

Ontario Securities Commission

Ontario Instrument 44-501

Exemption from Certain Prospectus Requirements for Well-known Seasoned Issuers (Interim Class Order)

The Ontario Securities Commission, considering that to do so would not be prejudicial to the public interest, orders that effective January 4, 2022, Ontario Instrument 44-501 entitled “Exemption from Certain Prospectus Requirements for Canadian Well-known Seasoned Issuers (Interim Class Order)” is made.

December 6, 2021

Grant Vingoe
Chair
Ontario Securities Commission

Wendy Berman
Vice-Chair
Ontario Securities Commission

Authority under which the order is made:

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

Ontario Securities Commission

Ontario Instrument 44-501

Exemption from Certain Prospectus Requirements for Well-known Seasoned Issuers (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;

“**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*;

“**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 Order, unless otherwise defined.

Background

3. Staff of the Commission have received submissions expressing concern that certain prospectus requirements in the base shelf prospectus context create unnecessary regulatory burden for large, established reporting issuers that have strong disclosure records.
4. Similar comments were also made 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.¹
5. In the United States, a regime with accommodations for similar well-known seasoned issuers is codified in the *General Rules and Regulations* under the 1933 Act and has been in regular use for several years.
6. Relief from section 53 of the Act will permit issuers who satisfy the conditions of the Order to file a final short form base shelf prospectus as the first public step in an offering. Issuers who qualify will also be exempt from certain disclosure requirements relating to the final short form base shelf prospectus.

¹ See Recommendation No. 17 in the Taskforce Final Report, available at <https://www.ontario.ca/document/capital-markets-modernization-taskforce-final-report-january-2021>

Class Orders under the Securities Act

7. 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.
8. The Commission is satisfied that it would not be prejudicial to the public interest to provide, on an interim basis, the exemptions set out in paragraphs 10, 11, and 12 below, subject to the conditions of this Order.

Exemption from Certain Prospectus Requirements

9. Consequently, this Order provides for the temporary exemptions listed below.
10. 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 paragraphs 11 and 12 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 Order,

- (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 WCSI 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,
- (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.

11. An issuer that satisfies the conditions set out in paragraph 10 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.

12. An issuer that satisfies the conditions set out in paragraph 10 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.

Effective date and term

13. This decision comes into effect on January 4, 2022 and will cease to be effective on the earlier of the following:

- (a) July 4, 2023, unless extended by the Commission;
- (b) the effective date of an amendment to NI 44-102 that addresses substantially the same subject matter as this Order.