CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

Notice of publication

Regulation to amend Regulation 33-105 respecting Underwriting Conflicts

June 25, 2015

Introduction

The Canadian Securities Administrators (the CSA or we) are implementing amendments (the Regulation Amendments) to *Regulation 33-105 respecting Underwriting Conflicts* (Regulation 33-105). The Regulation Amendments have been made by each member of the CSA. In some jurisdictions, ministerial approvals are required for these changes. Provided all necessary ministerial approvals are obtained, the Regulation Amendments will come into force on September 8, 2015.

Substance and Purpose of the Regulation Amendments

The Regulation Amendments provide an exemption from the disclosure requirements relating to conflicts of interest between an issuer and dealer in the context of an offering by a foreign issuer to sophisticated investors in Canada made on a private placement basis.

The Regulation Amendments will eliminate the requirement to provide connected and related issuer disclosure in the context of offerings of securities that qualify as "eligible foreign securities". Eligible foreign securities are defined in the Regulation Amendments as securities that are offered primarily in a foreign jurisdiction and that are:

- Issued by an issuer
    - that is incorporated, formed or created under the laws of a foreign jurisdiction
    - that is not a reporting issuer in a jurisdiction of Canada
    - that has its head office outside of Canada, and
    - that has a majority of the executive officers and a majority of the directors ordinarily resident outside of Canada, or
- Issued or guaranteed by the government of a foreign jurisdiction.

The Regulation Amendments require that the purchaser of the securities must be a permitted client (as defined in *Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations*).

The purpose of the Regulation Amendments is to eliminate one of the disclosure requirements that results in the preparation of a "wrapper" when foreign securities are offered by way of prospectus exemption in Canada as part of a global offering. This may facilitate participation by sophisticated Canadian investors that qualify as permitted clients in foreign securities offerings.

The Regulation Amendments will apply to offerings of both non-investment fund issuers and non-redeemable investment funds that meet the above criteria. Under current paragraph 1.3(b) of Regulation 33-105, the regulation does not apply to a distribution of mutual fund securities. Non-Canadian issuers that are investment funds are reminded that there are other Canadian regulatory requirements specific to investment funds, such as investment fund manager registration, that may still apply. Permitted clients that are investment funds are reminded that other Canadian regulatory requirements, such as fund on fund restrictions, may restrict a Canadian investment fund's ability to purchase securities of a non-Canadian issuer that is an investment fund.

Background

The CSA previously requested comment on proposals reflected in the Regulation Amendments. On November 28, 2013, we published a Notice and Request for Comment relating to the Regulation Amendments (the November 2013 materials).

In developing the November 2013 materials, we:

- Conducted research on the disclosure requirements related to conflicts of interest between issuers and dealers in the United States,
- Considered feedback received on the implementation of exemptive relief (the Wrapper Relief) previously granted to certain dealers that participate in private placement offerings of foreign securities in Canada, and
- Reviewed data compiled from monthly reports provided to us by dealers that obtained the Wrapper Relief.

Summary of Written Comments Received by the CSA

The comment period for the November 2013 materials ended on February 26, 2014 and the CSA received submissions from seven commenters. The comment letters on the November 2013 materials can be viewed on the OSC website at www.osc.gov.on.ca and on the Autorité des marches financiers website at www.lautorite.qc.ca.

We have considered the comments received and thank all of the commenters for their input. The names of the commenters are contained in Annex B and a summary of their comments, together with our responses, is contained at Annex C.

Summary of Changes to the November 2013 materials

After consideration of the comments received on the November 2013 materials we have made some revisions to the November 2013 materials. Those revisions are reflected in the Regulation Amendments we are publishing concurrently with this notice. As these changes are not material, we are not republishing the Regulation Amendments for a further comment period.

Annex A contains a summary of notable changes between the Regulation Amendments and the November 2013 materials.

Related Amendments

Also being published today is

- *Regulation 45-107 respecting Listing Representation and Right of Action Disclosure Exemptions*,
- Ontario amendments to OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions*, and
- An Ontario-specific amendment to Form 45-106F1 *Report of Exempt Distribution*.

These amendments generally relate to disclosure of statutory rights of action and restrictions on the making of representations that securities will be listed or quoted on an exchange or quotation system. This information is also typically included in a wrapper prepared for foreign offerings. More information can be found in the notices accompanying these publications.

