



IN THE MATTER OF THE SECURITIES ACT, SNB 2004, c. S-5.5 (the “Act”)

AND

IN THE MATTER OF

EXEMPTION FROM CERTAIN PROSPECTUS REQUIREMENTS FOR CANADIAN WELL-KNOWN SEASONED ISSUERS

Blanket Order 44-503

Sections 71, 80(1) and 208

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 *Continuous Disclosure Obligations* (“**NI 51-102**”), and National Instrument 71-101 *The Multijurisdictional Disclosure System* (“**NI 71-101**”) have the same meaning in this Instrument.
2. In this Instrument:

“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.

Background

- 3. Market participants have informed the Financial and Consumer Services Commission (the “**Commission**”) staff 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 71(1) 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 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**”).
- 4. 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 Commission is satisfied that, subject to the conditions set out in this Instrument, it is appropriate to provide exemptions from these requirements.

5. The Commission has delegated to the Executive Director of Securities the Commission's power under section 80(1) of the *Act* to order that any trade, intended trade, security or person or class of trades, intended trades, securities or persons is not subject to section 71 of the *Act*.
6. The Commission has delegated to the Executive Director of Securities the Commission's power under section 208 of the *Act* to exempt, in whole or in part, a person or class of persons from any requirement of any National Instrument, Multilateral Instrument, or Local Instrument, subject to such terms and conditions considered appropriate.

IT IS ORDERED pursuant to section 80(1) of the *Act*:

7. The Executive Director, considering that to do so would not be prejudicial to the public interest, orders under section 80(1) of the *Act* that 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 WCSI 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 Instrument);
 - (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 Instrument,
 - (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 (k).

IT IS ORDERED pursuant to section 208 of the *Act*:

8. The Executive Director, considering that to do so would not be prejudicial to the public interest, orders under section 208 of the *Act* that 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 7 of this Instrument.

IT IS ORDERED pursuant to section 208 of the *Act*:

9. The Executive Director, considering that to do so would not be prejudicial to the public interest, orders under section 208 of the *Act* that 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 7 of this Instrument;
 - (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.
10. For greater certainty, an issuer that relies on the exemption in section 7 must comply with the additional base shelf disclosure requirements in each shelf prospectus supplement to the base shelf prospectus.

Effective date

11. This order comes into effect on January 4, 2022.

DATED at Saint John, New Brunswick this 6th day of December, 2021.

“original signed by”

To-Linh Huynh
Executive Director, Securities