

Ontario Securities Commission

National Instrument 44-103

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**NATIONAL INSTRUMENT 44-103
*POST-RECEIPT PRICING***

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PART 1
DEFINITIONS AND INTERPRETATION

Definitions

1.1 (1) In this Instrument

"base PREP prospectus" means a prospectus that at the time of issuance of a receipt for the prospectus omits some or all of the PREP information as permitted by this Instrument;

"PREP information" means the information permitted by this Instrument to be omitted from a base PREP prospectus;

"PREP procedures" means the requirements in this Instrument for the distribution under a base PREP prospectus and a supplemented PREP prospectus of securities, the price of which is determined after a receipt has been obtained for the base PREP prospectus; and

"supplemented PREP prospectus" means a prospectus filed under the PREP procedures containing PREP information.

(2) Every term that is defined or interpreted in NI 41-101 or NI 44-101, the definition or interpretation of which is not restricted to a specific portion of NI 41-101 or NI 44-101, has, if used in this Instrument, the meaning ascribed to it in NI 41-101 or NI 44-101, unless otherwise defined or interpreted in this Instrument.

Amendments

1.2 References in this Instrument to an amendment to a prospectus include both an amendment that does not fully restate the text of a prospectus and an amended and restated prospectus.

PART 2
USE OF THE PREP PROCEDURES

Prohibited Offerings

2.1 Despite the other provisions of this Instrument, the PREP procedures shall not be used for a distribution of rights under a rights offering.

Opting out of the PREP Procedures After a Preliminary Prospectus has been Received and before a Prospectus has been Received

2.2 An issuer that has obtained a receipt for a preliminary base PREP prospectus for a distribution of securities shall not file a prospectus for the distribution that is not a base PREP prospectus, unless the issuer files a covering letter, before or concurrently with the filing of the prospectus, stating that the issuer or the selling securityholder, as the case may be, has decided not to use the PREP procedures for the distribution.

Opting into the PREP Procedures After a Preliminary Prospectus has been Received and before the Prospectus has been Received

2.3 An issuer that has obtained a receipt for a preliminary prospectus that is not a preliminary base PREP prospectus for a distribution of securities shall not file a base PREP prospectus for the distribution, unless the issuer files a covering letter, before or concurrently with the base PREP prospectus, stating that the issuer or the selling securityholder, as the case may be, has decided to use the PREP procedures for the distribution.

Opting out of the PREP Procedures After a Prospectus has been Received

2.4 If a receipt has been issued for a base PREP prospectus for a distribution of securities and the issuer or the selling securityholder decides, before a supplemented PREP prospectus is filed, no longer to use the PREP procedures for the distribution, the issuer shall file

- (a) either
 - (i) an amended prospectus that is not a base PREP prospectus or a supplemented PREP prospectus, or
 - (ii) a new preliminary prospectus that is not a preliminary base PREP prospectus; and
- (b) a covering letter stating that the issuer or the selling securityholder, as the case may be, has decided not to use the PREP procedures for the distribution.

PART 2A ACCESS TO SUPPLEMENTED PREP PROSPECTUSES

Application

2A.1 (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 2A.5 or the conditions under section 2A.6.

(2) This Part does not apply in respect of a prospectus to distribute securities of an investment fund.

Access to Supplemented PREP Prospectuses

2A.2 (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 supplemented PREP prospectus, the preliminary base PREP prospectus and any amendment to the documents in accordance with subsection 2A.5(2) or (3).

(3) The supplemented PREP prospectus, the preliminary base PREP 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 2A.5(2) or (3).

(4) The supplemented PREP prospectus and any amendment is received on the date that the document has been delivered or sent in accordance with subsection (3).

Access to Supplemented PREP Prospectuses – Alberta

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

Right of Withdrawal, Revocation or Cancellation

2A.4 (1) This section does not apply in British Columbia, Québec and New Brunswick.

(2) Except in Alberta and Saskatchewan, if the supplemented PREP prospectus or any amendment is delivered or sent in accordance with subsection 2A.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 2A.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 supplemented PREP prospectus or any amendment is provided in accordance with subsection 2A.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 2A.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 supplemented PREP prospectus or any amendment is delivered or sent in accordance with subsection 2A.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 2A.2(4), and

- (b) the date that the purchaser has entered into the agreement to purchase the security.

