

PILOT WELL-KNOWN SEASONED ISSUER PROGRAM ANNOUNCED

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The Canadian Securities Administrators (“**CSA**”) have announced a pilot program for well-known seasoned issuers (“**WKSIs**”) permitting temporary exemptions from certain base shelf prospectus requirements. Most significantly, WKSIs are not required to file and obtain a receipt for a preliminary base shelf prospectus and are exempt from certain disclosure requirements (further discussed below).

The implementation of the WSKI program is part of the CSA initiative to reduce the regulatory burden on Canadian reporting issuers, and follows a recommendation of the Capital Markets Modernization Taskforce. It is based on the Well-Known Seasoned Issuer category of issuer adopted by the United States Securities and Exchange Commission. The WSKI will make it more efficient for qualifying issuers to raise capital in Canada.

The WSKI program will be implemented through blanket orders referred to in the [CSA Staff Notice 44-306 - Blanket Orders Exempting Well-known Seasoned Issuers from Certain Prospectus Requirements](#). The blanket orders come into effect on January 4, 2022, and remain in effect until July 4, 2023, unless extended or otherwise adopted.

Who qualifies as a WSKI?

A WSKI is an issuer that has either:

- outstanding listed equity securities with a public float of C\$500,000,000 or more; or
- 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.

As well, an issuer must not be an “ineligible issuer” meaning, among other factors, that the issuer must be current with its continuous disclosure filings and not in default of any requirement of Canadian securities laws and, within the past three years, the issuer has not:

- ceased operations or 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;

- been bankrupt;
- been subject to any court penalties or sanctions relating to securities laws; or
- been subject to a cease trade order.

What other criteria must be met?

In addition, in order not to file a preliminary prospectus, among other requirements, a WKSI must:

- meet the above definition of a WKSI as of a date within 60 days before the filing date;
- have been a reporting issuer in at least one Canadian jurisdiction for 12 months before the filing date;
- not be an investment fund; and
- have no outstanding asset-backed securities and not be qualifying any asset-backed security under the base shelf prospectus.

Further, issuers with mining operations must have gross revenue derived from mining operations of at least C\$55,000,000 for the issuer's most recently completed financial year, and gross revenue derived from mining operations of at least C\$165,000,000 in the aggregate for the issuer's three most recently completed financial years.

Other than not filing a preliminary prospectus, what are the other exemptions?

WKSIs will be exempt from certain of the disclosure requirements of a base shelf prospectus, including the requirement to disclose the aggregate dollar amount, and number of, securities qualified under the base shelf prospectus; a plan of distribution; details of the terms of the securities being distributed; and any selling securityholders.

What are the implications?

Eligible WKSIs will be able to access Canada's capital markets on an accelerated basis as they can proceed directly to filing a final base shelf prospectus. This prospectus will still need to be receipted by the issuer's principal regulator. The CSA has indicated that, in the ordinary course, if a final base shelf prospectus is filed before noon, local time, an issuer can expect the receipt to be issued on the same business day, and otherwise can expect the receipt to be issued on the following business day.

Any member of McMillan's Capital Markets & Securities Group would be please to discuss the WKSI program and whether it is right for your organization.

by [Cynthia Sargeant](#) and [Jeffrey P. Gebert](#)

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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