

Multilateral CSA Notice 45-318

Prospectus Exemption for Certain Distributions through an Investment Dealer

January 14, 2016

Introduction

The securities regulatory authorities in British Columbia, Alberta, Saskatchewan, Manitoba and New Brunswick (the participating jurisdictions or we) are each adopting a prospectus exemption (exemption) that, subject to certain conditions, allows issuers listed on a Canadian exchange to raise money by distributing securities to investors who have obtained advice about the suitability of the investment from an investment dealer.

The participating jurisdictions have adopted the exemption by way of

- BC Instrument 45-536 *Exemption from prospectus requirement for certain distributions through an investment dealer* in British Columbia;
- General Order 45-930 *Exemption from prospectus requirement for certain distributions through an investment dealer* in Saskatchewan;
- Blanket Order 45-503 *Exemption from prospectus requirement for certain distributions through an investment dealer* in Manitoba;
- Blanket Order 45-508 *Exemption from the Prospectus Requirement for Certain Distributions through an Investment Dealer* in New Brunswick; and
- Alberta Securities Commission Rule 45-516 *Prospectus Exemptions for Retail Investors and Existing Security Holders* in Alberta (Alberta rule).

The exemption will be effective in each participating jurisdiction concurrently with, or as soon as possible after, this notice. Each participating jurisdiction has attached their form of exemption as Annex A to this notice.

The Alberta rule also repeals ASC Rule 45-513 *Exemption for Distribution to Existing Security Holders* consolidating the existing security holder exemption (ESE) and the exemption in a single rule.

Substance and purpose

The purpose of the exemption is to facilitate capital raising for listed issuers and foster participation of retail investors in private placements, while maintaining appropriate investor protection.

The exemption permits listed issuers to issue listed securities to an investor that has obtained advice about the suitability of the investment from an investment dealer, subject to a number of conditions. The key conditions are:

- the issuer must be a reporting issuer in at least one jurisdiction of Canada and have a class of equity securities listed on the Toronto Stock Exchange, the TSX Venture Exchange, the Canadian Securities Exchange or Aequitas Neo Exchange Inc.;

- the issuer must have filed all timely and periodic disclosure documents as required under the continuous disclosure requirements in our securities legislation;
- the offering can consist only of a listed security, a unit consisting of a listed security and a warrant to acquire another listed security, or another security convertible into a listed security at the security holder's sole discretion;
- the news release announcing the offering must
 - disclose, in reasonable detail, the distribution, including use of proceeds, and any material fact not yet generally disclosed, and
 - include a statement that there is no material fact or material change about the issuer that has not been generally disclosed;
- the investor must obtain advice regarding the suitability of the investment from an investment dealer;
- in British Columbia, Saskatchewan, Manitoba and New Brunswick, the investor must be provided with a contractual right of action in the event of a misrepresentation in the issuer's continuous disclosure record regardless of whether the investor relied on the misrepresentation. In Alberta, purchasers are afforded a statutory right of action under Part 17.01 of the *Securities Act* (Alberta); and
- although an offering document is not required, if an issuer voluntarily provides one, an investor will have certain rights of action in the event of a misrepresentation in it.

The first trade of securities issued under the exemption will be subject to resale restrictions under section 2.5 of National Instrument 45-102 *Resale of Securities* like most other capital raising prospectus exemptions. In addition, issuers will have to file a report of exempt distribution within 10 days after each distribution under the exemption.

This is only an exemption from the prospectus requirement. There is no corresponding exemption from the dealer registration requirement. In general, issuers with an active non-securities business do not have to register as a dealer because they are not in the business of trading. See the guidance in Companion Policy 31-103 *CP Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

Background

The securities regulatory authorities in British Columbia, New Brunswick and Saskatchewan published the exemption for comment on April 16, 2015 (the April publication). For additional background on the exemption, please refer to the notice we published on April 16, 2015.

The Alberta Securities Commission published the exemption for comment on September 10, 2015 (the September publication). For additional background on the Alberta rule, please refer to the notice published on September 10, 2015.

Summary of written comments received by the participating jurisdictions

The comment period for the April publication ended June 15, 2015. Submissions from 231 commenters were received.

The comment period for the September publication ended November 9, 2015. Submissions from six commenters were received.

We considered the comments received and thank all of the commenters for their input. The list of commenters for the April publication is in Annex B to this notice and a summary of comments for the April publication is contained in Annex C to this notice. The list of commenters and a summary of comments for the September publication is contained in Annex D to this notice.

The comment letters on the September publication can be viewed on the Alberta Securities Commission website at www.albertasecurities.com. They are attached to the notice of the September publication.

Summary of changes to the proposal

After considering the comments, we did not make any material changes to the exemption.

Annexes

- A. Form of exemption in local jurisdiction
- B. List of commenters on the April publication
- C. Summary of comments received on the April publication
- D. List of commenters and summary of comments received on the September publication

Questions

Please refer your questions to any of the following:

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