

**IN THE MATTER OF
THE *SECURITIES ACT*, R.S.P.E.I. 1988, Cap. S-3.1**

AND

**IN THE MATTER OF
EXEMPTION FROM CERTAIN PROSPECTUS REQUIREMENTS
FOR CANADIAN WELL-KNOWN SEASONED ISSUERS**

BLANKET ORDER 44-501

WHEREAS:

1. The Superintendent of Securities has the authority to make exemption orders under provisions of the *Securities Act* (the “Act”), including orders of general application.
2. Market participants have advised that certain base shelf prospectus requirements create regulatory burden for large, established reporting issuers that is unnecessary given their strong disclosure records. Specific identified requirements include:
 - (a) subsection 94(a) of the Act, which requires an issuer proposing to distribute securities to file and receive a receipt for a preliminary prospectus (the preliminary prospectus requirement);
 - (b) section 5.4 of National Instrument 44-102 *Shelf Distributions* (NI 44-102), which requires an issuer to limit distributions under a 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; item 5 of section 5.5 of NI 44-102, which requires an issuer to state in the base shelf prospectus the aggregate dollar amount of securities that may be raised under the base shelf prospectus; and item 1.4 of Form 44-101F1 *Short Form Prospectus* (Form 44-101F1), which requires an issuer to disclose in a short form prospectus the number of securities qualified for distribution under the short form prospectus (collectively, the base shelf size disclosure requirements);
 - (c) item 5 of Form 44-101F1, which requires an issuer to provide disclosure in a base shelf prospectus of an issuer’s plan of distribution; item 7 of Form 44-101F1, which requires an issuer to provide a description in a base shelf prospectus of the securities to be distributed under the prospectus; and item 8 of Form 44-101F1, which requires an issuer to provide information in a base shelf prospectus about each selling securityholder under the prospectus (collectively, the additional base shelf disclosure requirements).

3. Having considered that the regulatory burden imposed by the preliminary prospectus requirement, the base shelf size disclosure requirements and the additional base shelf disclosure requirements is unjustified for large, established reporting issuers with strong disclosure records, the Superintendent is satisfied that, subject to the conditions set out in this Order, it is appropriate to provide exemptions from these requirements, pursuant to section 16 of the Act.
4. The Superintendent is of the opinion that to order relief in these circumstances would not be prejudicial to the public interest.
5. The Superintendent expects that each securities regulatory authority will issue orders providing exemptions or variations similar to those provided in this Order.

IT IS ORDERED THAT:

Definitions

1. Terms defined in the Act, National Instrument 14-101 *Definitions*, National Instrument 41-101 *General Prospectus Requirements* (NI 41-101), National Instrument 44-101 *Short Form Prospectus Distributions* (NI 44-101), National Instrument 44-102 *Shelf Distributions* (NI 44-102), National Instrument 51-102 (NI 51-102), and National Instrument 71-101 *The Multijurisdictional Disclosure System* (NI 71-101) have the same meaning in this Order.
2. In this Order:

“ineligible issuer” means an issuer that satisfies one or more of the following:
 - (a) the issuer has not filed with the securities regulatory authority or regulator 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;
 - (ii) an issuer whose principal asset is cash, cash equivalents, or its exchange listing, including 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;

“public float” has the meaning given to it in NI 71-101;

“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 \$500,000,000;
- (b) at least \$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.

Exemption from Preliminary Prospectus Requirement

- 3. An issuer is exempt from the preliminary prospectus requirement 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 conditions:
 - (a) the issuer meets the definition of a WKSI as of a date within 60 days preceding the date the issuer files its 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 section 2.2, 2.3, 2.4 or 2.5 of NI 44-101;
 - (d) one of the following applies:
 - (i) the issuer has satisfied the requirements to be qualified to file a short form prospectus under section 2.8 of NI 44-101,
 - (ii) at least ten business days have passed since the issuer filed the notice referred to under section 2.8 of NI 44-101;
 - (e) if the issuer has mining operations,

- (i) the issuer's audited financial statements disclose:
 - A. gross revenue, derived from mining operations, of at least \$55,000,000 for the issuer's most recently completed financial year, and
 - B. gross revenue, derived from mining operations, of at least \$165,000,000 in aggregate over the issuer's three 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 those requirements from which the issuer is exempt under sections 4 and 5 of this Order);
 - (ii) does not qualify the distribution of an 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 base shelf 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),

- (ii) is signed 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 cause the issuer to satisfy the definition of WKSI 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),
- (vi) specifies the qualification criteria that the issuer is relying on to satisfy the requirement of paragraph (c) above and certifies that criteria have been satisfied,
- (vii) certifies that the issuer has satisfied the requirements of paragraphs (a) to (l).

Exemption from Base Shelf Size Disclosure Requirements

4. An issuer is exempt from the base shelf size disclosure requirements 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 conditions in section 3 of this Order.

Exemption to Omit Certain Disclosure

5. An issuer is exempt from the additional base shelf disclosure requirements in connection with the filing of a base shelf prospectus provided that
 - (a) at the time the issuer files the base shelf prospectus, it satisfies all of the conditions in section 3 of this Order;
 - (b) the base shelf prospectus
 - (i) indicates that the plan of distribution will be described in the supplement for any distribution of securities, and
 - (ii) identifies the types of securities to be distributed under the base shelf prospectus.
6. For greater certainty, an issuer that relies on the exemption in section 5 must comply with the additional base shelf disclosure requirements in each shelf prospectus supplement to the base shelf prospectus.

Effective date

7. This Order comes into effect on January 4, 2022.

DATED at Charlottetown, Prince Edward Island, this 6th day of December, 2021.

STEVE DOWLING

Steve Dowling,
Superintendent of Securities