

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* - 1996 Securities Act s. 76 Prospectus Requirements - Exemption from requirements when filing a prospectus - The Filer wants to conduct the marketing activities allowed under NI 44-102 in connection with a northbound MJDS offering; Canadian purchasers will only be able to purchase the Filer's securities through an investment dealer registered in the jurisdiction of residence of the purchaser; any road shows, standard term sheets and marketing materials must comply with the approval, content, use and other conditions and requirements of Part 9A of NI 44-102 as if the Filer were conducting an offering under that regulation rather than under MJDS.

Applicable Legislative Provisions

Securities Act, R.S.B.C. 1996, s.76

National Instrument 71-101 *The Multijurisdictional Disclosure System*

March 7, 2022

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
The Alkaline Water Company Inc.
(the Filer)

Decision

Background

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) for an exemption from the prospectus requirement for certain marketing activities not expressly permitted by National Instrument 71-101 *The Multijurisdictional Disclosure System* (NI 71-101) so that investment dealers acting as underwriters (as defined in the Legislation) or selling group members of the Filer, or a selling securityholder of the Filer, are permitted to (i) use standard term sheets and marketing materials,

and (ii) conduct road shows in connection with future offerings under a Final MJDS Shelf Prospectus (as defined below) together with applicable supplements as filed by the Filer in British Columbia, Ontario, Alberta, Manitoba and Saskatchewan (the Exemption Sought).

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

- (a) the British Columbia Securities Commission is the principal regulator for this application,
- (b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in each of Alberta, Manitoba and Saskatchewan (together with the Jurisdictions, the Offering Jurisdictions); and
- (c) this decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator 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 Filer:

1. the Filer was incorporated under the laws of the State of Nevada on June 6, 2011;
2. the head office of the Filer is located at 8541 E Anderson Drive, Suite 100/101, Scottsdale, Arizona 85255, U.S.A.;
3. the Filer is a reporting issuer in British Columbia, Alberta, Saskatchewan, Manitoba and Ontario, and is an “SEC foreign issuer” as defined under National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*;
4. the Filer’s common stock is listed for trading on the Nasdaq Capital Market and the Canadian Securities Exchange under the symbol “WTER”;
5. the Filer is not in default of the requirements of securities legislation in any jurisdiction of Canada;
6. the Filer filed a registration statement on Form S-3 with the SEC on February 11, 2022 (the Registration Statement); the Registration Statement contained a preliminary shelf prospectus (the U.S. Shelf Prospectus) and may register for sale, from time to time, in one or more offerings and pursuant to one or more prospectus supplements, any combination of the Filer’s common stock, preferred stock, debt securities, warrants, subscription receipts and units;
7. the Filer also filed a preliminary MJDS base shelf prospectus in the Offering Jurisdictions on February 11, 2022 and, in due course, intends to file a final MJDS base shelf prospectus (the

Final MJDS Shelf Prospectus) pursuant to NI 71-101, which will include the final U.S. Shelf Prospectus, and which will qualify the distribution in each of the Offering Jurisdictions, from time to time, in one or more offerings and pursuant to one or more prospectus supplements, of any combination of the Filer's common stock, preferred stock, debt securities, warrants, subscription receipts and units;

8. National Instrument 44-102 *Shelf Distributions* (NI 44-102) sets out the requirements for a distribution under a (non-MJDS) shelf prospectus in Canada, including requirements with respect to advertising and marketing activities; in particular, Part 9A of NI 44-102 permits the conduct of "road shows" and the use of "standard term sheets" and "marketing materials" (as such terms are defined in National Instrument 41-101 *General Prospectus Requirements* (NI 41-101)) following the issuance of a receipt for a final base shelf prospectus provided that the approval, content, use and other applicable conditions and requirements of Part 9A of NI 44-102 are complied with;
9. NI 71-101 does not contain provisions that are equivalent to those of Part 9A of NI 44-102;
10. in connection with marketing an offering in Canada under the Final MJDS Shelf Prospectus, investment dealers acting as underwriters or selling group members of the Filer, or a selling securityholder of the Filer, may wish to conduct road shows and utilize one or more standard term sheets and marketing materials, as such terms are defined in NI 41-101; because NI 71-101 does not provide for such activities, the investment dealers would not be able to conduct such activities absent this relief; and
11. Canadian purchasers, if any, of securities offered under the Final MJDS Shelf Prospectus will only be able to purchase those securities through an investment dealer registered in the province of residence of the purchaser.

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.

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted in respect of each future distribution under the Final MJDS Shelf Prospectus and applicable supplements provided that, in respect of each distribution, the conditions and requirements set out in Part 9A of NI 44-102 for standard term sheets, marketing materials and road shows are complied with in the manner in which those conditions and requirements would apply if the Final MJDS Shelf Prospectus were a final base shelf prospectus under NI 44-102.

John Hinze
Director, Corporate Finance
British Columbia Securities Commission