boughtonlaw

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Direct: 604 647 5525
Email: rgodinho@boughtonlaw.com

BY EMAIL

Larissa Streu
Senior Legal Counsel, Corporate Finance
British Columbia Securities Commission
PO Box 10142 - 701 West Georgia Street
Vancouver, British Columbia V7Y 1L2
lstreu@bcsc.bc.ca

Tracy Clark
Legal Counsel, Corporate Finance
Alberta Securities Commission
Suite 600 – 250 5th Street SW
Calgary, AB T2P 0R4
tracy.clark@asc.ca

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
comments@osc.gov.on.ca

Dear Sirs and Mesdames:

Re: Multilateral CSA Notice 45-312 Proposed Prospectus Exemption for Distributions to Existing Security Holders (the "Proposed Exemption")

We act as counsel to numerous junior issuers listed on the TSX Venture Exchange (the "**TSXV**") and other Canadian markets, as well as certain independent investment dealers headquartered in British Columbia.

As you know, we have advocated that the Canadian Securities Administrators ("**CSA**") consider and implement new rules and regulations to streamline the capital raising process for junior issuers to enable them to access capital in a more cost efficient and timely manner, while still protecting the integrity of the junior capital markets.

We strongly support the Proposed Exemption and see a critical need to implement it as soon as possible. We submit that the Proposed Exemption should be considered a first step towards the overall goal of simplification of the regulatory framework under which junior issuers operate.

From an issuer's standpoint, the cost of capital has increased dramatically. This is not only due to increased regulation imposed by securities commissions, the Investment Industry Regulatory Organization of Canada ("**IIROC**") and the stock exchanges, but also due to changes to legal and accounting procedures, such as greatly increased due diligence and corporate governance procedures and the implementation of International Financial Reporting Standards. The cost of raising venture capital has become prohibitive and we support any measures that aim to reduce such cost.

Retail Investors

We submit that the average retail investor is aware of, and is willing to take a high level of risk when he or she determines to purchase speculative securities. While the average retail investor is free to purchase securities in the secondary market, that same investor's ability to purchase securities from issuers themselves (which directs the capital invested to the issuers rather than third party sellers) has been severely restricted by regulations emplaced to theoretically protect investors. In particular, due to increased burdensome disclosure requirements, there has been a dramatic reduction in public offerings dating back several years. Issuers are unwilling or unable to undertake the significant costs of completing public offerings, particularly in a climate where there is no assurance that an issuer will be successful in raising significant funds through a public offering. We submit that the amount of disclosure required in a prospectus and regulation of public offerings is completely out of context for what is actually being sold. The forms for prospectus offerings that were once succinct and simple have become so comprehensive and convoluted that the average investor would never read them, let alone understand them.

In fact, we submit that 100 to 300 page prospectuses, information circulars and filing statements (whether in one document or incorporated by reference) may give investors the impression that their investments have more depth and merit than they actually do. An overabundance of liability protection jargon has completely compromised the tenet of "Full, True and Plain disclosure". Furthermore, the cost of completing a prospectus offering tends to represent a much larger percentage of the capital raised in small offerings than large offerings. Venture issuers tend to complete smaller offerings than senior issuers, such that excessive cost is a major deterrent to venture issuers specifically. We are sure that your staff are well aware of the cataclysmic drop in the number of public offerings being completed by venture issuers. Without the ability to invest small amounts of money through prospectus offerings sold by registered investment dealers, retail investors are increasingly only able to participate in treasury offerings through the exempt market.

As far as the exempt market is concerned, the average retail investor simply does not qualify to participate. The net worth and/or income tests to qualify as an Accredited Investor are out of reach for all but the most wealthy retail investors, the minimum $150,000 threshold per investment is too high as a "speculative" amount for most retail investors and the pool of "friends and family" is obviously a very small component of the overall investor community.

So, to a great extent, the lifeblood of the venture capital market is being excluded from participating.

The challenge is to re-engage retail investors, and promote the health of brokerage firms that service them and the venture capital industry.

We believe that the Proposed Exemption is not designed to be a "stop gap" measure (even though certain jurisdictions intend to introduce it under a Blanket Order) but rather expect that once implemented it will continue in force. Our comments therefore contemplate the operation of the Proposed Exemption over the long term.

