
B. Ontario Securities Commission

B.1 Notices

B.1.1 Notice of Commission Approval of OSC Rule 44-503 Exemption from Certain Prospectus Requirements for Well-known Seasoned Issuers

**NOTICE OF COMMISSION APPROVAL OF
OSC RULE 44-503
EXEMPTION FROM CERTAIN PROSPECTUS REQUIREMENTS FOR WELL-KNOWN SEASONED ISSUERS**

September 19, 2024

Introduction

On July 30, 2024, the Ontario Securities Commission (the **Commission** or **we**) made proposed OSC Rule 44-503 *Exemption from Certain Prospectus Requirements for Well-known Seasoned Issuers* (the **Rule**) as a rule under the *Securities Act* (Ontario) (the **Act**).

The Rule will, if approved by the Minister of Finance (the **Minister**), provide an exemption in Ontario from certain base shelf prospectus requirements for qualifying well-known seasoned issuers (**WKSIs**) to file a final base shelf prospectus with the Commission and obtain a receipt for that prospectus on an accelerated basis without first filing a preliminary base shelf prospectus.

Blanket Order and OSC Rule 44-502

The Rule is intended to make permanent the exemption first set out in a blanket order issued on December 6, 2021, Ontario Instrument 44-501 *Exemption from Certain Prospectus Requirements for Well-known Seasoned Issuers (Interim Class Order)* (the **Blanket Order**), which was then extended by 18 months by OSC Rule 44-502 *Extension to Ontario Instrument 44-501 Exemption from Certain Prospectus Requirements for Well-known Seasoned Issuers (OSC Rule 44-502)*.

The Blanket Order was issued as part of a larger initiative by the Canadian Securities Administrators (**CSA**) to implement a pilot program for WKSIs through local blanket orders that are substantively harmonized across the country. The pilot program has provided the CSA an opportunity to evaluate the appropriateness of the eligibility criteria for WKSIs and identify any potential public interest concerns or operational considerations that should be addressed in future rule amendments.

On September 21, 2023, the CSA published for comment proposed amendments to National Instrument 44-102 *Shelf Distributions* and consequential amendments to related rules that, if adopted, would introduce a permanent WKSI regime in Canada (the **Proposed Amendments**). If adopted, the Proposed Amendments would create a permanent shelf prospectus regime for WKSIs in Canada and replace the local blanket orders currently in effect. The CSA received 11 comment letters in response to the publication of the Proposed Amendments, and commenters were generally supportive of the Proposed Amendments and the adoption of a permanent WKSI regime in Canada. The comments are currently under consideration and further publication regarding the Proposed Amendments is expected in early 2025.

Subject to receipt of all requisite approvals, the Rule is expected to be revoked in connection with the finalization of the Proposed Amendments.

The Blanket Order, as extended by OSC Rule 44-502, will cease to be effective on January 4, 2025. The purpose of the Rule is to make permanent the Blanket Order exemption in Ontario until the Proposed Amendments are adopted by the CSA through the normal rule making procedures on a coordinated basis.

The Commission has made the Rule as a rule pursuant to paragraph 143.2(5)(b) of the Act. Paragraph 143.2(5)(b) provides that publication of a notice and request for comment in respect of a proposed rule is not required if “the proposed rule grants an exemption or removes a restriction and is not likely to have a substantial effect on the interests of persons or companies other than those who benefit under it”. We have determined that the Rule meets the criteria set out in paragraph 143.2(5)(b) of the Act. Accordingly, the Rule is not being published for comment.

The text of the Rule is contained in Annex A of this notice and is also available on the Commission website at www.osc.ca.

Substance and Purpose

The CSA received feedback in response to its Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers*¹ that certain prospectus requirements in the base shelf context create unnecessary regulatory burden for large, established reporting issuers that have strong market following and up-to-date disclosure records. The feedback recommended enhancing the current prospectus system by amending the base shelf prospectus regime to implement a Canadian WKSI regime.

