

British Columbia Securities Commission

BC Instrument 51-512

Certain Private Placements

Definitions

1. Terms defined in the *Securities Act*, National Instrument 14-101 *Definitions*, National Instrument 33-105 *Underwriting Conflicts* (NI 33-105) or Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets* (MI 51-105) have the same meaning in this Instrument.
2. In this Instrument:
 - (a) “designated exchange” means any of NASDAQ OMX; Borsa Italiana, MTA Tier; London Stock Exchange, except AIM; Hong Kong Stock Exchange; Deutsche Börse, except the Quotation Board and the Entry Standard tier; Xetra, Prime Standard and General Standard tiers; SIX Swiss Exchange; Bourse de Luxembourg, except Euro MTF; Tokyo Stock Exchange, 1st Section and 2nd Section; Shanghai Stock Exchange; The Stock Exchange of Thailand, except The Market for Alternative Investment (mai); National Stock Exchange of India; Bombay Stock Exchange; Osaka Stock Exchange; Korea Exchange; and Singapore Exchange; and
 - (b) “permitted client” means a permitted client as defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

Background

3. Certain existing provisions of British Columbia securities laws impose unnecessary and unintended constraints on private placements to institutional investors.
4. Under section 3 of MI 51-105, an issuer that has issued a class of OTC-quoted securities and that does not have a class of securities listed or quoted on certain specified exchanges is a reporting issuer in British Columbia in certain circumstances.
5. Section 2.1(1) of NI 33-105 prohibits a specified firm registrant from acting either as an underwriter in a distribution of securities in which it is the issuer or selling securityholder or as a direct underwriter in a distribution of securities of or by a connected issuer or a related issuer of the specified firm registrant, unless the distribution is made under a prospectus or another document that contains certain specified information. Further, where the specified information is required to be disclosed by section 2.1(1) of NI 33-105, section 4.1 requires in certain circumstances that a purchaser of securities be given a valuation of the issuer.

6. The exemptions from MI 51-105 provided by BC Instrument 51-511 *Exemptions from Multilateral Instrument 51-105 Issuers Quoted in the U.S. Over-the-Counter Markets* do not fully address the unnecessary and unintended constraints.

Order under sections 48 and 76

7. The Commission, considering that to do so would not be prejudicial to the public interest, orders under sections 48 and 76 of the Act that the provisions of MI 51-105 and NI 33-105 described below do not apply to the persons described below.

Exemption from MI 51-105 for issuers who have securities listed on a designated exchange, whose only listed or quoted securities are non-convertible debt securities, or who distribute securities to permitted clients

8. An OTC issuer is exempt from section 3 of MI 51-105 if it would otherwise apply only by reason of the OTC issuer carrying on promotional activities in or from British Columbia or distributing a security to a person in British Columbia (or both), provided that:
 - (a) the OTC issuer has securities listed on a designated exchange; or
 - (b) the OTC issuer does not have any class of securities listed on an exchange or quoted on a quotation and trade reporting system other than non-convertible debt securities; or
 - (c) all of the following apply:
 - (i) the distribution is exempt from the prospectus requirement;
 - (ii) the promotional activities in or from British Columbia are directed only at permitted clients; and
 - (iii) each person in British Columbia to which the OTC issuer distributes a security is a permitted client.

Exemption from disclosure and valuation requirements in NI 33-105

9. A person is exempt from sections 2.1(1) and 4.1 of NI 33-105 in connection with a distribution to which both of the following apply:
 - (a) the distribution is exempt from the prospectus requirement; and
 - (b) each person that purchases a security pursuant to the distribution is a permitted client.

Effective date

10. This instrument comes into effect on March 23, 2015.

March 23, 2015

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*, sections 48 and 76