



ASC NOTICE AND REQUEST FOR COMMENT
PROPOSED ASC RULE 45-516 PROSPECTUS
EXEMPTIONS FOR RETAIL INVESTORS AND
EXISTING SECURITY HOLDERS

September 10, 2015

The Alberta Securities Commission (ASC) is publishing for comment proposed ASC Rule 45-516 *Prospectus Exemptions for Retail Investors and Existing Security Holders* (Proposed Rule 45-516).

Proposed Rule 45-516 includes a proposed new prospectus exemption (the proposed exemption) that would, subject to certain conditions, allow issuers listed on a Canadian exchange to raise money by distributing securities to investors who have obtained advice about the suitability of the investment from an investment dealer.

Proposed Rule 45-516 also proposes to repeal ASC Rule 45-513 *Exemption for Distribution to Existing Security Holders* (Rule 45-513) consolidating the existing security holder exemption (ESE) and the proposed exemption in a single rule, Proposed Rule 45-516.

This notice summarizes the terms of the proposed exemption and includes a request for comment.

The proposed exemption is substantially similar to the prospectus exemption proposed by the securities regulatory authorities in each of British Columbia, New Brunswick and Saskatchewan in their publication Multilateral CSA Notice 45-315 *Proposed Prospectus Exemptions for Certain Distributions through an Investment Dealer* on April 16, 2015.

Background

Prospectus distributions and prospectus exempt distributions

One of the main requirements of securities legislation is that an issuer distributing a security must file and obtain a receipt for a prospectus. The prospectus must contain full, true and plain disclosure of all material facts relating to the securities being offered. Investors who purchase securities under a prospectus are provided certain statutory rights.

Securities legislation provides exemptions from the prospectus requirement in circumstances where a prospectus is considered not to be necessary (e.g., because of the investor's knowledge, sophistication, ability to withstand loss or relationship with principals of the issuer) or where alternative disclosure and/or other protections exist.

- The most commonly used prospectus exemption is the accredited investor exemption. The accredited investor exemption is available for the sale of securities to both new investors and existing security holders; however, the investor must meet the definition of "accredited investor".

- All jurisdictions of Canada have now adopted the ESE by way of local blanket order or rule. The ESE allows an issuer to distribute securities to an existing security holder if certain key conditions are met. One of the key conditions is that the existing security holder is limited to acquiring \$15,000 under the exemption in a 12-month period unless the security holder has obtained advice about the suitability of the investment from an investment dealer.

Retail investors that are not accredited investors or existing security holders

If a reporting issuer wants to raise capital from retail investors that are neither accredited investors nor existing security holders, without a prospectus, the principal prospectus exemptions available (offering memorandum exemption and TSX Venture short form offering document exemption) require an offering document. Although both of these exemptions allow for an abbreviated disclosure document, provided that the issuer has filed an annual information form (AIF), our data shows that Canadian reporting issuers do not generally use these exemptions.

Market participants report that reporting issuers do not use these exemptions because of the time and cost involved in preparing the required offering document (which also includes the time and costs associated with preparing an AIF). The time and costs are generally not considered to be significantly less than those which would apply in the context of a short-form prospectus offering. A further deterrent to using these exemptions can be the risk of a failed financing – they have to incur significant up-front costs that must be paid regardless of the success of the financing.

Because issuers rarely use the prospectus exemptions intended for sales to retail investors, retail investors have limited opportunity to invest directly in issuers and do not have access to the price discounts and ‘sweeteners’ such as warrants typically offered in private placements. Issuers of course also do not then have access to additional capital as a result of the retail investors’ investment.

As a result, retail investors who are not existing security holders that want to invest in an issuer generally acquire their securities on the secondary market, in reliance on the issuer’s continuous disclosure base. Currently, there is no specified limit on the number of listed securities that a retail investor can acquire on the secondary market.

