

Multilateral CSA Staff Notice 45-322

Potential Concerns with the Structure of Rights Offerings

January 12, 2017

Purpose of the Notice

Staff of the Ontario Securities Commission, Autorité des marchés financiers, Financial and Consumer Affairs Authority of Saskatchewan, Manitoba Securities Commission and Alberta Securities Commission are issuing this notice to highlight potential concerns regarding the use of the rights offering prospectus exemption under section 2.1 of National Instrument 45-106 *Prospectus Exemptions*.

Background

The rationale of the prospectus-exempt rights offering regime is to enable reporting issuers to raise capital while allowing existing security holders to participate based on their proportionate interests in an issuer. Existing security holders should be able to make a decision regarding the exercise of their rights on a fully informed basis, free from any features of the offering designed to discourage participation or any other unfair influence.

The current rights offering regime does not require prior regulatory review. However, as part of our oversight of the exempt market, staff may review the structure of an offering, the issuer's compliance with the exemption and the disclosure provided. We may conduct reviews either before or after the completion of the distribution.

Potential Concerns

In certain cases, staff may have concerns with how the rights offering exemption is being used, notably where there may be a potential abuse of security holders. For example, we may have concerns where a rights offering is structured in such a way as to provide incentives for existing security holders not to participate, whether as a means to increase the proportionate interests of insiders, to transfer control to an unrelated third party or otherwise.

Similarly, caution should be exercised with respect to the terms and conditions of stand-by commitments. Stand-by commitments are included in the rights offering regime because they provide certainty to issuers and security holders that the issuer will be able to raise a minimum amount of proceeds. Although stand-by commitments will be subject to reasonable commercial terms and conditions, the take-up of securities by the stand-by guarantor should be reasonably assured. Conditions that decrease certainty or discourage security holder participation may frustrate the ability of security holders to make a free and informed decision regarding the rights offering. For example, a stand-by commitment that is conditional on limited security holder participation could create uncertainty for security holders and may also discourage participation.

Where a rights offering, including a stand-by commitment, does not appear to be consistent with the objective of the regime, staff may raise comments with an issuer regarding the structure of the rights offering and the disclosure provided to security holders. If we believe

that a rights offering is being conducted in a manner that is contrary to the public interest, we may take steps to advance the goals of the rights offering regime and investor protection, which may include a recommendation to cease trade the offering.

Questions

Issuers proposing a rights offering with novel elements may wish to contact staff prior to filing materials. If you have any questions, please feel free to contact any of the following individuals:

Ontario Securities Commission

David Surat, Senior Legal Counsel, Corporate Finance Branch

416.593.8052

dsurat@osc.gov.on.ca

Ray Ho, Accountant, Corporate Finance Branch

416.593.8106

rho@osc.gov.on.ca

Jordan Lavi, Legal Counsel, Office of Mergers and Acquisitions

416.593.8245

jlavi@osc.gov.on.ca

Autorité des marchés financiers

Marie-Josée Lacroix, Analyste en financement des sociétés, Direction du financement des sociétés

514.395.0337, poste 4415

Marie-Josée.Lacroix@lautorite.qc.ca

Financial and Consumer Affairs Authority of Saskatchewan

Tony Herdzik, Deputy Director, Corporate Finance

306.787.5849

tony.herdzik@gov.sk.ca

Manitoba Securities Commission

Wayne Bridgeman, Deputy Director, Corporate Finance

204.945.4905

wayne.bridgeman@gov.mb.ca

Alberta Securities Commission

Ashlyn D'Aoust, Senior Legal Counsel, Corporate Finance

403.355.4347

ashlyn.daoust@asc.ca