

1.1.2 Notice of Commission Approval of OSC Rule 33-508 Extension to Ontario Instrument 33-507 Exemption from Underwriting Conflict Disclosure Requirements

**NOTICE OF COMMISSION APPROVAL OF
OSC RULE 33-508 EXTENSION TO ONTARIO INSTRUMENT 33-507 EXEMPTION FROM
UNDERWRITING CONFLICT DISCLOSURE REQUIREMENTS**

March 3, 2022

Introduction

On March 1, 2022, the Ontario Securities Commission (the **OSC** or **we**) made as a rule under the *Securities Act* (Ontario) local OSC Rule 33-508 *Extension to Ontario Instrument 33-507 Exemption from Underwriting Conflicts Disclosure Requirements* (the **Rule**).

The Rule extends the blanket relief issued on February 18, 2021 by Ontario Instrument 33-507 *Exemption from Underwriting Conflicts Disclosure Requirements* (Interim Class Order) (the **OSC Blanket Order**) by 18 months.

The OSC Blanket Order provides an exemption from the underwriting conflicts disclosure requirements in National Instrument 33-105 *Underwriting Conflicts* (**NI 33-105**) if

- (a) the distribution is made under an exemption from the prospectus requirement,
- (b) the distribution is of a security that is an “eligible foreign security” as defined in NI 33-105, and
- (c) each purchaser in Ontario that purchases a security pursuant to the distribution through such person or company is a “permitted client” as defined in section 1.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**).

The OSC Blanket Order eliminates the underwriting conflicts disclosure requirements in NI 33-105 in circumstances where foreign securities are offered to institutional investors in Ontario as part of a global offering and thereby facilitates participation by institutional investors in Ontario in such global offerings.

The OSC Blanket Order will cease to be effective on August 17, 2022, and the Rule will cause the relief provided in the OSC Blanket Order to be in force for an additional 18-month period from August 18, 2022 to February 17, 2024.

The text of the Rule is contained in Annex A of this notice and is also available on the OSC website at www.osc.ca.

Substance and Purpose

The OSC has been advised by a number of institutional investors that the underwriting conflicts disclosure requirement in NI 33-105 creates barriers that prevent institutional investors in Ontario from participating in global offerings on a timely basis.

Certain of these institutional investors also provided similar submissions to the Capital Markets Modernization Taskforce (the **Taskforce**) established by the Government of Ontario in February 2020. On January 22, 2021, the Taskforce published its final report (the **Taskforce Final Report**) that included a recommendation that the OSC provide an exemption from the disclosure of conflicts of interest in connection with private placements to institutional investors.¹

Having considered the interests of institutional investors in being able to participate in global offerings on a timely basis and the Taskforce recommendation, the OSC issued the OSC Blanket Order on February 18, 2021.

The OSC Blanket Order will cease to be effective on August 17, 2022. The purpose of the Rule is to cause the blanket relief issued under the OSC Blanket Order to be extended for an additional 18-month period, from August 18, 2022 to February 17, 2024.

Without an extension, entities offering foreign securities to institutional investors in Ontario would no longer be able to rely on the exemption in the OSC Blanket Order with the result that institutional investors in Ontario may again experience difficulties in participating in global offerings on a timely basis. The OSC is continuing to review options for a more permanent solution and may propose an amendment to NI 33-105 at a later date.

Authority for the Local Amendments

Paragraph 143.11(3)(b) of the *Securities Act* (Ontario) provides the authority for the making of a rule which extends a blanket order for a further period of up to 18 months, in accordance with section 143.3 to 143.6.

¹ See Recommendation No. 33 in the Taskforce Final Report, available at <https://www.ontario.ca/document/capital-markets-modernization-taskforce-final-report-january-2021>

Delivery of Rule to Minister

The OSC delivered the Rule to the Minister of Finance on or about March 1, 2022. The Minister may approve or reject the Rule or return it for further consideration. If the Minister approves the Rule or does not take any further action, the Rule will come into force on August 18, 2022.

Questions

Please refer any questions to the following OSC staff:

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