.

**Shelf qualification for distributions qualified under section 2.3 of NI 44-101 (approved rating non-convertible securities)**

**2.3(1)** An issuer is qualified to file a preliminary short form prospectus that is a preliminary base shelf prospectus for approved rating non-convertible securities if, at the time of filing, the issuer

(a) is qualified under section 2.3 of NI 44-101 to file a prospectus in the form of a short form prospectus; and

(b) has reasonable grounds for believing that, if it were to distribute securities under the base shelf prospectus, the securities distributed would receive an approved rating and would not receive a rating lower than an approved rating from any approved rating organization.

**2.3(2)** An issuer that has filed a preliminary base shelf prospectus in reliance on the qualification criteria in subsection (1) is qualified to file a short form prospectus that is the corresponding base shelf prospectus if, at the time of the filing of the base shelf prospectus, the issuer has reasonable grounds for believing that, if it were to distribute non-convertible securities under the base shelf prospectus, the securities distributed would

receive an approved rating and would not receive a rating lower than an approved rating from any approved rating organization.

**2.3(3)** A receipt issued for a base shelf prospectus of an issuer filed under subsection (2) is effective until the earliest of

(a) the date 25 months from the date of its issue;

(b) the time immediately before the entering into of an agreement of purchase and sale for a security to be sold under the base shelf prospectus, if at that time

(i) the issuer does not have current annual financial statements and does not satisfy the requirements of the exemption in either of subsection 2.7(1) or (2) of NI 44-101,

(ii) the issuer does not have a current AIF and does not satisfy the requirements of the exemption in either of subsection 2.7(1) or (2) of NI 44-101,

(iii) the issuer has withdrawn its notice declaring the issuer's intention to be qualified to file a short form prospectus under NI 44-101, or

(iv) the securities to which the agreement relates

(A) have not received a final approved rating,

(B) are the subject of an announcement by an approved rating organization, of which the issuer is or ought reasonably to be aware, that the approved rating given by the organization may be down-graded to a rating category that would not be an approved rating, or

(C) have received a provisional or final rating lower than an approved rating from any approved rating organization; and

(c) the lapse date, if any, prescribed by securities legislation.

**Shelf qualification for distributions under section 2.4 of NI 44-101 (guaranteed non-convertible debt securities, preferred shares and cash settled derivatives)**

**2.4(1)** An issuer is qualified to file a short form prospectus that is a preliminary base shelf prospectus for non-convertible debt securities, non-convertible preferred shares or non-convertible cash settled derivatives if, at the time of filing, the issuer is qualified under section 2.4 of NI 44-101 to file a prospectus in the form of a short form prospectus.

**2.4(2)** An issuer that has filed a preliminary base shelf prospectus in reliance on subsection (1) is qualified to file a short form prospectus that is the corresponding base shelf prospectus.

**2.4(3)** A receipt issued for a base shelf prospectus of an issuer qualified under subsection (2) is effective until the earliest of

- (a) the date 25 months from the date of its issue;
- (b) the time immediately before the entering into of an agreement of purchase and sale for a security to be sold under the base shelf prospectus, if at that time
  - (i) a credit supporter has not provided full and unconditional credit support for the securities to which the shelf prospectus supplement relates,
  - (ii) unless the requirements of subparagraph 2.4(1)(b)(ii) of NI 44-101, but not the requirements of subparagraph 2.4(1)(b)(i) of NI 44-101, were satisfied at the time the issuer filed its base shelf prospectus, the credit supporter does not have current annual financial statements and does not satisfy the requirements of the exemption in either of subsection 2.7(1) or (2) of NI 44-101,
  - (iii) unless the requirements of subparagraph 2.4(1)(b)(ii) of NI 44-101, but not the requirements of subparagraph 2.4(1)(b)(i) of NI 44-101, were satisfied at the time the issuer filed its base shelf prospectus, the credit supporter does not have a current AIF and does not satisfy the requirements of the exemption in either of subsection 2.7(1) or (2) of NI 44-101,
  - (iv) the issuer has withdrawn its notice declaring the issuer's intention to be qualified to file a short form prospectus under NI 44-101, or
  - (v) either of the following is true
    - (A) the credit supporter's equity securities are not listed or posted for trading on a short form eligible exchange, or
    - (B) the credit supporter is a credit supporter
      - (I) whose operations have ceased, or
      - (II) whose principal asset is cash, cash equivalents, or its exchange listing, andeither of the following is true:
    - (C) the credit supporter does not have issued and outstanding non-convertible securities that
      - (I) have received an approved rating,
      - (II) have not been the subject of an announcement by an approved rating organization, of which the issuer is or ought reasonably to be aware, that the approved rating given by the organization may be down-graded to a rating category that would not be an approved rating, and
      - (III) have not received a rating lower than an approved rating from any approved rating organization, or

(D) the securities to which the agreement relates

(I) have not received a final approved rating,

(II) have been the subject of an announcement by an approved rating organization, of which the issuer is or ought reasonably to be aware, that the approved rating given by the organization may be down-graded to a rating category that would not be an approved rating, and

(III) have received a provisional or final rating lower than an approved rating from any approved rating organization; and

(c) the lapse date, if any, prescribed by securities legislation.

