



BC Notice 2013/03

Notice and Request for Comment

National Instrument 45-106 *Prospectus and Registration Exemptions* Proposed Prospectus Exemption to Assist Capital Raising by Small Businesses

Introduction

The BCSC is publishing for comment a proposed new exemption intended to facilitate access to capital by small businesses.

The new exemption would be similar to the offering memorandum exemption in section 2.9 of National Instrument 45-106 *Prospectus and Registration Exemptions*. Here are the differences. The issuer need only include unaudited financial statements prepared using private enterprise GAAP in the offering memorandum and comply with these conditions:

- the issuer and related issuers raise no more than \$500,000
- no investor invests more than \$2,000 in any 12-month period
- the issuer is not a reporting issuer, investment fund, mortgage investment entity or real estate issuer
- the issuer does not distribute complex securities
- the offering memorandum contains a bold warning on the front page

This is an exemption only from the prospectus requirement.

Background

Securities legislation requires an issuer distributing securities to file and obtain a receipt for a prospectus. The prospectus must contain full, true and plain disclosure of all material facts relating to the securities being offered. There are a number of exemptions from this prospectus requirement. Some of these exemptions already facilitate financing for small businesses:

- private issuer exemption
- family, friends and business associates exemption
- minimum amount investment (\$150,000) exemption
- accredited investor exemption
- offering memorandum exemption

Under the current offering memorandum exemption in B.C., an issuer can raise any amount from any investor if the issuer gives the investor an offering memorandum in the required form and the investor signs the required form of risk acknowledgement. Other Canadian jurisdictions, except Ontario, provide the same or similar exemption.

The offering memorandum exemption is not widely used by issuers in the bio-tech, exploration, forestry, industrial or technology industries. One possible barrier to using the exemption is the cost of complying with the financial statement requirements. The offering memorandum must contain audited annual financial statements prepared in accordance with Canadian GAAP for publicly accountable enterprises¹. The proposed new exemption is one way of addressing this possible barrier while limiting risk to investors.

In December 2012, all other jurisdictions in Canada, except Ontario, adopted a new exemption to facilitate access to capital for small businesses and asked for comments on the exemption before February 20, 2013. You can view the exemption on their websites under Multilateral CSA Notice 45-311 *Exemptions from Certain Financial Statement-Related Requirements in the Offering Memorandum Exemption to Facilitate Access to Capital by Small Businesses*. This new exemption and our proposal would be uniform, except our exemption requires the issuer to identify use of this exemption when filing Form 45-106F6.

In December 2012, the Ontario Securities Commission published a consultation paper seeking comment on proposals for different prospectus exemptions, including an offering memorandum exemption, for a comment period that expires on March 8, 2013 (see the OSC website at www.osc.gov.on.ca for OSC Staff Consultation Paper 45-710 *Considerations for New Capital Raising Prospectus Exemptions*).

Request for comments

We welcome all comments on the proposed new exemption.

In particular, we would like small businesses to answer these questions:

1. What is the nature of your business?
2. What exemptions have you used and at what stage of your business did you use them?
3. What problems have you experienced using these exemptions? Please tell us why the exemptions do not enable you to meet your financing needs?
4. What exemptions have you not used, and why? We are particularly interested in any barriers to using the offering memorandum exemption.
5. Do you raise capital yourself, use registrants, or finders?

¹ Canadian GAAP for publicly accountable enterprises is IFRS incorporated into the CICA Handbook.

Please send us your comments about this proposal in writing on or before April 12, 2013.
Deliver your comments and refer your questions to:

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Under the *Freedom of Information and Protection of Privacy Act*, we cannot keep your submissions confidential.

February 9, 2013

Brenda M. Leong
Chair