

Multilateral CSA Notice 45-318
*Prospectus Exemption for Certain
Distributions through an Investment Dealer*

January 14, 2016

Introduction

The securities regulatory authorities in British Columbia, Alberta, Saskatchewan, Manitoba and New Brunswick (the participating jurisdictions or we) are each adopting a prospectus exemption (exemption) that, subject to certain conditions, allows issuers listed on a Canadian exchange to raise money by distributing securities to investors who have obtained advice about the suitability of the investment from an investment dealer.

The participating jurisdictions have adopted the exemption by way of

- BC Instrument 45-536 *Exemption from prospectus requirement for certain distributions through an investment dealer* in British Columbia;
- General Order 45-930 *Exemption from prospectus requirement for certain distributions through an investment dealer* in Saskatchewan;
- Blanket Order 45-503 *Exemption from prospectus requirement for certain distributions through an investment dealer* in Manitoba;
- Blanket Order 45-508 *Exemption from the Prospectus Requirement for Certain Distributions through an Investment Dealer* in New Brunswick; and
- Alberta Securities Commission Rule 45-516 *Prospectus Exemptions for Retail Investors and Existing Security Holders* in Alberta (Alberta rule).

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.

The Alberta rule also repeals ASC Rule 45-513 *Exemption for Distribution to Existing Security Holders* consolidating the existing security holder exemption (ESE) and the exemption in a single rule.

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 an investor that has obtained advice about the suitability of the investment from an investment dealer, subject to a number of conditions. The key conditions are:

- the issuer must be a reporting issuer in at least one jurisdiction of Canada and have a class of equity securities listed on the Toronto Stock Exchange, the TSX Venture Exchange, the Canadian Securities Exchange or Aequitas Neo Exchange Inc.;

- the issuer must have filed all timely and periodic disclosure documents as required under the continuous disclosure requirements in our securities legislation;
- the offering can consist only of a listed security, a unit consisting of a listed security and a warrant to acquire another listed security, or another security convertible into a listed security at the security holder's sole discretion;
- the news release announcing the offering must
 - disclose, in reasonable detail, the distribution, including use of proceeds, and any material fact not yet generally disclosed, and
 - include a statement that there is no material fact or material change about the issuer that has not been generally disclosed;
- the investor must obtain advice regarding the suitability of the investment from an investment dealer;
- in British Columbia, Saskatchewan, Manitoba and New Brunswick, the investor must be provided with a contractual right of action in the event of a misrepresentation in the issuer's continuous disclosure record regardless of whether the investor relied on the misrepresentation. In Alberta, purchasers are afforded a statutory right of action under Part 17.01 of the *Securities Act* (Alberta); and
- although an offering document is not required, if an issuer voluntarily provides one, 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

The securities regulatory authorities in British Columbia, New Brunswick and Saskatchewan published the exemption for comment on April 16, 2015 (the April publication). For additional background on the exemption, please refer to the notice we published on April 16, 2015.

The Alberta Securities Commission published the exemption for comment on September 10, 2015 (the September publication). For additional background on the Alberta rule, please refer to the notice published on September 10, 2015.

Summary of written comments received by the participating jurisdictions

The comment period for the April publication ended June 15, 2015. Submissions from 231 commenters were received.

The comment period for the September publication ended November 9, 2015. Submissions from six commenters were received.

We considered the comments received and thank all of the commenters for their input. The list of commenters for the April publication is in Annex B to this notice and a summary of comments for the April publication is contained in Annex C to this notice. The list of commenters and a summary of comments for the September publication is contained in Annex D to this notice.

The comment letters on the September publication can be viewed on the Alberta Securities Commission website at www.albertasecurities.com. They are attached to the notice of the September publication.

Summary of changes to the proposal

After considering the comments, we did not make any material changes to the exemption.

Annexes

- A. Form of exemption in local jurisdiction
- B. List of commenters on the April publication
- C. Summary of comments received on the April publication
- D. List of commenters and summary of comments received on the September publication

Questions

Please refer your questions to any of the following:

Leslie Rose

Senior, Legal Counsel, Corporate Finance
British Columbia Securities Commission
Telephone: 604-899-6654
lrose@bcsc.bc.ca

Larissa Streu

Senior Legal Counsel, Corporate Finance
British Columbia Securities Commission
Telephone: 604-899-6888
lstreu@bcsc.bc.ca

Elliott Mak

Senior Legal Counsel, Corporate Finance
British Columbia Securities Commission
Telephone: 604-899-6501
emak@bcsc.bc.ca

Christopher Peng

Legal Counsel, Corporate Finance
Alberta Securities Commission
Telephone: 403-297-4230
christopher.peng@asc.ca

Tony Herdzik

Deputy Director, Corporate Finance, Securities Division
Financial and Consumer Affairs Authority of Saskatchewan
Telephone: 306-787-5849
tony.herdzik@gov.sk.ca

