

CSA STAFF NOTICE 51-360

FREQUENTLY ASKED QUESTIONS REGARDING FILING EXTENSION RELIEF GRANTED BY WAY OF A BLANKET ORDER IN RESPONSE TO COVID-19

On March 23, 2020, the Canadian Securities Administrators (**CSA**) published substantively harmonized temporary exemptions from certain regulatory filing requirements as a result of COVID-19. The CSA has implemented the relief through local blanket orders that are substantively harmonized across the country.

This notice contains CSA staff's views on frequently asked questions (**FAQs**) about the exemptions from certain corporate finance requirements provided by the CSA that apply to reporting issuers and other issuers that are not investment funds in the following local blanket orders (collectively, the **Blanket Order**):

- In Alberta, Blanket Order 51-517 *Temporary Exemption from Certain Corporate Finance Requirements (ASC Blanket Order 51-517)*
- In British Columbia, BC Instrument 51-515 *Temporary Exemption from Certain Corporate Finance Requirements (BC Instrument 51-515)*
- In Ontario, Ontario Instrument 51-502 *Temporary Exemption from Certain Corporate Finance Requirements (OSC Instrument 51-502)*
- In Quebec, Decision No. 2020-PDG-0023 *Décision générale relative à la prolongation de délais concernant certaines obligations d'information continue et de prospectus applicables aux émetteurs et aux agences de notation désignées (AMF Decision 2020-PDG-0023)*
- In Manitoba, Manitoba Blanket Order 52-502 *Temporary Exemption from Certain Corporate Finance Requirements (Manitoba Blanket Order 52-502)*
- In New Brunswick, Blanket Order 51-507 *Temporary Exemption from Certain Corporate Finance Requirements (FCNB Blanket Order 51-507)*
- In Newfoundland and Labrador, Blanket Order Number 110 *Temporary Exemption from Certain Corporate Finance Requirements (NL Blanket Order 110)*
- In Nova Scotia, Blanket Order 51-509 *Temporary Exemption from Certain Corporate Finance Requirements (NSSC Blanket Order 51-509)*
- In Saskatchewan, General Order 51-501 *Temporary Exemption from Certain Corporate Finance Requirements (FCAA General Order 51-501)*
- In Prince Edward Island, Blanket Order 51-503 *Temporary Exemption from Certain Corporate Finance Requirements (PEI Blanket Order 51-503)*
- In the Northwest Territories, Blanket Order 51-502 *Temporary Exemption from Certain Corporate Finance Requirements (NWT Blanket Order 51-502)*
- In Yukon, Superintendent Order 2020-02 *Temporary Exemption from Certain Corporate Finance Requirements (Yukon SO 2020-02)*
- In Nunavut, Blanket Order 51-502 *Temporary Exemption from Certain Corporate Finance Requirements (NU Blanket Order 51-502)*

In these FAQs:

- “**extension period**” means the 45-day extension period provided for in the Blanket Order.
- “**Filing or Delivery Exemption**” means

- (a) the exemption from the Group A requirements in BC Instrument 51-515, NL Blanket Order 110, NWT Blanket Order 51-502, Yukon SO 2020-02, NU Blanket Order 51-502, PEI Blanket Order 51-503,
- (b) the exemption from the requirements in Exhibit A of OSC Instrument 51-502, FCNB Blanket Order 51-507 and NSSC Blanket Order 51-509,
- (c) the exemption from the requirements in Appendix A of ASC Blanket Order 51-517 and Manitoba Blanket Order 52-502,
- (d) the exemption from the requirements in *Annexe A* of AMF Decision 2020-PDG-0023, and
- (e) the exemption in section 1 of the FCAA General Order 51-501.