The proposed exemption

We are proposing a new prospectus exemption with the following key conditions:

- the issuer must be a reporting issuer in at least one jurisdiction of Canada and have a class of equity securities listed on the Toronto Stock Exchange, the TSX Venture Exchange, the Canadian Securities Exchange or Aequitas Neo Exchange Inc. (the proposed exchanges);
- the issuer must have filed all timely and periodic disclosure documents as required under the continuous disclosure requirements of Alberta securities laws;
- the offering can consist only of a listed security or a unit consisting of a listed security and a warrant to acquire another listed security, or another security convertible into a listed security at the security holder’s sole discretion;

- the news release announcing the offering must
 - disclose, in reasonable detail, the distribution, including use of proceeds, and any material fact not yet generally disclosed, and
 - include a statement that there is no material fact or material change about the issuer that has not been generally disclosed;
- the investor must obtain advice regarding the suitability of the investment from an investment dealer; and
- although an offering document is not required, if an issuer voluntarily provides one, an investor will have certain rights of action in the event of a misrepresentation in it.

We propose that the first trade of securities issued under the proposed exemption will be subject to resale restrictions under section 2.5 of National Instrument 45-102 *Resale of Securities* like most other capital raising prospectus exemptions. We understand that while there may be comments respecting resale restrictions, these issues are not unique to the proposed exemption and we believe the issue is more appropriately addressed globally in respect of prospectus exemptions generally. In addition, issuers will have to file a report of exempt distribution within 10 days after each distribution under the proposed exemption.

Investor protection considerations

We created the proposed exemption so that it contains sufficient alternative protections for investors such that the prospectus requirement is not necessary. We think it would address the inconsistency in our securities legislation that retail investors can purchase any amount of securities of a reporting issuer through the secondary market based on the issuer's continuous disclosure but cannot purchase any securities directly from the issuer without obtaining some form of offering document.

Involvement of investment dealer

One of the conditions of the proposed exemption is that the investor must receive suitability advice from a registered investment dealer. The exemption would not be available if the dealer is a restricted dealer or an exempt market dealer. The exemption would also not be available if the dealer is exempt from providing suitability advice. For example, the exemption would not be available to discount brokers that have received exemptive relief from providing suitability advice.

This condition is intended to provide protection to the investor as the suitability determination involves the investment dealer meeting their know-your-client and know-your-product obligations. Specifically,

- the know-your-client obligations require the investment dealer to accurately determine the investor's current financial situation, investment knowledge, investment objectives and time horizon, risk tolerance, and current investment portfolio composition and risk level,

- the know-your-product obligations require the investment dealer to understand the structure, features and risks of the relevant product, and
- a suitability determination entails the investment dealer ensuring that the product is suitable for the investor using the results of the know-your-client and know-your-product processes.

Continuous disclosure obligations

The proposed exemption would only be available to reporting issuers whose continuous disclosure is up-to-date and in compliance with applicable securities legislation. Our securities legislation provides a robust continuous disclosure regime that ensures investors have sufficient information to make informed investment decisions. Under our continuous disclosure regime:

- issuers are required to provide both periodic and timely disclosure
- executive officers are required to certify certain of their continuous disclosure
- there are statutory rights of action for rescission or damages available to purchasers on the secondary market in the event of a misrepresentation in the issuer's continuous disclosure
- there are prohibitions against insider trading, i.e., where material facts or material changes relating to the issuer have not been generally disclosed.

Under the proposed exemption, the issuer must issue a news release containing information about the proposed distribution and use of proceeds and a statement that there is no material fact or material change about the issuer that has not been generally disclosed.

Proposed form of exemption

Attached as Appendix A to this notice is Proposed Rule 45-516.

Questions

We invite comment on all aspects of the proposed exemption. In particular, we would like to receive feedback in respect of the following questions:

1. If you are an issuer listed on one of the Canadian exchanges, will you use the proposed exemption?
2. Should the proposed exemption be available to reporting issuers traded on other markets? Please support your response.
3. One of the conditions of the proposed exemption is that the investor must receive suitability advice from a registered investment dealer. Should we consider expanding this provision so that investors could also receive suitability advice from a registered exempt market dealer?
4. One of the benefits of the prospectus system is the due diligence process that the issuer and its underwriter undertakes in an effort to support the prospectus certificate in respect of full, true and plain disclosure of all material facts. An issuer using the exemption is required to state that there are no undisclosed material facts. Should we require the investment dealer to confirm this as well?

5. Are there additional conditions that should be considered to address investor protection?
Please explain.
6. Should there be a limit on the size of an offering under this exemption?
7. Should there be a limit on the amount of an investor's investment?

