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OSC Publishes Notice of Commission Approval of OSC Rule 44-503 Exemption from Certain Prospectus Requirements for WKSIs

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On September 19, 2024, the Ontario Securities Commission (OSC) issued the [Notice of Commission Approval of OSC Rule 44-503 Exemption from Certain Prospectus Requirements for Well-known Seasoned Issuers](#). If approved by the Minister of Finance, Rule 44-503 (as defined below) would solidify the Blanket Order (as defined below) that exempts qualifying well-known seasoned issuers (WKSIs) from certain Ontario base shelf prospectus requirements under National Instrument 44-102 – *Shelf Distributions* (NI 44-102).

Events Leading to Rule 44-503

In 2021, the OSC released a blanket order titled [Ontario Instrument 44-501 Exemption from Certain Prospectus Requirements for Well-known Seasoned Issuers](#) (the Blanket Order) which was later extended by 18 months through [OSC Rule 44-502 Extension to Ontario Instrument 44-501 Exemption from Certain Prospectus Requirements for Well-known Seasoned Issuers](#) (the Extension). The Blanket Order was a component of a larger initiative by the Canadian Securities Administrators (CSA) to initiate a pilot program for the rules that govern WKSIs to be harmonized across Canada.

As [previously](#) discussed, in 2023, the CSA released proposed amendments to NI 44-102 to implement a permanent expedited shelf prospectus regime for WKSIs in Canada (the Proposed Amendments). If adopted, the Proposed Amendments would replace the provincial Blanket Order and Extension. The CSA solicited comments from the public on the Proposed Amendments and has advised that overall, the comments received were supportive of the Proposed Amendments. The comments are currently under consideration and further publication regarding the Proposed Amendments is expected in early 2025.

On July 30, 2024, the OSC enacted [OSC Rule 44-503 Exemption from Certain Prospectus Requirements for Well-known Seasoned Issuers](#) (Rule 44-503) as a rule under Ontario's *Securities Act* (the Act). Rule 44-503 was delivered to the Minister of Finance on September 16, 2024, and if the Minister of Finance approves or does not take further action, Rule 44-503 will come into force on January 4, 2025. If approved, Rule 44-503 will present an exemption in Ontario from certain base shelf prospectus requirements for qualifying WKSIs, thereby allowing them to file and obtain a receipt for their final base shelf prospectus on an accelerated basis without first having to file a preliminary base shelf prospectus.

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Purpose

The introduction of these exemptions by the CSA came in response to feedback that the CSA had previously received noting that various base shelf prospectus requirements under NI 44-102 led to unnecessary regulatory challenges for large and established reporting issuers with strong market following and updated disclosure records. The purpose of Rule 44-503 is to maintain the Blanket Order exemptions in Ontario from the expiry date of the Blanket Order (being January 4, 2025), until the Proposed Amendments are adopted by the CSA. Subject to the necessary approvals, it is expected that Rule 44-503 will be revoked in connection with the finalization of the Proposed Amendments.

Summary of Available Exemptions Under Rule 44-503

Rule 44-503 defines a WKSI as an issuer with either (a) outstanding listed equity securities that have public float of at least \$500 million; or (b) at least \$1 billion aggregate amount of non-convertible securities, other than equity securities, distributed under a prospectus in primary offerings for cash, not exchange, in the last three years.

Rule 44-503 goes on to list the various conditions that must be satisfied by an issuer in order for the issuer to be exempt from the requirement to file and obtain a receipt for a preliminary prospectus in section 53 of the Act. The conditions that an issuer must meet at the time the issuer files the base shelf prospectus in order to rely on this exemption include, but are not limited to the following:

- the issuer must meet the definition of a WKSI within 60 days preceding the date the issuer files the base shelf prospectus;
- the issuer must be and have been a reporting issuer in at least one jurisdiction of Canada for 12 months;
- the issuer must be eligible to file a short form prospectus under National Instrument 44-101 – *Short Form Prospectus Distributions* (NI 44-101) and the issuer must have either satisfied the requirement to be qualified to file a short form prospectus under NI 44-101 or at least ten business days have passed since the issuer filed the applicable notice as required under NI 44-101;
- the issuer must not be an investment fund or an ineligible issuer;
- the issuer must not have any outstanding asset-backed securities;
- the issuer must pay the fee that would otherwise be required for the filing of a preliminary short form prospectus;
- the issuer must deliver to the regulator any required personal information forms; and
- the base shelf prospectus (i) must comply with the requirements of National Instrument 41-101 – *Information Required in a Prospectus*, NI 44-101 and NI 44-102; (ii) must not qualify the distribution of any asset-backed security; (iii) must include the required statement that the prospectus has been

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filed in reliance on the WKSI exemption; and (iv) must include the requisite cover page disclosure as further described in Rule 44-503.

In addition, the issuer must file a letter (the Letter) that is dated as of the date of the base shelf prospectus, executed by one of the issuer's executive officers or directors, stating that the issuer is relying on Rule 44-503, specifying the short form prospectus eligibility criteria that the issuer is relying on, and certifying that all of the applicable requirements have been met. The Letter must also set out, as applicable, the public float of outstanding listed equity securities or aggregate amount of non-convertible securities that satisfy the definition of WKSI and the applicable date of determination.

If the issuer has mining operations, its most recent audited financial statements must disclose gross revenue, derived from mining operations, of at least \$55 million for the issuer's most recently completed financial year, and gross revenue, derived from mining operations, of at least \$165 million in the aggregate in the issuer's three most recently completed financial years. The Letter must also describe the basis on which the issuer satisfies these additional criteria for mining issuers.

In the event that an issuer is able to satisfy all of the applicable conditions set out in Rule 44-503, it will also be exempt from certain requirements in respect of its base shelf prospectus and any supplement to the base shelf prospectus, including (a) the requirement to limit distributions under the base shelf prospectus to the dollar value the issuer expects to distribute within 25 months after the date of the base shelf prospectus receipt; (b) the requirement to state the aggregate dollar amount of securities that may be raised under the base shelf prospectus; and (c) the requirement to include the number of securities qualified for distribution under the base shelf prospectus.

Further, the issuer would also be exempt from the following requirements in respect of its base shelf prospectus but *not* any prospectus supplements filed thereunder, including (a) the requirement to include a plan of distribution, other than to indicate that the plan of distribution will be described in the supplement for any distribution of securities; (b) the requirement to describe the securities being distributed, other than as necessary to identify the types of securities; and (c) the requirement to describe any selling securityholders.

Final Thoughts

As noted above, the implementation of Rule 44-503 intends to make permanent the exemptions set out in the Blanket Order in order to bridge the gap between the expiration of the Blanket Order and the effective date of the Proposed Amendments. If approved, Rule 44-503 will come into force on January 4, 2025, enabling WKSIs in Ontario to continue relying on the base shelf prospectus exemption as a means of lessening the unnecessary administrative and regulatory burden for established issuers. For more information on how Rule 44-503 may affect you or your organization, we welcome you to contact our [Securities Group](#) to assist you further.

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This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.