

January 20, 2014

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Nova Scotia Securities Commission
Prince Edward Island Securities Office
Office of the Yukon Superintendent of Securities
Office of the Superintendent of Securities, Government of Northwest Territories
Legal Registries Division, Department of Justice, Government of Nunavut

c/o the Addressees set forth in Schedule "A" hereto

Dear Sirs/Mesdames:

Re: Request for Comments – Notice of Proposed Prospectus Exemptions for Distribution to Existing Security Holders (the "Request for Comments")

We are writing in response to the Request for Comments and your invitation to provide comments in connection with the proposed Prospectus Exemption for Distribution to Existing Security Holders as contained therein. Capitalized words and phrases used herein but not defined have the same meanings herein as in the Request for Comments.

Please note that the comments provided herein are those of certain members of our firm's securities group and should not be taken to represent the position of the firm generally nor of any of our clients, who have not been consulted in connection herewith.

The proposed exemption is a welcome step in giving issuers access to capital markets without having to incur substantial costs in preparing an offering document and allowing issuers access to investors who do not meet the current private placement exemptions. We believe the proposed exemption will also help resolve the incongruity in the rules which presently allows a security holder who is not an "accredited investor" to purchase securities of an issuer on the secondary market but prevents the same security holder from purchasing securities in a private placement conducted by the issuer.

Comments

The following are responses to certain of the questions beginning on page 5 of the Request for Comments. The numbers referred to below refer to the question number found in the Request for Comments.

2. Should the proposed exemption be available to issuers listed on other Canadian markets?

We do not see any reason to limit the proposed exemption to TSX Venture Exchange ("TSXV") listed issuers. It has been our recent experience that both issuers listed on the Toronto Stock Exchange (the "TSX") and the TSXV experience difficulties in accessing capital markets and even if access is available, the cost of raising capital is always something of concern to issuers. Further, the proposed exemption is founded on the principle that sufficient disclosure exists in the issuer's continuous disclosure record to provide adequate investor protection and given that TSX issuers must comply

with the same, if not stricter, continuous disclosure requirements as those listed on the TSXV and that insiders of both TSX and TSXV issuers are required to observe the same insider trading requirements, we do not see any public policy reason for limiting the exemption to TSXV issuers. We expect that both TSX and TSXV issuers would welcome the opportunity to raise capital through the proposed exemption and believe investors would receive substantially the same level of protection irrespective of which stock exchange the issuer was listed.

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

Although we recognize that picking a record date is relevant and necessary for determining what shareholders can participate in a private placement using this exemption, we are not certain whether the timing of the record date is the most important consideration in providing the appropriate level of investor protection. We suggest that an additional or alternative consideration that may be appropriate in determining a security holder's ability to withstand loss (and participate in an offering conducted using the proposed exemption) may be the value of the security holder's original investment in the issuer. For example, if the security holder held only one security of the issuer for a period of a year, does this provide any comfort in this regard?

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?*

A substantial difference between the proposed exemption and the rights offering exemption is that the former exemption does not require the issuer to prepare a prospectus level disclosure document in order to conduct the offering. We acknowledge that the proposed exemption does not prevent the issuer from preparing such a document, however, even if one was prepared we would suggest that, in and of itself, it would not be sufficient to merit the imposition of a seasoning period restriction because, unlike a rights offering: (i) there are currently no rules or form requirements guiding the preparation of the document to ensure that it contains full, true and plain disclosure; and (ii) it is not contemplated that the document would undergo review and be vetted by the securities commissions. For these reasons, we believe that the rules governing the proposed exemption as presently contemplated support the imposition of a restricted period on the securities issued thereunder.

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

Requiring a TSXV issuer to prepare and file an annual information form (or any other additional continuous disclosure document) in order to use the proposed exemption would increase the costs and time associated with the offering therefore reducing the cost savings associated with the exemption.

On the other hand, the proposed exemption is predicated on the fact that the issuer's continuous disclosure record is sufficient to provide investors with adequate information surrounding the issuer and its business. An annual information form, or a document containing similar-type information, provides investors with an overview of the issuer and its business as well as any associated risks with an investment therein and is arguably the most comprehensive document disseminated by an issuer.

Whether or not an issuer must file an annual information form (or other additional continuous disclosure document of a similar nature) in order to avail itself of the proposed exemption should be a decision made after evaluating the cost-benefit analysis of such a requirement.

(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?*

We do not believe that additional restrictions should be applied if the proposed exemption was subject to a seasoning period. We submit that the rules of the TSXV and the TSX should be sufficient to properly govern insider participation.

(d) Would there be a greater need to ensure investors are made aware of and have an opportunity to participate in the offering?

Requiring an issuer to take steps in addition to issuing a press release, to increase awareness of the offering may reduce the cost benefit of the proposed exemption to the issuer. As currently drafted, the proposed exemption does not require that the offering be made available to all or substantially all of the security holders of the issuer and therefore whether or not the issuer needs to increase the awareness surrounding the offering should be a determination made by management of the issuer on a case by case basis.

We understand that the Ontario Securities Commission is conducting its own review of the exempt market rules. We would encourage all provinces and territories to adopt the proposed exemption on substantially similar terms to ensure that it is of the greatest possible utility to issuers.

Thank you for allowing us to provide our input and comment on the issues raised by the Request for Comments and the proposed amendments.

If we can clarify or expand upon any of the foregoing, kindly contact Steven Cohen, Ted Brown or Bronwyn Inkster of our office at your convenience.

Yours truly,

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