Comments

We are inviting comments until **November 9, 2015**.

Please submit your comments in writing. If you are sending your comments by email, please also send an electronic file containing the submissions in Microsoft Word.

Please **address** your comments to the Alberta Securities Commission.

Please **send** your comments to:

Christopher Peng
Legal Counsel, Corporate Finance
Alberta Securities Commission
Suite 600, 250 – 5th Street SW
Calgary, Alberta T2P 0R4
Fax: 403.297.2082
christopher.peng@asc.ca

Please note that comments received will be made publicly available and will be posted on the ASC's website at www.albertasecurities.com. We will not keep submissions confidential. You should not include personal information directly in the comments. It is important that you state on whose behalf you are making the submission.

Questions

Please direct your questions to:

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Appendix A**PROPOSED ALBERTA SECURITIES COMMISSION RULE 45-516
PROSPECTUS EXEMPTIONS FOR
RETAIL INVESTORS AND EXISTING SECURITY HOLDERS****Definitions**

1. Terms defined in National Instrument 14-101 *Definitions* have the same meaning in this Rule.

2. In this Rule

“announcement date” is the day that an issuer issues an offering news release;

“investment dealer” has the same meaning as in section 1.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

“listed security” means a security of an issuer of a class of equity security listed on the TSX Venture Exchange, the Toronto Stock Exchange, the Canadian Securities Exchange, or Aequitas Neo Exchange Inc.;

“offering material” means a document purporting to describe the business and affairs of an issuer that has been prepared primarily for delivery to and review by a prospective purchaser so as to assist the prospective purchaser to make an investment decision in respect of securities being sold in a distribution under this Instrument;

“offering news release” means a news release issued by an issuer announcing its intention to conduct a distribution under either or both of section 3 and section 4 of this Instrument;

“record date” is the date that is at least one day prior to the announcement date;

“warrant” means a purchase warrant issued by an issuer that entitles the holder to acquire a listed security or a fraction of a listed security of the same issuer.

Exemption for Sales to Existing Security Holders

3. The prospectus requirement does not apply to a distribution by an issuer of a security of its own issue to a security holder of the issuer purchasing as principal if all of the following applies:
 - (a) the issuer is a reporting issuer in at least one jurisdiction of Canada with a class of equity securities listed on one or more of the TSX Venture Exchange, the Toronto Stock Exchange, the Canadian Securities Exchange and Aequitas Neo Exchange Inc.;

- (b) the issuer has filed in each jurisdiction of Canada in which it is a reporting issuer all periodic and timely disclosure documents that it is required to have filed in that jurisdiction as required by all of the following:
 - (i) applicable securities legislation;
 - (ii) an order issued by the regulator or securities regulatory authority of that jurisdiction;
 - (iii) an undertaking provided to the regulator or securities regulatory authority in that jurisdiction;
- (c) the issuer has issued and filed an offering news release
 - (i) describing in reasonable detail the proposed distribution, including, without limitation,
 - (A) the minimum and maximum number of securities proposed to be distributed under this section and the minimum and maximum aggregate gross proceeds of the distribution,
 - (B) the proposed principal uses, including estimated dollar amounts, of the gross proceeds of the distribution, assuming both the minimum and maximum offering, and
 - (C) a description of how the issuer intends to allocate securities if aggregate subscriptions for securities under the proposed distribution exceed the maximum number of securities proposed to be distributed; and
 - (ii) includes a statement confirming that there is no material fact or material change related to the issuer which has not been generally disclosed;
- (d) subject to applicable securities laws, the issuer permits each person or company who, as of the record date, held a listed security of the issuer of the same class and series as the listed security to be distributed under this exemption to subscribe for securities in the distribution;
- (e) the distribution is of a listed security, a unit comprised of a listed security and a warrant, or a security convertible into a listed security at the security holder's sole discretion;
- (f) the purchaser purchases the security as a principal;

- (g) the purchaser has represented in writing to the issuer that, on or before the record date the purchaser acquired and continues to hold, a listed security of the issuer of the same class and series as the listed security to be distributed under this section;
- (h) neither the issuer nor any salesperson acting on behalf of the issuer in connection with the distribution under this section has any reason to reasonably believe that the purchaser's representation, referred to in paragraph (g), is untrue;
- (i) unless the purchaser has obtained advice regarding the suitability of the investment and, if the person is resident in a jurisdiction of Canada, that advice is from a person or company registered in the jurisdiction as an investment dealer, the aggregate acquisition cost to the purchaser for the securities purchased under this section, when combined with the acquisition cost to the purchaser of all other securities of the issuer distributed under this section in the last 12 months, does not exceed \$15,000.

