

CSA Notice of Consultation
Draft Regulation to amend Regulation 44-102 respecting Shelf Distributions
Relating to Well-known Seasoned Issuers

September 21, 2023

Part 1 – Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are publishing for a 90-day comment period

- Draft Regulation to amend Regulation 44-102 respecting Shelf Distributions (**Regulation 44-102**),
- Draft Amendments to Policy Statement to Regulation 44-102 respecting Shelf Distributions,
- Draft Amendments to Policy Statement 11-202 respecting Process for Prospectus Reviews in Multiple Jurisdictions (**Policy Statement 11-202**),

(collectively, the **Draft Amendments**).

The public comment period expires on **December 20, 2023**.

The text of the Draft Amendments is published with this Notice and will also be available on websites of CSA jurisdictions, including:

www.lautorite.qc.ca

www.albertasecurities.com

www.bcsc.bc.ca

nssc.novascotia.ca

www.fcnb.ca

www.osc.ca

www.fcaa.gov.sk.ca

mbsecurities.ca

Part 2 – Substance and Purpose

The Draft Amendments would permit issuers that satisfy the qualification criteria and certain conditions to:

- file a final base shelf prospectus and be deemed to receive a receipt for that prospectus without first filing a preliminary base shelf prospectus or undergoing any regulatory review,
- omit certain disclosure from the base shelf prospectus (for example, the aggregate dollar amount of securities that may be raised under the prospectus), and
- benefit from receipt effectiveness for a period of 37 months from the date of its deemed issuance, subject to the requirement for the issuer to reassess its qualification to use the WKSI regime annually.

The Draft Amendments would introduce an expedited shelf prospectus regime for well-known seasoned issuers (**WKSIs**) in Canada. Regulatory costs and other restrictions on the business and investment activities of market participants should be proportionate to the significance of the regulatory objectives sought. The costs involved in the regulatory review of a prospectus filed in connection with a public offering of securities may be significant. In general, these costs are necessary and proportionate to the regulatory objectives of the prospectus requirement and securities legislation, particularly for offerings by newer reporting issuers. However, for mature, well-established and closely followed reporting issuers, the benefits of a full regulatory review of base shelf prospectuses may not justify the costs. The Draft Amendments aim to reduce unnecessary regulatory burden for issuers that are well-known reporting issuers, have a strong market following, complete public disclosure record and sufficient public equity. The Draft Amendments are also intended to foster capital formation by such issuers in the Canadian public markets.

In our experience, the review of base shelf prospectuses filed by WKSIs are unlikely to identify substantive deficiencies that require regulatory intervention. Eligible reporting issuers will have more flexibility in structuring a base shelf prospectus offering, have improved certainty regarding transaction timing and be permitted to forgo certain requirements that do not, in this context, provide meaningful disclosure to investors. The Draft Amendments will also more closely align the timing of Canadian prospectus filings with those applicable in the United States and better facilitate cross-border offerings.

Part 3 – Background

Regulation 44-102 permits qualified issuers to omit “shelf information” from a base shelf prospectus, if not known on the date the base shelf prospectus is filed. Such information is required to be included in a prospectus supplement, which is not subject to review. Shelf information consists of information such as the variable terms of the securities that may be distributed under the base shelf prospectus, the dollar amount, size and other specific terms of each tranche of securities that may be distributed, the variable terms of the plan of distribution, and any other information that is not known and cannot be ascertained at the time of filing the base shelf prospectus.

The CSA received feedback 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 rules to implement a Canadian WKSI regime.

In early 2018, the CSA undertook a research project on potential alternative offering models that included research of the United States’ WKSI regime² and targeted consultations with market participants. During our consultations, we continued to receive recommendations to implement a Canadian WKSI regime.

In response to stakeholder feedback, on December 6, 2021, the CSA published temporary exemptions from certain base shelf prospectus requirements for qualifying WKSIs through local blanket orders that are substantively harmonized across the country (collectively, the **Blanket Orders**).

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 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.

The Blanket Orders allow an issuer that meets the WKSJ qualifications and certain conditions to file a final base shelf prospectus with its principal regulator and obtain a receipt for that prospectus on an accelerated basis without first filing a preliminary base shelf prospectus.

Since the Blanket Orders came into effect³, we have had an opportunity to evaluate the appropriateness of the eligibility criteria and other conditions, consider feedback from various stakeholders and determine how best to implement a Canadian WKSJ regime through rule amendments.