Chris Besko

Director, General Counsel
The Manitoba Securities Commission
Telephone: 204-945-2561
Chris.Besko@gov.mb.ca

Ella-Jane Loomis

Legal Counsel, Securities
Financial and Consumer Services Commission (New Brunswick)
Telephone: 506-658-2602
Ella-jane.loomis@fcnb.ca

Annex A

**FINANCIAL AND
CONSUMER SERVICES
COMMISSION**

regulation • education • protection



**COMMISSION DES SERVICES
FINANCIERS ET DES SERVICES
AUX CONSOMMATEURS**

réglementation • éducation • protection

I, Manon Losier, the duly appointed General Counsel and Secretary of the Financial and Consumer Services Commission, hereby certify that this blanket order was approved by Members of the Commission at a meeting held on 21 December 2015, with an effective date of 14 January 2016.

Manon Losier

General Counsel and Secretary of the
Financial and Consumer Services Commission

IN THE MATTER OF THE SECURITIES ACT S.N.B. C. S-5.5 (the Act)

AND

**IN THE MATTER OF
EXEMPTION FROM THE PROSPECTUS REQUIREMENT FOR CERTAIN DISTRIBUTIONS
THROUGH AN INVESTMENT DEALER**

Blanket Order 45-508

Section 208

Definitions

1. Terms defined in the *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; and

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

3. The Financial and Consumer Services Commission (“the Commission”) considers it would not be prejudicial to the public interest to make the following order.

IT IS ORDERED pursuant to section 208 of the *Act* that:

4. 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 5;
 - (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 6 and 7.
5. 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.
6. 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 161.1 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 defense 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.

7. 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 161.1 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.
8. 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.
9. The first trade of a security acquired under this Instrument is subject to section 2.5 of National instrument 45-102 *Resale of Securities*.
10. An issuer that distributes a security under this Instrument must file a report in New Brunswick no later than the 10th day after the distribution.
11. The required form of report under section 10 is Form 45-106F1.
12. This order comes into effect on 14 January 2016.

Annex B
List of Commenters

Peter Bacsalmasi	Erica Tso
David Kearnes	Ivano Veschini
Ian Frame	Tom Cunningham
Lyle McLellan	Trish Hodgson
Darrin Hopkins	Kevin Guichon
Alan Tam	Jim Pettit
PI Financial Corp.	Don Mosher
Payton Nyguvest	Donald C. Huston
W. Brent Walker	Brian E. Sims
C. Michael O'Brian	Robert A. Sim
Young Xiao	The Canadian Advocacy Council for
Mark Redcliffe	Canadian CFA Institute Societies
Shane Parhar	Wayne Workun
Fiore Financial Corporation	Catherine McLeod-Seltzer
Edward Bodnarkchuk	Roy Fong
Randy Hildebrandt	Aaron Plaxton
Brodie Dunlop	Kyle Welder
Andrew MacGillivray	Jeff Willis
Mike Dunlop	Thomas Relling
Shawn Rutledge	Bernard Leroux
Donna McPherson	Gary Bogdanovich
Bill Whitehead	Michael Bebek
Todd Eymann	Investment Industry Association of Canada
Elsie Emes	Lee S. Tupper P.L .C.
Anthony Fierro	Aaron Pauliuk
Gerry Thompson	Adam Garvin
Arlene Barkun Cain	Wolverton Securities Ltd.
Bryan Henry	FAIR (Canadian Foundation for
Mark DeCotiis	Advancement of Investor Rights)
Michael A. Cochran	Carlo Aiello
Paul Vining	Marion L. Andrus
John Eymann	Alex Balfour
Mike Marosits	Delia Barbosa
Justin Hayek	Chan Buckland
Steve Wright	Robert Caie
Gary Winters	John Coletta
Bruce Winfield	Len Cuthbert
Jordan Trimble	Robert Disbrow
John R. Nelson	Enrico Giustra
Devinder Randhawa	John K. Jarvis
Norman Epp	Jonathan Jones
Tupper Jonsson & Yeadon	C. Keefer Pitfield
David Garnett	John Kirk

Alison Lam
 Kyla Lucey
 Jack Masciangelo
 Stephen Meyer
 Lorna Mountford
 Gary McDonald
 Chris O'Connor
 Michelle Parker
 Madeleine Radford
 Carlo K. Rahal
 Paul Saks
 Robert J. Sheppard
 Eric Savics
 Tor Schmidt
 Tammy Tang
 Martin Tielker
 Randal Van Eijnsbergen
 Frank Zargar
 Danny Ochoa
 Ardem Keshishian
 Caleb Chan
 Kai-Chen Yang
 Richard Forsely
 E. (Rick) Paolone
 Riley Skinner
 Robert Bryce
 Stephanie Weterings
 John Wheeler
 Tara Hassan
 Todd Gibson
 Antonio Misliarese
 Andrew Schneitzer
 Mark T. McGinnis
 Ted Parker
 Andrew Grimett
 Cale Balfour
 Colette Wood
 Getz Prince Wells LLP
 William Trimble
 Duncan W. Boggs
 Erroll Wong
 John MacPhaul
 Brock Daem
 Ian Worobetz
 Boughton Law Corporation
 David Taylor

