

An Attempt to Kickstart the Market:

OSC Introduces Self-Certified Prospectus Exemption for Interim Period

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On October 25, 2022, the Ontario Securities Commission (“OSC”) adopted a [new self-certified investor prospectus exemption](#) under [Ontario Instrument 45-507](#) (the “Exemption”), in effect for the next 18 months (expiring April 25, 2024). The Exemption allows issuers with head offices in Ontario to distribute securities without a prospectus to investors in Ontario who confirm that they have certain prescribed professional designations, levels of education, or industry experience (“Self-Certified Investors”).

Pursuant to the Exemption, Self-Certified Investors can participate in a prospectus-exempt distribution despite not meeting the financial thresholds or other criteria to qualify as an accredited investor. The Exemption aligns Ontario with Alberta and Saskatchewan, where the securities regulatory authorities adopted a similar prospectus exemption last year, which expires on April 1, 2024. The Exemption is expected to widen the pool of investors able to participate in prospectus-exempt securities offerings by Ontario issuers, signalling the OSC’s hopes of stimulating activity in Ontario’s capital markets, which have seen an extended downturn.

General Criteria

The following criteria must be met for the Exemption to apply to an issuer’s distribution of its securities:

1. the head office of the issuer is located in Ontario;
2. the issuer is not an investment fund;
3. the purchaser is a Self-Certified Investor or a permitted designate of a Self-Certified Investor;
4. the Self-Certified Investor represents in the subscription agreement that the aggregate acquisition cost of all securities acquired by the Self-Certified Investor, and any designates, in reliance on the Exemption in the calendar year does not exceed \$30,000;
5. at the time of execution of the subscription agreement, the Self-Certified Investor provides the issuer with a completed Confirmation of Qualifying Criteria and a completed Acknowledgement of Risks, in the forms annexed to Ontario Instrument 45-507; and

6. the issuer files a completed Form 45-106F1 *Report of Exempt Distribution*, together with the completed Confirmation of Qualifying Criteria and applicable fees (generally \$500), within 10 calendar days of the distribution.

Qualifying Criteria for Self-Certified Investors

To rely on the Exemption, Self-Certified Investors must confirm that they have met certain educational or designation requirements. Specifically, Self-Certified Investors must confirm in the Confirmation of Qualifying Criteria that they either:

- a) hold a CFA Charter, a CIM, CBV, CPA, CIWM or CFP designation, or a Financial Planner or Financial Advisor credential in good standing;
- b) were admitted to practice law in a jurisdiction of Canada and at least one-third of their practice has involved providing advice on financings involving public or private distributions of securities or mergers and acquisitions;
- c) hold an MBA degree with a focus on finance or an undergraduate degree in finance or in business or commerce with a major or specialization in finance or investment;
- d) have passed the Canadian Securities Course Exam or the Investment Funds in Canada Course Exam administered by the Canadian Securities Institute, the Exempt Market Products Exam, or the Canadian Investment Funds Course Exam administered by the IFSE Institute, Canada, or both the Series 7 Exam administered by the Financial Industry Regulatory Authority in the United States and the New Entrants Course Exam administered by the Canadian Securities Institute; or
- e) have management, policy-making, engineering, product, or other relevant operational experience at a business that operates in the same industry or sector as the issuer and the ability to adequately assess and understand the risk of investment in the issuer.

The Exemption is expected to help improve Ontario issuers' ability to raise capital by widening the investor pool during a period of market downturn. If the Exemption is successful in Ontario, we may see an amendment to [National Instrument 45-106 Prospectus Exemptions](#) in the future to implement a similar prospectus exemption across Canada. For the time being, financial analysts, accountants, corporate lawyers, and other financially savvy investors who have been itching to invest, but do not meet the financial thresholds to qualify as an accredited investor, will have an opportunity to participate in private offerings from Ontario through to April 25, 2024.

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