Part 4 – Summary of the Draft Amendments

Annex B summarizes the principal differences between the Blanket Orders and the Draft Amendments.

Under the Draft Amendments, the requirement to file and receive a receipt for a preliminary prospectus would not apply to a distribution under a WKSJ base shelf prospectus. Instead of requiring the payment of fees that would otherwise be due on filing a preliminary short form prospectus, some jurisdictions may adopt specific fees for WKSJ base shelf prospectus filings in parallel with the Draft Amendments.

Under the Draft Amendments, upon the filing of a WKSJ base shelf prospectus or an amendment to a WKSJ base shelf prospectus in compliance with all requirements, a receipt would be deemed to be issued in all jurisdictions in Canada where the prospectus has been filed. A receipt deemed to be issued for a WKSJ base shelf prospectus would generally be effective for a period of 37 months from the date of its deemed issuance, subject to the requirement for the issuer to reassess its qualification to use the WKSJ regime annually.

In addition, the Draft Amendments contain an annual confirmation requirement. Under the Draft Amendments, an issuer that has filed a WKSJ base shelf prospectus would be required to confirm whether it continues to qualify as a WKSJ on an annual basis and evidence that fact by including a statement confirming its WKSJ status in its annual information form or by filing an amendment to its WKSJ base shelf prospectus indicating that it continues to be a WKSJ. If an issuer no longer qualifies as a WKSJ, the issuer would be required to publicly announce that it would not distribute securities under a prospectus supplement to the WKSJ base shelf prospectus and withdraw the WKSJ base shelf prospectus.

Part 5 – Annexes

This Notice contains the following annexes:

- *Annex A – Local Matters*
- *Annex B – Summary of the principal differences between the Blanket Orders and the Draft Amendments.*

³ The Blanket Orders came into effect on January 4, 2022.

Part 6 – Consequential Amendments

We are proposing amendments to Policy Statement 11-202 to clarify that the procedures described in Policy Statement 11-202 are not applicable to WSKI base shelf prospectuses.

Part 7 – Proposed Legislative Amendments

Certain jurisdictions are contemplating amendments to their local securities legislation to provide rule-making authority for the automatic receipt mechanism contemplated by the Draft Amendments.

Part 8 – Local Matters

Annex A is being published in any local jurisdiction that is making related changes to local securities laws, including local notices or other policy instruments in that jurisdiction. It also includes any additional information that is relevant to that jurisdiction only.

Part 9 – Request for Comments

We welcome your comments on the Draft Amendments. In addition to any general comments you may have, we also invite comments on the following specific questions.

1. Do you agree with the WSKI qualification criteria proposed in the definition of “well-known seasoned issuer”? If not, please identify the requirements that could be eliminated or modified to improve the criteria. For example, are the proposed qualifying public equity and qualifying public debt thresholds appropriate?
2. Under the Blanket Orders, an issuer does not qualify to file a WSKI base shelf prospectus unless it has been a reporting issuer in at least one jurisdiction of Canada for at least 12 months immediately preceding the date of the WSKI base shelf prospectus. We are concerned that an issuer that has been a reporting issuer for only 12 months may not have a sufficient continuous disclosure record to justify participation in the WSKI regime. To address this concern, we propose extending the length of this seasoning period to three years. Is a three-year seasoning period appropriate? Should we consider a reduced seasoning period? If so, what is an appropriate seasoning period and why?
3. Do you agree with the eligibility criteria proposed in the definition of “eligible issuer”? If not, please identify the requirements that could be eliminated or modified to improve the criteria. In particular, do you agree with the requirements relating to (i) penalties and sanctions and (ii) outstanding asset-backed securities?
4. The definition of “eligible issuer” excludes issuers that have been the subject of a cease trade order or order similar to a cease trade order in any Canadian jurisdiction within the previous three years. Should this exclusion contain an exception for issuers that were the subject of a cease trade order or similar order in any Canadian jurisdiction within the previous three years that was revoked within 30 days of its issuance, to align with the disclosure requirements for directors and executive officers in Form 41-101F1 *Information Required in a Prospectus*, Form 51-102F2 *Annual Information Form* and Form 51-102F5 *Information Circular*?