Exemption for Sales to Purchasers Advised by Investment Dealers

- 4. The prospectus requirement does not apply to a distribution by an issuer of a security of its own issue to a purchaser purchasing as principal if all of the following applies:
 - (a) the issuer is a reporting issuer in at least one jurisdiction of Canada with a class of equity securities listed on one or more of the TSX Venture Exchange, the Toronto Stock Exchange, the Canadian Securities Exchange and Aequis Neo Exchange Inc.;
 - (b) the issuer has filed in each jurisdiction of Canada in which it is a reporting issuer all periodic and timely disclosure documents that it is required to have filed in that jurisdiction as required by all of the following:
 - (i) applicable securities legislation;
 - (ii) an order issued by the regulator or securities regulatory authority in that jurisdiction;
 - (iii) an undertaking to the regulator or securities regulatory authority of that jurisdiction;
 - (c) the purchaser has obtained advice regarding the suitability of the investment and, if the person is resident in a jurisdiction of Canada, that advice is from a person or company registered in the jurisdiction as an investment dealer;
 - (d) the issuer has issued and filed an offering news release that:
 - (i) describes in reasonable detail the proposed distribution, including, without limitation,

- (A) the minimum and maximum number of securities proposed to be distributed under this section and the minimum and maximum aggregate gross proceeds of the distribution, and
 - (B) the proposed principal uses, including estimated dollar amounts, of the gross proceeds of the distribution, assuming both the minimum and maximum offering, and
- (ii) includes a statement confirming that there is no material fact or material change related to the issuer which has not been generally disclosed;
- (e) the distribution is of a listed security, a unit comprised of a listed security and a warrant, or a security convertible into a listed security at the security holder's sole discretion;
 - (f) the purchaser purchases the security as a principal;
 - (g) the purchaser and the issuer enter into a subscription agreement that contains the condition set out in section 5.

Subscription Agreement

- 5. An issuer relying on either or both of section 3 and section 4 of this Instrument must represent each of the following to each purchaser in the subscription agreement:
 - (a) the issuer's "core documents" and "documents", as those terms are defined in Part 17.01 of the Act, do not contain a misrepresentation;
 - (b) there is no material fact or material change related to the issuer which has not been generally disclosed.

Removal of Exemptions

- 6. The exemptions in section 3 and section 4 are not available if the class of listed security that is being distributed has been suspended from trading for failure to comply with the ongoing requirements of the applicable exchange.

Offering Material

- 7. Other than the subscription agreement, any offering material provided to a purchaser in connection with a distribution under either section 3 or section 4, must be filed with the securities regulator no later than the day that the offering material is first provided to a purchaser.

Resale Restrictions

8. The first trade of a security acquired under either section 3 or section 4 is subject to section 2.5 of National Instrument 45-102 *Resale of Securities*.

Report of Exempt Distribution

9. On or before the 10th day after a distribution under either or both of section 3 and section 4, the issuer must file a report of the distribution that complies with Form 45-106F1 *Report of Exempt Distribution*.

Application of Statutory Secondary Market Civil Liability Provisions to this Rule

10. Part 17.01 of the Act applies to a security distributed under section 3 or section 4.

Repeal of ASC Rule 45-513

11. Alberta Securities Commission Rule 45-513 *Exemption for Distribution to Existing Security Holders* is repealed effective •.
12. This Rule comes into force on •.

ATTN: Alberta Securities Commission

Comments re: PROPOSED ASC RULE 45-516 PROSPECTUS EXEMPTIONS FOR RETAIL INVESTORS AND EXISTING SECURITY HOLDERS

1. If you are an issuer listed on one of the Canadian exchanges, will you use the proposed exemption?

N/A

2. Should the proposed exemption be available to reporting issuers traded on other markets? Please support your response.

No, and I would question the inclusion of the Cdn Securities Exchange. IPO and ongoing reporting standards on that exchange appear to be light.

