

Frequently Asked Questions

BCI 45-534 *Exemption from prospectus requirement for certain trades to existing security holders*

1. Is the \$15,000 limit per issuer?

Yes, the \$15,000 limit is per issuer, per 12-month period. As a result, an investor could invest up to \$15,000 in multiple issuers in a 12-month period.

2. Can an issuer combine a private placement under this exemption with private placements under other exemptions (e.g. the accredited investor exemption)?

Yes. Securities legislation does not prevent an issuer from doing a private placement under the existing security holder exemption concurrently with a private placement under another exemption, such as the accredited investor exemption.

3. How can an issuer satisfy the requirement to make the offer available to all security holders?

We expect most issuers will satisfy the requirement to make the offer available to all security holders by disclosing it in the offering news release. The issuer may consider indicating the jurisdictions where it is making the offer.

We note that the requirement to make the offer available to all security holders does not mean that it must be made available to security holders in jurisdictions outside of Canada unless there is a similar exemption available in the foreign jurisdiction.

4. Is the issuer required to make the offer available on a *pro rata* basis?

There is no requirement that an issuer make the offer on a *pro rata* basis.

5. Can an issuer distribute convertible securities or flow through common shares under this exemption?

Convertible securities – Under this exemption, an issuer can only distribute a security that is of a class of equity security that is already listed (a listed security) or a unit consisting of a listed security and a warrant to acquire a listed security. As a result, there are two types of convertible security that an issuer can distribute under this exemption. An issuer can distribute a convertible security if that convertible security itself is of a class of equity security already listed. Secondly, an issuer can distribute a warrant if that warrant forms part of a unit and the warrant entitles the holder to acquire a listed security.

“Flow-through” common shares – As discussed above, an issuer can distribute a security that is of a class of equity security that is already listed. An issuer could distribute “flow-through” common shares under the exemption, if the common shares are already listed. Flow-through common shares are not a separate class of security; rather, calling a security “flow-through” denotes the tax benefits of the security.

6. Does an issuer have to accept all subscriptions under this exemption?

No. Under the exemption, there is no requirement that an issuer accept all subscriptions. However, if an issuer were to reject a subscription that was in all respects a valid subscription, it might call into question whether the offering was open to all security holders.

We understand that issuers might not want to accept small subscription amounts because of the administrative burden. For instance, a venture issuer with a low market price might not want to accept subscriptions for less than a board lot. If this is the case, for transparency purposes, we would encourage issuers to clearly disclose the minimum subscription amount in the offering news release.

7. What are some examples of “offering material”? How does an issuer file offering material?

Offering material is defined as a document purporting to describe the business and affairs of an issuer that has been prepared primarily for delivery to and review by a prospective purchaser so as to assist the prospective purchaser to make an investment decision in respect of securities being sold in a distribution under this exemption. Issuers should consult this definition when determining whether they should file a particular document.

A term sheet that only included the basic terms of the offering (e.g. price, type of security, where to obtain a subscription agreement) would likely not constitute offering material, unless the term sheet also described the business and affairs of the issuer, or included information that was meant to sell, promote or market the sale of the security under this exemption.

A PowerPoint presentation about the business of the issuer would constitute offering material if that PowerPoint presentation was prepared primarily as a presentation to be delivered to and reviewed by prospective purchasers to assist them in making an investment decision about the securities being offered under this exemption.

If an issuer provides offering material to a purchaser, the issuer is required to file the offering material with the regulator or securities regulatory authority no later than the date the issuer first provided the material to a purchaser. The issuer would file the offering material on SEDAR under the “News Release” filing category as document type “Other”.

8. Is there a minimum pricing requirement for this exemption?

The exchanges set the pricing requirements, including allowable discounts, for private placements. An issuer should review the policies of their exchange, or contact the exchange, if they have questions about the pricing of an offering under this exemption.

9. Does an issuer need to have a minimum offering amount?

Under the exemption, an issuer is required to disclose in the offering news release the minimum and maximum number of securities proposed to be distributed and the minimum and maximum aggregate gross proceeds of the distribution. An issuer is also required to include a description of the principal purposes for which the issuer will use the gross proceeds, assuming both the minimum and maximum offering. These are disclosure requirements only. There is no requirement to have a minimum offering amount. An issuer could meet the disclosure requirements by indicating that there is no minimum offering amount.

10. Is there a minimum period for which the offering needs to remain open?

There is no minimum offering period specified in the exemption. However, an issuer needs to make the offer available to all persons who held a listed security on the record date. If the issuer were to set a very short offering period (for example, two days), it might call into question whether the issuer met the requirement to make the offer available to all security holders. This is because a very short offering period could prevent a security holder from participating in the offering. If there is an offering period, for transparency purposes, the issuer should disclose it in the offering news release.

11. Are there specific steps that an issuer must take to verify whether a purchaser's representation that they are an existing security holder is correct?

This exemption is available for distributions to existing security holders. One of the key conditions of the exemption is that the purchaser must represent in writing that they were a security holder on the record date. There is no corresponding requirement that the issuer must take specific steps to verify that the purchaser was actually a security holder on that date. However, if the issuer has reason to believe that the purchaser was not a security holder on the record date and is making a false representation, the issuer should not accept the subscription.

12. Can an issuer pay agent's commissions or finder's fees in connection with distributions under this exemption?

There are no restrictions on the payment of commissions or fees for distributions under this exemption. The exchanges typically have policies related to commissions and finder's fees. An issuer should consult those policies if they have questions about commissions or fees.

13. Can an issuer engage a party to backstop or provide a standby commitment in connection with a distribution under this exemption? Are there any limits related to fees for a standby commitment?

There are no restrictions related to backstop or standby commitments for distributions under this exemption. An issuer should contact the exchange to ensure that the standby commitment and any related fees are acceptable to the exchange.