

Chapter 5

Rules and Policies

5.1.1 NI 44-101 Short Form Prospectus Distributions - Ontario Amendment Instrument

NATIONAL INSTRUMENT 44-101 SHORT FORM PROSPECTUS DISTRIBUTIONS ONTARIO AMENDMENT INSTRUMENT

1. The table of contents of National Instrument 44-101 *Short Form Prospectus Distributions* is amended by adding the following after “7.1 Solicitations of Expressions of Interest”:

“7.2 Solicitations of Expressions of Interest - Over-allotment Options – Ontario.”
2. Part 7 of the Instrument is amended by adding the following as a new section after section 7.1:

“7.2 Solicitations of Expressions of Interest - Over-allotment Options – Ontario

 - (1) In Ontario, the prospectus requirement does not apply to solicitations of expressions of interest before the filing of a preliminary short form prospectus for securities to be issued pursuant to an over-allotment option that are qualified for distribution under a short form prospectus in accordance with this Instrument, if
 - (a) the issuer has entered into an enforceable agreement with the underwriters, who have agreed to purchase the securities offered under a short form prospectus, other than the securities issuable on the exercise of an over-allotment option,
 - (b) the agreement referred to in paragraph (a) has fixed the terms of the distribution and requires that the issuer file a preliminary short form prospectus for the securities and obtain from the regulator a receipt, dated as of a date that is not more than four business days after the date that the agreement is entered into, for the preliminary short form prospectus,
 - (c) the issuer has issued and filed a news release announcing the agreement immediately upon entering into the agreement,
 - (d) upon issuance of a receipt for the preliminary short form prospectus, a copy of the preliminary short form prospectus is sent to each person or company who has expressed an interest in acquiring the securities, and
 - (e) except as provided in paragraph (a), no agreement of purchase and sale for the securities is entered into until the short form prospectus has been filed and a receipt obtained.
 - (2) In this section,
 - (a) “over-allotment option” means a right granted to the underwriter(s) by an issuer or a selling securityholder of the issuer in connection with the distribution of securities under a short form prospectus to acquire, for the purposes of covering the underwriters’ over-allocation position, a security of an issuer that has the same designation and attributes as a security that is distributed under such short form prospectus, and that
 - (i) expires not later than the 60th day after the date of the closing of the distribution, and
 - (ii) is limited to the lesser of
 - (A) the over-allocation position determined as at the closing of the distribution, and
 - (B) 15% of the number or principal amount of the securities qualified for the distribution, without taking into account the securities issuable on the exercise of the over-allotment option; and

- (b) “over-allocation position” means the amount by which the aggregate number or principal amount of securities that are the subject of offers to purchase received by all underwriters of a distribution exceeds the aggregate number or principal amount of securities distributed by an issuer or selling securityholder under the prospectus, without taking into account the securities issuable on the exercise of an over-allotment option granted to the underwriters.”