Shelf life extended: CSA finalizes permanent prospectus regime for Well-Known Seasoned Issuers

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"Well-known seasoned issuers" (WKSIs) in Canada will get the benefit of a permanent, streamlined shelf prospectus regime through upcoming amendments to National Instrument 44-102 – *Shelf Distributions* (NI 44-102) which come into force on November 28, 2025 (the WKSI Regime). This development marks another step by the Canadian Securities Administrators (CSA) towards increasing the competitiveness of Canadian capital markets.

What you need to know

- Although there are many similarities, the new WKSI Regime replaces and makes some notable changes to the various local WKSI blanket orders (Blanket Orders) that WKSI eligible issuers have been relying upon since they were originally adopted by the CSA in late 2021.
- Issuers that qualify as WKSIs and who file a base shelf prospectus will now be deemed to receive a receipt for that prospectus without first filing a preliminary base shelf prospectus or undergoing any regulatory review.
- The new WKSI Regime also permits WKSIs to benefit from an increased effective period of 37 months after deemed receipt of the base shelf prospectus (up from 25 months under the Blanket Orders).
- Unlike the Blanket Orders, issuers who file a base shelf prospectus pursuant to the WKSI Regime will be required to annually confirm their eligibility as a WKSI, and if an issuer ceases to remain eligible in any given year, it must, among other things, withdraw the WKSI base shelf prospectus, unless it has received exemptive relief from the eligibility requirements.
- Issuers who qualified as WKSIs and filed base shelf prospectuses under the Blanket Orders will continue to be subject to the Blanket Order rules. Notably, this means that their prospectuses will only remain effective for a 25-month period; however, they will not need to confirm their WKSI status on an annual basis and risk withdrawal of their prospectus.

The new WKSI Regime

Under the new WKSI Regime, issuers will continue to qualify as WKSIs if they:

- have qualifying public equity of at least $500 million (now calculated by excluding equity securities held by affiliates and reporting insiders) or qualifying public debt (includes non-convertible securities, other than equity securities distributed under a prospectus within the preceding 3 years) of at least $1 billion; and
- have been a reporting issuer in Canada for at least 12 months or are a successor issuer of a company that was a reporting issuer for at least 12 months.

Notably, the seasoning period under the new WKSI regime remains unchanged at 12 months, rather than the 36-month seasoning period previously contemplated by the CSA.

Like the Blanket Orders, the WKSI Regime allows qualifying WKSI issuers to (a) file a final base shelf prospectus without having to file a preliminary prospectus or undergo regulatory review, and (b) omit certain disclosure from the base shelf prospectus.

While substantively the WKSI Regime follows the system set out in the Blanket Orders, there are a number of significant differences to be aware of:

- **Extended period of effectiveness**. A WKSI base shelf prospectus will be deemed effective for 37 months from the filing date of the prospectus, unless the issuer ceases to qualify as a WKSI during the Annual Confirmation Period (defined below) or fails to meet its annual reporting requirements. The WKSI Regime offers a longer period of effectiveness compared to the standard 25-month effective period under the Blanket Orders and NI 44-102 for issuers who do not qualify as WKSIs. This change will reduce administrative burden and cost and enhances flexibility for WKSIs.
- **Public float vs. qualifying public equity.** While the dollar amount for the public float and debt thresholds for WKSI eligibility remains unchanged, the new WKSI Regime introduces different calculation methods. In particular, for the public float calculation, issuers must now use a 20-day simple average closing price that excludes securities held by affiliates and reporting insiders. In contrast, the public float calculation under the Blanket Orders is based on the aggregate market value of securities held by non-affiliates using the price at which the securities were last sold in the principal market as of a date within 60 days preceding the filing of a WKSI base shelf prospectus. This new exclusion of reporting insider holdings from the public float calculation may make the $500 million public float threshold more challenging to meet for issuers who have significant shareholders that are reporting insiders. As a result, issuers who currently meet the public float requirement under the Blanket Orders will need to reconsider whether they will remain WKSI eligible under the new regime. The new amendments also allow issuers to rely on information reported on the System for Electronic Disclosure by Insiders (SEDI) in determining whether they meet the applicable threshold.
- **Deemed receipt**. Unlike the Blanket Orders, under the WKSI Regime, no receipt will be issued for a WKSI base shelf prospectus. Instead, a receipt is deemed to have been issued once the base shelf prospectus has been filed. This change aligns Canada more closely with the U.S. WKSI regime and provides issuers with greater certainty in transaction timing and the ability to avoid any signalling to the market that an offering is forthcoming by allowing WKSI-eligible issuers to

immediately file a base shelf prospectus prior to the announcement of an equity offering.