5. Are there other eligibility criteria that should disqualify an issuer from the WKSI regime? If so, please explain.
6. Under the Draft Amendments, issuers would be required to deliver personal information forms with the WKSI base shelf prospectus. However, the receipt for the prospectus would be deemed to be issued prior to any review of these personal information forms. Do you agree with requiring issuers to deliver personal information forms with the WKSI base shelf prospectus? If not, please explain.

Please submit your comments in writing on or before December 20, 2023.

Address your submission to all of the CSA as follows:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Office of the Superintendent of Securities, Service NL
Northwest Territories Office of the Superintendent of Securities
Office of the Yukon Superintendent of Securities
Superintendent of Securities, Nunavut

Deliver your comments only to the addresses below. Your comments will be distributed to the other participating CSA jurisdictions.

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Corporate Secretary and Executive Director, Legal Affairs
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Fax: 514 864-8381
E-mail: consultation-en-cours@lautorite.qc.ca

The Secretary
Ontario Securities Commission
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22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416 593-2318
E-mail: comments@osc.gov.on.ca

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of the written comments received during the comment period. All comments received will be posted on the websites of each of the Alberta Securities Commission at www.albertasecurities.com, the Autorité des marchés financiers at www.lautorite.qc.ca and the Ontario Securities Commission at www.osc.ca. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Part 10 - Questions

Please refer your questions to any of the following:

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ANNEX A
LOCAL MATTERS
PROPOSED LEGISLATIVE AMENDMENTS – QUÉBEC

The Autorité des marchés financiers (the **AMF**) is seeking legislative amendments that would provide rule-making authority to adopt the proposed WKSI regime and allow the deemed issuance of a receipt. Sections 107 and 108 of Bill 30, *An Act to amend various provisions mainly with respect to the financial sector*, tabled by Québec’s Minister of Finance on June 7, 2023, introduce statutory amendments that would allow the AMF to determine, by regulation, the cases in and conditions on which a receipt is deemed issued by the AMF for the purposes of Chapter I of Title II of the Québec *Securities Act*, CQLR c. V-1.1. These proposed amendments are subject to change as they go through the legislative process and will only become law if enacted by the National Assembly of Québec.

ANNEX B
SUMMARY OF THE PRINCIPAL DIFFERENCES BETWEEN THE BLANKET ORDERS AND THE DRAFT AMENDMENTS

Blanket Orders	Draft Amendments	Rationale
Definition of WKSJ – Calculation of Public Equity		
<p>Under the Blanket Orders, an issuer’s “public float” is defined as the aggregate market value of the issuer’s securities held by persons that are not affiliated parties of the issuer and is calculated by using the price at which the securities were last sold in the principal market for the securities as of a date within 60 days preceding the date of filing the WKSJ base shelf prospectus.</p>	<p>Under the Draft Amendments, an issuer’s “qualifying public equity” is defined as the aggregate market value of the issuer’s listed equity securities, excluding securities held by affiliates or reporting insiders of the issuer, and is calculated using the simple average of the daily closing price of the issuer’s equity securities on a short form eligible exchange for each of the trading days on which there was a daily closing price for the 20 trading days preceding the date of calculation (which must be within 60 days of the date of filing the WKSJ base shelf prospectus).</p>	<p>The definition was refined to exclude securities held by “reporting insiders”. We are of the view that excluding securities held by reporting insiders from the calculation is appropriate and provides a better approximation of an issuer’s qualifying public equity. We selected reporting insiders because these individuals will have been previously identified and their holdings are publicly available.</p> <p>The Draft Amendments include a requirement to calculate the 20-day simple average closing price of the issuer’s securities, for consistency with other rules that refer to market price.</p> <p>Under the Draft Amendments, an issuer should use the simple average closing price of its securities available on a “short form eligible exchange”. A “short form eligible exchange” is defined in <i>Regulation 44-101 respecting Short Form Prospectus Distributions (Regulation 44-101)</i> as the Toronto Stock Exchange, the TSX Venture Exchange, the NEO Exchange (now Cboe Canada) and the Canadian Securities Exchange. We believe the market price on a “short form</p>