Similar submissions were received in response to OSC Staff Notice 11-784 *Burden Reduction* in 2019 and by the Capital Markets Modernization Taskforce (the **Taskforce**) established by the Government of Ontario in February 2020. On January 22, 2021, the Taskforce published its final report (the **Taskforce Final Report**). The Taskforce Final Report included a recommendation that the Commission develop a WKSI model in Ontario to streamline the prospectus process for issuers that meet certain eligibility criteria.²

In the United States, the WKSI regime is codified in the General Rules and Regulations, *Securities Act of 1933*, and has been in regular use for several years.

Having considered market feedback and the Taskforce recommendation, the Commission issued the Blanket Order on December 6, 2021.

The Blanket Order will cease to be effective on January 4, 2025. The purpose of the Rule is to bridge the gap between the expiry of the Blanket Order and the contemplated effective date of the Proposed Amendments. Accordingly, it is expected that the Rule will be revoked if and when the Proposed Amendments are adopted. Without the Rule, WKSIs in Ontario would no longer be able to rely on the exemption in the Blanket Order with the result that WKSIs in Ontario may again experience unnecessary regulatory burden in the base shelf context.

Rule-making authority

The following provisions of the Act provide the Commission with authority to adopt the Rule:

- Paragraph 143(1)15
- Paragraph 143(1)16
- Paragraph 143.2(5)(b)

Delivery of Rule to Minister

We delivered the Rule to the Minister on September 16, 2024. The Minister may approve or reject the Rule or return it for further consideration. If the Minister approves the Rule or does not take any further action, the Rule will come into force on January 4, 2025.

Questions

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¹ See CSA Staff Notice 51-353 *Update on CSA Consultation Paper 51-404 Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers*.

² See Recommendation No.17 in the Taskforce Final Report, available at <https://www.ontario.ca/document/capital-markets-modernization-taskforce-final-report-january-2021>

ANNEX A

Ontario Securities Commission Rule 44-503
Exemption from Certain Prospectus Requirements for Well-known Seasoned Issuers

PART 1 DEFINITIONS

1. **Definitions**

(1) In this Rule,

“**Act**” means the *Securities Act*, R.S.O. 1990, c. S.5, as amended from time to time;

“**Form 44-101F1**” means Form 44-101F1 *Short Form Prospectus*;

“**ineligible issuer**” means an issuer to which any of the following apply:

- (a) the issuer has not filed with the securities regulator or securities regulatory authority in each jurisdiction in which it is a reporting issuer all periodic and timely disclosure documents that it is required to have filed in that jurisdiction;
- (b) the issuer is, or during the past three years the issuer or any of its predecessors was, either of the following:
 - (i) an issuer whose operations have ceased; or
 - (ii) an issuer whose principal asset is cash, cash equivalents, or its exchange listing, including, without limitation, a capital pool company, a special purpose acquisition company, or a growth acquisition corporation or any similar entity, as defined in the applicable stock exchange rules or policies;
- (c) the issuer has in the past three years become bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency or was subject to or instituted any proceedings, arrangement or compromise with creditors or had a receiver, receiver manager or trustee appointed to hold its assets;
- (d) the issuer or any entity that at the time was a subsidiary of the issuer, was the subject of any penalties or sanctions, including restrictions on the use by the issuer of any type of prospectus, or exemption, imposed by a court relating to securities legislation or by a securities regulatory authority within the past three years;
- (e) the issuer has been the subject of any cease trade order in any Canadian jurisdiction or any suspension of trading under section 12(k) of the 1934 Act within the past three years;

“**NI 41-101**” means National Instrument 41-101 *General Prospectus Requirements*;

“**NI 44-101**” means National Instrument 44-101 *Short Form Prospectus Distributions*;

“**NI 44-102**” means National Instrument 44-102 *Shelf Distributions*;

“**public float**” has the meaning given in National Instrument 71-101 *The Multijurisdictional Disclosure System*; and

“**well-known seasoned issuer**” or “**WKSI**” means an issuer that has either of the following:

- (a) outstanding listed equity securities that have a public float of C\$500,000,000;
- (b) at least C\$1,000,000,000 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.

(2) Terms defined in the Act, National Instrument 14-101 *Definitions*, NI 41-101, NI 44-101, NI 44-102, and National Instrument 51-102 *Continuous Disclosure Obligations*, have the same meaning if used in this Rule, unless otherwise defined.

