

British Columbia Securities Commission

BC Instrument 45-536

*Exemption from prospectus requirement
for certain distributions through an investment dealer*

Definitions

1. Terms defined in the *Securities Act* or National Instrument 14-101 *Definitions* have the same meaning in this Instrument.

2. In this Instrument:

“investment dealer” has the same meaning as in section 1.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

“listed security” means a class of equity security of an issuer listed on the TSX Venture Exchange, the Toronto Stock Exchange, the Canadian Securities Exchange, or Aequitas Neo Exchange Inc.;

“offering material” means 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 Instrument;

“offering news release” means the news release of an issuer announcing its intention to conduct a distribution under this Instrument.

Exemption for distributions made with suitability advice

3. The Commission, considering that to do so would not be prejudicial to the public interest, orders that the prospectus requirement does not apply to a distribution by an issuer of a security of its own issue if all of the following conditions are met:

(a) the issuer is a reporting issuer in at least one jurisdiction of Canada;

(b) the issuer’s equity securities are listed for trading on the TSX Venture Exchange, the Toronto Stock Exchange, the Canadian Securities Exchange or Aequitas Neo Exchange Inc.;

(c) the issuer has filed in each jurisdiction of Canada in which it is a reporting issuer all periodic and timely disclosure documents that it is required to have filed in that jurisdiction as required by each of the following:

(i) applicable securities legislation,

- (ii) an order issued by the regulator or securities regulatory authority,
 - (iii) an undertaking to the regulator or securities regulatory authority;
- (d) the issuer has issued and filed the offering news release as set out in section 4;
- (e) the distribution is of a listed security, a unit consisting of a listed security and a warrant, or a security convertible into a listed security at the security holder's sole discretion;
- (f) the purchaser purchases the security as principal;
- (g) the purchaser has obtained advice regarding the suitability of the investment and, if the person is resident in a jurisdiction of Canada, that advice has been obtained from a person that is registered as an investment dealer in the jurisdiction; and
- (h) the purchaser and the issuer enter into a subscription agreement that contains the conditions set out in sections 5 and 6.
4. The offering news release must include
- (a) reasonable detail of the proposed distribution and proposed use of gross proceeds including:
 - (i) the minimum and maximum number of securities proposed to be distributed and the minimum and maximum aggregate gross proceeds of the distribution; and
 - (ii) a description of the principal purposes, with approximate amounts, for which the issuer will use the gross proceeds, assuming both the minimum and maximum offering;
 - (b) disclosure of any material fact about the issuer that has not been generally disclosed; and
 - (c) a statement that there is no material fact or material change about the issuer that has not been generally disclosed.
5. The subscription agreement between the issuer and purchaser must contain a contractual right of action against the issuer for rescission or damages that
- (a) is available to the purchaser if a document or core document, each as defined in section 140.1 of the Act, contains a misrepresentation that was not corrected before the purchaser acquires a security under this exemption, without regard to whether the purchaser relied on the misrepresentation;

- (b) is enforceable by the purchaser delivering a notice to the issuer
 - (i) in the case of an action for rescission, within 180 days after the purchaser signs the agreement to purchase the security, or
 - (ii) in the case of an action for damages, before the earlier of
 - (A) 180 days after the purchaser first has knowledge of the facts giving rise to the cause of action, or
 - (B) 3 years after the date the purchaser signs the agreement to purchase the security;
 - (c) is subject to the defence that the purchaser had knowledge of the misrepresentation;
 - (d) in the case of an action for damages, provides that the amount recoverable
 - (i) must not exceed the price at which the security was offered, and
 - (ii) does not include all or any part of the damages that the issuer proves does not represent the depreciation in value of the security resulting from the misrepresentation; and
 - (e) is in addition to, and does not detract from, any other right of the purchaser.
6. The issuer must represent each of the following to the purchaser in the subscription agreement:
 - (a) the issuer's "documents" and "core documents", each as defined in section 140.1 of the Act, do not contain a misrepresentation;
 - (b) there is no material fact or material change related to the issuer that has not been generally disclosed.
 7. Other than the subscription agreement, any offering material provided to a purchaser in connection with a distribution under this Instrument must be filed with the regulator or securities regulatory authority no later than the day that the material was first provided to a purchaser.

Resale restrictions

8. The first trade of a security acquired under this Instrument is subject to section 2.5 of National instrument 45-102 *Resale of Securities*.

Report of exempt distribution

9. An issuer that distributes a security under this Instrument must file a report in British Columbia no later than the 10th day after the distribution.

10. The required form of report under section 9 is Form 45-106F6.

Effective date

11. This order comes into effect on January 14, 2016.

January 13, 2016

Brenda M. Leong
Chair

(This part is for administrative purposes only and is not part of the Order)

Authority under which Order is made:
Act and section: Securities Act, section 76