- **“OM Ongoing Disclosure Exemption”** means the exemption from the ongoing disclosure requirements in connection with distributions made under the offering memorandum exemption set out in subsections 2.9(17.4), (17.5) or (17.6) of National Instrument 45-106 *Prospectus Exemptions (NI 45-106)*, as applicable, and subsection 2.9(17.19) of NI 45-106 provided in OSC Instrument 51-502, ASC Blanket Order 51-517, AMF Decision 2020-PDG-0023, FCAA General Order 51-501, FCNB Blanket Order 51-507 and NSSC Blanket Order 51-509.

If you cannot find the answer to your question here, please contact your principal regulator. We intend to update the FAQs as we receive more inquiries and encourage you to check for updates to this notice.

A. MATERIAL BUSINESS DEVELOPMENT

A1. The Filing or Delivery Exemption in the Blanket Order refers to a “material business development.” How should an issuer determine whether a business development is material?

As with any materiality determination, the determination of whether a business development constitutes a material business development depends on facts and circumstances and may vary from issuer to issuer. When assessing if a business development is material, an issuer should reference existing securities rules and policies for guidance.

The concept of materiality is referenced in a number of existing securities rules and policies, including:

- The interpretative provision in Part 1(f) of Form 51-102F1 *Management’s Discussion & Analysis* and Part 1(e) of Form 51-102F2 *Annual Information Form* that states “Would a reasonable investor’s decision whether or not to buy, sell or hold securities in your company likely be influenced or changed if the information in question was omitted or misstated? If so, the information is likely material.”
- Section 4.2(1) of National Policy 51-201 *Disclosure Standards (NP 51-201)* that states “in making materiality judgements, it is necessary to take into account a number of factors that cannot be captured in a simple bright-line standard or test. These include the nature of the information itself, the volatility of the company’s securities and prevailing market conditions. The materiality of a particular event or piece of information may vary between companies according to their size, the nature of their operations and many other factors. An event that is “significant” or “major” for a smaller company may not be material to a larger company. Companies should avoid taking an overly technical approach to determining materiality. Under volatile market conditions, apparently insignificant variances between earnings projections and actual results can have a significant impact on share price once released.”

- The non-exhaustive list of potentially material information contained in Section 4.3 of NP 51-201.
- The guidance provided in sections 9 and 12 of National Policy 12-203 *Management Cease Trade Orders* (NP 12-203).

B. CALCULATION OF TIME PERIOD

B1. How do I calculate the extension period under the Blanket Order? Does the extension period start on the calendar day following the deadline date?

Yes, the extension period starts on the next calendar day following the deadline date. For example, if the deadline is March 30, 2020, the first day of the 45 day period is March 31, 2020. The extension period would end on May 14, 2020.

C. PROSPECTUSES

C1. If an issuer uses the Filing or Delivery Exemption in the Blanket Order, does the condition requiring that the issuer not file a preliminary or final prospectus unless their continuous disclosure record is current also apply to renewal of a base shelf prospectus, a non-offering prospectus, an amended and restated prospectus, a PREP prospectus, an amendment to a final prospectus or the filing of a prospectus supplement under an existing base shelf prospectus?

Yes. The prohibition against filing a preliminary or final prospectus until the continuous disclosure record of an issuer is current applies to preliminary and final base shelf prospectuses even if there is no specific offering contemplated at the time. Similarly, the prohibition applies to a non-offering prospectus, an amended and restated prospectus, a PREP prospectus or an amendment to a final prospectus. CSA staff are also of the view that the prohibition would preclude an issuer from completing a prospectus offering which requires or will require the filing of a prospectus supplement to an existing base shelf prospectus.

C2. Does the Blanket Order provide an extension of the 90 and 180 day lapse period contained in section 2.3 of National Instrument 41-101 *General Prospectus Requirements* (NI 41-101)?

No, the Blanket Order does not provide an extension of the 90 and 180 day lapse date period contained in section 2.3 of NI 41-101. The 90 and 180 day limits in section 2.3 of NI 41-101 still apply. Issuers that have questions about section 2.3 of NI 41-101 should contact their principal regulator.

