

Securities Regulators of Canada,

Re **Proposed Prospectus Exemption for Distributions to Existing Security Holders** [Multilateral CSA Notice 45-312](#)

I am a securities lawyer in Calgary and have served on numerous boards over a number of years. I know the frustration of management in raising capital in Canada. Your Survey asked what I am representing. In that my comments are not going to please the lawyers, I am speaking for the listed companies that can't raise money because of the cost and the lethargy of the Canadian markets which have something to do with costs of operations. I am fully aware of the legal side, the complicated multi-page subscription forms, and the inability for even 50% of so-called sophisticated investor and their brokers to fill them in properly and the countless hours spent on each closing, sending out certificates that get lost and oh! the legal fees!

The only answer to get the sloth out of the Canadian Securities industry is to recognize the fact that the costs and delays of raising money is a restraint on trade and negatively affects the competitiveness of Canadian industry.

Every tweaking by the multiple layers of regulators including the TSX, the securities commissions and the legislative bodies which pass required legislation, makes this one frustrating, costly business. The severe cost of raising money especially for resources and other junior companies deters the success of such companies which historically has been Canada's prime economic engine.

Let's think clearly here and recognize that the reporting requirements and filings on SEDAR and through company websites and news releases, together with the ubiquity of computer access to such information, means that the investor of today has complete access to such information, as complete as the brokerage community. Gone are the days when the annual report was filed in your broker's desk and he could tell you what was happening with Canada Inc. but someone doesn't have a fax that is working! We can assume even the proverbial Little Old Lady (LOLL) from Lethbridge has an internet connection and hence access to SEDAR and company websites.

Accordingly, the time has come for the creation of an exemption which allows a listed company, whose officers certify current compliance with disclosure requirements and brokers place orders on behalf of their clients to purchase shares from the treasury of the companies through the TSX or

TSXV directly, which shares are being offered on a completely transparent basis.

The listed company would have to make an announcement that they were selling such shares at market prices-or at a fixed price- for a certain period of time or until sold or at their discretion, until sold or withdrawn. The market will dictate the price, not some predetermined haggling in board rooms.

To this point we are in agreement but the recommended exemption falls far short of being an effective exemption. The requirements that don't make it work are

- 1) the purchasers need to be existing shareholders;
- 2) 4 month hold;
- 3) a purchaser is limited to \$15,000 (unless advised by a broker!);
- 4) once a year; and
- 5) redemption rights.

With such restrictions this proposed exemption is just another tweaking that solves nothing but adds another level of legal work, Certificates of Ownership and is another exemption that someone can't find on the hardcopy subscription forms out of the what is it 50 exemptions? (except for Saskatchewan and Quebec and oh yes Ontario doesn't have the OM etc...)

As to #1: today's shareholders mostly hold through brokers who then hold through CDS. How would one prove he is a shareholder? File a certificate that the broker needs to produce to the TSX? Why? It is not necessary for someone to be a shareholder to have this or any exemption for that matter because being a shareholder does NOT mean he has more information. If he does have more information than the "public" he has inside information! Requiring declarations of ownership is bureaucratic and tempts investors to cheat. If a company wants to limit their investors to existing investors they can do an expensive rights offering but most companies WELCOME new investors. Such a requirement adds days to closing and volumes of paper for **no benefit to the companies**.

As to #2: Also why bother with a four month hold? The market will adjust. Why does the regulator care about the 4 month hold and what a bother to keep track of which shares were sold, when and to whom, and it just interferes with the flow of shares between or among brokerage accounts. Practically how do you differentiate between shares sold on the Offering Day from Treasury or those sold by someone who bought the shares yesterday? Who cares? Let's treat the proposed exemption as if it were an

IPO! The shareholders have full disclosure, the broker has its sale and the shareholder has a stock that **should** be just as valuable as one he bought on the TSX yesterday. The four month hold is an invention of yesterday and it was assumed the “inside” nature of private placements (which is what they are of course) and the lower negotiated price because there is a four month hold (!) put such private places at a financial advantage, and as a penalty for such advantages they need to be cooled by a time in the penalty box-let’s call it 4 months. I am sure as you are that the 4 month time period (why 4 not 3 or 5.5 months?) reasoning is lost in history and has no actual relevancy today. And there is **no benefit to the company**.