Blanket Orders	Draft Amendments	Rationale
		eligible exchange” best reflects how the market price of issuers that are listed on more than one exchange is consolidated and publicly made available.
Definition of WSKI – Reporting Issuer Status		
Under the Blanket Orders, an issuer that files a WSKI base shelf prospectus must have been a reporting issuer in at least one jurisdiction in Canada for the previous 12 months.	Under the Draft Amendments, an issuer that files a WSKI base shelf prospectus must have been a reporting issuer in at least one jurisdiction in Canada for the previous three years.	The Draft Amendments increase the seasoning period to address the concern that an issuer that has been a reporting issuer for only 12 months may not have a sufficient continuous disclosure record, market following or history of participation in the capital markets to justify participation in the WSKI regime.
Definition of WSKI – Mining Operations		
Under the Blanket Orders, if an issuer that files a WSKI base shelf prospectus has mining operations, its most recent audited financial statements must disclose prescribed revenue from mining operations, and the issuer must file any technical reports that would be required to be filed with a preliminary short form prospectus under <i>Regulation 43-101 respecting Standards of Disclosure for Mineral Projects (Regulation 43-101)</i> .	Under the Draft Amendments, if an issuer that files a WSKI base shelf prospectus has a mineral project, its most recent audited financial statements must disclose prescribed revenue from mining operations, and the issuer must file any technical reports that would be required to be filed with a preliminary short form prospectus under Regulation 43-101.	The requirement is generally unchanged, except that the introductory language refers to “mineral project” rather than “mining operations”, to align with Regulation 43-101.
Eligibility Requirement - Periodic and Timely Disclosure		
Under the Blanket Orders, an issuer is ineligible to file a WSKI base shelf prospectus if it has not filed all periodic and timely disclosure documents that it is required to have filed with the	Under the Draft Amendments, an issuer is not eligible to file a WSKI base shelf prospectus if it has not filed all periodic and timely disclosure required under applicable securities legislation,	The Draft Amendments expand the requirement for an issuer to have filed all periodic and timely disclosure. The change aligns with the basic qualification

Blanket Orders	Draft Amendments	Rationale
securities regulator or securities regulatory authority in each jurisdiction in which it is a reporting issuer.	an order issued by the regulator or securities regulatory authority or an undertaking to the regulator or securities regulatory authority.	criteria in section 2.2 of Regulation 44-101.
Eligibility Requirement - Operating History		
Under the Blanket Orders, an issuer is ineligible to file a WKSI base shelf prospectus if, during the three years immediately preceding the date of the WKSI base shelf prospectus, the issuer or any of its predecessors was either an issuer whose operations have ceased or an issuer whose principal asset is cash, cash equivalents or its exchange listing.	Under the Draft Amendments, an issuer is not eligible to file a WKSI base shelf prospectus if, during the three years immediately preceding the date of the WKSI base shelf prospectus, the issuer or any person with whom the issuer completed a restructuring transaction was a person whose operations have ceased or a person whose principal asset is cash, cash equivalents or its exchange listing.	The requirement is generally unchanged except that the Draft Amendments replace the undefined term “predecessor” with the concept of a person with whom the issuer completed a “restructuring transaction”, which is defined in <i>Regulation 51-102 respecting Continuous Disclosure Obligations</i> . In addition, the Draft Amendments replace, in the French texts, “activités” with “activités d’exploitation” and “son principal actif est constitué d’espèces, de quasi-espèces ou de son inscription à la cote” with “son actif principal consiste en de la trésorerie, en des équivalents de trésorerie ou en l’inscription de ses titres à la cote” in accordance with updates made to the terminology in similar wording of <i>Regulation 45-106 respecting Prospectus Exemptions</i> .
Eligibility Requirement - Penalties and Sanctions		
Under the Blanket Orders, an issuer is ineligible to file a WKSI base shelf prospectus if, during the three years immediately preceding the date of the WKSI base shelf prospectus, the issuer or any of its subsidiaries was the subject of any penalties or	Under the Draft Amendments, an issuer is not eligible to file a WKSI base shelf prospectus if, during the three years immediately preceding the date of the WKSI base shelf prospectus, the issuer or any of its subsidiaries has been the	The requirement has been changed to describe with greater specificity the types of penalties and sanctions that would preclude an issuer from filing a WKSI base shelf prospectus.