C3. If an issuer has obtained a receipt for a prospectus and is currently in the 90 day distribution period of a best efforts distribution, what will happen if the issuer would like to rely on the Blanket Order during the extension period?

CSA staff are of the view that issuers that wish to rely on the Blanket Order during an ongoing prospectus distribution should cease the distribution. Issuers in this circumstance should contact their principal regulator to discuss this matter as soon as possible.

D. ANNUAL GENERAL MEETING OF SECURITYHOLDERS AND RELATED MATTERS

D1. CSA staff are aware that certain stock exchange rules were recently amended in response to COVID-19 to permit issuers to delay their annual general meeting of securityholders to December 31, 2020.

- The deadline extension provided for in the Blanket Order is for a period of 45 days and is only available for certain documents required to be filed, sent or delivered during the period from March 23, 2020 to June 1, 2020. The Blanket Order does not contemplate a deadline extension for the filing, sending or delivery of management information circulars or proxy materials for a meeting of securityholders.
- CSA staff have received a number of inquiries from issuers regarding the interplay between the Blanket Order and a delay of an annual general meeting of securityholders, including matters relating to executive compensation, management information circulars and other proxy materials, annual meeting request forms, and delivery of financial statements in conjunction with the delivery of management information circulars.
- CSA staff are considering these issues. As noted in the CSA news release dated March 23, 2020 regarding the Blanket Order, the CSA is closely monitoring the situation and will consider whether further relief or extension is necessary.
- The CSA does not establish meeting requirements. Those requirements are established under the corporate law (or equivalent legislation) applicable to an issuer and its constating documents. Issuers should review their applicable corporate law or other governing statutes and any exemptions or guidance provided by the corporate law regulator or equivalent in the applicable jurisdiction.
- Issuers should also refer to the CSA press release *Canadian securities regulators provide guidance on conducting Annual General Meetings during COVID-19 outbreak* that was issued on March 20, 2020.
- Issuers that have urgent concerns with respect to these matters are encouraged to contact their principal regulator.

E. ANNUAL INFORMATION FORM

E1. Form 51-102F2 states the annual information form needs to be dated no earlier than the date of the auditor's report of an issuer's financial statements. If an issuer will be delaying the filing of its annual financial statements pursuant to the Blanket Order, can it file its annual information form before filing its annual financial statements for its most recently completed financial year?

No. The Filing or Delivery Exemption provides only a filing exemption for an annual information form. It does not provide an exemption from the content requirement. An issuer may utilize the exemptive relief provided in the Filing or Delivery Exemption of the Blanket Order with respect to the filing of an annual information form provided the conditions of the Blanket Order are met.

F. NORMAL COURSE ISSUER BIDS

F1. If an issuer is relying on the Filing or Delivery Exemption in the Blanket Order, is the issuer restricted from purchasing its securities in reliance on the normal course issuer bid exemptions set out in section 4.8 of National Instrument 62-104 *Take-Over Bids and Issuer Bids*?

An issuer should not make purchases of its own securities pursuant to a normal course issuer bid while it is in possession of material undisclosed information, except to the extent that such purchases are made pursuant to an automatic securities purchase plan that is established and conducted in a manner consistent with the principles set out in OSC Staff Notice 55-701 *Automatic Securities Disposition Plans and Automatic Securities Purchase Plans*. We note that these views are consistent with requirements under the by-laws, rules, regulations and policies of designated exchanges (see, for example, section 629(l)6 of the rules of the Toronto Stock Exchange). Issuers should carefully assess whether they are in possession of material undisclosed information.

Where an issuer is relying on the Filing or Delivery Exemption in the Blanket Order, there may be a heightened risk that the issuer, its management and other insiders may have material information that has not been publicly disclosed. If reliance on the Filing or Delivery Exemption in the Blanket Order means that the issuer, its management and insiders are in possession of material undisclosed information, we would expect the issuer to suspend any normal course issuer bids that are in operation (except where an automatic securities purchase plan has previously been established and is operative).

