

CSA Notice and Request for Comment

Proposed Amendments to National Instrument 44-102 *Shelf Distributions Relating to Well-known Seasoned Issuers*

September 21, 2023

Part 1 – Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are publishing for a 90-day comment period

- proposed amendments to National Instrument 44-102 *Shelf Distributions* (**NI 44-102**), as set out in Annex A,
- proposed changes to Companion Policy 44-102CP to NI 44-102, as set out in Annex B,
- proposed changes to National Policy 11-202 *Process for Prospectus Reviews in Multiple Jurisdictions* (**NP 11-202**), as set out in Annex C,
- proposed amendments to local securities laws as set out in Annex D

(collectively, the **Proposed Amendments**).

The public comment period expires on **December 20, 2023**.

The text of the Proposed Amendments is contained in Annexes A through D of this Notice and will also be available on websites of CSA jurisdictions, including:

www.lautorite.qc.ca

www.albertasecurities.com

www.bcsc.bc.ca

nssc.novascotia.ca

www.fcnb.ca

www.osc.ca

www.fcaa.gov.sk.ca

mbsecurities.ca

Part 2 – Substance and Purpose

The Proposed Amendments would permit issuers that satisfy the qualification criteria and certain conditions to:

- file a final base shelf prospectus and be deemed to receive a receipt for that prospectus without first filing a preliminary base shelf prospectus or undergoing any regulatory review,
- omit certain disclosure from the base shelf prospectus (for example, the aggregate dollar amount of securities that may be raised under the prospectus), and

- benefit from receipt effectiveness for a period of 37 months from the date of its deemed issuance, subject to the requirement for the issuer to reassess its qualification to use the WKSI regime annually.

The Proposed Amendments would introduce an expedited shelf prospectus regime for well-known seasoned issuers (**WKSI**s) in Canada. Regulatory costs and other restrictions on the business and investment activities of market participants should be proportionate to the significance of the regulatory objectives sought. The costs involved in the regulatory review of a prospectus filed in connection with a public offering of securities may be significant. In general, these costs are necessary and proportionate to the regulatory objectives of the prospectus requirement and securities legislation, particularly for offerings by newer reporting issuers. However, for mature, well-established and closely followed reporting issuers, the benefits of a full regulatory review of base shelf prospectuses may not justify the costs. The Proposed Amendments aim to reduce unnecessary regulatory burden for issuers that are well-known reporting issuers, have a strong market following, complete public disclosure record and sufficient public equity. The Proposed Amendments are also intended to foster capital formation by such issuers in the Canadian public markets.

In our experience, the review of base shelf prospectuses filed by WKSIs are unlikely to identify substantive deficiencies that require regulatory intervention. Eligible reporting issuers will have more flexibility in structuring a base shelf prospectus offering, have improved certainty regarding transaction timing and be permitted to forgo certain requirements that do not, in this context, provide meaningful disclosure to investors. The Proposed Amendments will also more closely align the timing of Canadian prospectus filings with those applicable in the United States and better facilitate cross-border offerings.

Part 3 – Background

NI 44-102 permits qualified issuers to omit “shelf information” from a base shelf prospectus, if not known on the date the base shelf prospectus is filed. Such information is required to be included in a prospectus supplement, which is not subject to review. Shelf information consists of information such as the variable terms of the securities that may be distributed under the base shelf prospectus, the dollar amount, size and other specific terms of each tranche of securities that may be distributed, the variable terms of the plan of distribution, and any other information that is not known and cannot be ascertained at the time of filing the base shelf prospectus.

The CSA received feedback to its Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers*¹ that certain prospectus requirements in the base shelf context create unnecessary regulatory burden for large, established reporting issuers that have strong market following and up-to-date disclosure records. The feedback recommended enhancing the current prospectus system by amending the base shelf prospectus rules to implement a Canadian WKSI regime.

¹ See CSA Staff Notice 51-353 *Update on CSA Consultation Paper 51-404 Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers*.

In early 2018, the CSA undertook a research project on potential alternative offering models that included research of the United States' WKSI regime² and targeted consultations with market participants. During our consultations, we continued to receive recommendations to implement a Canadian WKSI regime.

In response to stakeholder feedback, on December 6, 2021, the CSA published temporary exemptions from certain base shelf prospectus requirements for qualifying WKSIs through local blanket orders that are substantively harmonized across the country (collectively, the **Blanket Orders**).

The Blanket Orders allow an issuer that meets the WKSI qualifications and certain conditions to file a final base shelf prospectus with its principal regulator and obtain a receipt for that prospectus on an accelerated basis without first filing a preliminary base shelf prospectus.

Since the Blanket Orders came into effect³, we have had an opportunity to evaluate the appropriateness of the eligibility criteria and other conditions, consider feedback from various stakeholders and determine how best to implement a Canadian WKSI regime through rule amendments.

Part 4 – Summary of the Proposed Amendments

Annex E to this notice summarizes the principal differences between the Blanket Orders and the Proposed Amendments.

