CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

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. In Québec, *Regulation 45-513 respecting Prospectus Exemption for Distribution to Existing Security Holders* is published with 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 *Regulation 45-102 respecting 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 *Policy Statement to Regulation 31-103 respecting 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 and a summary of comments are contained in Annex A and B, respectively, to this notice.

The comment letters can be viewed on the Alberta Securities Commission website at 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.

Questions

Please refer your questions to any of the following:

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Annex A

List of Commenters on 2013 Proposal

Midas Gold
Carl Jonsson
Fiore Management & Advisory Corp.
Chamberlain Hutchison
Darrin Hopkins
The Canadian Advocacy Council for Canadian CFA Institute Societies
Manex Resource Group
Dave Antony
Venture Capital Markets Association
Richard Sutin
Sean Zaboroski
Rick Moore
Jim Borland
Judie Whitby
Auramex Resource Corp.
Louis Béliveau
Ingrid Hibbard
Jordan Trimble
Karen Allan
Donald Mosher
Ian Frame
Stuart Ross
Catherine Green
Brad Farquhar
Tim Termuende
Salley Bowes Harwardt Law Corp.
Morris McManus
Sharon White
IGC Resources Inc.
Dean Gendron
Clark Wilson LLP
Tosca Mining Corp.
G. Trevor Conway
Critical Outcome Technologies Inc.
George Stephenson
US Oil Sands Inc.
Elmer Stewart
Paul Bowes
Mike England
Mark Fields
Victor Harwardt
Tom McCandless
Kensington Court Ventures Inc.
Doug McFaul
Marion Shaw
Canadian Securities Exchange
Miller Thomson LLP
Impact Silver Corp.
Canadian International Minerals Inc.
Charn Deol and Rajindar Deol
S. Mark Francis
Harvey Lawson
N.C. Carter
Guy Chase
Newmac Resources Inc.
Gregory Harris
Bennett Jones LLP
L'Association de l'exploration minière du Québec (AEMQ)
John Kvellestad
Investment Industry Association of Canada
Jordan Capital Markets Inc.
Cambridge House International Inc.
Jennifer Boyle
Global Met Coal Corporation
ALQ Gold Corp.
Cadillac Mining Corporation
A group of investment dealers
- Global Securities Corporation
- Haywood Securities Inc.
- Jordan Capital Markets Inc.
- Leede Financial Markets Inc.
- Mackie Research Capital Corporation
- Macquarie Capital Markets Canada Ltd. (Vancouver)
- PI Financial Corp.
- Wolverton Securities Ltd.
- Woodstone Capital Inc.

TMX Group Limited
Boughton Law Corporation
Wayne Workun

Donald Simon
Burnet, Duckworth & Palmer LLP
DuMoulin Black LLP
Donald Leitch, Peter Yates and Trevor Korsud
Matt Terriss
Darford International Inc.
Carrie Cesarone
Zahra H. Ramji
Burstall Winger
Greg Hogan and Brian Koscak
McCullough O'Connor Irwin LLP
Venture Law Corporation
Exempt Market Dealers Association of Canada
Canadian Foundation for Advancement of Investor Rights
William Murray
Chris Bunka
Greenock Resources Inc.
Nav Dhaliwal
David Little
Prospectors & Developers Association of Canada
Gardiner Roberts LLP
Gordon Blankstein
Scott Broughton
R. Brian Ashton
Thomas Atkins
Don Baxter
Hannah Bernard
Patrick Butler
Eric Carlson
Charles Chebry
Mike Clark
Denis Clement
Bob Cooper
Terry Coughlan
David Duggan
Garth Edgar
Don Flahiff
Leonard Gareau
Ronan Geoghegan
Shannon Cotnam
Ethan Heck
Dave Hodge
G. Bret Conkin
Rav Mlait
Tim Kenny
Farhan Lalani
Joe Markevich
Reza Mohammed
Luke Montaine
Travis McPherson
Paul Pawelec
Brian Peel
G.P. Schroeder
Richard Silas
Daniel Southern-Dwyer
Tom Steer
Peter Yew
Dan Stuart
Adrian Sydenham
James Tobbe
Brian Thomas
Sean Tufford
A.H. Von Kursell
Terri Anne Welyki
Bruce Winfield
Aditya*
Jason Allen
Tom Anderson
Victoria Anderson
John Archibald
Antonio Arias
J.K. Arias
Jon Armes
Saadia Syed
Rebecca Badowich
Erez Bahar
James Black
Grant Block
G. Bodnarchuk*
Douglas Bowie
Clifford Boychok
Carl Burrows*
Jesse Campbell
David A. Caulfield
David Chandra
W. Coetzer
Nicole Chartrand
Harrison Cookenboo

**illegible or incomplete name*

Bruce Counts
David Coweur
Steve Davidson
Lyle Davis
Paul Dickson
Peter M. Dimmell
Nathalie Dion
Mario Drolet
Peter Eberhardt
Hani El Rayess
Donald Erickson
Robert Fisher
Taryn Flint
Sandy Gardner
Jason Gigliotti
A. Paul Gill
Ravneet Gill
Kuba Graboski
Brian Gusko
Ronald L. Handford
Brian Hawes
Augustin Henriques
Eugene Hodgson
Carleigh Hofman
Kirsty Hogg
Alison Holditch
Yuliya Inopina
Caleb Jefferies
Twila Jensen
Bernie Kennedy
Richard Kgosana
Terry Killey*
Jan Kindler
Peter Krah
M. Kiesman
Paul Kuhn
Preeth Kumar
Michael Lake
John Lando
David S. Larsen
Roger Leschuk
Nastassia Macky
Jim Marsh
Jeremy Martin
Stephen Martin*
Nancy Massicotte
James K. Mortensen
Murray McChristian*
Sean McCole
Brock McMichael
Chad McMillan
James Nelson
Jason Nickel
Kevan O'Brien
Justus Parmar
James Paterson
Brian Petsnick
Randy* (at PI Financial)
Chris Reynolds
Brent Rusin
Rick*
Jay Roberge
George Rodriguez
Mark Saxon
Rick Schafer
Lowell Scott*
Tim Shearcroft
Cody Simpson
G. W.*
Kevin Spiro
Jeremy Strautman
Al Stan
Kyle Steveson
O. Tielens
Jordon Trimble
Riley Trimble
Josh Trujillo
Rob Turner
John A. Versfelt
Matt Watson
Steve Williams
Young Xiao
Christine Lai