Procedures

2A.5 (1) This section does not apply in British Columbia, Québec and New Brunswick.

(2) Access to the supplemented PREP prospectus and any amendment has been provided on the date on which all of the following have been satisfied:

- (a) the base PREP prospectus and any amendment is filed on SEDAR+ and a receipt is issued and posted on SEDAR+ for the document;
- (b) the supplemented PREP prospectus and any amendment is filed on SEDAR+; and
- (c) after the supplemented PREP prospectus 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 supplemented PREP prospectus and any amendment is accessible through SEDAR+, or will be accessible through SEDAR+ within 2 business days, as applicable,
 - (ii) that access to the supplemented PREP prospectus and any amendment is provided in accordance with securities legislation relating to procedures for providing access to a supplemented PREP prospectus and any amendment,
 - (iii) that the document is accessible, or will be accessible within 2 business days, as applicable, at www.sedarplus.com,
 - (iv) the securities that are offered under the supplemented PREP prospectus, and
 - (v) the following:

“An electronic or paper copy of the supplemented PREP prospectus and any amendment 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 PREP 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 supplemented PREP prospectus or any amendment, 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 PREP 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.

Exemption from Requirement to Send Prospectus – British Columbia, Québec and New Brunswick

2A.6 (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 PREP prospectus and any amendment has been filed on SEDAR+ and a receipt has been issued and posted on SEDAR+ for the document,
- (b) a supplemented PREP prospectus and any amendment has been filed on SEDAR+, and
- (c) after the supplemented PREP prospectus 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 supplemented PREP prospectus and any amendment is accessible through SEDAR+, or will be accessible through SEDAR+ within 2 business days, as applicable,
 - (ii) that access to the supplemented PREP prospectus and any amendment is provided in accordance with securities legislation relating to procedures for providing access to a supplemented PREP prospectus and any amendment,
 - (iii) that the document is accessible, or will be accessible within 2 business days, as applicable, at www.sedarplus.com,
 - (iv) the securities that are offered under the supplemented PREP prospectus, and
 - (v) the following:

“An electronic or paper copy of the supplemented PREP prospectus and any amendment 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 PREP 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 supplemented PREP prospectus or any amendment 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.

PART 3
BASE PREP PROSPECTUSES

Form of Base PREP Prospectus

3.1 The required form of prospectus under securities legislation may be varied for a PREP prospectus to the extent provided for in this Instrument.

Required Disclosure

3.2 (1) A base PREP prospectus of an issuer shall contain the following:

1. A statement at the top of the cover page identifying the prospectus as a base PREP prospectus.
2. The following statement in red ink and in *italics* on the cover page:

This [insert throughout, if applicable, "short form"] prospectus has been filed under procedures in [insert names of each jurisdiction where qualified] that permit certain information about these securities to be determined after the prospectus has become final and that permit the omission of that information from this prospectus. The procedures require the delivery to purchasers of a supplemented PREP prospectus containing the omitted information within a specified period of time after agreeing to purchase any of these securities.

3. A statement that all disclosure contained in a supplemented PREP prospectus that is not contained in the base PREP prospectus will be incorporated by reference into the base PREP prospectus as of the date of the supplemented PREP prospectus.
4. If securities other than shares are being distributed, a statement of the aggregate dollar amount of securities to which the base PREP prospectus pertains.
5. If shares are being distributed,
 - (a) the aggregate dollar amount of the shares to which the base PREP prospectus pertains, if
 - i) the proceeds of the offering are to be applied to a specific purpose identified in the prospectus and a minimum amount must be raised through the offering in order to accomplish the purpose, and
 - ii) there is no pre-existing trading market in which securities of the same class as the securities to be distributed under the prospectus are traded; or
 - (b) either the aggregate number, or the aggregate dollar amount, of the shares to which the base PREP prospectus pertains.

