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CSA Introduces a Streamlined Shelf Prospectus Regime for “Well-Known Seasoned Issuers”

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The Canadian Securities Administrators (CSA) recently announced that each of its members has adopted a blanket order (collectively, Blanket Orders) to make available to “well-known seasoned issuers” (WKSIs) a streamlined shelf prospectus qualification procedure (WKSI regime). This regime is modelled on the “automatic” shelf registration process available under U.S. securities laws. Effective on January 4, 2022, the Blanket Orders will permit WKSIs to skip filing a preliminary base shelf prospectus and instead file a final base shelf prospectus (WKSI prospectus) as the first step in an offering; the associated final receipt will be issued on an accelerated basis.¹ The WKSI regime is being implemented on a trial basis to provide CSA members with an opportunity to evaluate the appropriateness of the eligibility criteria and identify any public interest concerns or operational considerations. These should be addressed in future rule amendments.

The Blanket Orders will permit large and well-established issuers with a broad market following – and their shareholders – to access capital markets more rapidly and avoid some of the regulatory delay and market overhang associated with filing traditional, unallocated base shelf prospectuses. Unfortunately, under the WKSI regime, regulatory delays and the associated execution risks will not be completely eliminated because the issuance of the final receipt for the WKSI prospectus is not automatic. Instead, the CSA has said it expects that if a WKSI prospectus is filed with the principal regulator by noon (local time), a final receipt will be issued the same business day; if the prospectus is filed after noon, the final receipt will be issued before noon the next business day.

Additionally, the WKSI regime eliminates the requirement that either a WKSI prospectus disclose an aggregate dollar value of the offerings that may be qualified under the WKSI prospectus or that it include a description of the securities to be qualified, other than the name or class of the securities (e.g., “debt securities,” “common shares” or “preferred shares”). The elimination of this requirement will provide WKSI issuers with greater flexibility in undertaking offerings under a shelf prospectus.

To be a WKSI, a reporting issuer must have (i) outstanding listed equity securities that have a public float of \$500 million or (ii) at least \$1 billion aggregate amount of non-convertible securities, other than equity securities, distributed under a prospectus in primary offerings for cash in the previous three years. The CSA states that it considered the smaller size of Canadian issuers in setting these thresholds; however, using a public float test as opposed to a market capitalization test may result in the WKSI regime not being available to some larger Canadian issuers that have controlling shareholders. To use the WKSI regime, the issuer must also be up to date in its securities filings and satisfy the general eligibility requirements to file a Canadian short form prospectus and the other conditions described below.

Conditions

Under the Blanket Orders, an issuer may file a WKSI prospectus without having filed and obtained a receipt for a preliminary base shelf prospectus if, among other things, the following conditions apply:

- The issuer meets the definition of a WKSI in the 60-day period before filing the final base shelf prospectus.
- The issuer is and has been a reporting issuer in at least one jurisdiction of Canada for 12 months.

- If the issuer has mining operations,
 - its most recent audited financial statements disclose gross revenue derived from mining operations (i) of at least \$55 million for its most recently completed financial year, and (ii) of at least \$165 million in the aggregate for its three most recently completed financial years; and
 - it files any technical reports that would be required to be filed with a preliminary short form prospectus under National Instrument 43-101 – *Standards of Disclosure for Mineral Projects*.
- In the previous three years, the issuer’s principal asset was not cash, cash equivalents or its exchange listing, including a capital pool company or a special purpose acquisition company; nor had the issuer become bankrupt or made a proposal under any legislation relating to bankruptcy or insolvency or was subject to or instituted any proceedings, arrangement or compromise with creditors.
- The issuer has no outstanding asset-backed securities and does not intend to qualify any asset-backed securities under the final base shelf prospectus.

Background

The Blanket Orders result from feedback on the CSA’s Consultation Paper 51-404 – *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers*. Davies, in its comments on the consultation paper, recommended, among other things, that Canadian securities regulators adopt a Canadian WKSI regime similar to the WKSI regime available under U.S. securities laws. Davies argued that a Canadian WKSI regime would reduce unnecessary regulatory burden for large, established reporting issuers that have strong market following without meaningfully diminishing investor protection. A Canadian WKSI regime was subsequently included as one of the proposals in Ontario’s Capital Markets Modernization Taskforce: Consultation Report released in July 2020.

Some Permanent Changes?

While the decision to introduce a WKSI regime in Canada is welcome, the Blanket Orders have been adopted temporarily while the CSA considers whether future rule amendments to make such a regime permanent would be appropriate. We will continue to advocate for the CSA to adopt permanent rules (i) whereby the final receipt for a WKSI prospectus is automatically issued on filing, further reducing regulatory delays and associated deal execution risks; and (ii) that do not unnecessarily exclude large and well-established issuers that have a smaller public float as a result of their controlling shareholders.

¹ Davies has advocated for the adoption of a WKSI model in Canada since 2017 in its various responses to Canadian securities regulators’ requests for ways to reduce regulatory burden in Canadian capital markets. See Davies comment letters on (i) [CSA Consultation Paper 51-404](#), (ii) [OSC Staff Notice 11-784](#), and (iii) [Ontario’s Capital Markets Modernization Taskforce \(PDF\)](#).

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