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

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Annexes to Notice

Annex A – Summary of changes to the November 2013 materials
Annex B – List of commenters
Annex C – Summary of comments and responses

Annex A
Summary of changes to the November 2013 materials

The following is a summary of notable changes between the Regulation Amendments and the November 2013 materials. In addition to the notable changes identified below, please note that we have revised the drafting of the Regulation Amendments to make the conditions of the exemption clearer. For example, rather than including a stand-alone provision on the requirement to provide notice of reliance on the exemption, the notice requirement has been included as a condition to the exemption provisions.

Exemption based on U.S. disclosure for registered offerings
The November 2013 materials contemplated providing an exemption from the connected and related issuer disclosure requirements of Regulation 33-105 provided that, among other things, the offering document complied with U.S.disclosure requirements on conflicts of interest applicable to registered offerings (whether or not the offering was in fact registered in the U.S.) and contained the same disclosure as that provided to U.S. investors.

Many commenters expressed concern that this requirement was too narrow and would limit the utility of the exemption significantly. Commenters stated that the requirement to comply with underwriter conflicts of interest disclosure requirements applicable to U.S. registered offerings would continue to prevent Canadian investors from being able to participate in global offerings that are not registered offerings in the U.S. This approach would require Canadian investors to receive disclosure beyond that which is required to be provided to U.S. investors. Certain commenters recommended that the exemption should allow securities of non-Canadian issuers to be offered in Canada on the same basis as they are offered in the U.S.

After considering these comments, we have revised the exemption provision to provide an exemption from the connected and related issuer disclosure requirements for all offerings (registered and unregistered) made into the U.S. to U.S. investors, provided that the same disclosure that is provided to U.S. investors is also provided to Canadian investors.

Foreign government offerings
The November 2013 materials proposed that offerings of foreign government securities would be exempted from the connected issuer disclosure requirements in their entirety, but not the related issuer disclosure requirements. However, relief was proposed to be provided from the requirement to provide cover page disclosure in the case of a related issuer.

Commenters have stated that maintaining a distinction between connected and related disclosure requirements for foreign government securities will be difficult in practice and will result in foreign government securities not being offered in Canada.

Some commenters referred to how the Wrapper Relief has operated in practice. They noted that foreign governments and underwriters often leave Canada out of an offering rather than consider the different meaning of the terms “related issuer” versus “connected issuer”. Because these terms are unique to Canadian requirements and are not well understood outside of

Canada, there is a hesitation to rely on relief from the connected issuer disclosure requirements for offerings of foreign government securities.

In response to these comments, we have revised the exemption for foreign government securities to provide relief from both the connected and related issuer disclosure requirements. In addition, we have included a reference to the definition of eligible foreign security, rather than refer to the security being "issued or guaranteed by the government of a foreign jurisdiction" directly in the exemption provision.

Requirement to provide notice to permitted clients

The November 2013 materials contemplated that a notice would be delivered to a permitted client by a dealer that intends to rely on one or both of the exemptions. The notice was to include a description of the terms and conditions of the exemption being relied on.

One commenter pointed out that it is not necessary to require the notice to contain a description of the terms and conditions of the exemption being relied on, since the terms and conditions of the exemption will be contained in Regulation 33-105. At most, the requirement should be to indicate the exemption being relied on with a cross-reference to the relevant section in Regulation 33-105.

After considering this comment, we removed the requirement to provide a description of the terms and conditions of the exemption being relied on in the notice delivered to a permitted client. Instead, the notice is only required to include a reference to the applicable section. We have also clarified that the notice must be a written notice.

Exemption available to registered dealers and international dealers

The November 2013 materials used the term "specified firm registrant" in the proposed exemption provisions. The term "specified firm registrant" is defined in Regulation 33-105 to include a person registered, or required to be registered, under securities legislation as a registered dealer, registered adviser or registered investment fund manager.

Some commenters suggested that it would be more appropriate to use the term "registered dealer or international dealer" instead of "specified firm registrant". The terms of the Wrapper Relief specifically referred to these categories of dealer.

Some commenters also suggested that there was confusion as to whether an international dealer was caught by the definition of "specified firm registrant", and that using the specific dealer terms would provide greater clarity.