Having said that, in current market conditions, with numerous listed issuers on the verge of insolvency, time is of the essence

There are literally hundreds of listed issuers with large share capitalizations trading at less than $.10. We have reviewed reliable statistics that show approximately 57% of TSXV issuers trade at less than $.10, and approximately 860 TSXV issuers have less than $200,000 in working capital. The TSXV implemented "Temporary Relief Measures" to provide issuers the opportunity to raise capital at extremely low prices. We understand that approximately 60 issuers did so, but as indicated in the statistics above, there are still many others in dire predicaments. We believe a big part of the problem is that when some of the issuers had access to institutional funds, they raised significant sums and issued millions of shares. Many of those issuers have now run out of capital, have huge numbers of shares outstanding and trade in the pennies. The Temporary Relief Measures allowed these issuers to raise additional capital at less than $.05 per share/unit, but from an investor's standpoint where is the upside of making such an investment? Issuers with many or even hundreds of millions of shares outstanding have little hope of providing a decent return to investors. For this reason, we campaigned tirelessly to convince the TSXV to allow issuers to complete share consolidations on an expedited basis and the TSXV, to its credit, recently introduced provisions facilitating that. However, we had also suggested that in the event issuers were permitted to consolidate their securities without having to obtain shareholder approval, then as a condition of providing that relief the TSXV should mandate that the issuer be required to offer the first financing it completes after or in conjunction with a consolidation to its existing shareholders. Consider the following example: An issuer has 100,000,000 shares outstanding and trades at $.02. An arm's length non-Accredited Investor previously purchased 100,000 shares at $.40 in the secondary market. The issuer avails itself of the ability to consolidate its share capital without shareholder approval, and proceeds with a 10 for 1 consolidation. The issuer now has a more manageable 10,000,000 issued and outstanding shares. For the sake of argument, suppose the issuer's shares trade down slightly to $.15 post consolidation. The issuer completes a reorganization financing using the maximum discount at $.1125 to Accredited Investors and friends and family. The investor meanwhile now has 10,000 shares with a cost base of $4.00 and very little hope of ever recovering his or her investment. The investor who is already unhappy with the loss of his or her investment in a junior issuer becomes even more alienated and disenfranchised because of the perception of an uneven playing field. He or she feels that Accredited Investors, insiders and their friends and family have taken advantage of the situation to the detriment of other shareholders. Yet there is no way for the investor to participate because: i) he or she does not qualify under existing exemptions; and ii) even if the issuer wants to offer the financing to all its shareholders, the cost and time involved in completing a Rights Offering is completely unjustified and prohibitive.

We believe that the Proposed Exemption provides issuers with the ability to reach out to and preserve value for their security holders, relying on their continuous disclosure records, without having to incur the cost of traditional expensive prospectus/rights offerings or brokered private placements. This should be a fast and cost efficient method for issuers to raise capital, and also has the beneficial result of giving security holders a 'leg up' in the dismal current markets by allowing them to 'average down' their cost.

Responses to your Questions

We provide the following responses to the questions posed by you. Please note that we conducted a survey of our clients and have attached the results to this letter. We base some of our responses (such as to Question 1) on their feedback.

1. ***If you are a TSXV issuer, will you use the Proposed Exemption?***

Based on the general feedback from our issuer clients, there seems little doubt that the Proposed Exemption, if implemented, will be used by issuers extensively.

2. ***Should the Proposed Exemption be available to issuers listed on other Canadian markets?***

The writer is a member of the TSXV's listing advisory committee and therefore there is a bias in our response. Having said that, we believe the rules and policies of the TSXV, and the oversight imposed by the TSXV on its listed issuers, provide added protection to investors that may not apply to junior issuers listed on other Canadian markets. Generally speaking however, we submit that the Proposed Exemption should be a uniform exemption and available nationally to all Canadian listed issuers. We understand that the British Columbia and Alberta Securities Commissions are comfortable with allowing TSXV listed issuers to avail themselves of the Proposed Exemption due to the fact that the TSXV reports to and is governed by those commissions, whereas other exchanges are subject to the primary jurisdiction of the Ontario Securities Commission. Accordingly we presume that the Proposed Exemption would become available to issuers listed on other Canadian markets if Ontario participated in the implementation of the Proposed Exemption. We hope that will be the case.