As to #3: everyone is limited to \$15,000 (unless advised by a broker!): Why \$15,000? Why not \$2,000 or \$19,999? But \$15,000 is just about not enough for the ridiculous effort of proving #1, suffering #2 and keeping track of your Once a Year Out of Jail Card. Moreover it is patronizing to LOLL referred to above, it attracts investors who don’t want and probably shouldn’t invest such an amount and becomes an amount you just have to put in because the brokers can’t be bothered getting your Certificate of Ownership and providing it to some party either before the trade or afterwards, for such a small trade. Congratulation to the TSX to try to include the little guy but it’s a pittance of a concession and won’t make a difference.

As to #4 see #3 reasons.

As to #5 redemption rights. Why? Why is this shareholder in a better position than other shareholders just because he comes in at a different time? And really how do you keep track of who is on first when the sale is going through the exchange. A redemption right doesn’t work for this exemption. The investors are relying on the public information. If they have a right give it to everyone but then of course nobody would do such placements and then we would be back where we are. No small investors, few placements. No redemption rights please.

## PROPOSAL

Here is the scenario. A company (Sellco) is TSX listed closes at \$23.50 on Day 1. It talks to the brokers, hires an Offering Broker who will put the sell order in on Market Day (and who will get the commission as negotiated) decides on the size but the price is to be determined at the time of the Market Sell. A news release is sent out on Day 2 advising that Sellco will be offering say 1.25 million shares on Day +5 or whatever time the regulators feel is required to warn or warm (?) the market (is it good news or bad news?) at a Market Price (whatever that will be) with a right to withdraw all or part at Sellco’s discretion at any time before or during

Market Day. The President lines up what she can with the brokers with hard orders at a negotiated price, say \$22.75 (remember no hold period, fully tradable immediately). On Market Day which would be say 15 minutes BEFORE the market bell, the Buy side for this Market Offering opens with the \$22.75 Buys for the full 1.25 million shares. However, the Sell Order is not entered at this time... The company may however, through their broker, hit the Buy side at any time during such 15 minute window or at any time thereafter during that day or, if previously announced, during such longer time. But if the Canada Pension Fund wants to buy some shares at \$24.75 then they can post their Buy Order on the early opening and the MARKET WILL DETERMINE SUCH PRICING. If LOLL (who like the CPF unfortunately didn't get invited into the offering) wants to participate she can outbid someone who wants to pay less. It does mean that the Old Boyz Network may have a few wrinkles to work out and indeed the company can just elect to take the agreed upon bids immediately out of the gate. But if the trading price takes off why shouldn't the company benefit from the increased price rather than the speculators?

Of course it could work otherwise if the Market Price falls but the company could have and should have taken what they were offered.

In any event the sale would be determined by Market forces, it would be efficient, cleared through the established and well tested inter-brokerage financial arrangements and announced to the market before it opens for the general trading following the 15 minute skirmish of buyers (whoever they may be). AND NO! - in such an arrangement there are no redemption rights, no identity of buyers and no certificates of ownership, no delays, cheques in the mail, no discounts to market price but there is a substantial increase in efficiency, fairness to all potential purchasers and a drop in legal fees.)

It may bring the small investor back into the market. Such purchasers have been very effectively excluded from private placements. Although some regulators who may not know the tough realities of the small investor or perhaps think LOLL should be excluded from the markets generally, will not agree with anything I say. Today's small investor does not qualify as an "exempt purchaser" (aka RPRPP or the Rich Person's Right to Private Placements) but then again maybe the regulators don't either (ask yourselves please). **I suggest very seriously that those elusive small investors are very knowledgeable about stocks and savvy beyond your expectation, and need to be brought into the fray.**

I am sure that everyone would welcome the relief from some legal costs, delayed and lengthy private placement closings and printed certificates issued on closings, sent by courier to various jurisdictions.

In this day of SEDAR, the present private placement information is, for a listed company, repetitive of the information set out in a compliant company's disclosure. The TSX is capable of handling large and multiple orders and investors have access to real time Buy and Sell side volumes and prices. This exemption was not available two years ago!

Such an exemption could devastate legal and accounting costs and would be of benefit to the company and the investors who own the company. The brokerages have a valuable role they can charge for. All trades must be through a recognized exchange which vets information from its listed companies the TSX, TSXV and CDNX but NOT THE ALTERNATE MARKETS. The exchanges would need to require officers' certificates.

The lawyers have had a good run.

A more robust exemption as I am suggesting would increase the competitiveness of Canadian public markets.

Thank you for the opportunity to comment. Please make it an exemption that helps makes a difference to the companies. They need your help. And please don't let some SEC rule spoil the day.

Gregory R Harris, Lawyer  
403 903 4486  
gregoryharrislaw@gmail.com