

January 20, 2014

**BY EMAIL**

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 the Northwest Territories  
Legal Registries Division, Department of Justice, Government of Nunavut

c/o Larissa Streu  
Senior Legal Counsel, Corporate Finance  
British Columbia Securities Commission  
P.O. Box 10142, Pacific Centre  
701 West Georgia Street  
Vancouver, British Columbia V7Y 1L2

c/o Tracy Clark  
Legal Counsel, Corporate Finance  
Alberta Securities Commission  
Suite 600, 250-5th Street SW  
Calgary, Alberta T2P 0R4

**Dear Sirs/Mesdames:**

**Re: Multilateral CSA Notice 45-312 - *Proposed Prospectus Exemption for Distributions to Existing Security Holders***

We appreciate the opportunity to comment on Multilateral CSA Notice 45-312 - *Proposed Prospectus Exemption for Distributions to Existing Security Holders* (the “**Proposed Exemption**”).

Overall, we are supportive of the Proposed Exemption and are hopeful that it will facilitate increased participation in the exempt market by retail investors and provide TSXV issuers with access to a potential source of capital. However, we think it is important that the Proposed

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Exemption be made available in all Canadian jurisdictions consistently. We believe that a harmonized set of rules across jurisdictions is necessary for the benefits of the Proposed Exemption to be realized.

The following are our responses to a number of the specific questions set out in the Proposed Exemption. We have only reproduced the questions to which we will be responding.

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

Yes. We do not see the policy rationale for limiting the availability of the Proposed Exemption to TSXV issuers. Issuers listed on other Canadian markets are currently facing similar capital raising challenges as those faced by TSXV issuers.

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

We can anticipate circumstances where it might be suitable for a retail investor to invest more than \$15,000 pursuant to the Proposed Exemption; for example, where the investor is relatively sophisticated or where the investor has previously made a decision to invest more than \$15,000 in the secondary market.

In principle, the Proposed Exemption is largely based on certain fundamental assumptions about the protections afforded by being an existing security holder. For example, the Proposed Exemption assumes that existing security holders have some familiarity with the issuer (including its continuous disclosure record) and at least some limited investing experience. If the participating jurisdictions are in fact comfortable with these assumptions, then we think it makes sense to allow existing security holders to determine the level of investment that is appropriate for them.

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

Yes.

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**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 general, we think existing security holders are less likely to require the protections afforded by securities laws as compared to some of the other classes of persons currently permitted to purchase securities in the exempt market.

**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? If you think it should be a more extended period, what would be the appropriate period of time?**

We think the appropriate record date is one day before the announcement of the offering. While we have not conducted research on this matter, we assume that the typical hold period for a retail investor may be quite short. For example, those who were security holders 30 days ago may be unlikely to be security holders at the time of the offering in reliance on the Proposed Exemption. Extending the record date further back also seems likely to make it more difficult for issuers to determine who their security holders were on that date.

**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?**

Yes. We think investors purchasing under the Proposed Exemption should be treated in the same manner as investors purchasing under most other prospectus exemptions.

We would welcome the opportunity to discuss with you the rationale for and length of hold periods generally, particularly in circumstances where offerings are priced at market.

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

No. We think such a requirement would likely be a barrier to the adoption of the Proposed Exemption in the venture market. As you know, venture issuers have mostly avoided

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distributions to retail investors by prospectus, offering memorandum or other offering document mostly due to the associated cost. For similar reasons, we believe that venture issuers would avoid the Proposed Exemption if an annual information form or other additional continuous disclosure is required.

- 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 the 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?**

We think it makes sense for a financing in reliance on the Proposed Exemption to be conducted under the standard private placement rules of the TSXV (or other recognized stock exchange).

We would not suggest any additional structural requirements with the following exception. We suggest that investment dealers agreeing to backstop offerings conducted in reliance on the Proposed Exemption be entitled to additional compensation. We think such a backstop would significantly reduce the risk to issuers of commencing an offering pursuant to the Proposed Exemption.

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We note that we have reviewed the submissions dated October 11, 2013 and October 31, 2013 made on behalf of the ad hoc investment dealer advocacy group and wish to express our strong support for the views expressed therein.

We would be happy to discuss our comments with you; please direct any inquiries to David Gunasekera at (604) 646-3325 or by e-mail at [dgunasekera@moisolicitors.com](mailto:dgunasekera@moisolicitors.com), or Farzad Forooghian at (604) 646-3311 or by email at [fforooghian@moisolicitors.com](mailto:fforooghian@moisolicitors.com).

Yours truly,

**McCULLOUGH O'CONNOR IRWIN LLP**

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