3. ***Investors will only be able to invest $15,000 in a 12 month period unless they obtain advice from a registered investment dealer. Is $15,000 the right investment limit?***

We understand the rationale for the $15,000 limit from a "loss control" perspective. We agree that there should be a maximum limit of investment for investors who don't have the protection afforded by either prospectus-level disclosure or a registered investment advisor performing a "suitability" test. We originally advocated a $50,000 limit because in the current market we do not expect that a large percentage of existing shareholders will participate in these offerings. If 90% of existing shareholders declined to invest, and the remaining shareholders are willing to invest more, why should they be restricted to $15,000? One of the objectives of the Proposed Exemption is to facilitate the raising of sufficient capital to allow the issuer to continue its business activities. In light of the expectation that the Proposed Exemption will at some point in the future become permanent, and that market conditions will hopefully improve, we recommend a limit of $25,000 per investor without suitability advice from a registered dealer. We do not recommend that you delay the implementation of the Proposed Exemption to consider the limit, however suggest you monitor its use and adjust the limit based on experience and future market conditions.

4. ***In what circumstance would it be suitable for an investor that is a retail security holder to invest more than $15,000 in a TSXV issuer?***

We believe that in the circumstances described above, certain shareholders who have a significant vested interest in ensuring the ongoing viability of an issuer (i.e. if the investor has already made a substantial investment in the issuer and believes in its potential success based on a successful financing) should be able to invest more than $15,000. Perhaps such existing shareholders should have the ability to "back-stop" an offering, and be granted additional consideration (bonus warrants) for doing so. We believe this may merit further consideration, but do not think implementation of the Proposed Exemption should be delayed in any way.

5. ***Do you agree that there should be no investment limit if an investor receives suitability advice from a registered dealer?***

Yes, if an IIROC investment dealer determines that the investment is suitable for its client, we see no reason to limit the amount of the investment. We note that over the past few years, venture issuers have reduced their reliance on brokered private placements as a primary source of capital. We believe this is mainly due to the compliance costs passed on by investment dealers to issuers in the form of corporate finance fees and legal expenses. Instead issuers have increasingly relied on non brokered private placements which provide the least amount of protection for investors. As the Proposed Exemption is directed to an issuer's existing shareholders, we suggest that IIROC consider implementing a more limited "suitability" standard on investment dealers (without compromising the protection afforded by reasonable due diligence), failing which we expect there would be limited take up by investment dealers without fee schedules that are comparable to brokered transactions.

6. ***Do you agree that being a current security holder of an issuer enables an investor to make a more informed investment decision in that issuer?***

Yes. In our view, an existing shareholder of a listed issuer has already made an investment decision to participate in the issuer, has a relationship and some familiarity with the issuer, and is less in need of protection than a non-shareholder.

7. ***What is the appropriate record date for the Proposed Exemption? Should it be one day before the announcement of the offering or should it be a more extended period? If you think it should be more extended period what would be the appropriate period of time?***

The appropriate record date should be the date that is immediately prior to the public announcement of the offering. This would tie into the TSXV's pricing policy. We understand the rationale for having some length of relationship, but whether a shareholder determined to purchase shares of an issuer 60 days previously or 2 days previously does not really matter. What matters is that an investment decision is made. For an issuer to go back in time and try to determine who its shareholders were 60 days previous will be a logistical nightmare. We suggest that any shareholder who holds shares as of the "Record Date", being the date prior to the announcement, should be eligible. At most we consider setting the record date 5 trading days prior to the announcement, should settlement of trades be an issue.

8. ***We are currently proposing that the exemption be subject to the same resale restrictions as most other capital raising exemptions (i.e.: a four month restricted period). However, there are some similarities between the proposed exemption and the rights offering exemption which is only subject to a seasoning period.***

a. Do you agree that a four month hold period is appropriate for this exemption?

We submit that there should either be a seasoning period (if you feel that the Proposed Exemption should be given some preference of utilization over other existing exemptions – for which we believe there is a valid argument in favour) or the hold period applicable to this exemption should be consistent with those applicable to other exemptions (if the Proposed Exemption is to be put on the same footing as other exemptions). However, we strongly believe the concept of hold periods should be revisited for all exempt financings, as given the immediacy of information available to investors and the faster pace at which markets now operate, current hold periods do not serve a useful function and further limit the ability of issuers to raise funds. We recommend that hold periods for all exemptions should be reduced to a maximum of two months, if any at all. Some of the responses to our survey indicated that, as many of these financings will be undertaken as last ditch efforts to save issuers, the imposition of a four month hold period may deter investor participation. Where the financing is for a small amount, an investor may not be sure the issuer will survive another four months.

b. Should we require issuers to provide additional continuous disclosure, such as an annual information form?