3. One of the conditions of the proposed exemption is that the investor must receive suitability advice from a registered investment dealer. Should we consider expanding this provision so that investors could also receive suitability advice from a registered exempt market dealer?

No. Exempt Market Dealers in general are working on behalf of the issuers, whereas IIROC licensed investment dealers work on behalf of both their underswriting clients and their investing clients and safeguard their interests.

4. One of the benefits of the prospectus system is the due diligence process that the issuer and its underwriter undertakes in an effort to support the prospectus certificate in respect of full, true and plain disclosure of all material facts. An issuer using the exemption is required to state that there are no undisclosed material facts. Should we require the investment dealer to confirm this as well?

No The investment dealer should be required to provide best efforts due diligence when underwriting.

5. *Are there additional conditions that should be considered to address investor protection? Please explain.*

Distribution to investors of most recent annual and quarterly audited financials and comments should be a requirement of prospectus exempt investments.

6. *Should there be a limit on the size of an offering under this exemption?*

Size should be limited to a reasonable percentage of existing market cap of the issuer (30% to 50%). Anything larger than that can presumably be a financing leading to a material change in the issuer – those material changes should follow standard prospectus offering

7. *Should there be a limit on the amount of an investor's investment?*

No – this should be covered under the registered dealer's suitability advice.

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RE: Proposed ASC Rule 45-516 Prospectus Exemptions for Retail Investors and Existing Security Holders (Proposed Rule 45-516).

Delivered via email: Christopher.peng@asc.ca

Dear Mr. Peng,

Thank you to the Alberta Securities Commission (ASC) for publishing for comment the Proposed Prospectus Exemption For Retail Investors. Being one of the initial instigators and author of this form of exemption, I sincerely appreciate the ASC embracing the dynamic efficiency of the capital markets in Western Canada and acknowledging the need for more efficient access to capital. It is this sort of regional awareness and oversight of the public venture capital markets that has allowed Canada to create and maintain one of the world's foremost venture markets. It is also this dynamic efficiency that will be put most at risk in a national securities regulator environment. I look forward to Ontario joining in support of this Proposed Exemption in a show of proof of the kind of co-operation and uniformity amongst regulators that is cited so often by the authors of the proposed national securities regulator.

In order for a company to go public in Canada, it must incur substantial costs, subject itself to intense scrutiny from a number of regulators, adhere to and undergo audit procedures according to Canadian regulations, and undergo a due diligence process by an investment banking department of a regulated IIROC firm. Once public, these companies must now follow continuous disclosure requirements, be subject to secondary market liability exposure, and continue to meet the requirements of the same aforementioned regulators and auditors. There has to be some form of relaxed offering mechanism for these companies to raise capital that recognizes the massive regulatory and disclosure undertakings that these companies have made.

IIROC member firms are also subject to intense scrutiny from numerous regulators in Canada. IIROC firms have strict financial and capital requirements. IIROC registered representative employees must pass numerous exams, participate in an extended on the job training program, and are subject to continuing education requirements. The member firms and their representatives are also governed by strict Know Your Client and Suitability requirements. There has to be some form of differentiation within the Exemptions that IIROC member firms can access that too recognizes the level of professionalism, accreditation, and compliance that governs IIROC member firms.

Exemptions that are one size fits all for IIROC member firms and exempt market dealers, and are the same for publicly listed and private companies, simply do not make sense.

The Proposed Prospectus Exemption For Retail Investors is a very well thought out and positive step forward in both acknowledging the facts cited above and creating a more efficient mechanism for public venture companies to access capital in Canada.

Specific feedback with regards to the questions posed in the Request For Comments:

1 Although I am not an issuer, all of the issuers that I have canvassed have told me they will make use of this Exemption if approved;

2 I believe that the Exchanges listed in this document are sufficient;

3 This Proposed Exemption should not be extended to exempt market dealers. This exemption is meant for publicly listed companies and non-Accredited Investors. My understanding is that exempt market dealers are supposed to be dealing with Accredited Investors and not able to handle shares in client accounts. Further, the requirements to be an IIROC member firm are very different than those of an exempt market dealer. This is a perfect example of where one size does not fit all and tailored regulation must be instituted;

4 I think that it is either duplication or impossible for a Dealer to state that there are no unknown material facts. I am not sure how a Dealer would be aware of an unknown material fact that the Issuer would not be aware of and have to disclose on its own.