Under the Proposed Amendments, the requirement to file and receive a receipt for a preliminary prospectus would not apply to a distribution under a WKSI base shelf prospectus. Instead of requiring the payment of fees that would otherwise be due on filing a preliminary short form prospectus, some jurisdictions may adopt specific fees for WKSI base shelf prospectus filings in parallel with the Proposed Amendments.

Under the Proposed Amendments, upon the filing of a WKSI base shelf prospectus or an amendment to a WKSI base shelf prospectus in compliance with all requirements, a receipt would be deemed to be issued in all jurisdictions in Canada where the prospectus has been filed. A receipt deemed to be issued for a WKSI base shelf prospectus would generally be effective for a period of 37 months from the date of its deemed issuance, subject to the requirement for the issuer to reassess its qualification to use the WKSI regime annually.

In addition, the Proposed Amendments contain an annual confirmation requirement. Under the Proposed Amendments, an issuer that has filed a WKSI base shelf prospectus would be required to confirm whether it continues to qualify as a WKSI on an annual basis and evidence that fact by including a statement confirming its WKSI status in its annual information form or by filing an amendment to its WKSI base shelf prospectus indicating that it continues to be a WKSI. If an

² In the United States, the WKSI regime is codified in the *General Rules and Regulations, Securities Act of 1933*, and has been in regular use for several years.

³ The Blanket Orders came into effect on January 4, 2022.

issuer no longer qualifies as a WKSI, the issuer would be required to publicly announce that it would not distribute securities under a prospectus supplement to the WKSI base shelf prospectus and withdraw the WKSI base shelf prospectus.

Part 5 – Proposed Text

The text of the Proposed Amendments is published with this Notice in the following annexes:

- Annex A – Proposed Amendments to NI 44-102
- Annex B – Proposed Changes to Companion Policy 44-102CP to NI 44-102
- Annex C – Proposed Changes to NP 11-202
- Where applicable, Annex D – Local Matters (including any local amendments)

Part 6 – Consequential Amendments

We are proposing changes to NP 11-202 to clarify that the procedures described in NP 11-202 are not applicable to WKSI base shelf prospectuses. Please see Annex C.

Part 7 – Proposed Legislative Amendments

Certain jurisdictions are contemplating amendments to their local securities legislation to provide rule-making authority for the automatic receipt mechanism contemplated by the Proposed Amendments. Where applicable, please see details in Annex D.

Part 8 – Local Matters

Where applicable, Annex D is being published in any local jurisdiction that is making related changes to local securities laws, including local notices or other policy instruments in that jurisdiction. It also includes any additional information that is relevant to that jurisdiction only.

Part 9 – Request for Comments

We welcome your comments on the Proposed Amendments. In addition to any general comments you may have, we also invite comments on the following specific questions.

1. Do you agree with the WKSI qualification criteria proposed in the definition of “well-known seasoned issuer”? If not, please identify the requirements that could be eliminated or modified to improve the criteria. For example, are the proposed qualifying public equity and qualifying public debt thresholds appropriate?
2. Under the Blanket Orders, an issuer does not qualify to file a WKSI base shelf prospectus unless it has been a reporting issuer in at least one jurisdiction of Canada for at least 12 months immediately preceding the date of the WKSI base shelf prospectus. We are

concerned that an issuer that has been a reporting issuer for only 12 months may not have a sufficient continuous disclosure record to justify participation in the WSKI regime. To address this concern, we propose extending the length of this seasoning period to three years. Is a three-year seasoning period appropriate? Should we consider a reduced seasoning period? If so, what is an appropriate seasoning period and why?

3. Do you agree with the eligibility criteria proposed in the definition of “eligible issuer”? If not, please identify the requirements that could be eliminated or modified to improve the criteria. In particular, do you agree with the requirements relating to (i) penalties and sanctions and (ii) outstanding asset-backed securities?
4. The definition of “eligible issuer” excludes issuers that have been the subject of a cease trade order or order similar to a cease trade order in any Canadian jurisdiction within the previous three years. Should this exclusion contain an exception for issuers that were the subject of a cease trade order or similar order in any Canadian jurisdiction within the previous three years that was revoked within 30 days of its issuance, to align with the disclosure requirements for directors and executive officers in Form 41-101F1 *Information Required in a Prospectus*, Form 51-102F2 *Annual Information Form* and Form 51-102F5 *Information Circular*?
5. Are there other eligibility criteria that should disqualify an issuer from the WSKI regime? If so, please explain.
6. Under the Proposed Amendments, issuers would be required to deliver personal information forms with the WSKI base shelf prospectus. However, the receipt for the prospectus would be deemed to be issued prior to any review of these personal information forms. Do you agree with requiring issuers to deliver personal information forms with the WSKI base shelf prospectus? If not, please explain.

Please submit your comments in writing on or before December 20, 2023.