6. Any earnings coverage ratios required under securities legislation, which may be expressed as ranges based on a reasonable estimate of the PREP information.
7. The prospectus certificates required by Part 5 of NI 41-101 and other securities legislation,
 - (a) in the following issuer certificate form:

"The [insert, if applicable, "short form"] prospectus, together with the documents and information incorporated by reference, will, as of the date of the supplemented prospectus providing the information permitted to be omitted from this prospectus, constitute, full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required under the securities legislation of [insert name of each jurisdiction in which qualified]."; and
 - (b) in the following underwriter certificate form:

"To the best of our knowledge, information and belief, this [insert, if applicable "short form"] prospectus, together with the documents and information incorporated by reference, will, as of the date of the supplemented prospectus providing the information permitted to be omitted from this prospectus, constitute full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required under the securities legislation of [insert name of each jurisdiction in which qualified].";
8. [repealed]
9. [repealed]
10. List all exemptions from the provisions of this Instrument granted to the issuer applicable to the base PREP prospectus, including all exemptions to be evidenced by the issuance of a receipt for the base PREP prospectus pursuant to section 6.2.

(2) Despite subsection (1), a preliminary base PREP prospectus is not required to contain the information required in paragraphs 4, 5 and 6 of subsection (1), if the information is not known at the time of filing the preliminary base PREP prospectus.

Disclosure that may be Omitted

3.3 A base PREP prospectus may omit the following:

1. The public offering price of the securities to be distributed.
2. The amount of cash underwriting fees, discounts and commissions for the distribution of the securities.
3. The net proceeds of the distribution.

4. If shares are being distributed and only the aggregate number of securities to be distributed is disclosed and the aggregate dollar amount of shares is not required to be disclosed under paragraph 5 of subsection 3.2(1), the gross proceeds of the distribution.
5. Any dividend or interest rate of the securities to be distributed.
6. Any dividend or interest payment dates, record dates and any dates from which dividends or interest accrue for the securities to be distributed.
7. Any redemption, purchase for cancellation, conversion and exchange prices of the securities.
8. The identity of the members of the underwriting syndicate, other than the lead underwriter and any co-lead underwriter, and the disclosure required under Item 14 of Form 44-101F1 or Item 25 of Form 41-101F1.
9. The delivery dates of securities to be purchased under the distribution.
10. If one or more underwriters have agreed to purchase the securities to be distributed at a specified price, the statement required under securities legislation that the securities are to be taken up by the underwriters, if at all, on or before a specified date.
11. If the securities to be distributed are underwritten on a best efforts basis for which a minimum amount of funds are required by an issuer, disclosure required under securities legislation concerning the maximum length of time for which the distribution may continue and concerning the disposition of subscription funds.
12. Other terms of the securities to be distributed that are mathematically derivable from any of the information referred to in paragraphs 1 through 11.

Issuance of Receipt

3.4 Despite the omission of PREP information, the regulator may issue a receipt for a base PREP prospectus.

Expiry of Receipt

3.5 (1) Subject to subsection (2), a receipt issued for a base PREP prospectus expires 90 days after issuance unless a supplemented PREP prospectus is filed within the 90 day period.

(2) If a supplemented PREP prospectus is not filed within 20 days of the filing of a base PREP prospectus, the receipt issued for the base PREP prospectus expires at the time immediately before the entering into of the first agreement of purchase and sale for a security to which the base PREP prospectus pertains, unless a receipt has been issued within the preceding 20 days for an amended base PREP prospectus that updates to the date of the filing of the amended base PREP prospectus all of the disclosure contained in the base PREP prospectus.

Amendment to a Base PREP Prospectus

3.6 (1) For an amendment to a base PREP prospectus, other than an amendment filed under section 2.4 to opt out of the PREP procedures, in respect of a base PREP prospectus that included the issuer certificate form or the underwriter certificate form in subsection 3.2(1), and if the amendment is not a restatement of the base PREP prospectus, insert the phrase "as amended by this amendment" after the reference in each certificate form to the prospectus.

(2) For an amended and restated base PREP prospectus, other than an amended and restated base PREP prospectus filed under section 2.4 to opt out of the PREP procedures, in respect of a base PREP prospectus that included the issuer certificate form or the underwriter certificate form in subsection 3.2(1), preface the reference to the prospectus in each certificate form with the phrase "this amended and restated".