5 I believe that all of the checks and balances that are required of an IIROC firm and the checks and balances of being a reporting public issuer listed on an Exchange in Canada, sufficiently fulfill the requirements for investor protection;

6 I do not believe there should be a limit to how much an Issuer can raise via this Proposed Exemption; and,

7 I am comfortable with a \$25,000 limit per individual investor that relies on this Proposed Exemption.

Additionally, I do not believe that a hold period should be instituted. My belief is that any advantaged differentiation in pricing would quickly be arbitrated out of the marketplace and thus the requirement of a hold period is not required. Further, given this a retail client directed exemption, the average investor will be purchasing a relatively small number of shares unlike institutional offerings where any one entity could in theory corner the market on an offering and gain a large advantage over individual retail investors. Lastly, we need to make this exemption as user friendly as possible in order to breathe some much needed life into our public venture capital markets.

In closing, it is critical for this Proposed Exemption to be put into practice as soon as possible. We are facing a drought of public venture capital, the likes of which we have never seen before. While there is much hue and cry for social media type sourcing of social capital for feel good pet projects, this style of fundraising must not be confused with investing in public venture capital in our regulated capital markets. We have 2000 plus publicly traded companies in Canada that have jumped all of the hurdles and incurred all of the costs in order to gain access to capital in our regulated and transparent markets. We must not lose sight of that.

Thank you again for your focus on the well-being of the Canadian public venture capital markets for the benefit of investors, issuers, and residents of Canada

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November 6, 2015

Christopher Peng Legal Counsel, Corporate Finance
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BY EMAIL

Dear Sirs/Mesdames:

**Re: ASC Notice and Request for Comment - Proposed ASC Rule 45-516
*Prospectus Exemptions for Retail Investors and Existing Security Holders (the
“Proposed Rule”)***

The Canadian Advocacy Council¹ for Canadian CFA Institute² Societies (the CAC) appreciates the opportunity to comment on the Proposed Rule.

We support the efforts made by the Alberta Securities Commission and other securities regulatory authorities across Canada to streamline access to capital by issuers at a lower cost, while endeavouring to ensure that investor protection remains a high priority.

We understand from the notice accompanying the Proposed Rule that the exemption reflects the fact that retail investors are already permitted to invest in listed securities on the secondary market without the benefit of any specific disclosure document in unlimited quantities. The exemption is intended in part to allow such investors to benefit from the ability to participate in primary offerings where there may be price discounts or equity sweeteners offered.

We agree that certain provisions contained in the Proposed Rule are helpful in safeguarding investor interests. In particular, we support the required news release. Investors are also generally familiar with the ability to access current information from SEDAR. The requirement to indicate in the news release that there is no undisclosed

¹The CAC represents more than 15,000 Canadian members of the CFA Institute and its 12 Member Societies across Canada. The CAC membership includes portfolio managers, analysts and other investment professionals in Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. See the CAC's website at <http://www.cfainstitute.org/cac>. Our Code of Ethics and Standards of Professional Conduct can be found at <http://www.cfainstitute.org/ethics/codes/ethics/Pages/index.aspx>.

² CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion for ethical behavior in investment markets and a respected source of knowledge in the global financial community. The end goal: to create an environment where investors' interests come first, markets function at their best, and economies grow. CFA Institute has more than 135,000 members in 151 countries and territories, including 128,000 CFA charterholders, and 145 member societies. For more information, visit www.cfainstitute.org.

material fact or material change about the issuer would help ensure all investors have access to the same information. We also support the four month hold period and the requirement to file private placement reports with respect to the use of the exemption.

While we agree that the exemption should only be available if suitability advice is received from an investment dealer (and not an exempt market dealer or restricted dealer), we note that even investment dealers are only responsible for ensuring that their suitability, KYC and KYP obligations are fulfilled. We wish to stress the importance of implementing a statutory best interest standard on all registrants providing advice. Such a standard would help ensure that an investment under the proposed exemption is in fact in a client's best interests, and would help mitigate concerns relating to potential conflicts of interest in a private placement where the issuer is compensating the dealer for locating investors. Investor protection in the exempt market is best enhanced by providing clear risk disclosures, taking steps to verify eligibility to participate in the market, and implementing a best interest standard on all registrants.