**Shelf qualification for distributions under section 2.5 of NI 44-101 (guaranteed convertible debt securities or preferred shares)**

**2.5(1)** An issuer is qualified to file a short form prospectus that is a preliminary base shelf prospectus for convertible debt securities and convertible preferred shares if, at the time of filing, the issuer is qualified under section 2.5 of NI 44-101 to file a prospectus in the form of a short form prospectus.

**2.5(2)** An issuer that has filed a preliminary base shelf prospectus in reliance on subsection (1) is qualified to file a short form prospectus that is the corresponding base shelf prospectus.

**2.5(3)** A receipt issued for a base shelf prospectus qualified under subsection (2) is effective until the earliest of

(a) the date 25 months from the date of its issue;

(b) the time immediately before the entering into of an agreement of purchase and sale for a security to be sold under the base shelf prospectus, if at that time

(i) the securities to which the agreement relates are not convertible into securities of a credit supporter that has provided full and unconditional credit support for the securities being distributed,

(ii) the credit supporter does not have current annual financial statements and does not satisfy the requirements of the exemption in either of subsection 2.7(1) or (2) of NI 44-101,

(iii) the credit supporter does not have a current AIF and does not satisfy the requirements of the exemption in either of subsection 2.7(1) or (2) of NI 44-101,

(iv) the credit supporter's equity securities are not listed or posted for trading on a short form eligible exchange,

(v) the credit supporter is a credit supporter

(A) whose operations have ceased, or

(B) whose principal asset is cash, cash equivalents, or its exchange listing, or

(vi) the issuer has withdrawn its notice declaring the issuer's intention to be qualified to file a short form prospectus under NI 44-101; and

(c) the lapse date, if any, prescribed by securities legislation.

**Shelf qualification for distributions under section 2.6 of NI 44-101 (asset-backed securities)**

**2.6(1)** An issuer that is qualified under section 2.6 of NI 44-101 to file a prospectus in the form of a short form prospectus may file a preliminary base shelf prospectus for asset-backed securities if, at the time of filing, the issuer has reasonable grounds for believing that

(a) all asset-backed securities that it may distribute under the base shelf prospectus will receive an approved rating; and

(b) no asset-backed securities that it may distribute under the base shelf prospectus will receive a rating lower than an approved rating from any approved rating organization.

**2.6(2)** An issuer that has filed a preliminary base shelf prospectus in reliance on the qualification criteria in section 2.6 of NI 44-101 may file the corresponding base shelf prospectus if, at the time of the filing of the base shelf prospectus, the issuer has reasonable grounds for believing that

(a) all asset-backed securities that it may distribute under the base shelf prospectus will receive an approved rating; and

(b) no asset-backed securities that it may distribute under the base shelf prospectus will receive a rating lower than an approved rating from any approved rating organization.

**2.6(3)** A receipt issued for a base shelf prospectus qualified under subsection (2) is effective for a distribution of asset-backed securities until the earliest of

(a) the date 25 months from the date of its issue;

(b) the time immediately before the entering into of an agreement of purchase and sale for an asset-backed security to be sold under the base shelf prospectus, if at that time

(i) the issuer does not have current annual financial statements and does not satisfy the requirements of the exemption in either of subsection 2.7(1) or (2) of NI 44-101,

(ii) the issuer does not have a current AIF and does not satisfy the requirements of the exemption in either of subsection 2.7(1) or (2) of NI 44-101, or

(iii) the asset-backed securities to which the agreement relates

(A) have not received a final approved rating,

(B) have been the subject of an announcement by an approved rating organization, of which the issuer is or ought reasonably to be aware, that the approved rating given by the organization may be down-graded to a rating category that would not be an approved rating, or

(C) have received a provisional or final rating lower than an approved rating from any approved rating organization; and

(c) the lapse date, if any, prescribed by securities legislation.

**Lapse date - Ontario**

**2.7** In Ontario, the lapse date prescribed by securities legislation for a receipt issued for a base shelf prospectus is extended to the date 25 months from the date of issuance of the receipt.

**Lapse date - Alberta**

**2.8** In Alberta, the lapse date prescribed by securities legislation for a receipt issued for a base shelf prospectus is the date 25 months from the date of the issuance of the receipt.

**Limitation on offerings**

**2.9** Despite any provision in this Instrument, the shelf procedures shall not be used for a distribution of rights under a rights offering."

6. Subsections 4.1(1) and (2) are amended by moving "in the local jurisdiction" to after "distribute".

7. Section 5.1 is amended in the preamble by adding "for the distribution" after "a short form prospectus".

8. Sections 5.3 and 5.6 are amended by striking out "44-101F3" wherever it occurs and substituting "44-101F1".

9. Section 5.4 is amended by striking out "person or company" and substituting "issuer or selling securityholder".

10. Section 5.5 is amended by adding the following after paragraph 8:

"9. List all exemptions from the provisions of this Instrument granted to the issuer applicable to the base shelf prospectus, including all exemptions to be evidenced by the issuance of a receipt for the base shelf prospectus pursuant to section 11.2."

