

UNDERSTANDING THE CSA'S PROPOSED SHELF PROSPECTUS REGIME FOR WELL-KNOWN SEASONED ISSUERS

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On September 21, 2023, the Canadian Securities Administrators (the "CSA") published proposed amendments to National Instrument 44-102 *Shelf Distributions* ("NI 44-102") as well as to certain other rules and policies in connection with the establishment of a permanent expedited shelf prospectus regime (the "Proposed Amendments") for Canadian well-known seasoned issuers ("WKSIs"). There is a 90-day comment period for the Proposed Amendments, which expires on December 20, 2023. For further details, please see the CSA's request for comment [here](#).

Background

The CSA received feedback that certain shelf prospectus requirements were unnecessary regulatory burdens for large and established issuers with a strong market following a complete public disclosure record and sufficient public equity. Through that feedback process, market participants, as well as other stakeholders, recommended implementing a WKSI regime similar to that of the United States, which would allow certain issuers to raise capital more expeditiously.

Following such feedback, the CSA published temporary exemptions for qualifying WKSIs through local blanket orders, which were substantively harmonized nationwide (collectively, the "Blanket Orders"). These Blanket Orders, which came into effect on January 4, 2022, allowed certain issuers to file a final base shelf prospectus and obtain a receipt on an accelerated basis without first filing a preliminary base shelf prospectus. Since coming into effect, the CSA has evaluated the appropriateness of the eligibility criteria and other conditions, considered feedback from various stakeholders, and determined how best to implement a permanent WKSI regime. Although the CSA considered replicating the WKSI shelf prospectus regime provided under the Blanket Orders, the CSA ultimately decided that the Proposed Amendments better responded to stakeholder feedback, increased market efficiency, and presented greater benefits than the status quo or the interim model created by the Blanket Orders.

The Proposed Amendments

Under the Proposed Amendments, an issuer that is up to date with all periodic and timely disclosure requirements under securities legislation will qualify as a WKSI, assuming that it:

- has either qualifying public equity of at least CAD\$500 million or qualifying public debt of at least CAD\$1 billion;
- has been a reporting issuer in Canada for the past three years; and
- is eligible to file a short-form prospectus.

The Proposed Amendments will allow qualifying WKSIs to primarily benefit in three ways, which include the ability to:

- (i) file a final base shelf prospectus and be deemed to have received a receipt for that prospectus, without the need to file a preliminary shelf prospectus or any preliminary regulatory review;
- (ii) omit certain disclosure from the base shelf prospectus, including, amongst other things, the aggregate dollar amount of securities that may be raised under such prospectus; and
- (iii) upon filing such a final base shelf prospectus, be deemed to have received a receipt for that prospectus effective for a 37-month period, subject to complying with annual confirmation requirements.

At a high level, the Proposed Amendments modify the regulatory landscape for WKSIs to offer a permanent regime under which the requirements and costs are proportionate to the significance of the objectives sought. The CSA's view is that the regulatory review process for prospectus filings and associated costs are necessary and proportionate to the securities legislation objectives, particularly for newer issuers, but the benefits simply may not be justified for mature, well-established, closely followed reporting issuers.

Differences between the Blanket Orders and the Proposed Amendments

WKSI Eligibility

There are two primary differences between the Blanket Orders and the Proposed Amendments as it pertains to eligibility:

- (i) extended seasoning period: whereas the Blanket Orders set out that an issuer must only be a Canadian reporting issuer for the previous 12 months, the Proposed Amendments require that an issuer be a Canadian reporting issuer for the previous 36 months.
- (ii) public equity calculation: the Blanket Orders' requirement that the issuer's "public float" be at least CAD\$500 million has been replaced by the narrower "qualifying public equity", which excludes securities held by an issuer's affiliates and reporting insiders. "Qualifying public equity" is now to be calculated using a 20-day simple average closing price, which is more in line with other market pricing rules, as opposed to using a single closing price on any day during the prior 60-day period.

Filing Requirements

Under the Blanket Orders, an issuer was required to file a WKSI letter in place of a preliminary prospectus. The letter required an issuer to state: (i) its reliance on the Blanket Order; (ii) its "public float" as at the date of determination; and (iii) the provision under which it is short-form eligible.

While substantially similar content-wise, the Proposed Amendments now require filing a qualification certificate that meets the National

Instrument 44-101 Short Form Prospectus Distributions requirements. More specifically, such a certificate must disclose: the issuer's: (i) reliance on the WKSI rule; and (ii) the value of the issuer's "qualifying public equity" and the date that such value was determined.

Receipt

The Blanket Orders ensured that a receipt was issued on an expedited basis, but the issuance of a receipt could still be delayed if the regulators exercised their discretion to perform a review. Under the Proposed Amendments, a receipt is deemed to have been issued upon filing the base shelf prospectus. This is significant because it provides certainty regarding transaction timing and better aligns the Canadian system with the existing system in the United States.

Similarly, the Proposed Amendments expressly provide for an amendment to a WKSI's base shelf prospectus without the issuance of a receipt by the issuer's principal regulator. As set out above for initial filings, a receipt for any amendment to a WKSI base shelf prospectus will be deemed to be issued upon filing that amendment, assuming all other conditions are satisfied.

Effectiveness Period Extension

The Proposed Amendments allow for a WKSI's base shelf prospectus to be effective up to 37 months from the deemed issuance date. While the Blanket Orders did not reference effectiveness periods, under NI 44-102, receipts were effective for 25 months.

Annual Confirmation

While there were no confirmation requirements under the Blanket Orders, issuers must now confirm their WKSI eligibility annually under the Proposed Amendments. Such confirmation must be made within 60 days preceding the issuer's annual filing date by either (i) a statement in the issuer's annual information form confirming WKSI eligibility or (ii) an amendment to its WKSI base shelf prospectus. Significantly, an issuer that is no longer WKSI-eligible must publicly announce that it will not distribute securities under a prospectus supplement to the WKSI base shelf prospectus and then withdraw such prospectus.

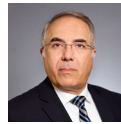
Moving Forward

Although the Proposed Amendments, if adopted, will provide issuers with increased flexibility and certainty while reducing associated costs and regulatory burden, some requirements have also become more stringent than was the case under the Blanket Orders.

Dickinson Wright will continue to monitor the WKSI framework as the comment period comes to a close and into the future. If you have any questions with respect to the above, please get in touch with Andre Poles at apoles@dickinson-wright.com, Don Sheldon at dsheldon@dickinson-wright.com, or Geoffrey Farr at gfarr@dickinson-wright.com.

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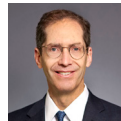
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