Address your submission to all of the CSA as follows:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Office of the Superintendent of Securities, Service NL
Northwest Territories Office of the Superintendent of Securities
Office of the Yukon Superintendent of Securities
Superintendent of Securities, Nunavut

Deliver your comments only to the addresses below. Your comments will be distributed to the other participating CSA jurisdictions.

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416 593-2318
E-mail: comments@osc.gov.on.ca

Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
Fax: 514 864-8381
E-mail: consultation-en-cours@lautorite.qc.ca

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of the written comments received during the comment period. All comments received will be posted on the websites of each of the Alberta Securities Commission at www.albertasecurities.com, the Autorité des marchés financiers at www.lautorite.qc.ca and the Ontario Securities Commission at www.osc.ca. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Part 10 - Questions

Please refer your questions to any of the following:

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ANNEX A

**PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 44-102
SHELF DISTRIBUTIONS**

1. *National Instrument 44-102 Shelf Distributions is amended by this Instrument.*
2. *Part 2 is amended by adding the following after section 2.7:*

2.7.1 Lapse Date – Ontario – WKSI Base Shelf Prospectus

In Ontario, the lapse date prescribed by securities legislation for a receipt deemed to be issued for a WKSI base shelf prospectus, as defined in subsection 9B.1(1), is extended to the date 37 months from the date of deemed issuance of the receipt.

3. *The Instrument is amended by adding the following part after Part 9A:*

**PART 9B: DISTRIBUTIONS UNDER WELL-KNOWN SEASONED ISSUER BASE
SHELF PROSPECTUSES**

9B.1 Definitions

(1) In this Part,

“annual filing date” means the date on which an issuer is required to file its audited annual financial statements under NI 51-102 or National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*, as applicable;

“eligible issuer” means an issuer to which the following apply:

- (a) the issuer has filed all periodic and timely disclosure documents that it is required to have filed under the following:
 - (i) securities legislation;
 - (ii) an order made by the regulator or securities regulatory authority;
 - (iii) an undertaking given by the issuer to the regulator or securities regulatory authority;
- (b) during the preceding 3 years, neither the issuer, nor any person or company that completed a restructuring transaction with the issuer, was either of the following:
 - (i) a person or company whose operations have ceased;
 - (ii) a person or company whose principal asset is cash, cash equivalents or its exchange listing or any similar person or company, including, for

greater certainty, a capital pool company, a special purpose acquisition company or a growth acquisition corporation;

- (c) during the preceding 3 years, the issuer
 - (i) did not become bankrupt,
 - (ii) did not make a proposal under any legislation relating to bankruptcy or insolvency, and
 - (iii) was not subject to or did not institute any proceeding, arrangement or compromise with creditors or was not subject to an appointment of a receiver, receiver manager or trustee to hold its assets;
- (d) during the preceding 3 years, neither the issuer, nor any of its subsidiaries, has been the subject of an order, judgment, decree, sanction or administrative penalty imposed by, or has entered into a settlement agreement with or approved by, a court in Canada or a foreign jurisdiction, or a securities regulatory authority or a similar authority in a foreign jurisdiction, related to a claim based in whole or in part on fraud, theft, deceit, misrepresentation, conspiracy, insider trading, unregistered activity or illegal distribution;
- (e) during the preceding 3 years, the issuer has not been the subject of
 - (i) a cease trade order or order similar to a cease trade order in a jurisdiction of Canada, or
 - (ii) a suspension of trading under the 1934 Act;

“qualifying public debt” means the aggregate principal amount of non-convertible debt securities, other than equity securities, distributed by an issuer under a prospectus in respect of primary offerings for cash within the preceding 3 years;

“qualifying public equity” means the aggregate market value of the listed equity securities of an issuer, excluding listed equity securities held by an affiliate or a reporting insider of the issuer, calculated using the simple average of the daily closing price of the securities on a short form eligible exchange for each of the trading days on which there was a daily closing price for the preceding 20 trading days;

“reporting insider” has the meaning ascribed to that term in National Instrument 55-104 *Insider Reporting Requirements and Exemptions*;

“well-known seasoned issuer” means an issuer to which the following apply:

- (a) on at least one day during the preceding 60 days, the issuer had
 - (i) qualifying public equity of at least \$500 000 000, or

- (ii) qualifying public debt of at least \$1 000 000 000;
- (b) the issuer is and has been a reporting issuer in a jurisdiction of Canada for the preceding 3 years;
- (c) the issuer is qualified to file a short form prospectus under section 2.2, 2.3, 2.4 or 2.5 of NI 44-101;
- (d) for an issuer that has a mineral project, the issuer's most recent audited annual financial statements disclose
 - (i) gross revenue, derived from mining operations, of at least \$55 000 000 for the issuer's most recently completed financial year, and
 - (ii) gross revenue, derived from mining operations, of at least \$165 000 000 in the aggregate for the issuer's 3 most recently completed financial years;
- (e) the issuer has no outstanding asset-backed securities;

“WKSI base shelf prospectus” means a base shelf prospectus prepared in accordance with subsections 9B.2(2) and (3).