After considering these comments, and reviewing the categories of dealer that have applied to date for Wrapper Relief, we have revised the exemptions to use the terms "registered dealer" or "international dealer" rather than specified firm registrant. This will align the exemption with the terms of the Wrapper Relief orders that have been granted and also accords with our understanding of who is using the Wrapper Relief. We have not received any applications from registered advisers or registered investment fund managers. As a result, in our view, use of the term specified firm registrant in this context may be too broad.

Annex B
List of commenters

1. AGF Investments Inc.
2. Alberta Investment Management Corporation
3. Caisse de dépôt et placement du Québec
4. Davies Ward Phillips & Vineberg LLP
5. Ontario Teachers' Pension Plan Board
6. RBC Global Asset Management Inc.
7. Securities Industry and Financial Markets Association

Annex C
Regulation 33-105 respecting Underwriting Conflicts
(Regulation 33-105)
Summary of comments and CSA responses

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
General comments on the draft amendments			
1.	General support for the proposals	Five commenters[1] expressed general support for the draft amendments and the CSA's efforts to provide better access to investment opportunities to sophisticated Canadian investors.	We acknowledge these comments of general support for the CSA's efforts to provide better access to investment opportunities to sophisticated Canadian investors.
2.	General concerns with the proposals	Six commenters noted that the draft amendments would continue to limit the ability of sophisticated Canadian investors to purchase securities issued or guaranteed by foreign governments and offerings not registered in the United States. Five commenters cited concerns that the draft amendments would continue to preclude Canadian investors from new issues, forcing them to purchase securities at higher prices on secondary markets. Two commenters stated that the draft amendments are not sufficient because Canadian investors will continue to lose opportunities as a result of the need for dealers to determine whether or not a wrapper is required for an offering of international bonds into Canada and, if applicable, to prepare the wrapper. According to the commenters, this is exacerbated by the fact that the size of the	We acknowledge the general concerns raised with the draft amendments. We are proposing changes to the amendments as originally published for comment, as described more fully below, in order to address certain concerns raised by commenters.

[1] Four comment letters were received, however two letters were from multiple commenters. In all, seven commenters responded to the proposal.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		Canadian investor base is such that issuers or dealers are often unable to justify the time and expense in addressing compliance with any additional Canadian requirements.	
3.	Overall approach to relief	One commenter stated that the draft amendments should allow securities of non-Canadian issuers to be offered in Canada on the same basis as they are offered in the United States and elsewhere, not to create more onerous disclosure obligations for offerings to Canadian investors. Two commenters noted that in order for Canadian institutional investors to be provided with the same access to foreign offerings as is provided to institutional investors in the United States and elsewhere around the world, it will be necessary for Canadian legal requirements to be capable of being addressed in the same manner as in other jurisdictions, namely through short, standardized disclosure that can be inserted into an offering document, without the necessity of making a determination whether or not the disclosure suffices for a particular distribution or requires customization. One commenter stated that Canadian requirements for the offering of foreign securities by private placement would remain the most onerous in the world if current proposals are put into effect.	We understand that in certain cases, the Canadian disclosure requirements on conflicts of interest are different from requirements in other international jurisdictions with respect to disclosure of conflicts of interest between issuers and dealers. The goal of this initiative is to facilitate participation by sophisticated Canadian investors that qualify as permitted clients in foreign securities offerings, including offerings by foreign governments and corporations. As a result of the comments received, we are proposing certain changes that are intended to address the concern that the draft amendments will not achieve the stated objective of reducing barriers to sophisticated Canadian investors participating in foreign offerings. Please see the more detailed description of these changes below.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
Commentary on the nature of the problem			
4.	General commentary on the market for foreign offerings	**Foreign offerings generally** One commenter stated that the major impetus for extending foreign offerings into Canada is dealers responding to demand from institutional investors in Canada, rather than issuer interest in expanding into Canada. Five commenters noted that demand for offerings of foreign securities (including foreign government securities) is usually strong and the entire offering sells quickly. As a result of this large demand, foreign issuers are usually unconcerned that Canadian investors are unable to purchase the securities. There is a willingness on the part of issuers and dealers to address Canadian disclosure requirements only if demand for an offering is poor. **International bond markets** Two commenters noted that Canadian bond markets represent 2.48% of the world's total outstanding debt securities and that Canadian investors look to international investment alternatives for opportunities to enhance yield and to diversify and reduce risk. The vast majority of issuers, particularly governments and corporate issuers outside the United States, lack familiarity with Canadian securities laws, as do many of the dealers' syndicate desks. The size of the Canadian investor base is not viewed	We thank commenters for providing this information on the foreign offering process and the international bond markets, including information on the problems faced by Canadian institutional investors in participating in international offerings.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		by issuers or dealers as justifying any time and expense in addressing compliance with Canadian requirements. Bond offerings are announced with little advance warning. This time constraint accentuates the problem of syndicate desks being unfamiliar with Canadian securities legislation and preferring not to deal with it. This is a market for which Canadian wrappers are rarely prepared. **Lack of access to international investment opportunities** Rather than preparing customized disclosure or even addressing the question of whether or not customized Canadian disclosure is required (including dealing with the distinction between connected issuers and related issuers), dealers find it easier to sell to Canadian investors in the secondary market immediately after a new offering. This means the initial attractive pricing is not available to the Canadian investors. This also results in Canadian investors acquiring the same securities they were unable to acquire in the primary offering, without receiving any of the disclosure required by Canadian legislation. When an existing issue is re-opened, Canadian investors may already hold the securities in one or more portfolios but are unable to add to a position at an attractive price due to the exclusion of Canadian investors from participating in the offering. Reduced access to favourable investment	

