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January 11, 2011

## **Headnote**

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* –

National Instrument 51-102 *Continuous Disclosure Obligations*, s. 13.1 – General  
- A reporting issuer wants relief from all the requirements of NI 51-102 – A reporting issuer is a wholly owned subsidiary of a parent reporting issuer; the subsidiary's only outstanding securities are note receipts; the note receipts trade as units that include shares of the parent and cannot be transferred separately from shares of the parent; the note receipts do not qualify as "designated exchangeable securities" under section 13.3 of NI 51-102; the requested relief is on terms substantially similar to section 13.3 of NI 51-102

National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*, s. 8.6 – An issuer wants relief from the requirements in Parts 4 and 5 of NI 52-109 to file annual and interim certificates - The issuer has applied for and received an exemption from filing interim and annual financial statements

## **Applicable British Columbia Provisions**

National Instrument 51-102, s. 13.1

National Instrument 52-109, s. 4.5

In the Matter of  
the Securities Legislation of  
British Columbia and Ontario  
(the Jurisdictions)

and

In the Matter of  
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of  
Westshore Terminals Income Fund (the Fund),  
Westshore Terminals Investment Corporation (New Westshore),  
and Westshore Terminals Holdings Ltd. (Holdings, and together with the Fund  
and New Westshore, the Filers)

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## Decision

### **Background**

- ¶ 1 The securities regulatory authority in each of the Jurisdictions (the Decision Maker) has received an application from the Filers for a decision under the securities legislation of the Jurisdictions (the Legislation) that:
1. the requirements of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) (the Continuous Disclosure Requirements) do not apply to Holdings; and
  2. the requirements of National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (NI 52-109) (the Certification Requirements) do not apply to Holdings.

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual application):

- (a) the British Columbia Securities Commission (the BCSC) is the principal regulator for this application;
- (b) the Filers have provided notice that section 4.7(1)(c) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Newfoundland and Labrador and Prince Edward Island; and
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority in Ontario.

### **Interpretation**

- ¶ 2 Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision unless otherwise defined.

### **Representations**

- ¶ 3 This decision is based on the following facts represented by the Filers:
1. The Fund
    - (a) the Fund was an open-ended trust established under the laws of the Province of British Columbia by a declaration of trust made as of December 2, 1996, as amended and restated on September 29, 2005;

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- (b) the Fund's principal office was located at 1800 – 1067 West Cordova Street, Vancouver, British Columbia V6C 1C7;
- (c) the Fund was a “reporting issuer” in the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland;
- (d) as of November 4, 2010, 74,250,016 units of the Fund (the Fund Units) were listed and traded on the Toronto Stock Exchange (the TSX) under the symbol “WTE.UN”; and
- (e) the Fund held a 100% interest in both the common shares of Westshore Terminals Ltd. (the General Partner) and the limited partnership units of Westshore Terminals Limited Partnership (Westshore LP);

### 2. Westshore LP

- (a) Westshore LP operates a coal storage and loading terminal on land leased from the Vancouver Fraser Port Authority located at Roberts Bank, British Columbia (the Business);

### 3. Holdings

- (a) Holdings is a corporation incorporated under the *Business Corporations Act* (British Columbia) (the BCBCA) on September 28, 2010;
- (b) the head and registered office of Holdings is located at 1800 – 1067 West Cordova Street, Vancouver, British Columbia V6C 1C7;
- (c) the capital structure of Holdings consists of an unlimited number of common shares (the Holdings Shares), of which one Holdings Share was outstanding as at November 4, 2010, and was held by New Westshore; and
- (d) Holdings has debt obligations consisting of 10.5% subordinated notes due December 31, 2040 (the Holdings Notes) with an aggregate principal amount of \$371,250,080, represented by note receipts (the Note Receipts);

### 4. New Westshore

- (a) New Westshore is a corporation incorporated under the BCBCA on September 28, 2010;

