

## Multilateral CSA Notice 45-313

### *Prospectus Exemption for Distributions to Existing Security Holders*

March 13, 2014

#### **Introduction**

The securities regulatory authorities in British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Yukon, Northwest Territories and Nunavut (the participating jurisdictions or we) are each publishing a prospectus exemption (exemption) that, subject to certain conditions, allows issuers listed on the TSX Venture Exchange (TSXV), Toronto Stock Exchange (TSX) or Canadian Securities Exchange (CSE) to raise money by distributing securities to their existing security holders.

The participating jurisdictions have made, or expect to implement, the exemption by way of

- blanket order in each of British Columbia, Saskatchewan, Manitoba, Nova Scotia, New Brunswick, Prince Edward Island, the Northwest Territories, Nunavut and Yukon; and
- rule in each of Alberta and Québec.

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.

#### **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 their existing security holders, subject to a number of conditions. The key conditions are:

- the issuer must have a class of equity securities listed on the TSXV, TSX or CSE;
- the offering can consist only of a class of equity securities listed on the TSXV, TSX, or CSE, or units consisting of the listed security and a warrant to acquire the listed security;
- the issuer must make the offering available to all existing security holders that hold the same type of listed security;
- unless the investor has obtained suitability advice from a registered investment dealer, the investor can only invest a maximum of \$15,000 per issuer under the exemption in a 12-month period;
- the issuer must have filed all timely and periodic disclosure documents as required under applicable securities laws;
- the issuer must issue a news release disclosing the proposed offering, including details of the use of proceeds;
- each investor must confirm in writing to the issuer that, as at the record date, they held the type of listed security offered under the exemption;

- an investor must be provided with certain rights of action in the event of a misrepresentation in the issuer’s continuous disclosure record; and
- although an offering document is not required, if an issuer voluntarily provides one, the issuer must file the offering document with the securities regulatory authority and 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**

We published the exemption for comment on November 21, 2013 (the 2013 Proposal). For additional background on the exemption, please refer to the notice we published on November 21, 2013.

## **Summary of Written Comments Received by the Participating Jurisdictions**

The comment period for the 2013 Proposal ended January 20, 2014. During the comment period, we received submissions from 241 commenters. We considered the comments received and thank all of the commenters for their input. The list of commenters is in Annex B to this notice and a summary of comments is contained in Annex C to this notice.

The comment letters can be viewed on the Alberta Securities Commission website at [www.albertasecurities.com](http://www.albertasecurities.com).

## **Summary of Changes to the Exemption**

After considering the comments, we made some revisions to the 2013 Proposal. Those revisions are reflected in the form of exemption each participating jurisdiction is publishing concurrently with this notice. As these changes are not material, we are not republishing the exemption for a further comment period.

The key changes we made to the 2013 Proposal are described below. We also highlight areas where we are not making changes to what was proposed in the 2013 Proposal.

### ***Exchanges***

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

We received comments indicating that the policy rationale for the exemption applies equally to issuers listed on other Canadian exchanges. We have revised the exemption so that it will be available to issuers with equity securities listed on the TSXV, TSX or CSE.

### ***Record date***

The record date is the date on which a security holder must already hold securities of the issuer to be eligible to acquire securities under the exemption. We did not specify a record date in the 2013 Proposal. Instead, we sought comment on two alternatives: a record date up to one day before the announcement, or a longer period.

Most commenters supported a record date of at least one day prior to the date of the announcement. We have now specified that the record date be a date that is *at least one day* prior to the day that an issuer issues the offering news release.

### ***Requirement to make offer to all existing security holders***

Under the 2013 Proposal, there was no requirement that an issuer make the offering available to all existing security holders. We added a condition that the issuer makes the offer available to all persons who, as of the record date, held a listed security of the issuer of the same class and series as the listed security to be distributed under this exemption. Issuers would therefore be unable to limit the offer to selected security holders.

We think this requirement furthers one of the goals of the exemption, which is to promote fairness by giving investors who do not meet the criteria under other capital-raising exemptions the opportunity to participate in private placements. We do not think this is a burdensome requirement, since we expect issuers will wish to maximize the amount of capital they can raise under the exemption.

**An issuer is only required to make the offer available to security holders who reside in jurisdictions where the exemption or a similar exemption is available.**

### ***Requirement to disclose approach to oversubscriptions***

The offering news release must include reasonable detail of the proposed distribution, including the minimum and maximum number of securities an issuer proposes to distribute. In the 2013 Proposal, we did not specify any disclosure requirements where aggregate subscriptions exceed the maximum number of securities proposed to be distributed. However, to help ensure fairness and transparency in how issuers deal with oversubscriptions, we have added a requirement that issuers describe in the offering news release how they intend to allocate oversubscriptions.

### ***Sunset clause***

In the 2013 Proposal, the participating jurisdictions adopting the exemption by blanket order proposed that the blanket order would expire on December 31, 2015, subject to extension. In

light of the support for the exemption, and given that in two jurisdictions the exemption will be permanently available in a rule, the blanket order will not contain a sunset clause.

### ***Other comments***

We received comments suggesting other changes. We are not making the following changes at this time:

- *Investment limit:* A number of commenters supported increasing the limit, but there was no consensus on the appropriate dollar amount. Instead of delaying implementation to consult further on the appropriate investment limit, we propose to maintain the \$15,000 limit (unless an investor obtains suitability advice). We will monitor the use of the exemption to see if changes to the investment limit are warranted.
- *Resale restrictions:* We propose to maintain the restricted period so securities issued under the exemption will be subject to a four-month hold period. This is consistent with most other capital-raising exemptions. A number of commenters expressed views on hold periods generally. We propose to implement the exemption without delay and defer consideration of hold periods at this time.

### **Ontario**

The Ontario Securities Commission announced on December 4, 2013 that it would publish for comment four new capital raising prospectus exemptions in the first quarter of 2014, including a proposed prospectus exemption for distributions to existing security holders. It intends to publish the proposed prospectus exemptions on or around March 20, 2014.

### **Local Matters**

Annex D is being published in any local jurisdiction that is making related changes to local securities laws, including local notices or other policy instruments in that jurisdiction. It also includes any additional information that is relevant to that jurisdiction only.

### **Annexes**

- A. Form of Exemption in Local Jurisdiction
- B. List of Commenters on 2013 Proposal
- C. Summary of Comments Received on 2013 Proposal
- D. Local Matters

## **Questions**

Please refer your questions to any of the following:

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