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		opportunities hurts the ability of Canadian fund managers to compete internationally with non-Canadian fund managers who have a performance advantage as a result of their greater ability to participate in new issues at favourable pricing. Investors look at performance when deciding how to allocate funds and even small performance differences can have a significant difference over time.	
5.	Impact of the Wrapper Relief[2]	Two commenters noted that use of the Wrapper Relief has been disappointing. There is a lack of understanding in the market as to how the Wrapper Relief works and an unwillingness to take the time to consider whether the relief applies to a particular offering. Dealers have little or no incentive to be educated on whether and how the Wrapper Relief will apply to a particular offering, given the speed of offerings and their popularity. Educating dealers would be a constant process due to the multitude of different markets in which such dealers are based and ongoing personnel changes. Two commenters noted that dealers who obtained exemptive relief as a result of the Wrapper Relief have been failing to take advantage of this relief because they find it	We acknowledge these comments and appreciate the input on how the Wrapper Relief is being used in practice. Based on data received from dealers that have obtained Wrapper Relief to date, we note that a certain number of transactions are occurring. It may be difficult to know to what extent the problem relates to the specifics of the Wrapper Relief versus the fact that the Canadian market is such a small part of the international markets. However, we have taken these comments into consideration in proposing further changes to the draft amendments, as described more fully below.

[2] A number of dealers have been granted exemptive relief from certain Canadian securities law disclosure requirements, including requirements of Regulation 33-105, for offerings of foreign securities made on an exempt basis to permitted clients in Canada (the Wrapper Relief). The Wrapper Relief granted substantially the same relief as set out in the proposed amendments, and also granted relief that is reflected in proposed Ontario amendments to OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions* (proposed amendments to OSC Rule 45-501) and *Regulation 45-106 respecting Prospectus and Registration Exemptions* published for comment on April 25, 2013 as well as proposed *Regulation 45-107 respecting Listing Representation and Rights of Action Disclosure Exemptions* (draft Regulation 45-107) published for comment on November 28, 2013.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		to be overly confusing and they consider it to require a time-consuming, case-by-case analysis. Dealers are reluctant to incur the extra time and cost associated with preparing a wrapper or determining the possible availability of exemptive relief. The current Wrapper Relief is most likely to be relied on in the case of issuers having lower credit quality for which demand, including potential Canadian interest, is weak.	
Definitions			
6.	Definition of "designated foreign security" – issuer requirements (proposed section 3A.1 of Regulation 33-105)	**Not a reporting issuer** Six commenters stated that the condition that an issuer not be a 'reporting issuer in a jurisdiction of Canada' should be removed. A common concern with this requirement is that it necessitates checking the list of reporting issuers maintained by each provincial and territorial securities regulatory authority. Three commenters expressed the view that the status of an issuer as a reporting issuer in a Canadian jurisdiction does not make a class of its securities more "Canadian" (or less foreign) than a class of securities of a non-Canadian issuer that is not a reporting issuer. Four commenters noted that no policy basis has been suggested for the	We do not agree that the definition of "designated foreign security"[3] should include securities issued by reporting issuers. In our view, the policy basis for excluding reporting issuers is the fact that by choosing to become reporting issuers, issuers take active steps to engage with and participate in the Canadian securities regulatory regime and as a result such issuers should be required to comply with Regulation 33-105 (and other applicable Canadian securities law requirements). In our view, issuers should know if they are a reporting issuer in a Canadian jurisdiction, as this will impact the various requirements (in addition to requirements under

[3] Note that the term "eligible foreign security" is now proposed to be used instead of "designated foreign security".

