

Ontario Securities Commission

Ontario Instrument 45-507

Self-Certified Investor Prospectus Exemption (Interim Class Order)

The Ontario Securities Commission, considering that to do so would not be prejudicial to the public interest, orders that effective October 25, 2022, Ontario Instrument 45-507 entitled “Self-Certified Investor Prospectus Exemption (Interim Class Order)” is made.

October 25, 2022

“Grant Vingo”

Chief Executive Officer
Ontario Securities Commission

Authority under which the order is made:

Act and section: *Securities Act*, subsection 143.11(2)

Ontario Securities Commission

Ontario Instrument 45-507

Self-Certified Investor Prospectus Exemption (Interim Class Order)

Interpretation

1. In this Order:

“Acknowledgement of Risks” means a document in the form specified in Annex 2 *Acknowledgement of Risks*;

“Accredited Investor” has the meaning given in subsection 73.3(1) of the Act and National Instrument 45-106 *Prospectus Exemptions*;

“Act” means the *Securities Act*, R.S.O. 1990, c. S.5, as amended from time to time;

“Confirmation of Qualifying Criteria” means a document in the form specified in Annex 1 *Confirmation of Qualifying Criteria*;

“investment fund” has the meaning given in National Instrument 81-106 *Investment Fund Continuous Disclosure*;

“holding entity” has the meaning given in National Instrument 45-106 *Prospectus Exemptions*;

“permitted designate” means, with respect to an individual,

- (a) a trustee, custodian or administrator acting on behalf of, or for the benefit of, the individual,
- (b) a holding entity of the individual,
- (c) a RRSP, RRIF, or TFSA of the individual,
- (d) a spouse of the individual,
- (e) a trustee, custodian, or administrator acting on behalf of, or for the benefit of, the spouse of the individual,
- (f) a holding entity of the spouse of the individual, or
- (g) a RRSP, RRIF, or TFSA of the spouse of the individual;

“Qualifying Criteria” means the criteria specified in the Confirmation of Qualifying Criteria;

“Self-Certified Investor” means an individual that has completed the Confirmation of Qualifying Criteria and the Acknowledgement of Risks, as contemplated in paragraph 12(e) of this Order.

2. Terms defined in the Act have the same meaning if used in this Order, unless otherwise defined.

Background

3. The Capital Markets Modernization Taskforce (the **Taskforce**) was established by the Government of Ontario in February 2020. On January 22, 2021, the Taskforce published its final report (the **Taskforce Final Report**), which acknowledged the importance of capital formation for businesses

and included a recommendation that the Commission expand the Accredited Investor definition to those individuals who have completed and passed relevant proficiency requirements indicating a high degree of understanding of investments and markets.¹

4. On March 31, 2021, the securities regulatory authorities in Alberta and Saskatchewan adopted a prospectus exemption entitled *Self-Certified Investor Prospectus Exemption* that allows issuers in those jurisdictions to distribute securities to “self-certified investors” that meet certain criteria intended to demonstrate financial and investment knowledge.
5. The Commission also recognizes that certain individuals possess the necessary business knowledge, through their education or experience, to make an informed investment decision, but may not meet the financial thresholds or other criteria required to qualify as an Accredited Investor.
6. On April 27, 2021, the Ontario government amended the Commission’s legislative mandate to include fostering competitive capital markets and capital formation. This expanded mandate provides additional areas of focus for the Commission’s operational and policy development activities, as well as its approach to regulatory decisions.
7. In order to promote capital formation, the Commission intends to explore a regulatory response to the Taskforce recommendation to expand the Accredited Investor prospectus exemption and, in the interim, considers that it would be appropriate to create a time-limited prospectus exemption that allows purchasers in Ontario, who may not meet the financial thresholds or other criteria required to qualify as an Accredited Investor, to invest in issuers provided that they meet other criteria intended to demonstrate financial knowledge, investment knowledge or relevant industry-specific experience and acknowledge that they understand certain investment considerations and risks.
8. The Commission recognizes the importance of data-driven approaches to support analysis and regulatory decision-making. This Order will require issuers to report on the use of the prospectus exemption that will in turn provide the Commission with important insights to inform future policy-making.

