

1.1.9 Notice of Minister of Finance Approval of Final Rule under the Securities Act and Amendment to Regulation 1015 made under the Securities Act - National Instrument 44-103 Post-Receipt Pricing

**NOTICE OF MINISTER OF FINANCE APPROVAL OF
FINAL NATIONAL INSTRUMENT 44-103 POST-RECEIPT PRICING**

AND

**NOTICE OF AMENDMENT TO REGULATION 1015 OF
THE REVISED REGULATIONS OF ONTARIO, 1990
MADE UNDER THE SECURITIES ACT
IN CONNECTION WITH NATIONAL INSTRUMENT 44-103**

On December 6, 2000, the Minister of Finance approved National Instrument 44-103 Post-Receipt Pricing (the "National Instrument"). Previously, materials related to the National Instrument and Companion Policy 44-103CP (the "Companion Policy") were published in the Bulletin on October 2, 1998 and October 13, 2000. **The National Instrument and Companion Policy will come into effect on December 31, 2000.**

The Commission is publishing in a Special Supplement to this issue of the OSC Bulletin, the final National Instrument and Companion Policy. The National Instrument and Companion Policy will also be published in the Ontario Gazette on December 23rd, 2000.

The Minister of Finance has also approved a regulation to amend and revoke certain sections of Regulation 1015 of the Revised Regulations of Ontario, 1990 made under the Securities Act (the "Regulation") in connection with the National Instrument. The amendments and revocations to the Regulations will come into force at the time that the National Instrument comes into force and will be published in the Ontario Gazette on December 23rd, 2000.

National Instrument 44-103

Post-Receipt Pricing

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NATIONAL INSTRUMENT 44-103 POST-RECEIPT PRICING

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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) All terms defined in National Instrument 44-101 Short Form Prospectus Distributions and used, but not defined, in this Instrument have the respective meanings ascribed to them in National Instrument 44-101.

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 security holder, 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 security holder, 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 security holder 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; and

(b) otherwise, 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. A certificate in the following form signed by

(a) the chief executive officer and the chief financial officer, or, if no such officers have been appointed, a person acting on behalf of the issuer in a capacity similar to a chief executive officer and a person acting on behalf of the issuer in a capacity similar to that of a chief financial officer;

(b) on behalf of the board of directors of the issuer, any two directors of the issuer, duly authorized to sign, other than the persons referred to in paragraph (a), and

(c) any person or company who is a promoter of the issuer:

"This [insert, if applicable, "short form"] prospectus, together with the documents and information incorporated herein 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 securities legislation of [insert name of each jurisdiction in which qualified]. [Insert if distribution made in Québec - "For the purpose of the Province of Québec, this [describe document], [insert in the case of short form prospectus distributions - "simplified prospectus, as supplemented by the permanent information record,"] will as of the date of the supplemented prospectus contain no misrepresentation likely to affect the value or the market price of the securities to be distributed."]"

8. A certificate in the following form signed by each underwriter, if any, who for the securities to be distributed under the prospectus, is in a contractual relationship with the issuer or selling security holder:

"To the best of our knowledge, information and belief, this [insert, if applicable, "short form"] prospectus, together with the documents incorporated herein 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 securities legislation of [insert name of each jurisdiction in which qualified]. [Insert if distribution made in Québec - "For the purpose of the Province of Québec, to our knowledge, this [describe document], [insert in the case of short form prospectus distributions - "simplified prospectus, as supplemented by the permanent information record,"] will as of the date of the supplemented prospectus contain no misrepresentation likely to affect the value or the market price of the securities to be distributed."]"

9. If securities legislation requires a prospectus certificate of a credit supporter, a certificate in the form described in paragraph 7 signed by the credit supporter and if the credit supporter is a corporation signed by

(a) the chief executive officer and the chief financial officer or, if no such officers have been appointed, a

person acting on behalf of the credit supporter in a capacity similar to a chief executive officer and a person acting on behalf of the credit supporter in a capacity similar to that of a chief financial officer; and

(b) on behalf of the board of directors, of the credit supporter, any two directors of the credit supporter duly authorized to sign, other than the persons referred to in paragraph (a).

