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CSA Finalizes New WKSI Regime in Canada

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On August 28, 2025, the Canadian Security Administrators (the CSA) published the final amendments to National Instrument 44-102 – *Shelf Distributions* (NI 44-102) and other related securities law instruments (the Final Amendments) to formally establish a permanent expedited base shelf prospectus regime for "well-known seasoned issuers" (WKSIs) in Canada. The Final Amendments will take effect on November 28, 2025, subject to receiving all of the expected ministerial approvals, and will replace the existing WKSI blanket orders that are currently in effect in each of the provinces and territories of Canada (the Blanket Orders).

Background to the WKSI Regime

In December 2021, regulators in each of the provinces and territories of Canada published temporary exemptions from certain base shelf prospectus requirements for qualifying WKSIs through the local Blanket Orders, which took effect in January 2022. The Blanket Orders were introduced as part of a larger initiative to reduce unnecessary regulatory burdens in the base shelf prospectus context. The Blanket Orders that are currently in place allow qualifying WKSIs to file a final base shelf prospectus with its principal regulator and obtain a receipt for such prospectus on an accelerated basis without first filing a preliminary base shelf prospectus.

In September 2023, the CSA published the proposed amendments to NI 44-102 with the intention of formally establishing a permanent WKSI regime in Canada (the Proposed Amendments). The Final Amendments are generally consistent with the WKSI regime set out in the Blanket Orders and the Proposed Amendments, however the CSA has made certain changes and updates to the Final Amendments in response to stakeholder feedback that was received during the public comment period.

The Final Amendments

Pursuant to the Final Amendments, and subject to certain exceptions to be set out in NI 44-102, an issuer will qualify as a WKSI (i) if the issuer has qualifying public equity of at least $500 million or qualifying public debt of at least $1 billion, (ii) if the issuer is a reporting issuer in a jurisdiction of Canada and has been for the preceding 12 months, (iii) if the issuer is otherwise qualified to file a short form prospectus under applicable securities laws, and (iv) if the issuer has one or more mineral project interests that together constitute a material portion of its business, the issuer has reported gross revenue derived from mining

operations of at least (a) $55 million for the most recently completed financial year and (b) $165 million in the aggregate for the three most recently completed financial years. In addition, an issuer will need to have filed all periodic and timely disclosure documents that it is required to have filed under applicable securities laws in order to qualify as a WKSI.

The Final Amendments will permit qualifying WKSIs to:

- File a final base shelf prospectus without first filing a preliminary base shelf prospectus or undergoing any regulatory review.
- Omit certain disclosure from the base shelf prospectus, including the aggregate dollar amount of securities that may be raised under the prospectus.
- Be deemed to have received a receipt for a final base shelf prospectus at the time of filing, which receipt will remain in effect for a period of 37 months from the date of its deemed issuance, subject to the issuer continuing to qualify as a WKSI.

Key Differences Included in the Final Amendments

As noted above, the Final Amendments are generally consistent with the current Blanket Orders and the Proposed Amendments, with certain noteworthy changes reflected in the Final Amendments, including the following:

- **Deemed Receipts:** Under the Final Amendments, no receipt will be issued by the principal regulators for a WKSI base shelf prospectus, but instead a receipt will be deemed to be issued at the time of filing the WKSI base shelf prospectus together with any other required documentation. The result of this change will be that a WKSI base shelf prospectus is immediately effective upon filing, without having to wait for a receipt to be issued. This change will bring the Canadian WKSI regime in line with the current processes in effect under the United States WKSI regime. In addition and in order to facilitate cross-border offerings under the multijurisdictional disclosure system (MJDS), the Final Amendments include updates to the companion policy guidance to reflect that an issuer filing a prospectus or a registration statement qualifying securities offered and sold in the United States, may request a notification of clearance from the regulator if needed to comply with the applicable US Securities and Exchange Commission requirements. Issuers relying on the MJDS are encouraged to contact their principal regulators in advance of filing to avoid any timing complications with respect to the delivery of a notification of clearance.
- **Increased Term:** The Final Amendments will allow a WKSI base shelf prospectus to remain effective for 37 months from the date of its deemed issuance, compared to the 25 months under the current Blanket Orders.
- **Seasoning Period:** Subject to meeting the other eligibility requirements, an issuer will be eligible to qualify as a WKSI after having been a reporting issuer in a jurisdiction of Canada for a period of 12 months. This is in line with the timeline set out in the current Blanket Orders, however it differs from the

three-year seasoning period that was initially included in the Proposed Amendments.

