

WKSI pilot program comes to Canada, plus issuers and registrants face extended OSC review timelines

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Canadian securities regulators announced two significant developments impacting Canadian capital markets participants this week. First, the Canadian Securities Administrators (the CSA) announced a pilot program for the adoption of a “well-known seasoned issuer” (WKSI) regime intended to streamline the process for large, established reporting issuers to put a base shelf prospectus in place. While this is a positive development, we highlight some important differences between the Canadian WKSI regime and the U.S. WKSI regime on which the Canadian framework is based. Separately, the Ontario Securities Commission (the OSC) announced that due to continuing elevated capital markets activity levels, it has temporarily extended the timelines applicable to its review of certain offering documents, applications and registration materials.

Canadian WKSI regime

On December 6, 2021, the CSA published temporary exemptions from certain base shelf prospectus requirements for qualifying WKSI. The exemptions allow a non-investment fund issuer that meets certain qualifications and conditions to file a final base shelf prospectus and obtain a receipt for that prospectus on an accelerated basis without first filing a preliminary base shelf prospectus. An issuer that meets the WKSI qualifications and conditions may also omit certain information from its base shelf prospectus, including the number and aggregate dollar amount of securities qualified under the base shelf prospectus, the plan of distribution and a description of the securities being qualified for distribution other than as necessary to identify the types of securities qualified. The temporary exemptions will come into effect on January 4, 2022, and expire on July 4, 2023, unless extended.

The temporary exemptions are a pilot project as part of the CSA’s ongoing initiatives to reduce the regulatory burden on capital markets participants, including changes on the recommendation of the Ontario Capital Markets Modernization Taskforce. The orders reflect the CSA’s experience that base shelf prospectuses filed by large, established reporting issuers with a strong market following and up-to-date disclosure records are less likely to result in a significant number of substantive deficiency comments.

To qualify as a WKSI, an issuer must, within 60 days preceding the date the issuer files its base shelf prospectus, either

- have outstanding listed equity securities that have a public float of \$500 million, or
- have distributed at least \$1-billion aggregate amount of non-convertible securities, other than equity securities, under a prospectus in primary offerings for cash in the last three

years.

These eligibility requirements for WKSI status under the pilot program in Canada are somewhat different from those that determine WKSI status in the United States, where a US\$700-million public float requirement applies. In addition, to rely on the Canadian pilot program exemptions, a WKSI must, among other requirements, have been a reporting issuer in at least one jurisdiction of Canada for 12 months and have filed all periodic and timely disclosure documents that it is required to have filed in each jurisdiction in which it is a reporting issuer.

The creation of a Canadian WKSI regime on a trial basis is a welcome advancement toward streamlining the prospectus filing process for large, established reporting issuers. The U.S. WKSI regime, which serves as the inspiration for the Canadian exemptions, has been in use in the United States since 2005. However, a key difference between the two regimes is that a registration statement filed under the U.S. WKSI rules becomes automatically effective on filing. This provides certainty regarding execution of an offering and allows an equity offering to be launched concurrently with the filing of a WKSI shelf registration statement, which would not be possible under the Canadian rules. Under the Canadian WKSI regime, the issuer's principal regulator is still required to issue a receipt for the final base shelf prospectus. The CSA has indicated that, in the ordinary course, if a final base shelf prospectus is filed before noon, 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. However, this does not provide Canadian issuers and underwriters the same degree of certainty that U.S. WKSIs have that they can proceed to launch and/or price an offering on the same day as filing of their base shelf prospectus.

The final prospectus receipt requirement introduces the risk that the principal regulator may decide to deviate from the "ordinary course" and conduct a review. Even absent a review, the issuance of the final receipt could be subject to processing delays or delays for other administrative reasons. Hopefully, positive experience with the pilot program will encourage the CSA to consider modifying the approach taken for a final version of the Canadian WKSI regime, under which a final receipt might be deemed to be automatically issued upon filing, so that Canadian WKSIs would have the benefit of the same timing and execution certainty as their U.S. counterparts.

For further details, please see [CSA's Staff Notice](#) and the related local [blanket orders](#) [PDF] implemented by the securities regulators in each of the Canadian provinces and territories.

OSC service standards extended

On December 7, 2021, the OSC announced temporary changes to its service standards in response to the sustained high level of capital markets activity in Canada. Issuers, underwriters and other capital markets participants should take note of these changes in establishing their timelines for offerings and other capital markets activities through the first half of 2022. The changes extend the timelines applicable to the OSC's review of certain offering documents, applications and registration materials for which the OSC is principal regulator. In addition, for certain filings, including management information circulars for conflict of interest transactions and take-over bid circulars, the OSC has reduced its target percentage of filings that will meet its stated service commitment. All preliminary prospectuses and exemptive relief applications filed after December 7, 2021, will be processed under the temporary service commitments, and the changes will remain in effect until June 30, 2022.

The OSC has advised that the temporary changes do not impact urgent and time-sensitive prospectus pre-filings, such as those involving bought deals and overnight marketed

offerings. The OSC also reiterated that it will continue to triage all filings to prioritize the most urgent and time-sensitive prospectus filings.

The OSC further notified market participants that while the temporary service standard changes are in place, OSC staff will not review pre-files for draft preliminary base shelf prospectuses or non-offering prospectuses under its confidential pre-file program.

Certain of the temporary changes to the service commitments are summarized below. For more details, please see the [OSC's Service Commitment](#).

Filing type	Description	Previous service commitment	New temporary service commitment
Prospectus	Issuing first comment letters on long form prospectus (such as an IPO prospectus)	Within 10 working days of date of receipt for preliminary prospectus (target is for 80% or more of all filings received)	Within 15 working days of receipt for preliminary prospectus (target is for 80% or more of all filings received)
	Issuing first comment letters on short form prospectus or shelf prospectus	Within 3 working days of date of receipt for preliminary prospectus (target is for 80% or more of all filings received)	Except for bought deals, within 5 working days of date of receipt for preliminary prospectus (target is for 80% or more of all filings received) For bought deals, service commitment remains 3 working days
Exemptive Relief Application	Issuing first comment letter	Within 10 working days of receiving complete application (target is for 80% or more of all filings received)	Within 15 working days of receiving complete application (target is for 80% or more of all filings received)
	Providing OSC's decision	Within 40 working days of receiving complete application for routine exemptive relief (target is for 80% or more of all routine applications received)	Within 45 working days of receiving complete application (target is for 80% or more of all routine applications received)
Registration Application for New Business	OSC's initial comments to application	Within 30 working days of receiving complete application (target is for 80% or more of all filings received)	Within 45 working days of receiving complete application (target is for 80% or more of all filings received)
	Providing OSC's decision	Within 90 working days of receiving complete application for routine applications (target is for 80% or more of all routine filings received)	Within 120 working days of receiving complete application for routine applications (target is for 80% or more of all routine filings received)