- (2) For the purpose of this Part, the terms “cash” and “cash equivalents” have the same meanings as in Canadian GAAP applicable to publicly accountable enterprises.

9B.2 Requirements for Issuers Filing a WKSI Base Shelf Prospectus

- (1) An issuer may file a WKSI base shelf prospectus if, as of the date of filing the prospectus, the following apply:
 - (a) the issuer is a well-known seasoned issuer;
 - (b) the issuer is not an investment fund;
 - (c) the issuer is an eligible issuer.
- (2) A prospectus filed under this section shall include the following:
 - (a) on the cover page, the following statement or a statement in substantially the following words:

“This base shelf prospectus is filed under Part 9B Distributions Under Well-Known Seasoned Issuer Base Shelf Prospectuses of National Instrument 44-102 *Shelf Distributions*.

[Name of issuer] has satisfied the requirements for issuers filing a WKSI base shelf prospectus and for a receipt for this prospectus to be deemed to

be issued in all jurisdictions in Canada in which this prospectus has been filed.

No regulator or securities regulatory authority has reviewed this prospectus.”;

- (b) disclosure of the date on which the issuer’s qualifying public equity or qualifying public debt met or exceeded the amount referred to in subparagraph (a)(i) or (ii) of the definition of well-known seasoned issuer, as applicable, and the amount of the issuer’s qualifying public equity or qualifying public debt on that date.
- (3) A prospectus filed under this section shall not qualify the distribution of an asset-backed security.

9B.3 Provisions Not Applicable to a WKSI Base Shelf Prospectus

- (1) An issuer is exempt from the prospectus requirement in respect of the requirement to file a preliminary prospectus relating to the WKSI base shelf prospectus if the following apply:
- (a) the issuer is qualified to file a WKSI base shelf prospectus under subsection 9B.2(1);
 - (b) the issuer files a WKSI base shelf prospectus;
 - (c) the issuer has filed all documents otherwise required to be filed under securities legislation in connection with the filing of a base shelf prospectus.
- (2) The following provisions do not apply to an issuer in respect of a WKSI base shelf prospectus:
- (a) section 5.4;
 - (b) item 5 of section 5.5.
- (3) An issuer that files a WKSI base shelf prospectus may omit from the prospectus the following disclosure:
- (a) the number of securities qualified for distribution referred to in item 1.4 of Form 44-101F1;
 - (b) a plan of distribution referred to in item 5 of Form 44-101F1, other than to state that the plan of distribution will be described in the shelf prospectus supplement for any distribution of securities;
 - (c) a description of the securities being distributed referred to in item 7 of Form 44-101F1, other than as necessary to identify the types of securities;

- (d) the disclosure regarding any selling securityholder referred to in item 8 of Form 44-101F1.
- (4) An issuer that omits information from a WKSI base shelf prospectus under subsection (3) shall include the omitted information in any shelf prospectus supplement used to supplement the disclosure in the WKSI base shelf prospectus.

9B.4 Filing Requirements for a WKSI Base Shelf Prospectus

- (1) An issuer that files a WKSI base shelf prospectus shall file, with the WKSI base shelf prospectus, a certificate in accordance with subparagraph 4.1(1)(a)(ii) of NI 44-101 as if the WKSI base shelf prospectus were a preliminary short form prospectus.
- (2) An issuer that files a WKSI base shelf prospectus shall file, with the WKSI base shelf prospectus, any technical report that is required to be filed with a preliminary short form prospectus under NI 43-101.
- (3) An issuer that files a WKSI base shelf prospectus shall deliver to the regulator, concurrently with the filing of the WKSI base shelf prospectus, any personal information form that is required to be delivered with a preliminary prospectus under section 4.1 of NI 44-101.
- (4) An issuer that files a WKSI base shelf prospectus shall pay the fee otherwise required for the filing of a preliminary short form prospectus.

9B.5 Receipts

- (1) A receipt for a WKSI base shelf prospectus is deemed to be issued if, at the time of filing of the WKSI base shelf prospectus, the issuer has
 - (a) complied with section 9B.2, and
 - (b) filed or delivered, as the case may be, all documents required to be filed or delivered in connection with the filing of a base shelf prospectus.
- (2) A receipt for an amendment to a WKSI base shelf prospectus is deemed to be issued if
 - (a) as of the date of filing of the amendment to the WKSI base shelf prospectus, the following apply:
 - (i) the issuer is a well-known seasoned issuer;
 - (ii) the issuer is not an investment fund;
 - (iii) the issuer is an eligible issuer,
 - (b) the amendment to the WKSI base shelf prospectus includes the following:

- (i) on the cover page, the following statement or a statement in substantially the following words:

“This amendment is filed under Part 9B Distributions Under Well-Known Seasoned Issuer Base Shelf Prospectuses of National Instrument 44-102 *Shelf Distributions*.