Class Orders under the Securities Act

9. Under subsection 143.11(2) of the Act, if the Commission considers that it would not be prejudicial to the public interest to do so, the Commission may, on application by an interested person or company or on its own initiative, make an order exempting a class of persons or companies, trades, intended trades, securities or derivatives from any requirement of Ontario securities law on such terms or conditions as may be set out in the order, effective for a period of no longer than 18 months after the day on which it comes into force unless extended pursuant to paragraph (b) of subsection 143.11(3) of the Act.
10. The Commission is satisfied that it would not be prejudicial to the public interest to provide, on an interim basis, the exemptions set out below, subject to the conditions of this Order.

¹ See Recommendation No. 23 in the Taskforce Final Report, available at <https://www.ontario.ca/document/capital-markets-modernization-taskforce-final-report-january-2021>.

Self-Certified Investor Prospectus Exemption

11. Consequently, this Order provides for the temporary exemption listed below.
12. The prospectus requirement in subsection 53(1) of the Act does not apply to a distribution by an issuer of securities of its own issue provided that all of the following apply:
 - (a) the head office of the issuer is located in Ontario;
 - (b) the issuer is not an investment fund;
 - (c) the purchaser is a Self-Certified Investor or a permitted designate of a Self-Certified Investor;
 - (d) the purchaser represents to the issuer in the subscription agreement that, after giving effect to the distribution, the aggregate acquisition cost of the securities of all issuers acquired by the Self-Certified Investor, and any permitted designates, under this Order in the calendar year does not exceed \$30,000;
 - (e) at the time of execution of the subscription agreement, the Self-Certified Investor completes and provides to the issuer
 - (i) a completed Confirmation of Qualifying Criteria, confirming that the Self-Certified Investor meets the Qualifying Criteria, and
 - (ii) a completed Acknowledgement of Risks, confirming that the Self-Certified Investor has read and understood each of the acknowledgements in that part;
 - (f) the issuer does not know and would not reasonably be expected to know that the statements made by the Self-Certified Investor in the Confirmation of Qualifying Criteria, the Acknowledgement of Risks or the representation referred to in paragraph 12(d) of this Order are false;
 - (g) the issuer, on or before the 10th day after the closing of the distribution, files a completed Form 45-106F1 *Report of Exempt Distribution*, together with the completed Confirmation of Qualifying Criteria and the applicable fee.

Resale Restrictions

13. The first trade of a security acquired under this Order is subject to section 2.5 of National Instrument 45-102 *Resale of Securities*.

Effective Date and Term

14. This Order comes into effect on October 25, 2022 and will cease to be effective on the earlier of the following:
 - (a) April 25, 2024, unless extended by the Commission;
 - (b) the effective date of an amendment to National Instrument 45-106 *Prospectus Exemptions* that addresses substantially the same subject matter as this Order.

Annex 1 to Ontario Instrument 45-507
Self-Certified Investor Prospectus Exemption (Interim Class Order)

Confirmation of Qualifying Criteria

Instruction: All capitalized terms used in this Confirmation of Qualifying Criteria but not defined in it have the meaning ascribed to them in Ontario Instrument 45-507 Self-Certified Investor Prospectus Exemption (Interim Class Order).

I [insert name of purchaser] wish to be considered a Self-Certified Investor under Ontario Instrument 45-507 Self-Certified Investor Prospectus Exemption (Interim Class Order).

I certify that I meet at least one of the Qualifying Criteria specified below.

