

## **CSA Notice of Amendments to National Instrument 44-102 *Shelf Distributions* and Change to Companion Policy 44-102CP *Shelf Distributions* relating to At-the-Market Distributions**

**June 4, 2020**

### **Introduction**

The Canadian Securities Administrators (**CSA** or **we**) are making amendments (the **Amendments**) to National Instrument 44-102 *Shelf Distributions* (**NI 44-102**) and changes (the **Changes**) to Companion Policy 44-102CP *Shelf Distributions* (**44-102CP**).

The Amendments replace relief that has historically been required by issuers conducting at-the-market (**ATM**) distributions of equity securities. The text of the Amendments and the Changes is contained in Annexes C and D of this Notice.

The Amendments and the Changes are expected to be made by each member of the CSA. In certain jurisdictions, Ministerial approvals are required for the Amendments. Provided all necessary Ministerial approvals are obtained, the Amendments and the Changes will become effective on August 31, 2020. Where applicable, Annex E of this Notice provides information about each of the jurisdiction's approval process.

### **Substance and Purpose**

While Part 9 of NI 44-102 currently contemplates the distribution of equity securities by way of an ATM distribution using the shelf procedures, it does not provide an exemption for the prospectus delivery requirement. Because of the nature of ATM distributions, issuers are required to obtain exemptive relief from certain prospectus-related requirements if they wish to conduct ATM distributions in Canada. When the Amendments become effective, issuers will not have to apply for exemptive relief to conduct ATM distributions.

The Amendments reduce the regulatory burden for issuers who wish to conduct ATM distributions, without compromising investor protection or the efficiency of the capital markets.

### **Background**

The CSA published CSA Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers* to identify and consider areas of securities legislation that could benefit from a reduction of undue regulatory burden.

After receiving and reviewing stakeholder comments, the CSA published Notice 51-353 *Update on CSA Consultation Paper 51-404 Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers*. Among other things, commenters observed that the limited

number of ATM distributions in Canada may be partly attributable to regulatory burden associated with the requirement to obtain prior exemptive relief and the conditions typically imposed in connection with such relief.

In response, we initiated a CSA policy project relating to ATM distributions resulting in the publication for comment on May 9, 2019 of proposed amendments (the **Proposed Amendments**) to NI 44-102 and proposed changes (the **Proposed Changes**) to 44-102CP.

### **Summary of Written Comments Received by the CSA**

On May 9, 2019, we published a Notice and Request for Comment (the **Publication for Comment Materials**) relating to the Proposed Amendments and the Proposed Changes. The comment period ended on August 7, 2019. We received written submissions from seven commenters. We considered all of the comments received and we thank the commenters for their input. The names of the commenters are contained in Annex B of this Notice along with a summary of the comments and our responses.

The comment letters can be viewed on the website of each of:

- the Alberta Securities Commission at [www.albertasecurities.com](http://www.albertasecurities.com)
- the Ontario Securities Commission at [www.osc.gov.on.ca](http://www.osc.gov.on.ca)
- the Autorité des marchés financiers at [www.lautorite.qc.ca](http://www.lautorite.qc.ca)

### **Summary of Changes**

We have revised the Proposed Amendments and the Proposed Changes to reflect certain of the comments received and to improve or clarify drafting. As these changes are not material, we are not republishing the Amendments and the Changes for a further comment period.

A summary of the noteworthy differences between the Proposed Amendments and the Amendments are contained in Annex A.

### **Annexes**

This Notice includes the following annexes:

- Annex A summarizes the noteworthy differences between the Proposed Amendments and the Amendments
- Annex B sets out the name of the commenters, a summary of their comments, and our responses
- Annex C sets out the Amendments
- Annex D sets out the Changes

Where applicable, Annex E provides additional information relevant for local jurisdictions.

## Questions

Please refer your questions to any of the following:

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