

Ontario Securities Commission

Ontario Instrument 33-507

Exemption from Underwriting Conflicts Disclosure Requirements (Interim Class Order)

The Ontario Securities Commission, considering that to do so would not be prejudicial to the public interest, orders that effective February 18, 2021, Ontario Instrument 33-507 entitled “Exemption from Underwriting Conflicts Disclosure Requirements (Interim Class Order)” is made.

February 18, 2021

“Tim Moseley”

Tim Moseley
Vice-Chair

“Frances Kordyback”

Frances Kordyback
Commissioner

Authority under which the order is made:

Act and section: *Securities Act*, subsection 143.11(2)

Ontario Securities Commission

Ontario Instrument 33-507

Exemption from Underwriting Conflicts Disclosure Requirements (Interim Class Order) (the Order)

Interpretation

1. In this Order:

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

“**eligible foreign security**” has the meaning ascribed to that term in section 3A.1 of NI 33-105;

“**NI 31-103**” means National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

“**NI 33-105**” means National Instrument 33-105 *Underwriting Conflicts*;

“**permitted client**” has the meaning ascribed to that term in section 1.1[*definitions*] of NI 31-103; and

“**underwriting conflicts of interest disclosure requirement**” means the requirement in subsection 2.1(1) of NI 33-105 that investors be provided with certain conflicts of interest disclosure in circumstances in which there is a direct or indirect relationship between the issuer or selling securityholder and the underwriter that might give rise to a perception that they are not independent of each other in connection with a distribution.

2. Terms defined in the Act or National Instrument 14-101 *Definitions* have the same meaning if used in this Order, unless otherwise defined.

Background

3. Staff of the Commission have recently been advised by a number of institutional investors in Ontario that the underwriting conflicts disclosure requirement in NI 33-105 creates barriers that prevent institutional investors in Ontario from participating in global offerings on a timely basis.
4. Staff understand that certain of these institutional investors have also provided similar submissions to 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 provide an exemption from the disclosure

of conflicts of interest in connection with private placements to institutional investors.¹

Class Orders under the Securities Act

5. Under subsection 143.11(2) of the Act, if the Commission considers that it would not be prejudicial to the public interest to do so, the Commission may, on application by an interested person or company or on its own initiative, make an order exempting a class of persons or companies, trades, intended trades, securities or derivatives from any requirement of Ontario securities law on such terms or conditions as may be set out in the order, effective for a period of no longer than 18 months after the day on which it comes into force unless extended pursuant to paragraph (b) of subsection 143.11(3) of the Act.
6. Having considered the interests of institutional investors in being able to participate in global offerings on a timely basis and the Taskforce recommendation, the Commission is satisfied that it would not be prejudicial to the public interest to provide, on an interim basis, an exemption from the underwriting conflicts disclosure requirements in subsection 2.1(1) of NI 33-105 subject to the conditions of this Order.

Exemption from the Underwriting Conflicts Disclosure Requirements

7. Consequently, this Order provides for the temporary exemption listed below.
8. A person or company is exempt from the underwriting conflicts of interest disclosure requirement in subsection 2.1(1) of NI 33-105 in connection with a distribution provided that:
 - (a) the distribution is made under an exemption from the prospectus requirement;
 - (b) the distribution is of a security that is an eligible foreign security; and
 - (c) each purchaser in Ontario that purchases a security pursuant to the distribution through such person or company is a permitted client.

Effective date and term

9. This decision comes into effect on this 18th day of February, 2021 and will cease to be effective on the earlier of the following:
 - (a) the date that is 18 months after the date of this Order unless extended by the Commission, and
 - (b) the effective date of an amendment to NI 33-105 that addresses substantially the same subject matter as this Order.

¹ See Recommendation No. 33 in the Taskforce Final Report, available at <https://www.ontario.ca/document/capital-markets-modernization-taskforce-final-report-january-2021>