[Name of issuer] has satisfied the requirements for issuers filing an amendment to a WKSI base shelf prospectus and for a receipt for this amendment to be deemed to be issued in all jurisdictions in Canada in which this amendment has been filed.

No regulator or securities regulatory authority has reviewed this amendment.”;

- (ii) disclosure of the date on which the issuer’s qualifying public equity or qualifying public debt met or exceeded the amount referred to in subparagraph (a)(i) or (ii) of the definition of well-known seasoned issuer, as applicable, and the amount of the issuer’s qualifying public equity or qualifying public debt on that date,
- (c) the amendment to the WKSI base shelf prospectus does not qualify the distribution of an asset-backed security, and
- (d) the issuer has filed or delivered, as the case may be, all documents required to be filed or delivered in connection with the filing of an amendment to a base shelf prospectus.

9B.6 Period of Effectiveness of a Deemed Receipt for a WKSI Base Shelf Prospectus

- (1) Within 60 days preceding the annual filing date in each financial year of an issuer following the filing by the issuer of a WKSI base shelf prospectus and until the date, under subsection (2), on which the issuer is no longer permitted to distribute a security under the WKSI base shelf prospectus, the issuer shall
- (a) include a statement in its AIF for the financial year ended immediately before the annual filing date, or in an amendment to the WKSI base shelf prospectus, that explains that the issuer is eligible to file a WKSI base shelf prospectus, if the issuer satisfies the conditions under subsection 9B.2(1), or
- (b) withdraw the WKSI base shelf prospectus and issue a news release announcing that the issuer will not distribute securities under a prospectus supplement to the WKSI base shelf prospectus.
- (2) An issuer may distribute a security under a WKSI base shelf prospectus, with respect to which a receipt is deemed to have been issued under subsection 9B.5(1), until the earliest of

- (a) the date that is 37 months from the date a receipt is deemed to be issued under subsection 9B.5(1),
 - (b) the annual filing date, unless the issuer has included the statement referred to in paragraph (1)(a) in
 - (i) its AIF for the financial year ended immediately before the annual filing date, or
 - (ii) an amendment to the WKSI base shelf prospectus filed during the 60 days preceding the annual filing date,
 - (c) in the case of an issuer that is qualified to file a short form base shelf prospectus under
 - (i) section 2.2 of NI 44-101, the time referred to in paragraph 2.2(3)(b) of this Instrument,
 - (ii) section 2.3 of NI 44-101, the time referred to in paragraph 2.3(3)(b) of this Instrument,
 - (iii) section 2.4 of NI 44-101, the time referred to in paragraph 2.4(3)(b) of this Instrument, and
 - (iv) section 2.5 of NI 44-101, the time referred to in paragraph 2.5(3)(b) of this Instrument, and
 - (d) in Ontario, the lapse date prescribed by securities legislation.
- (3) An issuer that is required to withdraw a WKSI base shelf prospectus under paragraph (1)(b) shall not distribute a security under that prospectus.

Effective date

4. (1) This Instrument comes into force on *.
- (2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after * this Instrument comes into force on the day on it is filed with the Registrar of Regulations.

ANNEX B

PROPOSED CHANGES TO COMPANION POLICY 44-102CP *SHELF DISTRIBUTIONS*

1. *Companion Policy 44-102CP Shelf Distributions is changed by this Document.*
2. *Part 2 Shelf Procedures is changed by adding, after section 2.9, the following:*

2.10 Distributions Under Well-Known Seasoned Issuer Base Shelf Prospectuses

(1) Meaning of WKSI base shelf prospectus

The term WKSI base shelf prospectus is a defined term used for ease of reference. A WKSI base shelf prospectus is a final base shelf prospectus that has been varied in accordance with Part 9B of NI 44-102. Accordingly, any reference to a “prospectus”, a “final prospectus”, a “final short form prospectus” or a “final base shelf prospectus” in securities legislation includes a WKSI base shelf prospectus.

For the avoidance of doubt, any reference to a “final receipt” includes a receipt deemed to be issued under sections 9B.5 of NI 44-102.

(2) Deemed receipt

No securities regulatory authority or regulator will issue a receipt for a WKSI base shelf prospectus or an amendment to a WKSI base shelf prospectus filed under Part 9B of NI 44-102. If the requirements in section 9B.5 of NI 44-102 are met, a receipt for a WKSI base shelf prospectus will be deemed to be issued on the date that the WKSI base shelf prospectus is filed. No review of the WKSI base shelf prospectus is conducted by any securities regulatory authority or regulator for a deemed receipt.

(3) Non-application of the passport system and multiple jurisdictions prospectus review process

Part 9B of NI 44-102 provides an alternative filing option for well known seasoned issuers that is independent of the passport system and the procedures described in National Policy 11-202 *Process for Prospectus Reviews in Multiple Jurisdictions*. A receipt for a WKSI base shelf prospectus is deemed to be issued in every jurisdiction in which the prospectus is filed so the application of the passport system is not necessary. Further, an issuer that files a WKSI base shelf prospectus would not meet the conditions to use the passport system as it does not file a preliminary prospectus and would not indicate that it is relying on Multilateral Instrument 11-102 *Passport System*.