PART 4 SUPPLEMENTED PREP PROSPECTUSES

Requirement to Use a Supplemented PREP Prospectus

4.1 An issuer or selling securityholder that distributes securities under a base PREP prospectus shall supplement the disclosure in the base PREP prospectus with a supplemented PREP prospectus in order for the prospectus to contain full, true and plain disclosure of all material facts relating to the securities distributed under the prospectus.

Incorporation by Reference

4.2 The content of a supplemented PREP prospectus that is not also contained in the corresponding base PREP prospectus is incorporated by reference in the base PREP prospectus as of the date of the supplemented PREP prospectus.

Restriction on Changes

4.3 A supplemented PREP prospectus shall be identical to the corresponding base PREP prospectus, except for the changes permitted or required under this Part.

Changes in the Size of Distribution

4.4 (1) The size of the distribution as disclosed in the base PREP prospectus under paragraph 4 or 5 of subsection 3.2(1) may be increased or decreased by up to 20% in a supplemented PREP prospectus.

(2) If the size of the distribution as disclosed in the base PREP prospectus under paragraph 4 or 5 of subsection 3.2(1) is increased or decreased by up to 20% in a supplemented PREP prospectus and that increase or decrease is a material change, the provisions of Part 6 of NI 41-101 or other securities legislation that require the filing of an amendment to a prospectus if a material change occurs are satisfied by the filing of the supplemented PREP prospectus.

(3) Despite the provisions of securities legislation regarding the prescribed form of issuer certificate form and underwriter certificate form for prospectus amendments, a supplemented PREP prospectus filed in order to satisfy provisions of Part 6 of NI 41-101 or other securities legislation that require the filing of an amendment to a prospectus if a material change occurs shall contain the issuer certificate form and underwriter certificate form required in subsection 4.5(2).

Required Disclosure

4.5 (1) A supplemented PREP prospectus shall be dated the date that the public offering price of the securities is determined.

(2) A supplemented PREP prospectus shall contain the following:

1. All of the PREP information omitted from the base PREP prospectus.
2. Instead of the earnings coverage ratios expressed as ranges based on a reasonable estimate of the PREP information as permitted under paragraph 6 of subsection 3.2(1), the earnings coverage ratios required under securities legislation.
3. The prospectus certificates required by Part 5 of NI 41-101 or other securities legislation,

(a) in the following issuer certificate form:

"This [insert, if applicable, "short form"] prospectus [insert in the case of a short form prospectus distribution — ", together with the documents incorporated by reference"] constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required under securities legislation of [insert name of each jurisdiction in which qualified]."; and

(b) in the following underwriter certificate form:

"To the best of our knowledge, information and belief, this [insert, if applicable, "short form"] prospectus [insert in the case of a short form prospectus distribution — ", together with the documents incorporated by reference,"] constitutes full, true and plain disclosure of all material facts relating to securities offered by this prospectus as required under the securities legislation of [insert name of each jurisdiction in which qualified].";

4. [repealed]

5. [repealed]

6. A list and brief description of each document that has been incorporated by reference in the base PREP prospectus since the issuance of a receipt for the base PREP prospectus.

Legend to be Omitted

4.6 A supplemented PREP prospectus shall omit the legend required under paragraph 2 of subsection 3.2(1).

Amendment to a Supplemented PREP Prospectus

4.7 An amendment to a supplemented PREP prospectus shall contain the form of certificates set out in subsection 4.5(2) for a supplemented PREP prospectus with the following changes:

1. If the amendment is not a restatement of the supplemented PREP prospectus, the phrase "as amended by this amendment" inserted after the reference in each certificate form to the prospectus.
2. If the amendment is an amended and restated supplemented PREP prospectus, the reference in each certificate form to the prospectus prefaced by the phrase "this amended and restated".

Timing of Filing of Supplemented PREP Prospectus

4.8 If securities are distributed using the PREP procedures in the local jurisdiction, a supplemented PREP prospectus prepared in accordance with this Instrument shall be filed in the local jurisdiction by the second business day following the date of the determination of the information omitted from the base PREP prospectus.