Qualifying Criteria [please initial all that apply]:

An individual who:

- _____ (a) Holds a CFA or Chartered Financial Analyst Charter from the CFA Institute or any predecessor or successor organization.
- _____ (b) Holds the CIM or Chartered Investment Manager designation from the Canadian Securities Institute, a Division of Moody's Analytics Global Education (Canada) Inc. or any predecessor or successor organization.
- _____ (c) Holds the CBV or Chartered Business Valuator designation from the CBV Institute or any predecessor or successor organization.
- _____ (d) Holds a CPA or Chartered Professional Accountant designation from CPA Canada.
- _____ (e) Holds a CIWM or Certified International Wealth Manager Designation from the Canadian Securities Institute, a Division of Moody's Analytics Global Education (Canada) Inc. or any predecessor or successor organization.
- _____ (f) Was admitted to practice law in a jurisdiction of Canada and at least 1/3 of the individual's practice has involved providing advice in respect of financings involving private or public distributions of securities or mergers and acquisition transactions.
- _____ (g) Holds a Master of Business Administration degree, focused on finance, from a university in Canada or from an accredited university in a foreign jurisdiction.
- _____ (h) Holds an undergraduate degree in Finance or holds an undergraduate degree in Business or Commerce with a major or specialization in finance or investment, from a university in Canada or from an accredited university in a foreign jurisdiction.
- _____ (i) Has passed the Canadian Securities Course Exam administered by the Canadian Securities Institute, a Division of Moody's Analytics Global Education (Canada) Inc., or any predecessor or successor organization.
- _____ (j) Has passed the Exempt Market Products Exam administered by the IFSE Institute, Canada, or any predecessor or successor organization.
- _____ (k) Has passed the Canadian Investment Funds Course Exam administered by the IFSE Institute, Canada, or any predecessor or successor organization.

- _____ (l) Has passed the Investment Funds in Canada Course Exam administered by the Canadian Securities Institute, a Division of Moody's Analytics Global Education (Canada) Inc. or any predecessor or successor organization.
- _____ (m) Has passed both the Series 7 Exam administered by the Financial Industry Regulatory Authority in the United States of America, or any predecessor or successor organization, and the New Entrants Course Exam administered by the Canadian Securities Institute, a Division of Moody's Analytics Global Education (Canada) Inc., or any predecessor or successor organization.
- _____ (n) Holds the CFP or Certified Financial Planner designation from FP Canada or any predecessor or successor organization.
- _____ (o) Holds a Financial Planner or Financial Advisor credential, in good standing, from a credentialing body approved by the Financial Services Regulatory Authority of Ontario under the *Financial Professionals Title Protection Act, 2019* that permits the individual to use the Financial Planner or Financial Advisor title.
- _____ (p) Has 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 who, as a result of this experience, is able to adequately assess and understand the risk of investment in the issuer.

If criterion (p) applies to you, please provide the following information about your experience:

Industry or sector: _____

Employer: _____

Position: _____

Duration of tenure: _____

Dated: *[insert date]*

Self-Certified Investor's name

Signature

Annex 2 to Ontario Instrument 45-507
Self-Certified Investor Prospectus Exemption (Interim Class Order)

Acknowledgement of Risks

Instruction: To qualify as a Self-Certified Investor you must read the following and confirm your understanding of each of the statements relating to the risks of investing.

If you do not understand the risks of investing, including as set out below, do not complete this form. You do not qualify as a Self-Certified Investor.

1. You will not have the same rights as you would have under a prospectus

Securities legislation generally requires that an issuer trying to raise money through the sale of securities provide investors with a comprehensive disclosure document called a prospectus so that investors can make an informed decision about whether or not to buy those securities.

The accuracy of a prospectus is typically required to be certified by the CEO, CFO and two directors of the issuer and any underwriter involved in the sale. Investors who buy under a prospectus have certain special rights under securities legislation, including a two day right to cancel their investment for any reason, and a right to sue either to get their money back or for damages if there is a misrepresentation in the prospectus. A right to sue for damages is available not just against the issuer but also against the other parties that sign the prospectus. These rights are special in that an investor is not required to prove they relied on the misrepresentation in making their investment decision.

As an investor under a prospectus exemption, you will not have the special rights afforded to an investor under a prospectus.

