

ALBERTA SECURITIES COMMISSION

BLANKET ORDER 46-502

Citation: Re Exemption from section 3(2) of the Business Corporations Act (Alberta), 2022 ABASC 10 **Date: 20220201**

Definitions

1. Terms defined in the *Securities Act* (Alberta) (the **Act**), the *Business Corporations Act* (Alberta) (the **ABCA**) or National Instrument 14-101 *Definitions* have the same meaning in this Blanket Order.

Background

2. Section 3(2) of the ABCA provides that a security is part of a distribution to the public if, in respect of the security, there has been a filing of a prospectus, statement of material facts, registration statement, securities exchange take-over bid circular or similar document under the laws of Canada, a province or territory of Canada or a jurisdiction outside Canada.
3. Pursuant to section 82(2) of the ABCA, Part 7 of the ABCA applies to a trust indenture if the debt obligations issued or to be issued under the trust indenture are part of a distribution to the public. Section 83 within Part 7 of the ABCA requires that a trustee, or at least one of the trustees if more than one is appointed, shall be a trust corporation.
4. In section 28(1)(eee) of the *Interpretation Act* (Alberta), "trust corporation" is defined as a trust corporation registered under the *Loan and Trust Corporations Act* (Alberta) (the **LCTA**).
5. Certain corporations may wish to issue debt obligations under a document enumerated in section 3(2) of the ABCA pursuant to a trust indenture with a trustee which is not a trust corporation registered under the LCTA.
6. Under section 3(3) of the ABCA, the Commission, upon the application of a corporation, may determine that a security of the corporation is not or was not part of a distribution to the public if it is satisfied that its determination would not prejudice any security holder of the corporation.
7. Under section 257.1 of the ABCA, the Commission may make an order exempting any class or classes of persons, companies, corporations, distributions or securities relating to any matter in respect of which the Commission is permitted to make a determination under section 3(3), whether or not an application has been made under section 3(3), if the Commission is satisfied that the order would not prejudice any security holder of a corporation whose securities are distributed under that order.

Order

8. Considering that it would not be prejudicial to any security holder of a corporation whose securities are distributed under this Blanket Order, the Commission orders the exemptions below.

9. Debt obligations issued by a corporation described in paragraph 5 are not part of a distribution to the public for the purposes of section 3(2) of the ABCA if all of the following conditions are met:
 - (a) the indenture governing the debt obligations is subject to the *Trust Indenture Act of 1939* (United States), as amended (the **TIA**);
 - (b) the trustee appointed as trustee for the debt obligations is, or will be, authorized to act as a trustee under the TIA;
 - (c) the trustee appointed as trustee for the debt obligations will be subject to regulation by the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation in the United States;
 - (d) holders of the debt obligations will not derive any additional material benefit from having the applicable indenture be subject to the ABCA and the LTCA;
 - (e) if the debt obligations will be distributed in Canada, such distributions will be made in reliance on available exemptions from the prospectus requirements of applicable Canadian securities legislation.

10. Alternatively, if the conditions in paragraph 9 are not met, debt obligations issued by a corporation described in paragraph 5 are not part of a distribution to the public for the purposes of section 3(2) of the ABCA if all of the following conditions are met:
 - (a) the indenture governing the debt obligations requires that at all times the trustee appointed as trustee for the debt obligations
 - (i) is a corporation organized under the laws of the United States or any state thereof,
 - (ii) is authorized under such laws to exercise corporate trustee powers,
 - (iii) is subject to supervision or examination by the United States federal and state authorities, and
 - (iv) together with its affiliates, has a combined capital and surplus of at least US\$100 million;
 - (b) the terms of the indenture governing the debt obligations are substantially in compliance with sections 82(1) and 82(2), 88 and 89 of the ABCA;

- (c) the indenture governing the debt obligations provides that if an event of default has occurred and is continuing, the trustee appointed as trustee for the debt obligations shall use the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs;
- (d) holders of the debt obligations will not derive any additional material benefit from having the applicable indenture be subject to the ABCA and the LTCA;
- (e) if the debt obligations will be distributed in Canada, such distributions will be made in reliance on available exemptions from the prospectus requirements of applicable Canadian securities legislation.

11. This Blanket Order takes effect on February 1, 2022.

For the Commission:

“original signed by”

Tom Cotter
Vice-Chair

“original signed by”

Kari Horn
Vice-Chair