

PROSPECTUS EXEMPTION FOR SELF-CERTIFIED INVESTORS NOW AVAILABLE IN ONTARIO

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On October 25th, 2022, the Ontario Securities Commission (the “**OSC**”) adopted an 18-month pilot program providing a [new exemption](#) from the prospectus requirement with respect to the distribution of securities to financially literate “self-certified investors” (the “**Self-Certified Investor Exemption**”). As a result, until April 25th, 2024, investors with qualifying education or experience can participate in the prospectus-exempt distributions of Ontario issuers for up to \$30,000 per year, regardless of their income or assets.

Background

The majority of capital raised from individuals under prospectus exemptions in Ontario comes from “accredited investors”, who qualify based on their wealth (the “**Accredited Investor Exemption**”). In 2021, the [Capital Markets Modernization Taskforce](#) recommended that the Accredited Investor Exemption be broadened to include individuals who, despite not meeting the financial threshold, possess sufficient knowledge to assess the risks of investing without a prospectus. Following similar initiatives that were adopted in Alberta and Saskatchewan, the OSC has responded by implementing the Self-Certified Investor Exemption pilot. In order to mitigate self-certified investors’ risk exposure, their annual participation is however limited to \$30,000.

Eligible Distributions under the Self-Certified Investor Exemption

To be eligible under the Self-Certified Investor Exemption, the distribution of securities must meet the following criteria:

With respect to the subscriber: meets the prescribed proficiency requirement, which generally includes holding certain designation or credentials (such as Chartered Professional Accountant), holding certain degrees (such as an MBA), having passed certain courses or exams (such as the Canadian Securities Course) or having management or relevant operational experience in the same industry as issuer; provides representation that the aggregate acquisition cost of all securities acquired under the Self-Certified Investor Exemption, including the distribution, does not exceed \$30,000 for the calendar year; and provides to the issuer a “Confirmation of Qualifying Criteria” and an “Acknowledgement of Risks”.

With respect to the issuer: head office in Ontario; not an investment fund; does not know and would not reasonably be expected to know that the statements made by the subscriber in connection with their eligibility are false; and files a completed *Form 45-106F1 Report of Exempt Distribution*, together with the completed “Confirmation of Qualifying Criteria” and the applicable fee, within 10 days of closing distribution.

Conclusion

While the Self-Certified Investor Exemption is currently temporary, the data collected by the OSC during the pilot will allow a better assessment of whether it should be permanently implemented. We expect that both issuers and qualified investors will find this exemption a helpful investment tool.

To discuss the Self-Certified Investor Exemption, please contact any member of our Capital Markets Group.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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