Please indicate the answer that applies:

Have you read and understood the above information? Yes _____ No _____

2. You will need to seek out the information needed to make an informed investment decision

An issuer trying to raise money through the sale of securities under a prospectus is required to provide you with comprehensive disclosure in the prospectus, providing “full, true and plain disclosure of all material facts relating to the securities being distributed”. Some examples of required information include:

- details of the securities being offered for sale, including the rights they provide you, e.g., voting rights, rights to convert or exchange (including conversion prices or formulas and exercise periods), any limitations on redemption rights, as well as similar details on other outstanding securities;

- details on how the proceeds of the offering will be used, including any fees and commissions, information on payments to be made to related parties, and details on any funds to be used to repay outstanding indebtedness;
- the key business objectives and milestones;
- a description of material risks to the business e.g., environmental or other liabilities, significant litigation, competition, lack of management experience, regulatory approvals needed, and cash flow and other financial challenges;
- information about management and directors, e.g., education, experience, compensation, and security holdings.

As an investor under a prospectus exemption, you will not receive a prospectus. You will need to consider whether you otherwise have access to all the important information necessary to make an informed investment decision and, if not, take steps to obtain that information before investing. You should not invest if you do not have the information needed to make an informed investment decision.

Please indicate the answer that applies:

Have you read and understood the above information? Yes _____ No _____

3. You may not have the benefit of audited financial statements

An issuer selling securities under a prospectus is required to provide investors with audited annual financial statements. The audit provides certain independent assurance with respect to the financial information presented.

As an investor under a prospectus exemption, you may not be provided with audited financial statements and if any financial information is provided you may have no independent assurance with respect to it. You will need to determine whether audited financial statements are important to your investment decision and whether you will require that these be provided before investing.

Please indicate the answer that applies:

Have you read and understood the above information? Yes _____ No _____

4. You will need to assess the reliability of financial projections and other forward-looking information and the reasonableness of any assumptions

Securities legislation does not generally require that issuers provide financial projections and other forward-looking information in a prospectus. However, because of the potential unreliability of this type of information, if it is provided, to establish a defence to liability an issuer would generally need to provide cautionary language that

- indicates that actual results may vary from the forward-looking information,
- states the material factors or assumptions used to develop forward-looking information, and

- identifies material risk factors that could cause actual results to differ materially from the forward-looking information.

Securities legislation imposes liability for misrepresentations but, in respect of financial outlooks and future-oriented financial information, provides a defence where the information specified above is provided and the underlying assumptions are reasonable in the circumstances e.g., made only for a period that can be reasonably estimated.

Please indicate the answer that applies:

Have you read and understood the above information? Yes _____ No _____

5. You may need to conduct your own investigation (or due diligence) to understand the nature of the investment, the business and the associated risks

In a prospectus offering, the special liability that directors and management have creates an incentive for them to ensure that the prospectus contains full, true and plain disclosure. Similarly, the special liability that applies to any underwriters (the dealers that either sell the securities as agent for the company, or buy the securities from the company with a view to reselling them to the public) typically incentivizes them to conduct due diligence, i.e., investigate or review information about the issuer and its principals to try and identify material risks and confirm, “to the best of their knowledge, information and belief” the information in the prospectus.

If there is no underwriter or similar party conducting this due diligence, it will be very important for you to consider these matters yourself to determine whether or not to invest and to understand the risks. If you have little or no experience in conducting due diligence, you are strongly encouraged to seek training in conducting due diligence and/or seek assistance from qualified professionals before investing.

You will need to investigate to understand the terms of the security you buy and how they are affected by other securities that are outstanding or that may be issued

Examples of some of the factors that you should consider include:

- the number and type of securities outstanding and the prices at which they were sold as compared with the price at which the securities are being now offered and the development of the issuer's business since the prior offering(s);
- the rights associated with other outstanding securities as set out in the issuer's articles of incorporation, any shareholder agreement, escrow, voting trust or similar agreements (e.g., special voting rights, preferential rights to dividends or distributions, preferential rights to the issuer's assets in the case of a liquidation, preferential rights to disclosure, rights to convert, exchange or redeem securities, or rights to participate in future financings) and the implications of these rights to you and your investment.