11. Section 6.1 is amended by adding "and, in Québec, to contain no misrepresentation that is likely to affect the value or the market price of the securities to be distributed" after "distributed under the prospectus".

12. Section 6.2(1) is amended by adding "," after "base shelf prospectus" wherever it occurs.

13. Section 6.2 is amended by adding the following after subsection (2):

**6.2(3)** Any unaudited financial statements of an issuer or an acquired business incorporated by reference into the base shelf prospectus but filed after the date of filing the base shelf prospectus must have been reviewed in accordance with the relevant standards set out in the Handbook for a review of financial statements by an entity's auditor or a public accountant's review of financial statements.

**6.2(4)** Despite subsection (3)

(a) if the financial statements of the issuer or acquired business have been audited in accordance with U.S. GAAS, the unaudited financial statements may be reviewed in accordance with U.S. review standards;

(b) if the financial statements of the issuer or acquired business have been audited in accordance with International Standards on Auditing, the unaudited financial statements may be reviewed in accordance with international review standards; or

(c) if the financial statements of the issuer or acquired business have been audited in accordance with auditing standards that meet the foreign disclosure requirements of the designated foreign jurisdiction to which the issuer is subject, the unaudited financial statements may be reviewed in accordance with review standards that meet the foreign disclosure requirements of the designated foreign jurisdiction to which the issuer is subject.

**6.2(5)** The review specified in subsection (3) must have been completed

(a) if the base shelf prospectus established an MTN program or other continuous offering, no later than filing of the unaudited financial statements; or

(b) in all other circumstances, no later than the next filing of a shelf supplement."

14. Section 6.5 is amended by striking out "securities legislation that regulate conflicts of interest in connection with a distribution of securities of a registrant, a connected issuer of a registrant or a related issuer of a registrant" and substituting "National Instrument 33-105 *Underwriting Conflicts*".

15. Section 6.7 is amended by adding "and, in Québec, contain no misrepresentation that is likely to affect the value or the market price of the securities to be distributed," after "distributed".

16. Section 7.1 is amended by striking out "do not".



17. Subsection 7.2(1) is amended by striking out "that use of the" and substituting "the use of that".
18. Section 7.3 is repealed.
19. Subsection 8.2(1) is amended by striking out "5.5" and substituting "5.6".
20. Subsection 9.1(1) is amended
  - (a) by striking out "11.1" and substituting "6.1"; and
  - (b) by striking out "2.9 of National Instrument 44-101" and substituting "9.2".
21. Part 9 is amended by adding the following after section 9.1:

**"Market value calculation**

**9.2(1)** For the purposes of this Part,

(a) the aggregate market value of the equity securities of an issuer on a date is the aggregate of the market value of each class of its equity securities on the date, calculated by multiplying

(i) the total number of equity securities of the class outstanding on the date, by

(ii) the closing price on the date of the equity securities of the class on the exchange in Canada on which that class of equity securities is principally traded; and

(b) instalment receipts may, at the option of the issuer, be deemed to be equity securities if

(i) the instalment receipts are listed and posted for trading on an exchange in Canada, and

(ii) the outstanding equity securities, the beneficial ownership of which is evidenced by the instalment receipts, are not listed and posted for trading on an exchange in Canada.

**9.2(2)** For the purposes of subsection (1), in calculating the total number of equity securities of a class outstanding, an issuer shall exclude those equity securities of the class that are beneficially owned, or over which control or direction is exercised, by persons or companies that, alone or together with their respective affiliates and associated parties, beneficially own or exercise control or direction over more than 10 per cent of the outstanding equity securities of the issuer.

**9.2(3)** Despite subsection (2), if a portfolio manager of a pension fund or investment fund, alone or together with its affiliates and associated parties, exercises control or direction in the aggregate over more than 10 per cent of the outstanding equity securities of an issuer, and the fund beneficially owns or exercises control or direction over 10 per cent or less of the issued and outstanding equity securities of the issuer, the securities that the fund

beneficially owns or exercises control or direction over are not excluded unless the portfolio manager is an affiliate of the issuer."

22. Part 10 is repealed.
23. Subsection 11.1(2) is amended by striking out "and Alberta".
24. Appendix A is amended by striking out "and will not contain any misrepresentation" wherever it occurs and substituting ". For the purpose of the Province of Québec, this simplified prospectus, together with documents incorporated herein by reference and as supplemented by the permanent information record, will contain no misrepresentation that is".
25. Appendix B is amended by striking out "and does not contain any misrepresentation" wherever it occurs and substituting ". For the purpose of the Province of Québec, this simplified prospectus, together with documents incorporated herein by reference and as supplemented by the permanent information record, contains no misrepresentation that is".
26. This Instrument comes into force on December 30, 2005.
27. This Instrument may be cited as MSC Rule 2005-27.