(4) Amendments

A receipt deemed to be issued for an amendment to a WKSI base shelf prospectus under subsection 9B.5(2) of NI 44-102 will not extend the period of effectiveness of the deemed receipt of the WKSI base shelf prospectus.

(5) Annual confirmation

An issuer that files a WKSI base shelf prospectus on or before its financial year-end will be required to confirm its eligibility as a well-known seasoned issuer on or before the annual filing date of each year following the filing of the WKSI base shelf prospectus. For example, an issuer with a June 30 financial year end that files a WKSI base shelf prospectus on June 30 would be required to confirm its eligibility as a well-known seasoned issuer on or before September 28 of that calendar year. However, if that issuer instead files a WKSI base shelf prospectus on July 1, it would be required to confirm its eligibility on or before September 28 of the following calendar year.

(6) Exemptive relief in connection with WKSI base shelf prospectuses

Requests for exemptive relief require staff review and consideration. A receipt deemed to be issued pursuant to section 9B.5 of NI 44-102 will not evidence the granting of an exemption as WKSI base shelf prospectuses are not subject to staff review prior to the deemed issuance of a receipt and no receipt is actually issued.

The granting of an exemption from the provisions of securities legislation sought in connection with the filing of a WKSI base shelf prospectus or an amendment to a WKSI base shelf prospectus may only be evidenced by a decision to that effect, issued following a formal application for exemptive relief, by the regulator or, in Québec, the securities regulatory authority to the person that sought the exemption.

(7) Pre-marketing in connection with a WKSI base shelf prospectus

In general, any advertising or marketing activities undertaken in connection with a prospectus prior to the issuance of a receipt for the preliminary prospectus are prohibited under securities legislation by virtue of the prospectus requirement. As an issuer filing a WKSI base shelf prospectus is exempt from the requirement to file a preliminary prospectus, any advertising or marketing activities undertaken in connection with a WKSI base shelf prospectus prior to the deemed issuance of a receipt for the WKSI base shelf prospectus are prohibited.

An issuer who is filing a WKSI base shelf prospectus would also be unable to rely on the bought deal exemption for pre-marketing provided in Part 7 of NI 44-101 as a preliminary prospectus is required to be filed to comply with such exemption.

(8) Existing preliminary short form prospectus or existing base shelf prospectus

Issuers cannot amend an existing preliminary short form prospectus or an existing base shelf prospectus to convert the same into a WKSI base shelf prospectus. If an issuer has an existing preliminary short form prospectus or an existing base shelf prospectus, but would like to file a WKSI base shelf prospectus, the issuer should withdraw the existing preliminary short form prospectus or the existing base shelf prospectus and file a new WKSI base shelf prospectus.

3. These changes become effective on *.

ANNEX C

**PROPOSED CHANGES TO
NATIONAL POLICY 11-202 PROCESS FOR PROSPECTUS REVIEWS IN MULTIPLE
JURISDICTIONS**

1. *National Policy 11-202 Process for Prospectus Reviews in Multiple Jurisdictions is changed by this Document.*

2. *Section 2.1 is amended*

(a) *by deleting “and” after the definition of “short form prospectus”,*

(b) *by replacing “.” with “; and” after the definition of “waiver application”, and*

(c) *by adding the following definition:*

“WKSI base shelf prospectus” has the meaning ascribed to that term in National Instrument 44-102 *Shelf Distributions*..

3. *Part 3 is amended by adding the following section:*

3.6 WKSI base shelf prospectus

An issuer that files a WKSI base shelf prospectus would not meet the conditions to use the passport system as it does not file a preliminary prospectus and would not indicate on SEDAR+ that it is relying on MI 11-102 in accordance with paragraph 3.3(1)(b) of MI 11-102. For this reason, the procedures described in this policy statement are not applicable to WKSI base shelf prospectuses. Further, since a receipt for a WKSI base shelf prospectus is deemed to be issued in every jurisdiction in which the prospectus is filed, the application of the passport system is not necessary.

4. These changes become effective on •.

ANNEX D

LOCAL MATTERS

There are no local matters to consider at this time.