Please indicate the answer that applies:

Have you read and understood the above information? Yes _____ No _____

You will need to investigate to understand the issuer's business

Examples of some of the factors that you should consider include:

- the issuer's financial position, including by reviewing and assessing any historical financial information and assessing the reasonableness of any financial projections;
- agreements material to the issuer's business (e.g., key employment agreements, key supplier agreements, major sales agreements, insurance contracts);
- the experience, qualifications and character of management and key employees and dependence on certain personnel;
- the issuer's organizational structure, its governance, and internal controls;
- the compensation, benefits and other payments to executives, employees and any related parties.

Please indicate the answer that applies:

Have you read and understood the above information? Yes _____ No _____

You will need to investigate to understand the material risks

Examples of some of the factors that you should consider include:

- the material risks related to the business (e.g., competition, lack of experience, inadequate funds);
- material assets and the rights and risks related to those assets (e.g., title to assets, status of leases, extent of intellectual property protections, existence of required governmental, regulatory or other approvals);
- indebtedness, environmental liabilities and existing or potential litigation.

Please indicate the answer that applies:

Have you read and understood the above information? Yes _____ No _____

6. You may not receive investment advice from a qualified salesperson

If you invest under a prospectus, the issuer selling its securities will have typically retained one or more registered dealers to sell the securities to you. A registered dealer is required to understand the securities that they are selling and will often have conducted certain analysis and review of the business. An individual employed by a registered dealer is typically required to have certain investment education and training and is required to collect information from you to understand your financial and other circumstances, risk profile, investment objectives and time horizon and use that information to assess whether an investment is suitable for you.

You may be investing in circumstances where there is no registered dealer involved. If that is the case, you will need to assess for yourself whether or not the investment is suitable for you having regard to factors such as:

- your financial and personal circumstances, investment objectives and time horizon;
- the tax implications of the investment in your particular financial circumstances;

- your other investments, e.g., whether your investments are sufficiently diversified and not overly concentrated in a particular company, or industry or geographical area or heavily concentrated in high risk or illiquid investments;
- the significantly increased risk associated with borrowing to invest;
- the prospect of some of your investments being a failure and how much risk you are prepared to take and how much money you can afford to lose.

A person who is recommending an investment to you who is not registered under securities legislation may not have any expertise or qualifications to provide investment advice. They may have a conflict of interest that incentivizes them to encourage you to invest. (Seek information on commissions or other payments being paid.) Even if that person is independent, experienced and knowledgeable, their circumstances, risk tolerance and objectives may be very different than your own. An investment that is good for them may not be good for you.

You can check to see whether a person is registered under securities legislation here: <http://www.aretheyregistered.ca/>.

Please indicate the answer that applies:

Have you read and understood the above information? Yes _____ No _____

7. You may not receive ongoing information about your investment

If you were to invest under a prospectus, the issuer you invested in would be or would become a reporting issuer (public company) and would be obligated under securities legislation to continue to provide disclosure about its business including such as:

- audited annual financial statements and managements discussion and analysis;
- quarterly interim financial statements and management's discussion and analysis;
- news releases announcing material changes such as relating to changes in directors and executives, significant acquisitions or dispositions, significant liabilities or litigation, material contracts and loss of significant contracts;
- board composition and governance policies;
- executive compensation disclosure.

If you invest in an issuer that is not a reporting issuer, the issuer may have no obligation under securities legislation to provide you with any ongoing information. Consequently, you will need to determine what ongoing reporting you want from the issuer and negotiate by contract to obtain it. You will need to consider the possibility that the issuer fails to continue to provide you with that information and what rights you have under that contract and whether they can be effectively enforced.

Please indicate the answer that applies:

Have you read and understood the above information? Yes _____ No _____

8. You will be restricted from reselling your securities

If you invest under a prospectus, you will typically be able to immediately resell the securities you acquired in the secondary market e.g., on an exchange. Because you are investing under a prospectus exemption, your ability to resell the securities you acquired is limited.

If you acquire securities of a reporting issuer (public company) under a prospectus exemption, you are typically subject to resale restrictions for a period of four months during which you can generally only realistically resell them under a prospectus exemption.