Jennifer Taylor
 Christy de Cilloniz
 Dundee Goodman Private Wealth/Dundee Securities
 Ltd.
 Brian Fast
 Sean O'Neill
 Candace Mordy
 Shayne Nyguvest
 Fran Amato
 Elaine Anderson
 Brock Bradford
 Bruce Buckland
 Robert Blanchard
 Stephen Bell
 Donny Crodick
 Sue Derakhshan
 Corinne Elliott
 David Elliott
 Dale Eckert
 Nelson Forward
 Shalini Fowler
 Tim Ferrit
 Kevin Gould
 Fred Hofman
 Lorinda Hoyen
 Peter Irvine
 Pauline Alison Kemp
 Jason Knoblauch
 David Lyall
 Alan Manzie
 Daniel Matwell
 J. McDermid
 Murray McInnes
 Grant McDonald
 Steve McKee
 Kyle McLean
 Richard Newbury
 Tim O'Neill
 Chris Owen
 Peter J. Ross
 A. Rugin
 Ryan Steuart
 Kerry Smith
 Sonia F. Sheehan
 David Sangster
 Cindy Shoenhaar

William Smith
Sandra Todd
John Tognetti
John Van Stekelenburg
Rob Watts
Haywood Securities Inc.
Prospectors & Developers Association
Marcelin O'Neill
Michael Pound
TMX
Otto Folplement
Manfred Kurschner
Danny L. Yea
Hari Varshney
Mervyn Pinto
Reid Anderson
Nasm Siu
Tony Frakel
Alex Wong
Joseph Bonvillain
V.A. Tanaka
Paul Reinhart
Larry Timlick
Eric Sloan
Chris McKenzie
Ioanna Tsitos
Jeremy Poirier
Roy McLaughlin
Sean Kelly
Taylor Duncan-Barr
Tim Fennback
P. Walsh
Larry Martin
GB Minerals
Mark A. Smith
Thomas Schuster
Collin Kris
Sukh Athwal
Geoff Balderson
Ryan Johnson
Michael Lum
Alden Aumann
Santo Sidhu
R. Shore
Joseph Ng
Peter Dickie

Roy Trivett
Casey Trivett
David Goertz
Brian Ashton
Harley Sinclair
Mani Sanghera
Bruce Maranda
Brian G. Ko
GJ
William Ying

Annex C

Summary of comments received on Multilateral CSA Notice 45-315 *Proposed Prospectus Exemption for Certain Distributions through an Investment Dealer*

General support

We received 231 comment letters from a variety of market participants, including registrants, professional service providers, industry advocacy groups, issuers and investors.

Almost all commenters supported the proposed exemption. Most of the commenters agreed that the existing prospectus exemption regime results in the majority of private financings being limited to accredited investors. In addition, the vast majority of commenters suggested that the proposed exemption be made available in all Canadian jurisdictions.

1. Use of proposed exemption

224 commenters (97%) indicated that they, their clients, or their members would use the proposed exemption. The most common reason given was that the proposed exemption was one solution to the current regime that effectively precludes most retail investors from participating in private placements.

2. Expansion of exemption to registered exempt market dealers

One of the conditions of the proposed exemption is that the investor must receive suitability advice from a registered investment dealer. We invited comment on whether we should expand the proposed exemption so that investors could also receive suitability advice from a registered exempt market dealer (EMD).

We received 15 comments in response to this question. Only two of the commenters supported expanding the proposed exemption to permit use by EMDs, but neither provided substantive reasons. The 13 commenters that did not support use by EMDs cited a number of reasons. The most common reason given was that the investor protection underlying the proposed exemption is premised on the rigorous IIROC requirements applicable to registered investment dealers.

3. Appropriateness of hold period

Securities issued under the proposed exemption would be subject to resale restrictions (that is, a four-month hold period). We sought comment on whether the four-month hold period is appropriate.

We received 104 responses to this question. Of those, 68 suggested that securities distributed at or above market price should not be subject to resale restrictions. The most common reason given was that investors are already fully informed about the issuer through its continuous disclosure record and the requirement for the investment dealer to provide KYP and KYC advice. Since a potential investor would rely on exactly the same information to purchase on the secondary market without resale restrictions, these commenters argued that there should not be a resale restriction imposed on a purchase using the proposed exemption.