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		requirement that a designated foreign issuer cannot be a reporting issuer. They suggested that there is an insufficient policy rationale for excluding securities of non-Canadian issuers from the benefits of the draft amendments merely because of Canadian reporting issuer status. One commenter cited the same issue with draft Regulation 45-107. **Other conditions** According to six of the commenters, the other restrictions in the definition of "designated foreign security" are acceptable.	Regulation 33-105) that must be complied with under Canadian securities law.
7.	Use of the term "specified firm registrant"	One commenter raised an issue with the use of the term "specified firm registrant". The current definition of "specified firm registrant" in Regulation 33-105 includes a person registered, or required to be registered, under securities legislation as a registered dealer, registered advisor or registered investment fund manager, but does not refer to a person relying on the international dealer exemption. This definition is inconsistent with the Wrapper Relief. Based on the draft amendments, it would suggest that an exempt international dealer would have to provide disclosure in a Canadian wrapper in respect of another underwriter in the transaction that is not selling into Canada but is a "specified firm registrant". However, if that specified firm registrant itself chose to sell into Canada in that offering, it would not have to provide that	We have proposed to amend use of the term "specified firm registrant" and replace it with the terms "registered dealer" and "international dealer". This approach aligns with the use of these terms in the proposed amendments to OSC Rule 45-501. We also note that this aligns with the exemptive relief in the Wrapper Relief which was granted specifically to certain registered dealers and international dealers.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		disclosure because the exemption would be available to it. The commenter also noted that the definition in Regulation 33-105 is inconsistent with proposed amendments to OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions* (proposed amendments to OSC Rule 45-501), which specifically uses the terms "registered dealer" and "international dealer" instead of the term "specified firm registrant". The commenter recommends adopting the same approach as in the proposed amendments to OSC Rule 45-501. Another commenter noted that the definition of "specified firm registrant" may be interpreted to include persons that rely on the international dealer exemption in s. 8.18 of *Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations*, but that an interpretation that such persons are not specified firm registrants is also tenable on the basis that a person relying on an exemption from the registration requirement has ceased to be a person required to be registered. As such, the definition should be amended to clarify whether it includes persons relying on an exemption from the registration requirement.	

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
Exemption based on U.S. disclosure			
8.	Exemption based on U.S. disclosure (proposed section 3A.2 of Regulation 33-105) – General comments	All seven commenters expressed concerns with the draft amendments regarding compliance with underwriter conflicts of interest disclosure requirements applicable to U.S. registered offerings, whether or not such offerings are in fact registered in the United States. Four commenters stated that the requirement to comply with underwriter conflicts of interest disclosure requirements applicable to a U.S. registered offering remains a major impediment to extending non-U.S. registered offerings into Canada. This approach will substantially limit the utility of the draft amendments where a registered offering is not made in the U.S. and will continue to prevent Canadian investors from participating in global offerings in the same manner as U.S. institutional investors. Six commenters stated that the main problem is complying with the technical requirements for providing "prominent disclosure" applicable to a U.S. registered offering for disclosure of underwriter conflicts of interest. Six commenters noted that the requirement to impose U.S. registered offering standards regardless of whether the securities are registered in the U.S. requires issuers and dealers to provide Canadian investors with disclosure beyond that which is required to be provided to	We thank commenters for information on how this proposed requirement remains an impediment to extending non-U.S. registered offerings to Canadian investors. We have reconsidered this condition in light of the comments received and have amended the proposed exemption so that unregistered offerings also made to U.S. investors can also be offered in Canada, provided that the same disclosure that is provided to U.S. investors is also provided to Canadian investors. The purpose of these changes is to allow unregistered offerings that are made in the U.S. to U.S. investors to also be made to Canadian investors, without requiring the conflicts of interest disclosure required by Regulation 33-105. In our view, most offerings of interest to Canadian investors will also be made into the U.S. We agree with commenters that it is not necessary to impose more stringent requirements than those required for U.S. investors.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		investors under the laws of the home jurisdiction of the issuer or primary jurisdiction of the offering. Three commenters stated that in a global offering made primarily outside of Canada, Canadian institutional investors do not need to receive additional disclosure than is provided to a U.S. institutional investor for securities distributed on a private placement basis. These commenters recommended that the exemption allow securities of non-Canadian issuers to be offered in Canada on the same basis as they are being offered in the United States and elsewhere. Two commenters stated that compliance with the requirements of U.S. registered offerings should apply only to U.S. registered offerings. Two commenters stated that if the requirement to comply with the disclosure requirements relating to underwriter conflicts of interest for U.S. registered offerings is retained for distributions of non-government securities, compliance with the disclosure requirements for public offerings in other jurisdictions that apply to the offering document should be permitted as an alternative.	
9.	Applicability of U.S. disclosure requirements (proposed section 3A.2 of Regulation 33-105)	Two commenters stated that proposed section 3A.2 [*exemption based on U.S. disclosure*] should only apply to designated foreign securities other than foreign government securities and the relevant section should make this clear.	Proposed section 3A.2 was originally intended to also be available to offerings of foreign government securities, to the extent proposed section 3A.3 could not be relied on (for example, if a foreign government

