

**CSA Notice of Amendments Relating to Rights Offerings to
National Instrument 45-106 *Prospectus Exemptions*,
National Instrument 41-101 *General Prospectus Requirements*,
National Instrument 44-101 *Short Form Prospectus Distributions*,
and National Instrument 45-102 *Resale of Securities* and Repeal of
National Instrument 45-101 *Rights Offerings***

September 24, 2015

Introduction

We, the Canadian Securities Administrators (the **CSA** or **we**), are adopting the following amendments to the prospectus-exempt rights offering regime:

- amendments to:
 - National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**),
 - National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**),
 - National Instrument 44-101 *Short Form Prospectus Distributions* (**NI 44-101**),
 - National Instrument 45-102 *Resale of Securities* (**NI 45-102**),

- consequential amendments to:
 - Multilateral Instrument 11-102 *Passport System* (**MI 11-102**),
 - National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)* (**NI 13-101**),
 - Multilateral Instrument 13-102 *System Fees for SEDAR and NRD* (**MI 13-102**),
and

- the repeal of National Instrument 45-101 *Rights Offerings* (**NI 45-101**)
(collectively, the **Amendments**).

In addition, we are implementing changes to:

- Companion Policy 45-106CP to NI 45-106 (**45-106CP**), and
- Companion Policy 41-101CP to NI 41-101 (**41-101CP**).

We are also withdrawing Companion Policy 45-101CP to NI 45-101 (**45-101CP**).

The Amendments and policy changes have been made by each member of the CSA. Provided all necessary ministerial approvals are obtained, the Amendments and policy changes will come into force on **December 8, 2015**.

Substance and purpose

The Amendments and policy changes are intended to address CSA concerns that issuers seldom use prospectus-exempt rights offerings to raise capital because of the associated time and cost. At the same time, rights offerings can be one of the fairer ways for issuers to raise capital as they provide existing security holders with an opportunity to protect themselves from dilution. The Amendments are designed to make prospectus-exempt rights offerings more attractive to reporting issuers while maintaining investor protection.

The Amendments create a streamlined prospectus exemption (the **Rights Offering Exemption**) that is available only to reporting issuers, but not to investment funds subject to National Instrument 81-102 *Investment Funds*. The Rights Offering Exemption removes the current requirement for a regulatory review prior to use of the rights offering circular. Other key elements of the Rights Offering Exemption include:

- a new form of notice (**Form 45-106F14** or the **Rights Offering Notice**) that reporting issuers will have to file and send to security holders informing security holders how to access the rights offering circular electronically,
- a new form of simplified rights offering circular (**Form 45-106F15** or the **Rights Offering Circular**) in a question and answer format that is intended to be easier to prepare and more straightforward for investors to understand – it will have to be filed but not sent to security holders,
- a dilution limit of 100%, instead of the current 25%, and
- the addition of statutory secondary market civil liability.

The Amendments create a new prospectus exemption for stand-by guarantors and modify certain conditions of the minimal connection exemption. The Amendments also update or revise some of the requirements for rights offerings by way of prospectus.

In addition, the Amendments remove the ability of non-reporting issuers to use the Rights Offering Exemption and repeal NI 45-101.

Background

Under the current rules, an issuer wanting to conduct a prospectus-exempt rights offering in Canada would use the prospectus exemption in section 2.1 of NI 45-106 which requires compliance with NI 45-101 (the **45-101 Exemption**) and also provides that:

- the securities regulatory authority must not object to the offering, which results in a review of the rights offering circular by CSA staff, and
- reporting issuers are restricted from issuing more than 25% of their securities under the exemption in any 12 month period.

Very few reporting issuers use the 45-101 Exemption. In 2013 and 2014, CSA staff conducted research, collected data and held informal consultations with market participants to identify issues and to consider changes to the 45-101 Exemption that would facilitate prospectus-exempt rights offerings.

Through this work, the CSA found that the overall time period to conduct a prospectus-exempt rights offering, including the CSA review period, was much longer than the time period when using other prospectus exemptions. Specifically, CSA staff looked at 93 rights offerings by reporting issuers over a seven year time period and found that the average length of time to complete a prospectus-exempt rights offering was 85 days and the average length of time between filing of the draft circular and notice of acceptance by the regulator was 40 days. CSA staff heard that the length of time to complete an offering results in lack of certainty of financing and increased costs.

Market participants also reported that the dilution limit was too low and greatly restricted the ability of issuers with small market capitalization to raise sufficient funds to make a prospectus-exempt rights offering worthwhile.

Between March 2014 and February 2015, all CSA jurisdictions adopted a prospectus exemption for the distribution of securities to existing security holders. Under that exemption, reporting issuers listed on a Canadian exchange are able to raise money directly from their security holders without having to prepare an offering document. However, the CSA believes that rights offerings remain an important tool for reporting issuers because, with a rights offering:

- all security holders receive notice of the offering,
- the offering must be done on a pro-rata basis,
- securities are only subject to a seasoning period (and therefore generally freely tradeable), and
- there are no investment limits other than the limit imposed by the pro rata requirement.

On November 27, 2014, we published a Notice and Request for Comment relating to the Amendments and policy changes (the **November 2014 Publication**) in which we proposed removing the 45-101 Exemption and adopting the Rights Offering Exemption to make prospectus-exempt rights offerings more attractive to reporting issuers while maintaining investor protection.

Summary of written comments received by the CSA

The comment period for the November 2014 Publication ended on February 25, 2015. We received submissions from 13 commenters. We considered the comments received and thank all of the commenters for their input. The names of commenters are contained in Annex B of this notice and a summary of their comments, together with our responses, is contained in Annex C of this notice.

Summary of changes to the November 2014 Publication

After considering the comments received on the November 2014 Publication, we have made some revisions to the Amendments as published for comment. Those revisions are reflected in the Amendments and policy changes that we are publishing concurrently with this notice. As these changes are not material, we are not republishing the Amendments and policy changes for a further comment period.

Annex A contains a summary of notable changes to the Amendments and policy changes since the November 2014 Publication.

Repeal and withdrawal of instruments and policies

We are repealing NI 45-101 and withdrawing 45-101CP, effective December 8, 2015.

As the 45-101 Exemption will no longer be available as of December 8, 2015, issuers that plan to conduct a rights offering using the 45-101 Exemption will need to complete the distribution before December 8, 2015.

Consequential amendments

We are making consequential amendments to MI 11-102 to reflect the repeal of NI 45-101. We are also making consequential amendments to NI 13-101 and MI 13-102 to reflect necessary changes to SEDAR as a result of the Amendments. The consequential amendments to MI 13-102 will be adopted in each of the jurisdictions either as an amendment to a rule or as an amendment to a regulation.

Local matters

Annex G is being published in any local jurisdiction that is making related changes to local securities laws, including local notices or other policy instruments in that jurisdiction. It also includes any additional information that is relevant to that jurisdiction only.

The Ontario Securities Commission and the Autorité des marchés financiers will also make a consequential amendment to Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions*. The consequential amendment will replace the reference to NI 45-101 with a reference to NI 45-106. A more detailed explanation of this local amendment is available on the OSC and the AMF websites, respectively, www.osc.gov.on.ca and www.lautorite.qc.ca.

Contents of annexes

The following annexes form part of this CSA Notice:

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Annex E1	Consequential amendments to MI 11-102
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Annex F1	Changes to 45-106CP
Annex F2	Changes to 41-101CP
Annex G	Local matters

Questions

Please refer your questions to any of the following:

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