

**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.