

BLANKET ORDER 121
Amendment #1

**IN THE MATTER OF THE SECURITIES ACT, R.S.N.L. 1990, CHAPTER S-1 3 AS AMENDED
(the Act)-**

AND

**IN THE MATTER OF EXEMPTION FROM CERTAIN PROSPECTUS REQUIREMENTS FOR
WELL-KNOWN SEASONED ISSUERS (INTERIM ORDER)**

BLANKET ORDER
(under section 75 of the Securities Act)

WHEREAS:

1. On December 6, 2021, the Canadian Securities Administrators (CSA) will publish temporary exemptions from certain base shelf prospectus requirements for qualifying well-known seasoned issuers (WKSIs). The CSA has implemented the relief through local blanket orders that are substantively harmonized across the country.
2. The Blanket Orders are intended to reduce regulatory burden for issuers that are well-known reporting issuers, have a strong market following, complete public disclosure record and sufficient public float by permitting issuers that satisfy the conditions of the Blanket Orders to file a final base shelf prospectus as the first step in a shelf offering. CSA's notice contains CSA staff's views about the exemptions and a list of local blanket orders.

DEFINITIONS:

3. Terms defined in the **Securities Act (The Act)**, National Instrument 14-101 Definitions, NI 41-101 General Prospectus Requirements; NI 44-101 Short Form Prospectus Distributions; NI 44-102, and National Instrument 51-102 Continuous Disclosure Obligations, have the same meaning if used in this Order, unless otherwise defined, have the same meaning in this Order.

4. In this order:

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 Securities Exchange Act within the past three years;

Public float has the meaning given in National Instrument 71-101 The Multijurisdictional Disclosure System;

Well-known seasoned issuer (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.

BACKGROUND:

5. The CSA received feedback to its Consultation Paper 51-404 Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers 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 regime to implement a Canadian WKSI regime. In our experience, base shelf prospectuses filed by these types of issuers are less likely to result in a significant number of substantive deficiency comments.

6. As a result, in early 2018 the CSA undertook a research project that included research of the United States WKSI regime and targeted consultations with market participants. The CSA is considering whether future rule amendments to implement a Canadian WKSI regime would be appropriate.
7. Relief from section 54 of the Securities 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.
8. The Superintendent 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.

IT IS ORDERED THAT:

9. This Order provides for the temporary exemptions listed below.
10. The Superintendent, considering that to do so would not be prejudicial to the public interest, orders under section 75 of the **Act** that an issuer is exempt from the 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:
 - 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
 1. gross revenue, derived from mining operations, of at least C\$55,000,000 for the issuer's most recently completed financial year, and

2. 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 3 and 4 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 WKSJ 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 WKSJ 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 (l) above.

11. The Superintendent, considering that to do so would not be prejudicial to the public interest, orders under section 75 of the **Act** that 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

- m. 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 final short form base shelf prospectus,
- n. 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
- o. 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. The Superintendent, considering that to do so would not be prejudicial to the public interest, orders under section 75 of the **Act** that 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

- p. 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,
- q. 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
- r. the requirements in item 8 of Form 44-101F1 to describe any selling securityholders.

EFFECTIVE DATE:

This order comes into effect on January 4, 2022 and will cease to be effective on the effective date of an amendment to NI 44-102 that addresses substantially the same subject matter as this Order.

Dated at St. John's, Newfoundland and Labrador, this 30th day of June 2023.

D. White

Dave White
Deputy Superintendent of Securities