ANNEX E

SUMMARY OF THE PRINCIPAL DIFFERENCES BETWEEN THE BLANKET ORDERS AND THE PROPOSED AMENDMENTS

Blanket Orders	Proposed Amendments	Rationale
Definition of WKSI – Calculation of Public Equity		
<p>Under the Blanket Orders, an issuer’s “public float” is defined as the aggregate market value of the issuer’s securities held by persons or companies that are not affiliated parties of the issuer and is calculated by using the price at which the securities were last sold in the principal market for the securities as of a date within 60 days preceding the date of filing the WKSI base shelf prospectus.</p>	<p>Under the Proposed Amendments, an issuer’s “qualifying public equity” is defined as the aggregate market value of the issuer’s listed equity securities, excluding securities held by affiliates or reporting insiders of the issuer, and is calculated using the simple average of the daily closing price of the issuer’s equity securities on a short form eligible exchange for each of the trading days on which there was a daily closing price for the 20 trading days preceding the date of calculation (which must be within 60 days of the date of filing the WKSI base shelf prospectus).</p>	<p>The definition was refined to exclude securities held by “reporting insiders”. We are of the view that excluding securities held by reporting insiders from the calculation is appropriate and provides a better approximation of an issuer’s qualifying public equity. We selected reporting insiders because these individuals will have been previously identified and their holdings are publicly available.</p> <p>The Proposed Amendments include a requirement to calculate the 20-day simple average closing price of the issuer’s securities, for consistency with other rules that refer to market price.</p> <p>Under the Proposed Amendments, an issuer should use the simple average closing price of its securities available on a “short form eligible exchange”. A “short form eligible exchange” is defined in National Instrument 44-101 <i>Short Form Prospectus Distributions (NI 44-101)</i> as the Toronto Stock Exchange, the TSX Venture Exchange,</p>

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		the NEO Exchange (now Cboe Canada) and the Canadian Securities Exchange. We believe the market price on a “short form eligible exchange” best reflects how the market price of issuers that are listed on more than one exchange is consolidated and publicly made available.
Definition of WSKI – Reporting Issuer Status		
Under the Blanket Orders, an issuer that files a WSKI base shelf prospectus must have been a reporting issuer in at least one jurisdiction in Canada for the previous 12 months.	Under the Proposed Amendments, an issuer that files a WSKI base shelf prospectus must have been a reporting issuer in at least one jurisdiction in Canada for the previous three years.	The Proposed Amendments increase the seasoning period to address the concern that an issuer that has been a reporting issuer for only 12 months may not have a sufficient continuous disclosure record, market following or history of participation in the capital markets to justify participation in the WSKI regime.
Definition of WSKI – Mining Operations		
Under the Blanket Orders, if an issuer that files a WSKI base shelf prospectus has mining operations, its most recent audited financial statements must disclose prescribed revenue from mining operations, and the issuer must file any technical reports that would be required to be filed with a preliminary short form prospectus under National Instrument 43-101 <i>Standards of Disclosure for Mineral Projects</i> (NI 43-101).	Under the Proposed Amendments, if an issuer that files a WSKI base shelf prospectus has a mineral project, its most recent audited financial statements must disclose prescribed revenue from mining operations, and the issuer must file any technical reports that would be required to be filed with a preliminary short form prospectus under NI 43-101.	The requirement is generally unchanged, except that the introductory language refers to “mineral project” rather than “mining operations”, to align with NI 43-101.

Blanket Orders	Proposed Amendments	Rationale
Eligibility Requirement - Periodic and Timely Disclosure		
<p>Under the Blanket Orders, an issuer is ineligible to file a WKSI base shelf prospectus if it has not filed all periodic and timely disclosure documents that it is required to have filed with the securities regulator or securities regulatory authority in each jurisdiction in which it is a reporting issuer.</p>	<p>Under the Proposed Amendments, an issuer is not eligible to file a WKSI base shelf prospectus if it has not filed all periodic and timely disclosure required under applicable securities legislation, an order issued by the regulator or securities regulatory authority or an undertaking to the regulator or securities regulatory authority.</p>	<p>The Proposed Amendments expand the requirement for an issuer to have filed all periodic and timely disclosure. The change aligns with the basic qualification criteria in section 2.2 of NI 44-101.</p>
Eligibility Requirement - Operating History		
<p>Under the Blanket Orders, an issuer is ineligible to file a WKSI base shelf prospectus if, during the three years immediately preceding the date of the WKSI base shelf prospectus, the issuer or any of its predecessors was either an issuer whose operations have ceased or an issuer whose principal asset is cash, cash equivalents or its exchange listing.</p>	<p>Under the Proposed Amendments, an issuer is not eligible to file a WKSI base shelf prospectus if, during the three years immediately preceding the date of the WKSI base shelf prospectus, the issuer or any person or company with whom the issuer completed a restructuring transaction was a person or company whose operations have ceased or a person or company whose principal asset is cash, cash equivalents or its exchange listing.</p>	<p>The requirement is generally unchanged except that the Proposed Amendments replace the undefined term “predecessor” with the concept of a person or company with whom the issuer completed a “restructuring transaction”, which is defined in National Instrument 51-102 <i>Continuous Disclosure Obligations</i>.</p>
Eligibility Requirement - Penalties and Sanctions		
<p>Under the Blanket Orders, an issuer is ineligible to file a WKSI base shelf prospectus if, during the three years immediately preceding the date of the WKSI base shelf prospectus, the issuer or any of</p>	<p>Under the Proposed Amendments, an issuer is not eligible to file a WKSI base shelf prospectus if, during the three years immediately preceding the date of the WKSI base shelf prospectus,</p>	<p>The requirement has been changed to describe with greater specificity the types of penalties and sanctions that would preclude an issuer from filing a WKSI base shelf prospectus.</p>