Sixteen commenters indicated that the current four-month hold period was appropriate. An additional 20 commenters suggested various shortened hold periods between one and three months.

As a general comment, 55 commenters submitted that the four-month hold period is obsolete and that the CSA should reconsider its application to all prospectus exemptions.

4. Sufficient Investor Protection

We sought comment on whether the proposed exemption contains sufficient alternative protections such that the prospectus requirement is not necessary. Almost all of the commenters (227) agreed that it is appropriate to remove the prospectus requirement for offerings under the proposed exemption. Their reasons included:

- the standard of care applicable to a suitability review provides investors with a high degree of protection and is consistent with or higher than that provided by other exemptions that are based on the investor's relationship with an issuer or an income and asset threshold
- the considerable compliance effort and expense associated with the current investment dealer regime are not worthwhile if its benefits are not realized by exemptions which acknowledge the value of investment dealer suitability advice
- the cause of action for misrepresentation in an issuer's disclosure under the proposed exemption provides the investor with an avenue for recourse.

One commenter indicated that investor protection was insufficient under the proposed exemption and suggested that suitability is too low a standard to adequately protect retail investors. The commenter was of the view that, in order to meet KYP obligations, the only investment dealers providing advice would be the same dealers participating in the underwriting of the private placement and performing due diligence on the issuer. The result is that the investment dealer would have a conflict of interest. The commenter suggested that the proposed exemption would only be acceptable if the recommendation provided to the retail investor was a result of the investment being in the best interest of the investor, and not simply that it is suitable for the investor. Another commenter supported the proposed exemption but also stressed the importance of implementing a statutory best interest standard on all registrants providing advice.

Another commenter stated that the proposed exemption should not be conditional on investors receiving a positive suitability analysis from a registered dealer to be consistent with the existing KYC rules. A client is able to proceed with a trade on the secondary market even if the dealer determines it is not suitable.

Annex D

List of commenters and summary of comments received on proposed ASC Rule 45-516 *Prospectus Exemptions for Retail Investors and Existing Security Holders*

List of Commenters

- James Price, CFA, Director Capital Markets Products, Richardson GMP Limited;
- Darrin Hopkins, BA, MBA, Director Co-Head Public Venture Capital Division, Richardson GMP Limited;
- Richard Pong, CFA, Chair, Canadian Advocacy Council for Canadian CFA Institute Societies;
- Susan Copland, B. Comm., LLB, Managing Director on behalf of Investment Industry Association of Canada (IIAC);
- Gordon Keep, Fiore Financial Corporation;
- Ungad Chadda, Senior Vice President, Toronto Stock Exchange and John McCoach, President, TSX Venture Exchange.

Summary of Comments

1. General Support

Commenters expressed strong support for the proposed exemption. Submissions generally said that the exemption would be beneficial to the public venture capital market by helping issuers access capital in a cost-efficient manner, while balancing investor protection interests.

2. Harmonization across Canada

Four of the six submissions expressed strong support for harmonization of the proposed exemption across all jurisdictions in Canada.

3. Making exemption available to issuers listed on other Canadian markets

One commenter expressed concern about the exchanges included in the proposed exemption and two of the commenters expressed support for expanding to other markets. We have not made any changes to the proposed exemption but will monitor use of the exemption for possible future changes.

4. Expanding beyond registered investment dealers

Most submissions expressed a lack of support to expanding the exemption beyond registered investment dealers, citing concerns about investor protection.

5. Investment dealer due diligence

Submissions expressed a lack of support for confirmation from an investment dealer respecting the issuer's statement of no undisclosed material facts. This confirmation would require due diligence on behalf of the investment dealer. One commenter suggested that the issuer is in the proper position to provide such a confirmation and indicated that not providing such a confirmation would be more consistent with similar existing exemptions. Another commenter was concerned about the additional cost and delays associated with such a confirmation.

6. Additional investor protection

One commenter suggested that an issuer be required to provide to subscribers a copy of its most recent annual and quarterly financial statements and management discussion and analysis. As this information would be readily available in the issuer's public disclosure record on SEDAR, we did not make this change.

One commenter suggested implementing a statutory best interest standard for all registrants. This is outside the scope of this exemption but we will consider this comment for future projects.

7. Limit on size of offering

Most submissions did not support specifying a limit on the size of offerings and one commenter suggested that a limit relating to the market capitalization of the issuer be implemented. We have not changed the proposed exemption to include such a limit but will monitor use of the exemption for possible future changes.

8. Limit on Investor's Investment

Most submissions did not support specifying a limit on an investor's investment. One commenter suggested a limit of \$25,000. We have not changed the proposed exemption to include such a limit but will monitor use of the exemption for possible future changes. Several commenters noted that investment dealers are required to provide advice based on suitability and that this should address concerns on this issue.