Delivery Requirement

4.9 If securities are being distributed using the PREP procedures, the requirement under securities legislation to deliver a prospectus to a purchaser of securities shall be satisfied by the delivery of a supplemented PREP prospectus.

Underwriting Agreements

4.10 Despite the provisions of Part 9 of NI 41-101, an underwriting agreement or other material contract that relates to a distribution of securities that cannot be completed until the distribution is priced and that is required under Part 9 of NI 41-101 to be filed with a prospectus

- (a) shall be filed with the base PREP prospectus in draft form and may omit PREP information; and
- (b) shall be refiled in final form, together with the supplemented PREP prospectus or base PREP prospectus amendment containing the PREP information and a copy of the agreement, blacklined against the draft form filed under paragraph (a).

PART 4A
MARKETING IN CONNECTION WITH THE PREP PROCEDURES

Definitions

4A.1 (1) In this Part,

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

"U.S. cross-border initial public offering" means an initial public 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. 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, and includes a U.S. cross-border initial public offering;

"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.

(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 PREP Prospectus

4A.2 (1) An investment dealer must not provide a standard term sheet to a potential investor after a receipt for a final base PREP 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 PREP prospectus, the supplemented PREP prospectus or any amendment that has been filed, or
 - (ii) will be disclosed in, or derived from, the supplemented PREP prospectus that is subsequently filed; and
- (c) a receipt for the final base PREP prospectus has been issued in the local jurisdiction.

(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 PREP prospectus/supplemented PREP 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 PREP prospectus/supplemented PREP prospectus] and any amendment 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 supplemented PREP prospectus and any amendment for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.

(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 PREP Prospectus

4A.3 (1) An investment dealer must not provide marketing materials to a potential investor after a receipt for a final base PREP prospectus or any amendment is issued unless

- (a) the marketing materials comply with subsections (2) to (9);
- (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 PREP prospectus, the supplemented PREP prospectus or any amendment that has been filed, or
 - (ii) will be disclosed in, or derived from, the supplemented PREP prospectus 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 PREP 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 PREP prospectus has been issued in the local jurisdiction; and
- (g) the investment dealer
 - (i) includes, in the marketing materials, a statement that the final base PREP prospectus and any amendment, or if it has been filed, the supplemented PREP prospectus and any amendment, are accessible through SEDAR+, or

- (ii) provides, with the marketing materials, a copy of the final base PREP prospectus and any amendment, or if it has been filed, the supplemented PREP prospectus and any amendment.

(2) A template version of the marketing materials filed under paragraph 1(e) may contain blank spaces for the PREP information set out in section 3.3, provided that the omitted information is contained in the supplemented PREP prospectus that is subsequently filed.

(3) 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;
- (d) has text in a format, including the type's font, colour or size, that is different than the template version; or
- (e) contains the omitted information referred to in subsection (2), provided that the omitted information is contained in the supplemented PREP prospectus that is subsequently filed.

(4) 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.

(5) 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 (8)(b) 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.

(6) 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 PREP prospectus/supplemented PREP 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 PREP prospectus/supplemented PREP prospectus] and any amendment 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 supplemented PREP prospectus and any amendment for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.

(7) An investment dealer must not provide marketing materials under subsection (1) after a receipt for the final base PREP prospectus is issued unless the issuer

- (a) has included the template version of the marketing materials filed under paragraph (1)(e) in the final base PREP prospectus, and any amendment, or incorporated by reference the template version of the marketing materials filed under paragraph (1)(e) into the final base PREP prospectus, and any amendment, in the manner described in subsection 36A.1(1) of Form 41-101F1 or subsection 11.6(1) of Form 44-101F1, as applicable, or
- (b) has included in the final base PREP prospectus a statement that any template version of the marketing materials filed after the date of the final base PREP prospectus and before the termination of the distribution is deemed to be incorporated into the final base PREP prospectus.