Blanket Orders	Proposed Amendments	Rationale
<p>its subsidiaries was the subject of any penalties or sanctions, including restrictions on the use of any type of prospectus, or exemption, imposed by a court relating to securities legislation or by a securities regulatory authority.</p>	<p>the issuer or any of its subsidiaries has been the subject of an order, judgment, decree, sanction, or administrative penalty imposed by, or has entered into a settlement agreement with or approved by, a court in Canada or a foreign jurisdiction or a securities regulatory authority or similar authority in a foreign jurisdiction related to a claim based in whole or in part on fraud, theft, deceit, misrepresentation, conspiracy, insider trading, unregistered activity or illegal distribution.</p>	
Discretionary Exemptive Relief		
<p>Exemptive relief applications are not accepted under the Blanket Orders.</p>	<p>Under the Proposed Amendments, exemptive relief applications will be considered.</p>	<p>This change would allow a more fact-specific assessment of WKSI eligibility.</p>
Filing Requirements for a WKSI Base Shelf Prospectus		
<p>Under the Blanket Orders, an issuer filing a WKSI base shelf prospectus must file a letter in place of the preliminary prospectus that states: (i) its reliance on the Blanket Orders; (ii) its public float (or the aggregate amount of non-convertible, non-equity securities distributed by prospectus in the past three years) and the date of that determination; (iii) the provision under which it is short-form eligible; and (iv) if it has mining operations, the</p>	<p>Under the Proposed Amendments, an issuer filing a WKSI base shelf prospectus must file a certificate that meets the requirements of subparagraph 4.1(1)(a)(ii) of NI 44-101.</p> <p>In addition, the WKSI base shelf prospectus must disclose: (i) the issuer's reliance on the WKSI rules; and (ii) its qualifying public equity (or qualifying public debt) that establish that the issuer is a WKSI and the corresponding date.</p>	<p>The Proposed Amendments contemplate a more streamlined filing process.</p>

Blanket Orders	Proposed Amendments	Rationale
<p>basis on which it satisfies the applicable requirements.</p> <p>The letter must also certify that the issuer has satisfied all WKSI qualification criteria and filing requirements.</p> <p>The letter must be signed by one executive officer or director.</p>		
Receipt of a WKSI Base Shelf Prospectus		
<p>The Blanket Orders contemplate an accelerated receipt mechanism for WKSI base shelf prospectuses.</p>	<p>Under the Proposed Amendments, no receipt is issued for a WKSI base shelf prospectus. Instead, a receipt is deemed to be issued.</p>	<p>The automatic receipt mechanism was introduced to provide increased certainty regarding transaction timing for issuers filing WKSI base shelf prospectuses.</p>
Amendments		
<p>The Blanket Orders do not address amendments to WKSI base shelf prospectuses.</p>	<p>The Proposed Amendments set out the requirements for an amendment to a WKSI base shelf prospectus and contemplate a deemed receipt for WKSI base shelf prospectus amendments.</p>	<p>This change was introduced to provide a more comprehensive and flexible regime.</p>
Annual Confirmation		
<p>Under the Blanket Orders, there is no requirement for an issuer that has filed a WKSI base shelf prospectus to conduct an annual confirmation.</p>	<p>Under the Proposed Amendments, an issuer that has filed a WKSI base shelf prospectus must confirm its eligibility annually, by confirming that: (i) it continues to be a WKSI; and (ii) it remains eligible. The confirmation must be performed within 60 days before the date on which the issuer's audited annual</p>	<p>This change was made to better align the Canadian WKSI regime with the WKSI regime in the United States, which includes an annual reassessment requirement.</p>

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	<p>financial statements are required to be filed.</p> <p>The issuer must then signal to the market that it remains an eligible WKSI in its annual information form or in an amendment to its WKSI base shelf prospectus.</p> <p>An issuer that is no longer an eligible WKSI must publicly announce that it will not distribute securities under a prospectus supplement to the WKSI base shelf prospectus and withdraw the WKSI base shelf prospectus.</p>	
Period of Receipt Effectiveness		
<p>The Blanket Orders do not contain specific provisions relating to receipt effectiveness.</p>	<p>Under the Proposed Amendments, the deemed receipt for a WKSI base shelf prospectus will be effective until the earlier of: (i) 37 months from the date of its deemed issuance; (ii) the annual filing date unless the issuer continues to be an eligible WKSI and has complied with the annual confirmation provisions; and (iii) the relevant lapse date prescribed in NI 44-102 (which, in turn, depends on how the issuer qualifies to be short form eligible).</p>	<p>The Proposed Amendments extend the period of receipt effectiveness to provide additional burden reduction. These changes also build in a lapse date if the issuer does not complete the annual confirmation or is no longer an eligible WKSI on any day in the 60 days preceding its annual filing date.</p>