

## **CHANGES TO POLICY STATEMENT TO REGULATION 44 102 RESPECTING SHELF DISTRIBUTIONS**

1. *Policy Statement to Regulation 44-102 respecting Shelf Distributions* is changed by adding, after section 5.8, the following part:

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

#### **9B.1. Meaning of WCSI base shelf prospectus**

The term WCSI base shelf prospectus is a defined term used for ease of reference. A WCSI base shelf prospectus is a final base shelf prospectus that has been varied in accordance with Part 9B of Regulation 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 WCSI base shelf prospectus.

For greater certainty, any reference to a “final receipt” includes a receipt deemed to be issued under section 9B.5 of Regulation 44-102.

#### **9B.2. Deemed receipt**

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

For the avoidance of doubt, the requirement in paragraph 9B.5(1)(b) to file or deliver all documents required to be filed or delivered in connection with the filing of a base shelf prospectus includes the documents required to be filed or delivered in connection with a short form prospectus by Regulation 44-101, except as modified by Part 7 of Regulation 44-102.

#### **9B.3. Non-application of the passport system and multiple jurisdictions prospectus review process**

Part 9B of Regulation 44-102 provides an alternative filing option for well-known seasoned issuers that is independent of the passport system and the procedures described in *Policy Statement 11-202 respecting Process for Prospectus Reviews in Multiple Jurisdictions*. A receipt for a WCSI 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 WCSI 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 *Regulation 11-102 respecting Passport System* (chapter V-1.1, r. 1).

#### **9B.4. Amendments**

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

#### **9B.5. Annual confirmation**

An issuer that files a WCSI 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, 2025, financial year end that files a WKSI base shelf prospectus on June 30, 2025 would be required to confirm its eligibility as a well-known seasoned issuer on the annual filing date of that year (September 29, 2025) or in the 60 days preceding the annual filing date of that year. However, if that issuer instead files a WKSI base shelf prospectus on July 1, 2025 it would be required to confirm its eligibility on the annual filing date of the following year (September XX, 2026) or in the 60 days preceding the annual filing date of the following year.

#### **9B.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 Regulation 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. Accordingly, requests for relief from any requirements included in Part 9B of Regulation 44-102 must be filed, and exemptive relief must be granted, in advance of the filing of a WKSI base shelf prospectus.

Pursuant to Part 11 of Regulation 44-102, an application for an exemption from the requirements in Regulation 44-102 shall include a letter explaining why consideration should be given to the granting of the exemption. In respect of applications for relief from the conditions included in the definition of “eligible issuer”, the letter should explain why relief from the eligibility requirements would not be prejudicial to the public interest or raise investor protection concerns. Staff will consider numerous factors when determining whether relief from eligibility criteria would be appropriate, including the following:

- the nature of the conduct resulting in ineligibility,
- who was responsible for the conduct resulting in ineligibility,
- the duration of the conduct resulting in ineligibility,
- the effects of the conduct resulting in ineligibility, for example the number of investors affected or the amount of any damages or compensation paid to affected investors,
- the issuer’s history of compliance with securities laws,
- remedial steps taken to address the conduct resulting in ineligibility including any steps taken to prevent reoccurrence of conduct similar to the conduct resulting in ineligibility,
- disclosure of the conduct resulting in ineligibility.

Staff may consider factors other than those listed above when reviewing an exemptive relief application. A decision to recommend relief will be made on a case-by-case basis and will depend upon the facts known at the time. It is the responsibility of the applicant to demonstrate that the conduct that resulted in the issuer not satisfying the definition of “eligible issuer” should not result in the issuer being ineligible to file a WKSI base shelf prospectus.

If relief is granted from the criteria set out in the definition of “eligible issuer”, such relief will only be in respect of specific conduct resulting in ineligibility at the time of

the application. Relief will not be granted on a prospective basis for any future conduct resulting in ineligibility. Staff note relief granted from the definition of “eligible issuer” may also be time-limited.

#### **9B.7. Penalties and Sanctions**

For the purposes of the definition of “eligible issuer”, a late filing fee, such as a filing fee that applies to the late filing of an insider report, is not a “penalty or sanction”.

#### **9B.8. 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 Regulation 44-101 as a preliminary prospectus is required to be filed to comply with such exemption.

#### **9B.9. 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 and would like to file a WKSI base shelf prospectus, the issuer should, as a first step, withdraw the existing preliminary short form prospectus or the existing base shelf prospectus.

Issuers who withdraw a preliminary short form prospectus are ineligible to file a WKSI base shelf prospectus for the 90 days following such withdrawal. If an issuer wishes to file a WKSI base shelf prospectus within 90 days of such withdrawal, the issuer must file an application for exemptive relief from the eligibility criteria.

#### **9B.10. Issuers reporting in a foreign currency**

The definition of “well-known seasoned issuer” requires that issuers, on at least one day during the preceding 60 days of the date of filing of the WKSI base shelf prospectus, have either qualifying public equity of at least \$500 000 000 or qualifying public debt of at least \$1 000 000 000. Issuers calculating qualifying public equity or qualifying public debt and who report in a foreign currency should use the exchange rate on the day they are performing the relevant calculations to convert the figure into Canadian dollars.

The definition of “well-known seasoned issuer” requires that issuers with a mineral project satisfy certain gross revenue thresholds as disclosed in their most recent audited annual financial statements. For the purposes of confirming that an issuer satisfies the required thresholds, issuers who report in a foreign currency should use the annual average exchange rate corresponding to the relevant financial year to convert the disclosed gross revenue into Canadian dollars.

#### **9B.11. Calculation of “Qualifying Public Debt”**

Large issuers frequently conduct exchange offers for outstanding debt securities whereby new debt is issued in exchange for the outstanding debt securities. Since these exchange offers are not for cash they should be excluded from the calculation of “qualifying public debt”.

## **9B.12. Certain Offerings by Canadian Issuers under the U.S. Multijurisdictional Disclosure System**

Part 4 of Companion Policy 71-101: *The Multijurisdictional Disclosure System* (“71-101CP”) sets out the process for certain offerings by Canadian issuers distributing securities in the United States under the United States multijurisdictional disclosure system (the “71-101CP procedures”).

Under the 71-101CP procedures, an issuer filing a prospectus or a registration statement qualifying securities offered and sold in the United States, may receive from the regulator, except in Québec, or securities regulatory authority a receipt for the prospectus or a notification of clearance for the registration statement.

As described in section 9B.2 of this policy statement, no securities regulatory authority or regulator will issue a receipt for a WCSI base shelf prospectus or an amendment to a WCSI base shelf prospectus filed under Part 9B of Regulation 44-102. To the extent that a receipt deemed to be issued for the WCSI base shelf prospectus fails to satisfy the applicable requirements of the SEC, all jurisdictions that act as principal regulator pursuant to *Policy Statement 11-202 respecting Process for Prospectus Reviews in Multiple Jurisdictions* are prepared to issue a notification of clearance, as contemplated by the 71-101CP procedures, on request. As part of the 71-101CP procedures, comments may be raised by staff that require amendments to the WCSI base shelf prospectus.

To avoid timing complications from staff review we encourage issuers to contact staff of their principal regulator in advance to discuss their filing and use the confidential prospectus pre-filing process.”.