Annex G

Consultation Paper on a Base Shelf Prospectus Filing Model for Investment Funds in Continuous Distribution

Introduction

This Consultation Paper provides an overview of our Stage 2 proposal and invites stakeholders to provide responses to questions to help shape the proposal, ultimately determining whether we should publish for comment proposed amendments aimed at introducing a base shelf prospectus filing model that could apply to all investment funds in continuous distribution. Such a base shelf prospectus filing model would be based on an adaptation of the shelf prospectus system provided its benefits to market participants would outweigh its costs, including consideration of any adverse impact on the protection of investors.

Current Lapse Date Requirements and the Proposed Amendments

An investment fund in continuous distribution will file a *pro forma* long form prospectus to qualify those distributions. Under current Canadian securities legislation, the *pro forma* long form prospectus will lapse in just over 12 months from the date a receipt is issued for it. If the Proposed Amendments are adopted, the *pro forma* long form prospectus will lapse in just over 24 months from the date a receipt is issued for it. The annual or biennial lapse of a *pro forma* prospectus causes investment funds to incur the time and costs of preparing a renewal prospectus that is subject to pre-receipt regulatory review even though much of the disclosure remains unchanged year-to-year.

Base Shelf Prospectus

If we proceed to Stage 2, we would propose a new rule to permit an investment fund to qualify continuous distributions of its securities with a base shelf prospectus that is subject to a lapse date greater than 24 months (a **Base Shelf Prospectus**).

The Stage 2 proposal will also set out Base Shelf Prospectus requirements to ensure no adverse impact on investor protection. For example, material facts that are not disclosed in a Base Shelf Prospectus should be updated through the filing of either: (i) an amendment to the Base Shelf Prospectus; or (ii) a document that is incorporated by reference into the Base Shelf Prospectus. Moreover, a person or company required to sign a prospectus certificate may be required to provide a forward-looking certificate similar to those required under the base shelf prospectus system set out in Part 9 or Appendix A of National Instrument 44-102 *Shelf Distributions* (**NI 44-102**).

The base shelf prospectus regime under NI 44-102 provides an example of how to ensure a prospectus discloses all material facts and how to impose liability on any person or company required to certify that the prospectus discloses all material facts at the time of a distribution. These two principles then support the adoption of Part 2 of NI 44-102, which provides that the lapse date for a base shelf prospectus is the date 25 months from the date of issuance of the receipt. NI 44-102 further sets out the prospectus requirements in respect of a base shelf prospectus, shelf prospectus supplements (which are incorporated by reference into the base shelf prospectus), and any documents incorporated by reference into the base shelf prospectus. NI 44-102 further sets out the certification requirements so they may be forward-looking.

For investment funds in continuous distribution, the Base Shelf Prospectus could have a lapse date beyond 25 months. To ensure investors continue to receive information necessary to make informed investment decisions, disclosure documents like the Fund Facts and ETF Facts that are required to be delivered to purchasers *in lieu* of a prospectus, would continue to be required to be updated annually and delivered. These documents would be incorporated by reference into the Base Shelf Prospectus and, as a result of forward-looking certification, would be subject to primary market liability in the event of a misrepresentation.

On September 12, 2019, we published for comment,1 among other things, a proposal to reduce the regulatory burden for investment fund issuers by amending existing rules to remove redundant information in selected disclosure documents. A Base Shelf Prospectus regime would also build on the September 2019 proposal by identifying items within the consolidated disclosure that does not need to be updated annually. Disclosure that does need to be updated annually would be moved into a document that would be incorporated by reference into the Base Shelf Prospectus.

Consultation Questions

We welcome your comments on the issues outlined in this Consultation Paper. In addition, we are also interested in your views and comments on the following specific questions:

1. Please identify the disclosure required in a simplified prospectus (**SP**) or an ETF prospectus that is unlikely to change year-to-year.

   (a) We think this disclosure should be subject to regulatory review before a prospectus receipt is issued. Do you agree? Please explain.

   (b) We think it would be appropriate to require an amended and restated Base Shelf Prospectus to be filed and be subject to regulatory review before a receipt for the amended and restated Base Shelf Prospectus is issued if there is a change to this disclosure. Do you agree? Please explain.

   (c) Would it be appropriate for Part A of an SP under the Project RID amendments to form the equivalent of a base shelf prospectus for a group of investment funds under a Base Shelf Prospectus regime? Please explain.

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1 https://www.osc.ca/sites/default/files/pdfs/irps/ni_20190912_41-101_reducing-regulatory-burden-for-investment-fund-issuers.pdf

(d) Would it be appropriate for Part B of an SP under the Project RID amendments to form the equivalent of a prospectus supplement establishing an offering program for an investment fund under a Base Shelf Prospectus regime? Please explain.

2. Please identify the disclosure required in an SP and an ETF prospectus that is likely to change year-to-year.

   (a) Please confirm if this disclosure is also required to be updated at least annually in a Fund Facts or ETF Facts or other disclosure document required to be filed by investment funds in continuous distribution under Canadian securities legislation.

   (b) Should this disclosure be subject to regulatory review before a prospectus receipt is issued? Please explain.

   (c) Should this disclosure be subject to regulatory review only on a continuous disclosure basis? Please explain.

3. Please identify, categorize, and estimate the annual costs saved by an investment fund in continuous distribution if it were not required to file an SP or an ETF prospectus. In this regard, we note that any Stage 2 proposal for a Base Shelf Prospectus should not have a negative impact on filing fees. Accordingly, any costs savings identified should not include reduced filing fees.

4. Please identify any adverse impacts a Base Shelf Prospectus may have on the disclosure investors need to make informed investment decisions.

5. Please identify any adverse impacts a Base Shelf Prospectus may have on the liability rights investors currently have under the requirement to file an SP or an ETF prospectus.

6. How should the current base shelf prospectus filing model for public companies be adapted for use by investment funds in continuous distribution?

7. We contemplate a lapse date for a Base Shelf Prospectus to extend beyond 25 months. What would be an appropriate lapse date for a Base Shelf Prospectus for investment funds in continuous distribution? We think it would be prejudicial to the public interest for a Base Shelf Prospectus not to be subject to a lapse date at all. Do you agree? Please explain.