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- (b) the head and registered office of New Westshore is located at 1800 – 1067 West Cordova Street, Vancouver, British Columbia V6C 1C7;
  - (c) the authorized capital of New Westshore consists of an unlimited number of common shares (the New Westshore Shares), of which one New Westshore Share was outstanding as at November 4, 2010, which was held by the Fund; and
  - (d) New Westshore has no debt obligations outside the ordinary course of business;
- 5. the Filers entered into a plan of arrangement under section 180 of the BCBCA (the Arrangement) with the holders of Fund Units (Unitholders), which provided the terms and conditions under which the Fund would be converted into a corporate structure;
  - 6. the Fund mailed to the Unitholders a notice of special meeting (Unitholder Meeting) and management information circular (Circular) dated October 5, 2010 containing prospectus-level disclosure of the business and affairs of each of the Fund, New Westshore and Holdings and information on the Arrangement; the Circular included disclosure, among other things, that the completion of the Arrangement was subject to the parties obtaining consents, orders, approvals or exemptions on terms satisfactory to the trustees of the Fund;
  - 7. the Fund provided the Unitholders with prior notice of the Arrangement, including a statement that a copy of the Circular would be available for review on SEDAR;
  - 8. on November 4, 2010, Unitholders approved the Arrangement with an affirmative vote of 99.88% of the votes cast at the Unitholder Meeting;
  - 9. on November 12, 2010, the Filers received final approval of the Supreme Court of British Columbia and all applicable regulatory bodies for the Arrangement;
  - 10. the Arrangement was completed on January 1, 2011;
  - 11. under the Arrangement, in addition to other matters, the following occurred:

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- (a) the Fund transferred all of its property, including 100% of the limited partnership units of Westshore LP and the common shares of the General Partner, to Holdings;
  - (b) the Fund was wound up;
  - (c) Holdings issued 74,250,016 Holdings Shares, all of which were acquired by New Westshore;
  - (d) New Westshore issued 74,250,016 New Westshore Shares; and
  - (e) New Westshore acquired, through Holdings, a 100% interest in the limited partnership units of Westshore LP and the common shares of the General Partner;
12. on completion of the Arrangement, New Westshore became a publicly-owned corporation and Holdings became a wholly-owned subsidiary of New Westshore;
13. on completion of the Arrangement, New Westshore and Holdings became reporting issuers in the Jurisdictions as a result of the Fund having been, for a period of at least twelve months prior to the Arrangement, a reporting issuer in the Jurisdictions;
14. New Westshore is a reporting issuer and will comply with all applicable corporate and securities laws including, but not limited to, the Continuous Disclosure Requirements and the Certification Requirements; as Holdings is a material and wholly-owned subsidiary of New Westshore, New Westshore is required to include in its public disclosure information concerning Holdings;
15. the New Westshore Shares and the Note Receipts trade together on the TSX as the New Units; each New Unit consists of: (a) one Note Receipt representing \$5.00 principal amount of Holdings Notes; and (b) one New Westshore Share;
16. the New Westshore Shares and the Note Receipts are subject to a restraint on disposition such that transfer of a New Westshore Share is effective only upon the transfer of a Note Receipt and vice versa, except in the event of a separation event (a Separation Event) consisting of one or more of the following circumstances:
- (i) maturity of the Holdings Notes, unless repaid in full;
  - (ii) acceleration of the Holdings Notes; or

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- (iii) separate approvals by resolutions approved by holders of a 66⅔% majority of Note Receipts and of the New Westshore Shares, in either case represented and voted on a poll at meetings to consider such resolutions;
- 17. on October 8, 2010, the TSXV conditionally approved the listing of the New Units in substitution of the Fund Units;
- 18. on January 4, 2011, the New Units commenced trading on the TSX under the symbol "WTE.UN";
- 19. the TSX has agreed to list the New Westshore Shares, however they cannot be posted for trading on the TSX until there exists for the purposes of the listing requirements of the TSX a sufficient public distribution of New Westshore Shares that are held separately from Note Receipts, which can only happen upon the occurrence of a Separation Event;
- 20. New Westshore will satisfy dividends declared on the New Westshore Shares with the dividends it will receive on the Holdings Shares that it owns;
- 21. Holdings will satisfy its obligation under the Holdings Notes from the distributions it receives on the limited partnership units it holds in Westshore LP;
- 22. Holdings has no current intention of accessing the capital markets in the future by issuing any securities to the public other than the Holdings Notes that are outstanding on completion of the Arrangement, and it has no current intention to issue equity securities other than to New Westshore;
- 23. the obligations of Holdings under the Holdings Notes represent its primary liability;
- 24. it is not currently anticipated that Holdings will have any other meaningful assets or sources of income;
- 25. holders of Note Receipts maintain an equity interest in the parent company of Holdings and will receive, in the disclosure provided by New Westshore, financial and continuous disclosure information in respect of both securities constituting a New Unit; as such, separate disclosure by Holdings as required by the Continuous Disclosure Requirements would not provide otherwise unavailable meaningful information or be of any significant additional benefit

