

Annex C

Summary of Comments Received on 2013 Proposal

1. General support

Commenters overwhelmingly supported the proposed exemption. Many commenters said that the exemption would be beneficial to the public venture capital market by helping issuers (especially venture issuers) raise financing in a cost-effective manner. A number of commenters also noted the exemption would keep retail investors engaged.

Many commenters urged us to adopt the exemption as quickly as possible.

2. Making exemption available to issuers listed on other Canadian markets

In the 2013 Proposal, we proposed that the exemption would only be available to issuers with a class of equity securities listed on the TSXV. We sought comment on whether the proposed exemption should be available to issuers listed on other Canadian markets.

Commenters who provided comments on this question overwhelmingly supported making the exemption available to issuers listed on the TSX and the CSE, in addition to the TSXV. Reasons for extending the exemption to issuers listed on the TSX and CSE included the following:

- All issuers listed on an exchange in Canada are subject to continuous disclosure obligations under securities laws, so security holders of issuers listed on other exchanges would have access to information that is subject to similar standards of disclosure in order to make informed investment decisions.
- Issuers listed on other Canadian markets face similar financing challenges to those listed on the TSXV.

3. Investment limit

In the 2013 Proposal, we proposed an investment limit of \$15,000, unless an investor obtains suitability advice from a registered investment dealer. We sought comment on the investment limit and whether it was appropriate to set no limit where suitability advice has been obtained.

There were many comments on the proposed investment limit. While some commenters agreed that \$15,000 was a reasonable investment limit, many commenters thought the limit was too low and suggested limits ranging from \$25,000 to \$100,000 to “no limit”. Reasons for increasing the limit included the following:

- Retail investors are not limited to investing any particular amount when purchasing securities of a listed issuer on the secondary market, so they should not be limited in the amount they purchase under the proposed exemption.
- The success of the exemption will be measured both by how many retail investors participate and by the capital issuers are able to raise in reliance on the exemption. While limiting the amount of total loss is a valid consideration in implementing a prospectus

exemption, a higher limit strikes a fairer balance between the need to protect investors, the right of investors to make their own investment decisions and the need to allow junior issuers to raise meaningful levels of capital in reliance on the exemption.

- Many security holders may choose not to reinvest in an issuer given current market conditions, so those who do choose to participate should be able to invest a larger amount.

Some commenters suggested alternatives for calculating individual investment limits. One commenter suggested basing the investment limit on a *pro rata* allocation consistent with investors' current holdings. Another commenter suggested basing the limit on the greater of \$15,000 and the current market value of the security holder's investment in the issuer. Another commenter suggested a calculation that would permit security holders with a significant position to participate beyond the \$15,000 limit to the extent of their current holding multiplied by the offering price.

A few commenters suggested expanding the category of registrants who could provide suitability advice beyond registered investment dealers.

4. Record date

In the 2013 Proposal, we did not specify a record date but sought comment on different alternatives as short as one day before the announcement of the offering. While some commenters felt the record date should be a more extended period, with suggestions ranging from at least 5 days before the announcement of the offering to 90 days, the majority of commenters favoured a record date of at least one day before the announcement of the offering. Reasons for this included the following:

- A record date allowing for an extended period does not necessarily mean that an investor will have greater familiarity with an issuer. With respect to possible "pump and dump" concerns, current regulations against insider tipping should adequately address those concerns.
- Setting a record date as the date that is immediately prior to the public announcement of the offering ties into the TSXV's pricing policy.
- Whether an investor purchased securities of an issuer 60 days previously or two days previously does not matter. What matters is that an investment decision was made.

5. Resale restrictions

The majority of commenters providing feedback on the resale restrictions agreed that the exemption should be subject to a four-month restricted period. Reasons for this included the following:

- A four-month hold period ensures consistent treatment with other capital-raising exemptions. The four-month hold period meets the objectives of allowing retail investors to get the discounted price, avoid commissions, and acquire sweeteners, but does not provide advantages over other exemptions like "friends and family" or accredited investor.

- Although the rights offering exemption (where only a seasoning period is imposed) is similar to the exemption, it is also different in many important ways, including with respect to the disclosure requirements.
- A four-month hold period will be helpful to discourage investors from using the exemption for speculation purposes.

Some commenters provided feedback on the concept of hold periods generally and whether hold periods continue to serve a useful function.

6. Additional structural requirements

We did not propose any conditions regarding the structure of the financing and sought comment on whether the financings should be conducted under the standard private placement rules of the exchange. Most commenters agreed with this approach, however one commenter suggested making the private placement rules of the TSXV an integral part of the exemption, including an aggregate limit on the amount raised to no more than 25% of the number of the existing outstanding securities of the class to be issued in any twelve-month period.

We also asked if there are other structural requirements that we should make a condition of the exemption. A few commenters suggested capping the amount that issuers could raise under the exemption in a twelve-month period. Some commenters suggested that investment dealers be allowed to backstop offerings and be entitled to additional compensation for doing so.

Commenters generally disagreed with requiring issuers to provide additional continuous disclosure, such as an annual information form, as a condition of the exemption. One commenter did, however, suggest requiring additional disclosure in the offering news release regarding insider holdings and intention to participate in the offering.