Generally, we would expect that an issuer will not make purchases of its own securities in reliance on the normal course issuer bid exemptions (except pursuant to previously established and operative automatic securities purchase plans) until such time as the issuer's black-out policy is no longer applicable to its management and other insiders and all material undisclosed information has been disseminated.

G. ISSUER IN MULTIPLE JURISDICTIONS

G1. Each CSA jurisdiction has adopted its own blanket order. Are there differences between the blanket orders enacted in each jurisdiction?

The blanket orders are substantively harmonized. There are some minor areas of difference including those described below.

Issuers relying on the blanket orders for an exemption discussed below will need to review the blanket order in each applicable jurisdiction.

The blanket orders contain differences in respect of the offering memorandum exemption (**OM Exemption**) in section 2.9 of NI 45-106 as the ongoing disclosure requirements for issuers relying on the OM Exemption vary by jurisdiction and, where applicable, are out set out in different subsections of section 2.9 of NI 45-106.

- OSC Instrument 51-502, FCAA General Order 51-105, FCNB Blanket Order 51-507 and AMF Decision 2020-PDG-0023 refer to subsection 2.9(17.5) of NI 45-106
- ASC Blanket Order 51-517 refers to subsection 2.9(17.4) of NI 45-106
- NSSC Blanket Order 51-509 refers to subsection 2.9(17.6) of NI 45-106

The blanket orders in British Columbia, Manitoba, Newfoundland and Labrador, Northwest Territories, Prince Edward Island and Yukon do not provide the OM Ongoing Disclosure Exemption because those requirements do not apply in those jurisdictions.

Other jurisdictions, including Ontario, Alberta, Saskatchewan, Quebec, Nova Scotia and New Brunswick have provided the OM Ongoing Disclosure Exemption in their blanket orders. An issuer that has relied on the OM Exemption to distribute securities in other jurisdictions may want to review the blanket orders in those jurisdictions to ensure that the issuer is complying with the exemptions from those requirements.

We note that section 11 of OSC Instrument 51-502, ASC Blanket Order 51-517, FCNB Blanket Order 51-507 and section 5 of FCAA General Order 51-501 permit a filer relying on the filing extension for certain filings under the OM Exemption to simply refer to the order of the principal regulator of the filer in the news release required to be issued to announce the issuer's reliance on the filing extension. Section 5 of AMF Decision 2020-PDG-0023, section 3 of NSSC Blanket Order 51-509 and section 3 of FCAA General Order 51-501 contain a similar provision.

Issuers with specific questions about a blanket order should contact the applicable securities regulator.

H. NEWS RELEASES

H1. If an issuer issues and files the news release required by the Blanket Order on SEDAR, does the issuer need to do anything else with respect to the news release?

Issuers that are listed on exchanges are still required to comply with the rules, regulations and policies of the applicable exchange, including those related to the dissemination of a news release. This may also include compliance with IIROC requirements. Issuers that are also reporting issuers in jurisdictions outside of Canada must also comply with applicable rules in those jurisdictions.

Issuers that are SEDAR filers but whose securities are not listed on any stock exchange and that do not report in jurisdictions outside of Canada are only required to issue and file the news release on SEDAR.

I. MANAGEMENT CEASE TRADE ORDER (MCTO)

I1. If an issuer is subject to an MCTO and the issuer cannot file the outstanding continuous disclosure documents by the date expected in accordance with NP 12-203, is the issuer able to rely on the Blanket Order extension period with respect to the outstanding filings?

No, the issuer cannot rely on the extension period in the Blanket Order. The issuer should contact the CSA jurisdiction that issued the MCTO as soon as possible if the issuer expects it will not be able to file the outstanding continuous disclosure documents by the date expected in accordance with NP 12-203.

J. EXTENSION PERIOD

J1. If an issuer is relying on the Filing or Delivery Exemption in the Blanket Order but is unable to meet its filing and delivery obligations by the end of the extension period, what should the issuer do?