(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 44-101F3 Short Form Prospectus.
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 - An amendment to a base PREP prospectus, other than an amendment filed under section 2.4 to opt out of the PREP procedures, shall contain the certificates required under subsection 3.2(1) to be included in a base PREP prospectus with the following changes:

1. 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 to the base PREP prospectus.
2. If the amendment is an amended and restated base PREP prospectus, preface the reference in each certificate to the document 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 security holder 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 percent 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 percent in a supplemented PREP prospectus and that increase or decrease is a material change, the provisions of 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 certificates for prospectus amendments, a supplemented PREP prospectus filed in order to satisfy provisions of securities legislation that require the filing of an amendment to a prospectus if a material change occurs shall contain the certificates 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. Instead of the prospectus certificate required under paragraph 7 of subsection 3.2(1), a certificate in the following form signed by

(a) the chief executive officer and the chief financial officer, or, if no such officers have been appointed, a person acting on behalf of the issuer in a capacity similar to a chief executive officer and a person acting on behalf of the issuer in a capacity similar to that of a chief financial officer;

(b) on behalf of the board of directors of the issuer, any two directors of the issuer, duly authorized to sign, other than the persons referred to in paragraph (a), and

(c) any person of company who is a promoter of the issuer:

“This [insert, if applicable, “short form”] prospectus, together with the documents information incorporated herein 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]. [Insert if distribution made in Québec - “For the purpose of the Province of Québec, this [describe document], [insert in the case of short form prospectus distributions - “simplified prospectus, as supplemented by the permanent information record,”] contains no misrepresentation likely to affect the value or the market price of the securities to be distributed.”]”

4. Instead of the prospectus certificate required under paragraph 8 of subsection 3.2(1), a certificate in the following form signed by the each underwriter, if any, who for the securities to be distributed under the prospectus, is in a contractual relationship with the issuer or selling security holder:

“To the best of our knowledge, information and belief, this [insert throughout in the case of short form prospectus distributions - “short form”] [insert in the case of short form prospectus distributions - “, together with the documents incorporated herein by

reference,] constitutes 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]. [Insert if distribution made in Québec - "For the purpose of the Province of Québec, this [insert in the case of short form prospectus distributions - "simplified prospectus, as supplemented by the permanent information record,] contains no misrepresentation that is likely to affect the value or the market price of the securities to be distributed."]

5. Instead of the prospectus certificate required under paragraph 9 of subsection 3.2(1), a certificate signed by a credit supporter in the form described in paragraph 3 if securities legislation requires a prospectus certificate of a credit supporter.

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 certificates required under subsection 4.5(2) to be included in 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 to the supplemented PREP prospectus.

2. If the amendment is an amended and restated supplemented PREP prospectus, the reference in each certificate to the document prefaced 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 securities legislation, 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 securities legislation to be filed or delivered to the regulator with a prospectus

(a) shall be filed or delivered, as the case may be, with the base PREP prospectus in draft form and may omit PREP information; and

(b) shall be refiled or redelivered, as the case may be, 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 TRANSITIONAL PREP PROCEDURES

5.1 Transitional PREP Procedures

(1) An issuer that has filed and obtained a receipt for a PREP prospectus under National Policy Statement No. 44, or pursuant to securities legislation in the Province of Quebec, before this Instrument came into force is considered to have filed and obtained a receipt for a base PREP prospectus under this Instrument.

(2) An issuer that has filed a preliminary PREP prospectus under National Policy Statement No. 44, or pursuant to securities legislation in the Province of Quebec, is considered to have filed a preliminary base PREP prospectus under this Instrument.

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 and Alberta, only the regulator may grant such an exemption.

(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) An exemption under this Part may be evidenced in the manner set out in subsection (1) only if

(a) the person or company that sought the exemption

(i) sent to the regulator 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) sent to the regulator 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.

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Companion Policy 44-103CP

Post-Receipt Pricing

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COMPANION POLICY 44-103CP TO NATIONAL INSTRUMENT 44-103 POST-RECEIPT PRICING

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**COMPANION POLICY 44-103CP TO NATIONAL INSTRUMENT 44-103
POST-RECEIPT PRICING**

PART 1 INTRODUCTION

1.1 Implementation of the Instrument - Certain jurisdictions have implemented National Instrument 44-103 Post-Receipt Pricing (the “Instrument”) by one or more instruments forming part of securities legislation or securities directions in the jurisdiction. As a result, the provisions of the Instrument apply in those jurisdictions to the extent provided by, and except as modified by, the implementing law of the jurisdiction.

1.2 Availability of PREP Procedures - Access to the PREP procedures is not restricted to issuers qualified to file a prospectus in the form of a short form prospectus. Any issuer that wishes to use the PREP procedures, or enable a selling security holder to use the PREP procedures, to distribute securities may file a prospectus that is a base PREP prospectus.