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
			offering involved a related issuer). However, we have now proposed to broaden the exemption for offerings of foreign government securities. The proposed exemption will provide relief from both the related and connected issuer disclosure requirements for offerings of foreign government securities. As a result, we have clarified that proposed section 3A.4 is applicable to foreign government securities and proposed section 3A.3 is applicable to non-government foreign securities[4].
10.	Scope of U.S. disclosure requirements (proposed section 3A.2 of Regulation 33-105)	All commenters suggested that the scope of the U.S. disclosure requirements to be complied with is too broad. Proposed paragraph 3A.2(c) of Regulation 33-105 would require broad compliance with the requirements of section 229.508 of U.S. Securities Exchange Commission (SEC) Regulation S-K under the 1933 Act and FINRA Rule 5121. However, there are elements of 229.508 of SEC Regulation S-K and FINRA Rule 5121 that have nothing to do with underwriter conflicts of interest disclosure and are therefore outside the scope of Regulation 33-105. As well, one commenter pointed out that a situation can arise where an offering is subject to SEC Regulation S-K, but not subject to FINRA Rule 5121 and thus it may not be possible for the preliminary version of the offering document to	As a result of broadening the exemption to include non-registered offerings made in the U.S., we have removed these section references.

[4] Section references have changed since publication of the proposed amendments for comment.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		comply with FINRA Rule 5121 even though the document provides all material disclosure regarding underwriter conflicts. Some commenters stated that the wording of this section should be revised to specifically refer to disclosure of conflicts of interest between the dealer or issuer, rather than specific section references.	
11.	Alternatives to U.S. disclosure requirements	Six commenters were of the view that the exemption should be structured so that it can be used where the offering document is subject to the prospectus requirements of a jurisdiction other than the U.S. regarding the disclosure of underwriter conflicts of interest and where this offering document is sent to Canadian investors. Two commenters also stated that this should be provided with a standardized legend about the inapplicability of particular Canadian disclosure requirements. Two commenters stated that the level of disclosure in a U.S. private placement or global offering, a portion of which is privately placed with U.S. investors, should be considered adequate for Canadian permitted clients. One commenter suggested that the policy objective of the draft amendments would be satisfied by adopting the materiality standard of section 229.508 of SEC Regulation S-K, which requires issuers to "identify each such underwriter having a material relationship with the registrant	In our view, an exemption based on alternative disclosure from a jurisdiction other than the U.S. is too broad. We agree with those commenters who noted that the level of disclosure provided in a U.S. private placement or global offering, a portion of which is privately placed with U.S. investors, should be adequate for Canadian permitted clients. We have proposed amending the proposed exemption to permit unregistered U.S. offerings made to U.S. investors to also be made to Canadian investors that are permitted clients. We do not believe adopting a materiality standard based on SEC Regulation S-K would address the concerns raised by commenters, as this would still require foreign issuers and dealers to consider whether the Canadian standard applied in the context of a foreign offering.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		and state the nature of the relationship" without imposing a requirement to comply with other technical disclosure requirements.	
Exemption for foreign government securities			
12.	Exemption for foreign government securities - Distinction between "related" and "connected" issuers (proposed paragraph 3A.3(b) of Regulation 33-105)	Six commenters recommended deleting paragraph (b) from proposed section 3A.3, namely that a foreign government issuer cannot be a related issuer of a specified firm registrant. One commenter pointed out that foreign government issuers and underwriters often leave out Canada rather than deal with the distinction between related issuers and connected issuers. Two commenters noted that while the requirement to provide related issuer disclosure in the context of foreign government offerings will apply infrequently, the likelihood has increased following the bank bail-outs of the past several years. According to five commenters, the Canadian disclosure requirements for primary offerings of government securities differ from markets of comparable size, as no jurisdiction, other than the Canadian provinces and territories, imposes a disclosure requirement with respect to government securities that has the potential to require individualized analysis as to applicability and disclosure for one group of investors (i.e. Canadian permitted clients) that may require customization.	