**illegible or incomplete name*

Annex B

Summary of Comments Received on 2013 Proposal

1. General support

Commenters overwhelmingly supported the proposed exemption. Many commenters said that the exemption would be beneficial to the public venture capital market by helping issuers (especially venture issuers) raise financing in a cost-effective manner. A number of commenters also noted the exemption would keep retail investors engaged.

Many commenters urged us to adopt the exemption as quickly as possible.

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

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

Commenters who provided comments on this question overwhelmingly supported making the exemption available to issuers listed on the TSX and the CSE, in addition to the TSXV. Reasons for extending the exemption to issuers listed on the TSX and CSE included the following:

- All issuers listed on an exchange in Canada are subject to continuous disclosure obligations under securities laws, so security holders of issuers listed on other exchanges would have access to information that is subject to similar standards of disclosure in order to make informed investment decisions.
- Issuers listed on other Canadian markets face similar financing challenges to those listed on the TSXV.

3. Investment limit

In the 2013 Proposal, we proposed an investment limit of $15,000, unless an investor obtains suitability advice from a registered investment dealer. We sought comment on the investment limit and whether it was appropriate to set no limit where suitability advice has been obtained.

There were many comments on the proposed investment limit. While some commenters agreed that $15,000 was a reasonable investment limit, many commenters thought the limit was too low and suggested limits ranging from $25,000 to $100,000 to “no limit”. Reasons for increasing the limit included the following:

- Retail investors are not limited to investing any particular amount when purchasing securities of a listed issuer on the secondary market, so they should not be limited in the amount they purchase under the proposed exemption.
- The success of the exemption will be measured both by how many retail investors participate and by the capital issuers are able to raise in reliance on the exemption. While limiting the amount of total loss is a valid consideration in implementing a prospectus

exemption, a higher limit strikes a fairer balance between the need to protect investors, the right of investors to make their own investment decisions and the need to allow junior issuers to raise meaningful levels of capital in reliance on the exemption.

- Many security holders may choose not to reinvest in an issuer given current market conditions, so those who do choose to participate should be able to invest a larger amount.

Some commenters suggested alternatives for calculating individual investment limits. One commenter suggested basing the investment limit on a *pro rata* allocation consistent with investors' current holdings. Another commenter suggested basing the limit on the greater of $15,000 and the current market value of the security holder's investment in the issuer. Another commenter suggested a calculation that would permit security holders with a significant position to participate beyond the $15,000 limit to the extent of their current holding multiplied by the offering price.

A few commenters suggested expanding the category of registrants who could provide suitability advice beyond registered investment dealers.

4. Record date

In the 2013 Proposal, we did not specify a record date but sought comment on different alternatives as short as one day before the announcement of the offering. While some commenters felt the record date should be a more extended period, with suggestions ranging from at least 5 days before the announcement of the offering to 90 days, the majority of commenters favoured a record date of at least one day before the announcement of the offering. Reasons for this included the following:

- A record date allowing for an extended period does not necessarily mean that an investor will have greater familiarity with an issuer. With respect to possible "pump and dump" concerns, current regulations against insider tipping should adequately address those concerns.
- Setting a record date as the date that is immediately prior to the public announcement of the offering ties into the TSXV's pricing policy.
- Whether an investor purchased securities of an issuer 60 days previously or two days previously does not matter. What matters is that an investment decision was made.

5. Resale restrictions

The majority of commenters providing feedback on the resale restrictions agreed that the exemption should be subject to a four-month restricted period. Reasons for this included the following:

- A four-month hold period ensures consistent treatment with other capital-raising exemptions. The four-month hold period meets the objectives of allowing retail investors to get the discounted price, avoid commissions, and acquire sweeteners, but does not provide advantages over other exemptions like "friends and family" or accredited investor.

- Although the rights offering exemption (where only a seasoning period is imposed) is similar to the exemption, it is also different in many important ways, including with respect to the disclosure requirements.
- A four-month hold period will be helpful to discourage investors from using the exemption for speculation purposes.

Some commenters provided feedback on the concept of hold periods generally and whether hold periods continue to serve a useful function.

6. Additional structural requirements

We did not propose any conditions regarding the structure of the financing and sought comment on whether the financings should be conducted under the standard private placement rules of the exchange. Most commenters agreed with this approach, however one commenter suggested making the private placement rules of the TSXV an integral part of the exemption, including an aggregate limit on the amount raised to no more than 25% of the number of the existing outstanding securities of the class to be issued in any twelve-month period.

We also asked if there are other structural requirements that we should make a condition of the exemption. A few commenters suggested capping the amount that issuers could raise under the exemption in a twelve-month period. Some commenters suggested that investment dealers be allowed to backstop offerings and be entitled to additional compensation for doing so.

Commenters generally disagreed with requiring issuers to provide additional continuous disclosure, such as an annual information form, as a condition of the exemption. One commenter did, however, suggest requiring additional disclosure in the offering news release regarding insider holdings and intention to participate in the offering.