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National Instrument 44-103 Post-Receipt Pricing

Part 1 Definitions and Interpretation

1.1 Definitions

(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.

1.2 Amendments

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

2.1 Prohibited Offerings

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

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

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

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

holder, as the case may be, has decided not to use the PREP procedures for the distribution.

Part 3 **Base PREP Prospectuses**

3.1 Form of Base PREP Prospectus

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

3.2 Required Disclosure

- (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.

3.3 Disclosure that may be Omitted

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.

3.4 Issuance of Receipt

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

3.5 Expiry of Receipt

- (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.

3.6 Amendment to a Base PREP Prospectus

- (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

4.1 Requirement to Use a Supplemented PREP Prospectus

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.

4.2 Incorporation by Reference

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.

4.3 Restriction on Changes

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

4.4 Changes in the Size of Distribution

- (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).

4.5 Required Disclosure

- (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.

4.6 Legend to be Omitted

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

4.7 Amendment to a Supplemented PREP Prospectus

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 pre-faced by the phrase "this amended and restated".

4.8 Timing of Filing of Supplemented PREP Prospectus

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.

4.9 Delivery Requirement

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.

4.10 Underwriting Agreements

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 5 [Repealed]

Part 6 Exemptions

6.1 Exemption

- (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.

6.2 Evidence of Exemption

- (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

7.1 Effective Date

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