We acknowledge the comments that suggest the distinction between a "connected" and "related" issuer has proved difficult for foreign issuers and dealers to understand and apply in the context of fast-moving global offerings. We agree that the exemption should provide relief from both the connected and related issuer disclosure requirements for foreign government issuers and have proposed changes to the draft amendments. In our view, permitted clients would likely consider other factors to be more important than the existence of potential conflicts of interest when making a decision to invest in foreign government securities. For example, risks relating to conflicts of interest would likely be outweighed by other risks such as a foreign government's ability and/or willingness to make debt repayments. As a result, the existence of conflicts of interest between a government issuer and a related underwriter may not have the same impact on the permitted client's decision to invest.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		According to these commenters, sophisticated Canadian investors would be protected by receiving the same disclosure received by sophisticated investors in the U.S. and elsewhere.	
Requirement to provide notice of exemption			
13.	Notice to permitted clients (proposed section 3A.5 of Regulation 33-105) - Requirement to describe terms and conditions	One commenter submitted that the requirement to describe the 'terms and conditions of the exemptions being relied on' is unnecessary. The commenter submitted that, at most, the requirement should be to provide a statement to the effect that the dealer is relying on an exemption from the disclosure requirements of Regulation 33-105 with a cross-reference to the applicable section number. Describing the exemption is unnecessary because any permitted client can read the exemption if they are provided with the appropriate section reference. As such, a description would add no value and be an unnecessary compliance burden for dealers.	We agree that it should not be necessary to describe the terms and conditions of the exemption being relied on, given that the exemptions will be specifically included in Regulation 33-105. We have made changes to the draft amendments to remove the requirement to include a description of the terms and conditions of the exemption being relied on.
14.	Manner of notice (proposed section 3A.6 of Regulation 33-105)	Six commenters were supportive of the proposed section 3A.6 that includes alternative ways for the notice required by section 3A.5 to be provided to investors, on the basis that it will facilitate use of the proposed exemptive relief. One commenter noted that the deletion of the requirement to obtain an acknowledgment from investors and the availability of alternatives for providing notice to investors is a marked improvement over the notice and	We acknowledge the comments in support of alternative ways that notice can be provided. The draft amendments were drafted to provide flexibility in how notice of reliance on the exemption was provided to permitted clients. Thus notice of reliance on the exemption may be provided in a separate stand-alone notice, or in the offering document itself. We note the comments with respect to

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		acknowledgment conditions of the Wrapper Relief. Permitting the notice to be provided in the offering document and not requiring receipt of an acknowledgment will enable better centralization for particular offerings, including assuring that all underwriters authorized to sell into the applicable jurisdiction are able to rely on the exemption. Three commenters stated that dealers may be reluctant to use the option in proposed section 3A.6 if they are required to include in an offering document the same lengthy description of statutory rights of action currently included in Canadian wrappers in order to comply with the requirements in New Brunswick, Nova Scotia, Ontario and Saskatchewan. Five commenters supported a requirement to provide only a notification of the existence of statutory rights of action, rather than a description of those rights.	disclosure of statutory rights of action and will consider those comments in our review of the comments received in response to the proposed amendments to OSC Rule 45-501 and draft Regulation 45-107.
15.	Inconsistencies between the notice requirements in proposed sections 3A.5 and 3A.6 of Regulation 33-105 and the disclosure requirements in draft Regulation 45-107 and the proposed amendments to OSC Rule 45-501	One commenter cited inconsistencies between the notice requirement in section 3A.5 and disclosure requirements under draft Regulation 45-107. The commenter recommended further amendments to section 3A.5 to include a form of notice as set out in a schedule attached to the commenter's letter. Two commenters submitted that, while they are generally supportive of section 3A.6 (and, in particular, subparagraph (b)(ii)) on the basis that the provision enables notice to be provided in the	We note the comments with respect to requirements related to the disclosure of statutory rights of action in an offering document and will consider those comments when reviewing the comments received on the proposed amendments to OSC Rule 45-501 and draft Regulation 45-107.