1.3 Relationship of the Instrument to Securities Legislation

(1) Issuers are reminded that the rules and procedures contained in the Instrument for distributions made using the PREP procedures should be read in conjunction with other provisions of securities legislation in each jurisdiction in which a distribution is being made.

(2) A distribution under a short form prospectus using the PREP procedures is subject to all the requirements of National Instrument 44-101 Short Form Prospectus Distributions and other provisions of securities legislation, as supplemented or varied by the Instrument and the implementing law of the jurisdiction. Reference is made to Part 1 of the Companion Policy to National Instrument 44-101 for a discussion of the relationship between National Instrument 44-101 and various other pieces of securities legislation.

(3) Similarly, a distribution using the PREP procedures not made under a short form prospectus is subject to securities legislation, as supplemented or varied by the Instrument and the implementing law of the jurisdiction.

PART 2 PROSPECTUS AMENDMENTS

2.1 Prospectus Amendments

(1) Section 4.4 of the Instrument provides that the size of an offering may be increased or decreased by up to 20 percent between the filing of the prospectus and the filing of the supplemented PREP prospectus. The section further provides that, in cases where such a change in the size of the offering constitutes a material change, the requirement in securities legislation to file an amendment if a material change occurs may be satisfied by filing the supplemented PREP prospectus. The certificates required in the supplemented PREP prospectus are those prescribed by subsection 4.5(2) of the Instrument. For changes in the size of the offering by more than 20 percent that constitute a material change, this flexibility in filing of the amendment is not available.

(2) The securities regulatory authorities are of the view that an issuer’s ability to use the PREP procedures does not prevent the filing of a prospectus amendment to make some or all of the changes to the prospectus that are permitted to be made by a supplemented PREP prospectus.

PART 3 PREP PROCEDURES

3.1 Firm Commitment Distributions - Paragraph 10 of section 3.3 of the Instrument provides that a base PREP prospectus for securities to be distributed by one or more underwriters that have agreed to purchase the securities at a specified price is not required to indicate that the securities are to be taken up by the underwriters, if at all, on or before a specified date. This subsection provides an exemption from the requirement of securities legislation that this disclosure must be contained in a prospectus. Issuers are reminded that paragraph 1 of subsection 4.5(2) requires all information omitted from a base PREP prospectus to be included in a supplemented PREP prospectus. Therefore, it is necessary to comply with the relevant requirement of securities legislation in a supplemented PREP prospectus relating to specific distributions that are being effected on a firm commitment basis.

3.2 Best Efforts Distributions - Similarly, paragraph 11 of section 3.3 of the Instrument provides that a base PREP prospectus for a distribution of securities underwritten on a best efforts basis for which a minimum amount of funds are required by an issuer is not required to include disclosure required under securities legislation concerning the maximum length of time for which the distribution may continue and concerning the disposition of subscription funds. Issuers are reminded, as in the previous subsection, that paragraph 1 of subsection 4.5(2) requires all information omitted from a base PREP prospectus to be included in a supplemented PREP prospectus. Therefore, it is necessary to comply with the relevant requirement of securities legislation in a supplemented PREP prospectus relating to specific distributions that are being effected on a best efforts basis. Issuers are also reminded that where PREP procedures are used in connection with securities offered on a best efforts basis for which a minimum amount of funds are required, the issuer may not reduce the size of the distribution pursuant to section 4.4 of the Instrument in a supplemented PREP prospectus to a size that would yield less than the minimum amount of funds.

3.3 Rights of Rescission or Withdrawal - The securities regulatory authorities are of the view that statutory rights of rescission or withdrawal commence from the time of the purchaser's receipt of a supplemented PREP prospectus. It is only at this time that the entire prospectus has been delivered.

3.4 Supplemented Prospectus not an Amendment - The securities regulatory authorities do not consider a supplemented PREP prospectus to constitute an amendment to a prospectus within the meaning of securities legislation.

3.5 Certificates - With respect to the certificate requirements in the Instrument, reference should be made to the provisions of securities legislation of a jurisdiction that provide for a right of action against every person who signs a prospectus or an amendment to a prospectus. The securities regulatory authorities recognize that, in certain circumstances, a credit supporter may consider that its knowledge of the affairs of the issuer is not such that it considers it appropriate to sign a certificate in the form specified by the Instrument. In these circumstances, if the credit supporter is not a promoter of the issuer or a selling security holder, the regulatory authorities may allow the credit supporter to sign a different form of certificate. Credit supporters who wish to make application should do so in accordance with Part 6 of the Instrument.