(8) If an amendment to a final base PREP prospectus or a supplemented PREP prospectus modifies a statement of material fact that appeared in marketing materials provided under subsection (1), the issuer must

- (a) indicate in the amendment that the template version of the marketing materials is not part of the final base PREP prospectus or supplemented PREP prospectus, as amended, 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 amendment;
- (b) prepare and file, at the time the issuer files the amendment to the final base PREP prospectus or supplemented PREP prospectus, as applicable, a revised template version of the marketing materials that is blacklined to show the modified statement; and
- (c) include in the amendment to the final base PREP prospectus or supplemented PREP prospectus, as applicable, the disclosure required by subsection 36A.1(3) of Form 41-101F1 or subsection 11.6(3) of Form 44-101F1, as applicable.

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

(10) If marketing materials are provided under subsection (1) but the issuer did not comply with subsection (7), the marketing materials are deemed for purposes of securities legislation to be incorporated into the final base PREP prospectus as of the date of the final base PREP prospectus to the extent not otherwise expressly modified or superseded by a statement contained in the final base PREP prospectus.

Road Shows after a Receipt for a Final Base PREP Prospectus

4A.4 (1) An investment dealer must not conduct a road show for potential investors after a receipt for a final base PREP 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 PREP prospectus has been issued in the local jurisdiction.

(2) Subject to section 4A.6, 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 4A.3.

(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) make an oral statement at the commencement of the road show that the final base PREP prospectus and any amendment, or if they have been filed, the supplemented PREP prospectus and any amendment, are accessible through SEDAR+, or provide the investor with a copy of the final base PREP prospectus and any amendment, or if they have been filed, the supplemented PREP prospectus and any amendment.

(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 supplemented PREP prospectus and any amendment for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision. The [final base PREP prospectus/supplemented PREP prospectus] and any amendment are accessible through SEDAR+.

Exception from Procedures for Road Shows for Certain U.S. Cross-border Initial Public Offerings

4A.5 (1) Subject to subsection (2), paragraphs 4A.4(3)(a) and (b) do not apply to an investment dealer that conducts a road show in connection with a U.S. cross-border initial public offering.

- (2)** Subsection (1) does not apply unless
- (a) the issuer is relying on the exemption from U.S. filing requirements in Rule 433(d)(8)(ii) under the 1933 Act in respect of the road show; and
 - (b) the investment dealer establishes and follows reasonable procedures to
 - (i) ask any investor attending the road show in person, by telephone conference call, on the internet or by other electronic means to voluntarily provide their name and contact information; and
 - (ii) keep a record of any information voluntarily provided by the investor.

Exception from Filing and Incorporation Requirements for Road Shows for Certain U.S. Cross-border Offerings

4A.6 (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 4A.3(1)(e);
 - (b) subsections 4A.3(7) to (10).
- (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 PREP prospectus or the supplemented PREP 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 base PREP prospectus has been filed in the local jurisdiction, the template version of the marketing materials relating to the road show is delivered to the securities regulatory authority.
- (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.

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

**PART 5
[REPEALED]**

**PART 6
EXEMPTIONS**

Exemption

6.1 (1) The regulator or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.

(2.1) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

(3) An application made to the securities regulatory authority or regulator for an exemption from this Instrument shall include a letter or memorandum describing the matters relating to the exemption, and indicating why consideration should be given to the granting of the exemption.

Evidence of Exemption

6.2 (1) Subject to subsection (2) and without limiting the manner in which an exemption under this Part may be evidenced, the granting of an exemption under this Part may be evidenced by the issuance of a receipt for a base PREP prospectus or an amendment to a base PREP prospectus.

(2) The issuance of a receipt for a base PREP prospectus or an amendment to a base PREP prospectus is not evidence that the exemption is being granted unless

- (a)** the person or company that sought the exemption sent to the regulator
 - (i)** the letter or memorandum referred to in subsection 6.1(3), on or before the date of the filing of the preliminary base PREP prospectus, or
 - (ii)** the letter or memorandum referred to in subsection 6.1(3) after the date of the filing of the preliminary base PREP prospectus and received a written acknowledgement from the regulator that the exemption may be evidenced in the manner set out in subsection (1), and
- (b)** the regulator has not before, or concurrently with, the issuance of the receipt sent notice to the person or company that sought the exemption, that the

exemption sought may not be evidenced in the manner set out in subsection (1).

PART 7
EFFECTIVE DATE

Effective Date

7.1 This Instrument shall come into force on December 31, 2000.