As noted in the CSA news release dated March 23, 2020 regarding the Blanket Order, the CSA is closely monitoring the situation and will consider whether further relief or extension is necessary. Issuers in this circumstance should contact their principal regulator as soon as possible and before the end of the extension period. Issuers are reminded that an MCTO application may be appropriate in these circumstances.

J2. What should an issuer do if the due date for its filing is after June 1, 2020?

As noted in the CSA news release dated March 23, 2020 regarding the Blanket Order, the CSA is closely monitoring the situation and will consider whether further relief or extension is necessary. Please contact your principal regulator if you have any concerns.

K. OM ONGOING DISCLOSURE EXEMPTION

K1. Is an issuer who raises capital under the OM Exemption in section 2.9 of NI 45-106, considered a SEDAR filer and required to file a news release on SEDAR? How do I know if I am considered a SEDAR Filer?

Non-reporting issuers that have used the OM Exemption in Saskatchewan, Quebec and New Brunswick may be required to file materials, including the news release required under the OM Ongoing Disclosure Exemption, on SEDAR and therefore may be SEDAR Filers. Non-reporting issuers in Alberta that have used the OM Ongoing Disclosure Exemption are required to file the news release on SEDAR as a condition of ASC Blanket Order 51-517. Non-reporting issuers that have used the OM Exemption in Nova Scotia are required to file the news release on SEDAR. Issuers should refer to Multilateral CSA Staff Notice 13-323 *Frequently Asked Questions About Making Exempt Market Offering and Disclosure Filings on SEDAR* and, when applicable, the SEDAR Filer Manual (available on the "About SEDAR" page on the SEDAR website at www.SEDAR.com) for further details.

K2. Have the CSA jurisdictions provided relief from the requirement to file a report of exempt distribution (Form 45-106F1) or provided an extension for the filing of the report of exempt distribution?

No. Issuers that distribute securities relying on prospectus exemptions that require a report of exempt distribution are required to file the report within the time periods specified in section 6.1 of NI 45-106 or in the specific exemption (which is generally 10 days following the distribution).

K3. Do issuers planning to rely on the OM Exemption have to include in the offering memorandum audited annual financial statements within 120 days after year-end?

The Blanket Order does not provide relief from any disclosure requirements set out in the required form of offering memorandum (Form 45-106F2 or Form 45-106F3) to include annual financial statements. Accordingly, if an issuer chooses to conduct an offering under the OM Exemption in section 2.9 of NI 45-

106 during the period from March 23, 2020 to June 1, 2020, the offering memorandum would have to contain the annual financial statements required by the applicable form under section 6.4 of NI 45-106.

Issuers should refer to the OM Ongoing Disclosure Exemption in the applicable Blanket Order in Alberta, New Brunswick, Nova Scotia, Ontario, Quebec and Saskatchewan. The OM Ongoing Disclosure Exemption only applies to the requirement in subsections 2.9 (17.4 and 17.5) of NI 45-106 for an issuer to deliver audited annual financial statements to the securities regulatory authority in Alberta, New Brunswick, Ontario, Quebec and Saskatchewan. The OM Ongoing Disclosure Exemption applies to the requirement in subsection 2.9(17.6) of NI 45-106 for an issuer to make reasonably available annual financial statements to securityholders in Nova Scotia. If an issuer relies on the OM Ongoing Disclosure Exemption in the applicable Blanket Order for the annual financial statements required by subsection 2.9 (17.4), (17.5) or (17.6) of NI 45-106, it would have an additional 45 days to deliver the financial statements required by that subsection.

L. INSIDER REPORTING

L1. Does the Blanket Order provide an extension period for insider reports, including those related to compensation plans?

No. The Blanket Order does not provide an extension period for insider reports, including those related to compensation plans. Insiders continue to be required to file their insider reports on SEDI within the required period.

QUESTIONS

Please refer your questions to any of:

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