

Annex C

Summary of comments received on Multilateral CSA Notice 45-315 *Proposed Prospectus Exemption for Certain Distributions through an Investment Dealer*

General support

We received 231 comment letters from a variety of market participants, including registrants, professional service providers, industry advocacy groups, issuers and investors.

Almost all commenters supported the proposed exemption. Most of the commenters agreed that the existing prospectus exemption regime results in the majority of private financings being limited to accredited investors. In addition, the vast majority of commenters suggested that the proposed exemption be made available in all Canadian jurisdictions.

1. Use of proposed exemption

224 commenters (97%) indicated that they, their clients, or their members would use the proposed exemption. The most common reason given was that the proposed exemption was one solution to the current regime that effectively precludes most retail investors from participating in private placements.

2. Expansion of exemption to registered exempt market dealers

One of the conditions of the proposed exemption is that the investor must receive suitability advice from a registered investment dealer. We invited comment on whether we should expand the proposed exemption so that investors could also receive suitability advice from a registered exempt market dealer (EMD).

We received 15 comments in response to this question. Only two of the commenters supported expanding the proposed exemption to permit use by EMDs, but neither provided substantive reasons. The 13 commenters that did not support use by EMDs cited a number of reasons. The most common reason given was that the investor protection underlying the proposed exemption is premised on the rigorous IIROC requirements applicable to registered investment dealers.

3. Appropriateness of hold period

Securities issued under the proposed exemption would be subject to resale restrictions (that is, a four-month hold period). We sought comment on whether the four-month hold period is appropriate.

We received 104 responses to this question. Of those, 68 suggested that securities distributed at or above market price should not be subject to resale restrictions. The most common reason given was that investors are already fully informed about the issuer through its continuous disclosure record and the requirement for the investment dealer to provide KYP and KYC advice. Since a potential investor would rely on exactly the same information to purchase on the secondary market without resale restrictions, these commenters argued that there should not be a resale restriction imposed on a purchase using the proposed exemption.

Sixteen commenters indicated that the current four-month hold period was appropriate. An additional 20 commenters suggested various shortened hold periods between one and three months.

As a general comment, 55 commenters submitted that the four-month hold period is obsolete and that the CSA should reconsider its application to all prospectus exemptions.

4. Sufficient Investor Protection

We sought comment on whether the proposed exemption contains sufficient alternative protections such that the prospectus requirement is not necessary. Almost all of the commenters (227) agreed that it is appropriate to remove the prospectus requirement for offerings under the proposed exemption. Their reasons included:

- the standard of care applicable to a suitability review provides investors with a high degree of protection and is consistent with or higher than that provided by other exemptions that are based on the investor's relationship with an issuer or an income and asset threshold
- the considerable compliance effort and expense associated with the current investment dealer regime are not worthwhile if its benefits are not realized by exemptions which acknowledge the value of investment dealer suitability advice
- the cause of action for misrepresentation in an issuer's disclosure under the proposed exemption provides the investor with an avenue for recourse.

One commenter indicated that investor protection was insufficient under the proposed exemption and suggested that suitability is too low a standard to adequately protect retail investors. The commenter was of the view that, in order to meet KYP obligations, the only investment dealers providing advice would be the same dealers participating in the underwriting of the private placement and performing due diligence on the issuer. The result is that the investment dealer would have a conflict of interest. The commenter suggested that the proposed exemption would only be acceptable if the recommendation provided to the retail investor was a result of the investment being in the best interest of the investor, and not simply that it is suitable for the investor. Another commenter supported the proposed exemption but also stressed the importance of implementing a statutory best interest standard on all registrants providing advice.

Another commenter stated that the proposed exemption should not be conditional on investors receiving a positive suitability analysis from a registered dealer to be consistent with the existing KYC rules. A client is able to proceed with a trade on the secondary market even if the dealer determines it is not suitable.