

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. Each participating jurisdiction has attached their form of exemption as Annex A to 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 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

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 is in Annex B to this notice and a summary of comments is contained in Annex C 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.

Local Matters

Annex D is being published in any local jurisdiction that is making related changes to local securities laws, including local notices or other policy instruments in that jurisdiction. It also includes any additional information that is relevant to that jurisdiction only.

Annexes

- A. Form of Exemption in Local Jurisdiction
- B. List of Commenters on 2013 Proposal
- C. Summary of Comments Received on 2013 Proposal
- D. Local Matters

Questions

Please refer your questions to any of the following:

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**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 TRADES
TO EXISTING SECURITY HOLDERS**

**Blanket Order 45-505
Section 208 of the Act**

WHEREAS:

1. Terms defined in the Act or National Instrument 14-101 *Definitions* have the same meaning in this Blanket Order.
2. In this Blanket Order:

“announcement date” is the day that an issuer issues an offering news release; (*date de l’annonce*)

“Commission” means the Financial and Consumer Services Commission (New Brunswick); (*Commission*)

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

“listed security” means a security of an issuer of a class of equity security listed on the TSX Venture Exchange, the Toronto Stock Exchange, or the Canadian Securities Exchange; (*titre inscrit à la cote*)

“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 Blanket Order; (*document de placement*)

“offering news release” means a news release of an issuer announcing its intention to conduct a distribution under this Blanket Order; (*communiqué concernant le placement*)

“record date” is the date that is at least one day prior to the announcement date (*date de clôture des registres*); and

“warrant” means a warrant issued by an issuer that entitles the holder to acquire a listed security or a fraction of a listed security of the same issuer. (*bon de souscription*)

3. 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 to a security holder of the issuer if all of the following conditions apply:
 - (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, or the Canadian Securities Exchange;
 - (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 an offering news release;
 - (e) the distribution is of a listed security or a unit consisting of a listed security and a warrant;
 - (f) 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;
 - (g) the purchaser purchases the security as principal;
 - (h) the purchaser represents in writing to the issuer that, on or before the record date, the purchaser acquired and continues to hold, a listed security of the issuer of the same class and series as the listed security to be distributed under this exemption;
 - (i) one of the following applies:
 - i. the purchaser is a person that 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,
 - ii. the aggregate acquisition cost to the purchaser for the securities purchased under this Blanket Order, when combined with the acquisition cost to the purchaser for the purchase of any other security from the issuer under this Blanket Order in the last 12 months, does not exceed \$15,000.
5. The offering news release must include reasonable detail of the proposed distribution and proposed use of gross proceeds including:
 - (a) the minimum and maximum number of securities proposed to be distributed and the minimum and maximum aggregate gross proceeds of the distribution;
 - (b) 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; and
 - (c) a description of how the issuer intends to allocate securities if aggregate subscriptions for securities under the proposed distribution exceed the maximum number of securities proposed to be distributed.
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 which 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 subscription 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 subscription 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 which 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 Blanket Order must be filed no later than the day that the material was first provided to a purchaser.
9. The first trade of a security acquired under this section 4 of this Blanket Order is subject to section 2.5 of National instrument 45-102 *Resale of Securities*.
10. An issuer that distributes a security under this Blanket Order must file a report of the distribution that complies with Form 45-106F1 *Report of Exempt Distribution* no later than 10 days after the distribution.
11. This Blanket Order comes into force on 14 March 2014.

DATED at Saint John, New Brunswick this 26th day of February 2014.

Peter M. Klohn, Chair

Kenneth Savage, Member

Annex B

List of Commenters on 2013 Proposal

Midas Gold	Victor Harwardt
Carl Jonsson	Tom McCandless
Fiore Management & Advisory Corp.	Kensington Court Ventures Inc.
Chamberlain Hutchison	Doug McFaul
Darrin Hopkins	Marion Shaw
The Canadian Advocacy Council for Canadian CFA Institute Societies	Canadian Securities Exchange
Manex Resource Group	Miller Thomson LLP
Dave Antony	Impact Silver Corp.
Venture Capital Markets Association	Canadian International Minerals Inc.
Richard Sutin	Charn Deol and Rajindar Deol
Sean Zaboroski	S. Mark Francis
Rick Moore	Harvey Lawson
Jim Borland	N.C. Carter
Judie Whitby	Guy Chase
Auramex Resource Corp.	Newmac Resources Inc.
Louis Béliveau	Gregory Harris
Ingrid Hibbard	Bennett Jones LLP
Jordan Trimble	L'Association de l'exploration minière du Québec (AEMQ)
Karen Allan	John Kvellestad
Donald Mosher	Investment Industry Association of Canada
Ian Frame	Jordan Capital Markets Inc.
Stuart Ross	Cambridge House International Inc.
Catherine Green	Jennifer Boyle
Brad Farquhar	Global Met Coal Corporation
Tim Termuende	ALQ Gold Corp.
Salley Bowes Harwardt Law Corp.	Cadillac Mining Corporation
Morris McManus	A group of investment dealers
Sharon White	<ul style="list-style-type: none">• 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.
IGC Resources Inc.	TMX Group Limited
Dean Gendron	Boughton Law Corporation
Clark Wilson LLP	Wayne Workun
Tosca Mining Corp.	
G. Trevor Conway	
Critical Outcome Technologies Inc.	
George Stephenson	
US Oil Sands Inc.	
Elmer Stewart	
Paul Bowes	
Mike England	
Mark Fields	

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

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

Annex C

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.

Annex D

Local Matters

In New Brunswick, the Financial and Consumer Services Commission (the Commission) has adopted the exemption as a blanket order under section 208 of the *Securities Act*, effective March 13, 2014. The Commission proposes to replace the blanket order with a local rule under the rule-making process.