No, we strongly oppose the requirement of additional disclosure, as this defeats the purpose of the Proposed Exemption by adding additional time, cost, and potential liability to the fundraising process.

c. ***If we were to consider a seasoning period for this exemption, should we consider some of the restrictions that apply under a prospectus-exempt rights offering such as claw-backs limiting insider participation?***

No. Participation by insiders allows the interests of such insiders and the interests of retail investors to better align, and connects the success of the issuer with the success of individual insiders.

d. ***If securities offered under the exemption were only subject to a seasoning period, would there be a greater need to ensure investors are made aware of, and have an opportunity to participate in the offering?***

The disclosure should be in the form of a news release that announces the terms of the offering, the use of the exemption, the use of proceeds and any other material information (such as a standby guarantee or backstop). Security holders and other potential investors should simply rely on the issuer's continuous disclosure record and the contents of the news release. Proceeding with an "Existing Shareholder" offering does not prevent an Issuer from concurrently completing a private placement utilizing other available exemptions. In fact we expect that would be the norm. We believe that in the current market conditions there is a valid reason for the Proposed Exemption to be given preference in terms of restrictive hold periods, in that many existing security holders have suffered substantial losses in the junior markets, and perhaps they should be given an advantage over new retail investors. Nevertheless we reiterate that the Proposed Exemption should be fashioned with a long term perspective in mind.

9. ***We have not proposed any conditions regarding the structure of the financing, i.e., minimum or maximum price, maximum dilution, or period in which an offering must be completed. We contemplate that the proposed financing would be conducted under standard private placement rules of the TSXV which, among other things, allow pricing at a discount to market price. Is this appropriate or are there structural requirements that we should make a condition of the exemption?***

The pricing should be consistent with the existing discount structure applicable to issuers on the exchange on which they are listed. This would also assist issuers using the Proposed Exemption in combination with other exemptions when raising funds in excess of the limits. We further suggest that: i) brokers should be entitled to be paid whatever commission they are able to negotiate to assist in the financing; and ii) brokers or insiders should be allowed to backstop the offering and in consideration of doing so be granted up to 40% warrants, similar to rights offerings. We highlight the fact that existing shareholders generally hold their shares in brokerage accounts, so in order to maximize the chance of utilizing the Proposed Exemption successfully, it is best to try to engage the brokerage community as much as possible.

Conclusions

In closing we applaud the participating jurisdictions for taking this initiative. We sincerely hope that all Canadian jurisdictions adopt it, as it is incongruous that an issuer based in British Columbia will be able to offer a placement to an existing shareholder that resides in British Columbia (or any other participating jurisdiction) but not to an existing shareholder in Ontario. Nevertheless, time is of the essence, so we urge you to implement the Proposed Exemption without delay.

Unfortunately the rights offering regime under National Instrument 45-101 is extremely burdensome, overly complicated and costly, such that rights offerings are rarely used by junior issuers. We strongly advocate any initiatives designed to make rights offerings a more efficient and effective means to access capital, however understand that involves a comprehensive process that will take some time.

We note that the CSA recognized the need to streamline venture issuer disclosure and to make disclosure requirements more suitable and manageable for junior issuers. The CSA proposed National Instrument 51-103 O*ngoing Governance and Disclosure Requirements for Venture Issuers* ("**NI 51-103**"), which we considered a very worthwhile change to the disclosure, corporate governance and capital raising regime governing venture capital issuers. We encourage the CSA to reconsider implementing NI 51-103 and expect there would now be strong support from issuers for this change.

We again thank you for providing us the opportunity to offer input on these important matters.

Yours truly,

Boughton Law Corporation
by Rory S. Godinho Law Corporation

Per:
Rory S. Godinho

Existing Shareholder Exemption Survey - Boughton Law Securities Group

1. Please mark all that apply:

	Response Percent	Response Count
I am a member of the issuer community.	**66.7%**	**30**
I am a member of the brokerage community.	11.1%	5
I am a member of the service provider community.	17.8%	8
I am a retail investor.	46.7%	21
I represent an institutional investor.	2.2%	1
	answered question	**45**
	skipped question	**0**

2. Please take a moment to select from the options below. Individual responses are kept completely confidential:

	Response Percent	Response Count
I support the Proposed Exemption.	**84.4%**	**38**
I support the Proposed Exemption, but suggest the changes in the Comments box below:	15.6%	7
I do not support the Proposed Exemption, for the reasons in the Comments box below:	0.0%	0
	Comments	9
	answered question	**45**
	skipped question	**0**