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		offering document, the notice requirement is inconsistent with the disclosure requirement in draft Regulation 45-107 and with the requirement in the proposed amendments to OSC Rule 45-501 because both continue to require a description of the statutory rights of action available in four provinces (New Brunswick, Nova Scotia, Ontario and Saskatchewan). The required notice disclosure should be limited to notification of the existence of statutory rights of action rather than a description of those rights. Draft Regulation 45-107 and the proposed amendments to OSC Rule 45-501 only provide for alternative means by which the statutory rights of action could be described. This presents two difficulties: • The statutory rights of action differ among the four provinces that have disclosure requirements for the statutory rights of action, resulting in excessively lengthy disclosures; and • Although a fully comprehensive description of the statutory rights of action could be provided, it would be less useful to investors than a description of statutory rights of action tailored to the particular offering.	

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Other comments			
16.	*Regulation 51-105 respecting Issuers Quoted in the U.S. Over-the-Counter Markets* (Regulation 51-105)	One commenter noted that Regulation 51-105 may impose substantial ongoing requirements on issuers whose securities are offered in a province other than Ontario and Québec if the issuer does not have securities listed on a specified exchange or a primary listing on a specified exchange on the basis of a U.S. OTC quotation at the time of the offering. The result is that provinces other than Ontario and Québec may be excluded from offerings even where an exemption may be available as a result of Regulation 51-105.	We thank commenters for these comments but they are outside the scope of this project.
17.	*Regulation 32-102 respecting Registration Exemptions for Non-Resident Investment Fund Managers* (Regulation 32-102)	One commenter pointed out that the requirement for a non-Canadian Investment Fund Manager (IFM) to complete and file Form 32-102F2 *Notice of Regulatory Action* and keep it updated, particularly for IFMs with large numbers of affiliates, can be sufficiently onerous for IFMs to decide not to offer securities into the provinces that have implemented Regulation 32-102. For example, IFM registration requirements may become onerous where special purpose investment funds are set up with the same adviser but different general partners. Just a single permitted client in each of the relevant jurisdictions investing in each fund would require each general partner acting as an IFM to make the required filings for exemptive relief under Regulation 32-102. Given the breadth of the definition of investment fund, which may extend to	We thank commenters for these comments but they are outside the scope of this project.

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		exchange listed, actively managed mortgage and real estate investment trusts, for example, the impact of Regulation 32-102 on the utility of the draft amendments is greater than it might appear. As such, the commenter submitted that the CSA should reconsider the application of the IFM registration requirement to IFMs that manage foreign funds offshore.	
18.	Concerns with approach to relief[5]	One commenter expressed concern about piecemeal changes to the applicable rules relating to foreign securities offerings in Canada and fragmentation in market practice. The commenter noted that the exemptive relief granted to some dealers under Regulation 33-105 for offering documents prepared in compliance with U.S. disclosure requirements was premised on the assumption that those requirements are substantially similar to those mandated under the "connected issuer" and "related issuer" standards contained in Regulation 33-105. There are material and substantive differences between the U.S. disclosure standards and those contained in Regulation 33-105, with the effect that the Canadian disclosure requirements are more robust and provide investors with additional conflicts of interest disclosure.	We acknowledge the comment regarding piecemeal changes to applicable rules. Since the publication for comment of the Regulation 33-105 amendments, CSA staff have endeavoured to work together on the Regulation 33-105 amendments, the proposed amendments to OSC Rule 45-501 and draft Regulation 45-107. We are publishing all of these amendments in final form at the same time. We are aware that there are differences between Canadian and U.S. disclosure requirements related to conflicts of interest between issuers and dealers. However, in the context of the proposed exemption, which relates to foreign securities offered on a private placement basis to permitted clients, we are satisfied that disclosure provided in accordance with U.S. requirements is an appropriate alternative to the disclosure required by Regulation 33-105.

[5] These comments were included in one commenter's submission in response to the proposed amendments to OSC Rule 45-501.

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