

CSA Notice of Amendments to National Instrument 33-105 *Underwriting Conflicts*

June 25, 2015

Introduction

The Canadian Securities Administrators (the CSA or we) are implementing amendments (the Rule Amendments) to National Instrument 33-105 *Underwriting Conflicts* (NI 33-105). The Rule Amendments have been made by each member of the CSA. In some jurisdictions, ministerial approvals are required for these changes. Provided all necessary ministerial approvals are obtained, the Rule Amendments will come into force on September 8, 2015.

Substance and Purpose of the Rule Amendments

The Rule Amendments provide an exemption from the disclosure requirements relating to conflicts of interest between an issuer and dealer in the context of an offering by a foreign issuer to sophisticated investors in Canada made on a private placement basis.

The Rule Amendments will eliminate the requirement to provide connected and related issuer disclosure in the context of offerings of securities that qualify as “eligible foreign securities”. Eligible foreign securities are defined in the Rule Amendments as securities that are offered primarily in a foreign jurisdiction and that are:

- Issued by an issuer
 - that is incorporated, formed or created under the laws of a foreign jurisdiction,
 - that is not a reporting issuer in a jurisdiction of Canada,
 - that has its head office outside of Canada, and
 - that has a majority of the executive officers and a majority of the directors ordinarily resident outside of Canada, or
- Issued or guaranteed by the government of a foreign jurisdiction.

The Rule Amendments require that the purchaser of the securities must be a permitted client (as defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*).

The purpose of the Rule Amendments is to eliminate one of the disclosure requirements that results in the preparation of a “wrapper” when foreign securities are offered by way of prospectus exemption in Canada as part of a global offering. This may facilitate participation by sophisticated Canadian investors that qualify as permitted clients in foreign securities offerings.

The Rule Amendments will apply to offerings of both non-investment fund issuers and non-redeemable investment funds that meet the above criteria. Under current paragraph 1.3(b) of NI 33-105, the rule does not apply to a distribution of mutual fund securities. Non-Canadian issuers that are investment funds are reminded that there are other Canadian regulatory requirements

specific to investment funds, such as investment fund manager registration, that may still apply. Permitted clients that are investment funds are reminded that other Canadian regulatory requirements, such as fund on fund restrictions, may restrict a Canadian investment fund's ability to purchase securities of a non-Canadian issuer that is an investment fund.

Background

The CSA previously requested comment on proposals reflected in the Rule Amendments. On November 28, 2013, we published a Notice and Request for Comment relating to the Rule Amendments (the November 2013 materials).

In developing the November 2013 materials, we:

- Conducted research on the disclosure requirements related to conflicts of interest between issuers and dealers in the United States,
- Considered feedback received on the implementation of exemptive relief (the Wrapper Relief) previously granted to certain dealers that participate in private placement offerings of foreign securities in Canada, and
- Reviewed data compiled from monthly reports provided to us by dealers that obtained the Wrapper Relief.

Summary of Written Comments Received by the CSA

The comment period for the November 2013 materials ended on February 26, 2014 and the CSA received submissions from seven commenters. The comment letters on the November 2013 materials can be viewed on the OSC website at www.osc.gov.on.ca and on the Autorité des marchés financiers website at www.lautorite.qc.ca.

We have considered the comments received and thank all of the commenters for their input. The names of the commenters are contained in Annex C and a summary of their comments, together with our responses, is contained at Annex D.

Summary of Changes to the November 2013 materials

After consideration of the comments received on the November 2013 materials we have made some revisions to the November 2013 materials. Those revisions are reflected in the Rule Amendments we are publishing concurrently with this notice. As these changes are not material, we are not republishing the Rule Amendments for a further comment period.

Annex B contains a summary of notable changes between the Rule Amendments and the November 2013 materials.

Related Amendments

Also being published today is

- Multilateral Instrument 45-107 *Listing Representation and Right of Action Disclosure Exemptions*,
- Ontario amendments to OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions*, and
- An Ontario-specific amendment to Form 45-106F1 *Report of Exempt Distribution*.

These amendments generally relate to disclosure of statutory rights of action and restrictions on the making of representations that securities will be listed or quoted on an exchange or quotation system. This information is also typically included in a wrapper prepared for foreign offerings. More information can be found in the notices accompanying these publications.

Local Matters

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

Questions

Please refer your questions to any of:

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Annexes to Notice

Annex A – Rule amendments

Annex B – Summary of changes to the November 2013 materials

Annex C – List of commenters

Annex D – Summary of comments and responses

Annex E – Local matters