If you acquire securities of an issuer that is not a reporting issuer (i.e., not a public company), under a prospectus exemption, you will typically be subject to resale restrictions that continue indefinitely. Unless the issuer becomes a reporting issuer, securities legislation prohibits you from reselling those securities except under another prospectus exemption or under a prospectus.

Further, even if you can comply with securities legislation, there will be no market to help identify parties that might be interested in buying the securities from you. It may not be possible to find a willing buyer. You may not be able to sell your investment quickly – or at all.

Please indicate the answer that applies:

Have you read and understood the above information? Yes _____ No _____

9. You may not be able to realize a return on your investment. You could lose all the money invested

Statistics indicate that many early-stage businesses fail. You could lose your investment. However, even if a business you invest in is successful, you will need to consider how you will realize any return from your investment. If you buy securities, such as common shares, of a non-reporting issuer you will need to identify whether there is a realistic “exit strategy” for you, an opportunity to sell your securities and potentially obtain a return and whether the timing of that potential opportunity aligns with your investment time horizon.

If the issuer is not a reporting issuer, there is no assurance that it will ever become one and even if it does, that could take many years. There is also no assurance that the issuer will be acquired by another entity. You could be forced to hold the securities indefinitely.

If you are buying debt securities or preferred shares, consider whether the issuer has a realistic prospect of being able to pay you the interest, dividends or yield that is offered and what rights you will have if they default on such payments or do not declare dividends. If you buy redeemable securities, consider whether the issuer has a realistic prospect of being able to redeem the securities. Consider the limitations on or conditions to your ability to redeem.

Please indicate the answer that applies:

Have you read and understood the above information? Yes _____ No _____

10. You may have difficulty valuing your investment

If you acquire securities, such as common shares, under a prospectus, the issuer will be a reporting issuer (public company) and the securities will typically be available for resale on a secondary market. In the case of a mutual fund, the securities will typically be redeemable on demand based on the net asset value, which is required to be calculated and disclosed on an ongoing basis. This publicly available information helps to establish a value for the business. If you acquire securities under a prospectus exemption, and the issuer is not a reporting issuer, you will likely not have this type of information. It may be difficult to establish a value for the business or the securities.

Please indicate the answer that applies:

Have you read and understood the above information? Yes _____ No _____

11. Selling securities under a prospectus exemption doesn't mean misleading statements or unfair practices are allowed. Be alert for fraud and scams

Securities legislation prohibits parties selling securities from making statements that they know or reasonably ought to know are, in any material respect, and at the time and in light of the circumstances in which they are made, misleading or untrue or do not state a fact that is required to be stated or that is necessary to make a statement made not misleading, where one would reasonably expect that statement to have a significant effect on the market price or value of a security.

Securities legislation also prohibits unfair practices in connection with the sale of securities, such as unreasonable pressure to buy, sell or hold or imposing harsh, oppressive or excessively one-sided terms.

Although you are seeking to invest under a prospectus exemption, these prohibitions against misleading statements and unfair practices still apply to the parties selling you securities. They are not exempted from these fundamental provisions.

Scammers may disappear with your money. It is important to protect your money by being alert to the signs of investment fraud and scams **before** you invest. See <https://www.securities-administrators.ca>.

Please indicate the answer that applies:

Have you read and understood the above information? Yes _____ No _____

12. There are limits on the value of securities that can be sold to you as a Self-Certified Investor

An issuer in which you invest is not permitted to accept a subscription from you if the aggregate acquisition cost of the securities of the issuer acquired by you as a Self-Certified Investor in the preceding 12 months exceeds \$30,000. Further, the issuer is required to obtain a representation from you in the subscription agreement that the aggregate acquisition cost of the securities of all issuers acquired by you in the preceding 12 months as a Self-Certified Investor does not exceed \$30,000.

Please indicate the answer that applies:

Have you read and understood the above information? Yes _____ No _____

I understand that there is a risk that I could lose the entire investment and I should not invest more than I can afford to lose.

Dated: *[insert date]*

Self-Certified Investor's name

Signature