PART 2 EXEMPTION FROM CERTAIN PROSPECTUS REQUIREMENTS

2. An issuer is exempt from the requirement to file and obtain a receipt for a preliminary prospectus in section 53 of the Act in connection with the filing of a base shelf prospectus provided that, at the time the issuer files the base shelf prospectus, it satisfies all of the following:

- (a) the issuer meets the definition of a WKSI as of a date within 60 days preceding the date the issuer files the base shelf prospectus;
- (b) the issuer is and has been a reporting issuer in at least one jurisdiction of Canada for 12 months;
- (c) the issuer is eligible to file a short form prospectus under sections 2.2, 2.3, 2.4 or 2.5 of NI 44-101;
- (d) either
 - (i) the issuer has satisfied the requirements to be qualified to file a short form prospectus under section 2.8 of NI 44-101 or
 - (ii) at least ten business days have passed since the issuer filed the notice under section 2.8 of NI 44-101;
- (e) if the issuer has mining operations,
 - (i) the issuer's most recent audited financial statements disclose
 - (A) gross revenue, derived from mining operations, of at least C\$55,000,000 for the issuer's most recently completed financial year, and
 - (B) gross revenue, derived from mining operations, of at least C\$165,000,000 in the aggregate for the issuer's 3 most recently completed financial years;
 - (ii) the issuer 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*;
- (f) the issuer is not an ineligible issuer;
- (g) the issuer is not an investment fund;
- (h) the issuer has no outstanding asset-backed securities;
- (i) the base shelf prospectus
 - (i) complies with the requirements of NI 41-101, NI 44-101, and NI 44-102 (except as provided in sections 3 and 4 below),
 - (ii) does not qualify the distribution of any asset-backed security,
 - (iii) includes as part of the basic disclosure about the distribution the following statement on the cover page: "filed in reliance on an exemption from the preliminary base shelf prospectus requirement for a well-known seasoned issuer", and
 - (iv) includes cover page disclosure confirming that the issuer qualifies as a WKSI and the date of that determination;
- (j) the issuer pays the fee otherwise required for the filing of a preliminary short form prospectus;
- (k) the issuer delivers to the regulator any personal information forms that would be required under section 4.1 of NI 44-101 if the issuer were filing a preliminary short form prospectus;
- (l) the issuer files, in place of a preliminary base shelf prospectus, a letter that
 - (i) is dated as of the date of the base shelf prospectus described in paragraph (i) above,
 - (ii) is executed on behalf of the issuer by one of its executive officers or directors,
 - (iii) states that the issuer is relying on this Rule,
 - (iv) sets out, as applicable, the public float of outstanding listed equity securities or aggregate amount of non-convertible securities, other than equity securities, that the issuer has distributed under a prospectus within the last three years that satisfy the definition of WKSI and the date of that determination,
 - (v) if the issuer has mining operations, describes the basis on which it satisfies the requirement of paragraph (e) above,

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- (vi) specifies the qualification criteria that the issuer is relying on to satisfy the requirement of paragraph (c) above and certifies that those criteria have been satisfied,
 - (vii) certifies that the issuer has satisfied the requirements of paragraphs (a) to (k) above.
3. An issuer that satisfies the conditions set out in section 2 is exempt from the following requirements in respect of the base shelf prospectus and any supplement to the base shelf prospectus
- (a) the requirement in section 5.4 of NI 44-102 to limit distributions under the base shelf prospectus to the dollar value the issuer reasonably expects to distribute within 25 months after the date of the receipt for the base shelf prospectus,
 - (b) the requirement in item 5 of section 5.5 of NI 44-102 to state the aggregate dollar amount of securities that may be raised under the base shelf prospectus, and
 - (c) the requirement in item 1.4 of Form 44-101F1 to include the number of securities qualified for distribution under the base shelf prospectus.
4. An issuer that satisfies the conditions set out in section 2 is exempt from the following requirements in respect of the base shelf prospectus but not any supplement to the base shelf prospectus
- (a) the requirements in item 5 of Form 44-101F1 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 requirements in item 7 of Form 44-101F1 to describe the securities being distributed, other than as necessary to identify the types of securities, and
 - (c) the requirements in item 8 of Form 44-101F1 to describe any selling securityholders.

PART 3 EFFECTIVE DATE

5. This Rule comes into force on January 4, 2025.