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to the holders of the New Units or potential investors, but would impose a significant and largely duplicative cost on Holdings;

26. it is financial information relating to Westshore LP, and not to New Westshore, that is of primary importance to holders of New Units as Westshore LP is the operator of the Business of which New Westshore, through Holdings, is the 100% indirect holder; disclosure of this information will be made within the continuous public disclosure of New Westshore, including in New Westshore's consolidated financial statements, and will permit holders of New Units and potential investors to determine:
  - (a) the success of the Business underlying both Holdings and New Westshore;
  - (b) the ability of New Westshore to pay dividends on the New Westshore Shares; and
  - (c) the ability of Holdings to satisfy its obligations under the Holdings Notes represented by the Note Receipts;
27. should the relief from the Continuous Disclosure Requirements be granted, Holdings will not be able to fully comply with the Certification Requirements; and
28. each of the Filers is not in default of any requirement under securities legislation in the jurisdictions in which it is a reporting issuer.

### **Decision**

- ¶ 4 Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.
1. The decision of the Decision Makers under the Legislation is that the Continuous Disclosure Requirements do not apply to Holdings provided that:
    - (a) New Westshore is the beneficial owner of all of the issued and outstanding voting securities of Holdings;
    - (b) New Westshore is a reporting issuer in a designated Canadian jurisdiction (as defined in NI 51-102) and has filed all documents it is required to file under NI 51-102;
    - (c) New Westshore complies with securities legislation in respect of making public disclosure of material information on a timely basis;

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- (d) New Westshore immediately issues in Canada and files a news release that discloses any material changes in its affairs;
  - (e) New Westshore continues to consolidate the financial information of its subsidiaries, including Holdings, in its own financial information, or, if the generally accepted accounting principles in Canada prohibit such consolidation, provides separate financial statements of Holdings to holders of Note Receipts;
  - (f) New Westshore sends to all holders of Note Receipts all the disclosure materials required to be sent to holders of New Westshore Shares;
  - (g) New Westshore complies with the filing requirements set out under Part 12 of NI 51-102 with respect to material documents and contracts of Holdings;
  - (h) Holdings has not issued any securities to the public other than the Note Receipts;
  - (i) Holdings issues in Canada a news release and files a material change report in accordance with Part 7 of NI 51-102, for all material changes in respect of the affairs of Holdings that are not also material changes in the affairs of New Westshore;
  - (j) Holdings has no material liabilities and no operations or material assets other than its holdings of the limited partnership units of Westshore LP and of the common shares of the General Partner; and
  - (k) Holdings files in electronic format:
    - (i) if New Westshore is a reporting issuer in the local jurisdiction, a notice indicating that it is relying on the continuous disclosure documents filed by New Westshore and setting out where those documents can be found in electronic format; or
    - (ii) copies of all documents New Westshore is required to file under securities legislation, other than in connection with a distribution, at the same time as the filing by New Westshore of those documents with a securities regulatory authority or regulator.
2. The further decision of the Decision Makers under the Legislation is that the Certification Requirements do not apply to Holdings provided that:



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- (a) Holdings is not required to, and does not, file its own interim filings and annual filings (as those are defined in NI 52-109);
- (b) Holdings files in electronic format under its SEDAR profile either (i) copies of New Westshore's annual certificates and interim certificates at the same time as New Westshore is required under NI 52-109 to file such documents; or (ii) a notice indicating that it is relying on New Westshore's annual certificates and interim certificates and setting out where those documents can be found for viewing on SEDAR; and
- (c) Holdings is exempt from or otherwise not subject to the Continuous Disclosure Requirements, and both New Westshore and Holdings are in compliance with the conditions set out in paragraph 1 of this decision.

Martin Eady, CA  
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British Columbia Securities Commission