

## **Annex B**

### **Summary of changes to the November 2013 materials**

The following is a summary of notable changes between the Rule Amendments and the November 2013 materials. In addition to the notable changes identified below, please note that we have revised the drafting of the Rule Amendments to make the conditions of the exemption clearer. For example, rather than including a stand-alone provision on the requirement to provide notice of reliance on the exemption, the notice requirement has been included as a condition to the exemption provisions.

#### **Exemption based on U.S. disclosure for registered offerings**

The November 2013 materials contemplated providing an exemption from the connected and related issuer disclosure requirements of NI 33-105 provided that, among other things, the offering document complied with U.S. disclosure requirements on conflicts of interest applicable to registered offerings (whether or not the offering was in fact registered in the U.S.) and contained the same disclosure as that provided to U.S. investors.

Many commenters expressed concern that this requirement was too narrow and would limit the utility of the exemption significantly. Commenters stated that the requirement to comply with underwriter conflicts of interest disclosure requirements applicable to U.S. registered offerings would continue to prevent Canadian investors from being able to participate in global offerings that are not registered offerings in the U.S. This approach would require Canadian investors to receive disclosure beyond that which is required to be provided to U.S. investors. Certain commenters recommended that the exemption should allow securities of non-Canadian issuers to be offered in Canada on the same basis as they are offered in the U.S.

After considering these comments, we have revised the exemption provision to provide an exemption from the connected and related issuer disclosure requirements for all offerings (registered and unregistered) made into the U.S. to U.S. investors, provided that the same disclosure that is provided to U.S. investors is also provided to Canadian investors.

#### **Foreign government offerings**

The November 2013 materials proposed that offerings of foreign government securities would be exempted from the connected issuer disclosure requirements in their entirety, but not the related issuer disclosure requirements. However, relief was proposed to be provided from the requirement to provide cover page disclosure in the case of a related issuer.

Commenters have stated that maintaining a distinction between connected and related disclosure requirements for foreign government securities will be difficult in practice and will result in foreign government securities not being offered in Canada.

Some commenters referred to how the Wrapper Relief has operated in practice. They noted that foreign governments and underwriters often leave Canada out of an offering rather than consider the different meaning of the terms “related issuer” versus “connected issuer”. Because these terms are unique to Canadian requirements and are not well understood outside

of Canada, there is a hesitation to rely on relief from the connected issuer disclosure requirements for offerings of foreign government securities.

In response to these comments, we have revised the exemption for foreign government securities to provide relief from both the connected and related issuer disclosure requirements. In addition, we have included a reference to the definition of eligible foreign security, rather than refer to the security being “issued or guaranteed by the government of a foreign jurisdiction” directly in the exemption provision.

### **Requirement to provide notice to permitted clients**

The November 2013 materials contemplated that a notice would be delivered to a permitted client by a dealer that intends to rely on one or both of the exemptions. The notice was to include a description of the terms and conditions of the exemption being relied on.

One commenter pointed out that it is not necessary to require the notice to contain a description of the terms and conditions of the exemption being relied on, since the terms and conditions of the exemption will be contained in NI 33-105. At most, the requirement should be to indicate the exemption being relied on with a cross-reference to the relevant section in NI 33-105.

After considering this comment, we removed the requirement to provide a description of the terms and conditions of the exemption being relied on in the notice delivered to a permitted client. Instead, the notice is only required to include a reference to the applicable section. We have also clarified that the notice must be a written notice.

### **Exemption available to registered dealers and international dealers**

The November 2013 materials used the term “specified firm registrant” in the proposed exemption provisions. The term “specified firm registrant” is defined in NI 33-105 to include a person or company registered, or required to be registered, under securities legislation as a registered dealer, registered adviser or registered investment fund manager.

Some commenters suggested that it would be more appropriate to use the term “registered dealer or international dealer” instead of “specified firm registrant”. The terms of the Wrapper Relief specifically referred to these categories of dealer.

Some commenters also suggested that there was confusion as to whether an international dealer was caught by the definition of “specified firm registrant”, and that using the specific dealer terms would provide greater clarity.

After considering these comments, and reviewing the categories of dealer that have applied to date for Wrapper Relief, we have revised the exemptions to use the terms “registered dealer” or “international dealer” rather than specified firm registrant. This will align the exemption with the terms of the Wrapper Relief orders that have been granted and also accords with our understanding of who is using the Wrapper Relief. We have not received any applications from registered advisers or registered investment fund managers. As a result, in our view, use of the term specified firm registrant in this context may be too broad.