Blanket Orders	Draft Amendments	Rationale
sanctions, including restrictions on the use of any type of prospectus, or exemption, imposed by a court relating to securities legislation or by a securities regulatory authority.	subject of an order, judgment, decree, sanction, or administrative penalty imposed by, or has entered into a settlement agreement with or approved by, a court in Canada or a foreign jurisdiction or a securities regulatory authority or similar authority in a foreign jurisdiction related to a claim based in whole or in part on fraud, theft, deceit, misrepresentation, conspiracy, insider trading, unregistered activity or illegal distribution.	
Discretionary Exemptive Relief		
Exemptive relief applications are not accepted under the Blanket Orders.	Under the Draft Amendments, exemptive relief applications will be considered.	This change would allow a more fact-specific assessment of WKSI eligibility.
Filing Requirements for a WKSI Base Shelf Prospectus		
<p>Under the Blanket Orders, an issuer filing a WKSI base shelf prospectus must file a letter in place of the preliminary prospectus that states: (i) its reliance on the Blanket Orders; (ii) its public float (or the aggregate amount of non-convertible, non-equity securities distributed by prospectus in the past three years) and the date of that determination; (iii) the provision under which it is short-form eligible; and (iv) if it has mining operations, the basis on which it satisfies the applicable requirements.</p> <p>The letter must also certify that the issuer has satisfied all WKSI</p>	<p>Under the Draft Amendments, an issuer filing a WKSI base shelf prospectus must file a certificate that meets the requirements of subparagraph 4.1(1)(a)(ii) of Regulation 44-101.</p> <p>In addition, the WKSI base shelf prospectus must disclose: (i) the issuer's reliance on the WKSI rules; and (ii) its qualifying public equity (or qualifying public debt) that establish that the issuer is a WKSI and the corresponding date.</p>	The Draft Amendments contemplate a more streamlined filing process.

Blanket Orders	Draft Amendments	Rationale
<p>qualification criteria and filing requirements.</p> <p>The letter must be signed by one executive officer or director.</p>		
Receipt of a WKSJ Base Shelf Prospectus		
<p>The Blanket Orders contemplate an accelerated receipt mechanism for WKSJ base shelf prospectuses.</p>	<p>Under the Draft Amendments, no receipt is issued for a WKSJ base shelf prospectus. Instead, a receipt is deemed to be issued.</p>	<p>The automatic receipt mechanism was introduced to provide increased certainty regarding transaction timing for issuers filing WKSJ base shelf prospectuses.</p>
Amendments		
<p>The Blanket Orders do not address amendments to WKSJ base shelf prospectuses.</p>	<p>The Draft Amendments set out the requirements for an amendment to a WKSJ base shelf prospectus and contemplate a deemed receipt for WKSJ base shelf prospectus amendments.</p>	<p>This change was introduced to provide a more comprehensive and flexible regime.</p>
Annual Confirmation		
<p>Under the Blanket Orders, there is no requirement for an issuer that has filed a WKSJ base shelf prospectus to conduct an annual confirmation.</p>	<p>Under the Draft Amendments, an issuer that has filed a WKSJ base shelf prospectus must confirm its eligibility annually, by confirming that: (i) it continues to be a WKSJ; and (ii) it remains eligible. The confirmation must be performed within 60 days before the date on which the issuer's audited annual financial statements are required to be filed.</p> <p>The issuer must then signal to the market that it remains an eligible WKSJ in its annual information form or in an amendment to its WKSJ base shelf prospectus.</p>	<p>This change was made to better align the Canadian WKSJ regime with the WKSJ regime in the United States, which includes an annual reassessment requirement.</p>

Blanket Orders	Draft Amendments	Rationale
	<p>An issuer that is no longer an eligible WKSI must publicly announce that it will not distribute securities under a prospectus supplement to the WKSI base shelf prospectus and withdraw the WKSI base shelf prospectus.</p>	
Period of Receipt Effectiveness		
<p>The Blanket Orders do not contain specific provisions relating to receipt effectiveness.</p>	<p>Under the Draft Amendments, the deemed receipt for a WKSI base shelf prospectus will be effective until the earlier of: (i) 37 months from the date of its deemed issuance; (ii) the annual filing date unless the issuer continues to be an eligible WKSI and has complied with the annual confirmation provisions; and (iii) the relevant lapse date prescribed in Regulation 44-102 (which, in turn, depends on how the issuer qualifies to be short form eligible).</p>	<p>The Draft Amendments extend the period of receipt effectiveness to provide additional burden reduction. These changes also build in a lapse date if the issuer does not complete the annual confirmation or is no longer an eligible WKSI on any day in the 60 days preceding its annual filing date.</p>