

## 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](http://www.lautorite.qc.ca)

[www.albertasecurities.com](http://www.albertasecurities.com)

[www.bcsc.bc.ca](http://www.bcsc.bc.ca)

[nssc.novascotia.ca](http://nssc.novascotia.ca)

[www.fcnb.ca](http://www.fcnb.ca)

[www.osc.ca](http://www.osc.ca)

[www.fcaa.gov.sk.ca](http://www.fcaa.gov.sk.ca)

[mbsecurities.ca](http://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 WKSJ regime annually.

The Proposed Amendments would introduce an expedited shelf prospectus regime for well-known seasoned issuers (**WKSIs**) 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*<sup>1</sup> 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.

In early 2018, the CSA undertook a research project on potential alternative offering models that included research of the United States’ WKSI regime<sup>2</sup> 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**).

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

<sup>2</sup> 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.

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 effect<sup>3</sup>, 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 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

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<sup>3</sup> The Blanket Orders came into effect on January 4, 2022.

- 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 WSKI 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 WSKI 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 WSKI 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 WSKI 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 WCSI regime? If so, please explain.
6. Under the Proposed Amendments, issuers would be required to deliver personal information forms with the WCSI 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 WCSI 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  
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Québec (Québec) G1V 5C1  
Fax: 514 864-8381  
E-mail: [consultation-en-cours@lautorite.qc.ca](mailto: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](http://www.albertasecurities.com), the Autorité des marchés financiers at [www.lautorite.qc.ca](http://www.lautorite.qc.ca) and the Ontario Securities Commission at [www.osc.ca](http://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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