- **Personal Information Forms (PIFs):** Rather than being required to file PIFs concurrently with the filing of a WKSI base shelf prospectus, the Final Amendments will instead only require the delivery of PIFs for WKSIs as soon as practicable upon request from the regulators.
- **Penalties and Sanctions:** The Final Amendments have narrowed the scope of penalties and sanctions that would prevent an issuer from relying on the WKSI rules, such that the restrictions are now limited to convictions for offences related to bribery, deceit, fraud, insider trading, misrepresentation, money laundering, theft or any offence that is substantially similar. Additionally, issuers and their subsidiaries that have been the subject of any order, decision or settlement agreement that imposes sanctions, conditions, restrictions or requirements as a result of a contravention of the laws of Canada or the United States respecting securities or derivatives will also be prohibited from relying on the WKSI regime.
- **New Eligibility Criteria:** Following the implementation of the Final Amendments, an issuer will not be eligible to rely on the WKSI regime if such issuer (i) is subject to ongoing regulatory proceedings related to a prospectus or distribution of securities, (ii) has had a prospectus receipt refused by a Canadian regulator in the past three years, or (iii) has recently abandoned a preliminary prospectus or an amendment to a preliminary prospectus.
- **Expanded Regime:** The Final Amendments will expand the WKSI regime to permit successor issuers, credit support issuers, and issuers with outstanding asset-backed securities to file a WKSI base shelf prospectus, subject to certain conditions; provided however that the Final Amendments will not allow the filing of a WKSI base shelf prospectus that qualifies the distribution of an asset-backed security.
- **Calculation of Public Float:** The public equity requirement for WKSI eligibility will remain unchanged under the Final Amendments at $500 million, however the method of calculating an issuer's public float will change. Under the Final Amendments, public equity will be calculated using the average daily closing price of the issuer's listed securities over the prior 20 trading days, excluding any listed securities held by reporting insiders. This differs from the current Blanket Orders, where public equity is calculated using 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. The Final Amendments also clarify that an issuer may rely upon information contained in an insider report filed on SEDI, or a report or news release filed in accordance with the relevant requirements when calculating the qualifying public equity.
- **Annual Confirmations:** The Final Amendments remove the requirement to file a news release upon the withdrawal of a WKSI base shelf prospectus by an issuer. Instead, in the event that an issuer subsequently loses its WKSI status during the term of its WKSI base shelf prospectus, the issuer must file a letter withdrawing its WKSI base shelf prospectus on SEDAR+.
- **Exemptive Relief:** The Final Amendments, and specifically the proposed updates to the companion policy guidance, outline additional factors that regulators may consider when reviewing applications for exemptive relief in the context of WKSI eligibility. This is an addition to Part 11 of NI 44-102 which already provides that the regulators may grant an exemption from the instrument and sets out the process for such applications. A number of the comments received during the review period for the Final Amendments suggested adding certain materiality qualifiers for the purposes of determining WKSI

eligibility, specifically as it relates to the penalties and sanctions that would prevent an issuer from relying on the WKSI regime. Although the CSA did not include the suggested materiality qualifiers in the Final Amendments, they did note that an issuer may apply for exemptive relief if they are otherwise unable to satisfy the WKSI criteria as a result of the penalty and sanction restrictions.

- **Annual Confirmations:** Issuers that have filed a WKSI base shelf prospectus must confirm their WKSI eligibility on an annual basis by including a statement in their annual information form or by amending their WKSI base shelf prospectus to confirm the issuers continued eligibility. Such confirmations must be provided on or within 60 days prior to the date on which the issuer's audited annual financial statements are required to be filed.

Final Thoughts

The Final Amendments and the introduction of a formal WKSI regime in Canada aims to reduce certain unnecessary burdens associated with the full prospectus review process for WKSIs. The WKSI regime will allow more flexibility and improve certainty around transaction timing, while also eliminating certain disclosure requirements for established issuers that meet the specific criteria. The new WKSI regime will also help to align Canadian filing timelines more closely with those used in the United States, further enhancing the competitiveness of Canadian markets and helping to facilitate cross-border offerings.

Existing WKSI issuers should consider how the introduction of the Final Amendments will impact their eligibility to rely on the new WKSI regime. WKSIs planning to file a new base shelf prospectus in the near term should also consider the benefits of waiting until the Final Amendments come into force in order to take advance of the new rules, including the 37-month term for a WKSI base shelf prospectus, as compared to the current 25-month term. For more information on how the WKSI regime may impact you or your organization, please contact our Capital Markets Group to assist you further.

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