- **Ineligibility criteria**. Not all WKSIs are considered "eligible" to benefit from the WKSI Regime. In addition to the eligibility criteria found in the Blanket Orders, to qualify as an eligible WKSI under the new regime, the issuer must not (i) be the subject of any proceeding under securities legislation brought by a regulator in respect of a prospectus or a distribution of securities; (ii) the issuer must not have been refused a receipt for a prospectus within the preceding three years; and (iii) the issuer must not have filed and recently abandoned a preliminary prospectus or an amendment to a preliminary prospectus.
- **Annual confirmation.** WKSIs must annually confirm their eligibility as a WKSI. Confirmation is required within 60 days before the date on which the WKSI's audited annual financial statements are required to be filed (the Annual Confirmation Period) and a statement to the effect that the issuer continues to be a WKSI must be included in the WKSI's annual information form (AIF) or in an amendment to its base shelf prospectus filed during the Annual Confirmation Period. If an issuer determines that it is no longer an eligible WKSI during the Annual Confirmation Period, the issuer must publicly disclose this fact by filing a withdrawal letter on SEDAR+ indicating that it will not distribute securities under its base shelf prospectus and that such prospectus will be withdrawn. Accordingly, under the new WKSI Regime, issuers who lose WKSI eligibility are precluded from making any further sales under the related base shelf prospectus until such time as a new non-WKSI base shelf prospectus is filed and becomes effective. Notably, the WKSI Regime does not require issuers to file a news release upon the withdrawal of a WKSI base shelf prospectus, which was considered in the proposed amendments.
- **Exemptive relief.** Unlike under the Blanket Orders, the WKSI Regime will allow issuers to apply for exemptive relief, if needed. The CSA has provided guidance around the factors it will consider when deciding whether to grant exemptive relief from the conditions included in the definition of "eligible issuer" under the new WKSI Regime. The factors include: the nature and duration of the conduct resulting in ineligibility, who was responsible for the conduct, the effects of the conduct, the issuer's history of compliance with securities laws, and remedial steps taken to address the conduct. Under the Blanket Orders, exemptive relief was not contemplated for issuers that did not qualify to file a WKSI base shelf prospectus.
- **Amendments.** A WKSI may amend its base shelf prospectus without being required obtain a receipt. A receipt for amendments will be deemed to have been issued, provided that specified conditions are met.

Background

As we previously discussed, in December 2021, the CSA implemented the WKSI Blanket Orders in each of the provinces and territories, to create temporary exemptions for issuers who qualify as WKSIs from the requirement to file a preliminary base shelf prospectus. The Blanket Orders were intended to serve as temporary exemptions from certain base shelf prospectus requirements in response to market feedback that the base shelf prospectus system presented unnecessary regulatory burden for large, established reporting issuers with a strong market following and current disclosure records. Notably, the Blanket Orders allowed WKSIs to conduct shelf prospectus offerings on an expedited basis, mitigating deal risk and reducing the cost of capital.

They also better aligned the Canadian prospectus system with that of the United States to better facilitate cross-border capital raising.

Following the initial trial of the WKSI exemptions, in September 2023, the CSA published proposed amendments to NI 44-102 to codify the exemptions contained in the Blanket Orders. At that time, the proposed amendments sought to both refine and extend the exemptions in the Blanket Orders on a permanent basis.

Next steps

The WKSI Regime is a welcome change that creates certainty for WKSI-eligible issuers looking to raise capital on an expedited basis. The implementation of a deemed receipt upon filing a base shelf prospectus and the extended effective period of the base shelf prospectus will help increase deal timing certainty and decrease administrative burden for WKSIs.

Issuers that are considering relying on the WKSI Regime should take careful note of the new public float calculations and annual confirmation requirements to ensure that they will qualify as WKSI issuers going forward. Where there is uncertainty as to an issuer's ability to continue to qualify as a WKSI under the WKSI regime, an issuer may wish to file a base shelf prospectus under the Blanket Orders, prior to their repeal in November 2025, to benefit from an expedited filing process without regulatory review.

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