We remain of the view that it is important, to the extent possible, to harmonize the capital raising exemptions across all Canadian jurisdictions. It is becoming increasingly confusing for issuers, advisors, dealers and investors to determine whether or not a prospectus exemption is available to an issuer or purchaser in a particular province or territory, which has a negative impact on the efficiency of our markets. If the Proposed Rule is to proceed, we would support the adoption of a similar exemption across Canada.

Concluding Remarks

We thank you for the opportunity to provide these comments. We would be happy to address any questions you may have or to meet with you to discuss these and related issues in greater detail. We appreciate the time you are taking to consider our points of view. Please feel free to contact us at chair@cfaadvocacy.ca on this or any other issue in future.

(Signed) *Robin Pond*

Robin Pond, CFA
Chair, Canadian Advocacy Council



Susan Copland, B.Comm, LLB.
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Christopher Peng
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November 9, 2015

Dear Mr. Peng:

Re: Proposed Prospectus Exemption for Certain Distributions through an Investment Dealer (the “Proposed Exemption”)

The Investment Industry Association of Canada (“IIAC” or the “Association”) appreciates the opportunity to comment on the above noted Proposed Exemption. The Association supports regulatory efforts to create exemptions and policies that will assist Canadian companies in raising equity in a cost-efficient and timely manner, while still maintaining effective investor protection.

The Proposed Exemption represents a positive step in this direction. While the IIAC endorses the overall objectives of the Proposed Exemption, we have a few outstanding concerns, as well as some suggestions as to how to address issues that have been raised by particular members.

Availability of Proposed Exemption Based on Jurisdiction

The IIAC is pleased that the ASC, has joined the regulatory authorities in British Columbia, Saskatchewan and New Brunswick in considering the Proposed Exemption. We are, however, disappointed that the Proposed Exemption has not been proposed as

a uniform exemption that would be available nationally and equally to all Canadian issuers. The limited applicability of the Proposed Exemption to only four provinces severely limits its utility and potential impact. As we have stated on many previous occasions, implementation of exemptions on a piecemeal basis across jurisdictions contributes to regulatory and investor confusion, and discriminates against issuers and investors based solely on their location. In addition, inconsistent regulation ultimately creates unnecessary friction, increasing costs to the industry and all its constituents. Given the national nature of the market, it is essential that the members of the CSA act together to enact regulation that is consistent across all jurisdictions.

We also question the potential applicability of the Proposed Exemption once the Cooperative Capital Markets Regulatory System (“CCMRS”) is implemented. In its present form, the Proposed Exemption would apply in British Columbia, Saskatchewan, and New Brunswick, and Alberta. Three of the four provinces has already joined the CCMRS. Since it is presently unclear how participating jurisdictions will interact with non-participating jurisdictions, the potential impact of the Proposed Exemption in non-participating jurisdictions is also unclear. In the interests of preventing investor confusion and promoting efficient capital markets, the practical effects of the Proposed Exemption in the context of the CCMRS should be seriously considered.

Questions

1. If you are an issuer listed on one of the proposed exchanges, will you use the Proposed Exemption?

Our members believe that certain of their issuer clients will use the Proposed Exemption. However, given that the Proposed Exemption is only available in three jurisdictions, issuers are more likely to use other nationally available prospectus exemptions where possible. As such, unless other jurisdictions adopt the Proposed Exemption, it will likely be used for small financings of junior issuers with a concentration of local shareholders. If, however, the Proposed Exemption becomes available in other jurisdictions, (particularly Alberta, Ontario and Quebec), we anticipate that it would become a popular exemption for capital raising, both for junior, and more established issuers.

2. Should the proposed exemption be available to reporting issuers traded on other markets? Please support your response.

The exemption should be available to reporting issuers trading on other Canadian marketplaces. Investor protections in the form of disclosure requirements and IIROC dealer suitability assessments are applicable, regardless of the markets on which the securities trade.

- 3. One of the conditions of the Proposed Exemption is that the investor must receive suitability advice from a registered investment dealer. Should we consider expanding this provision so that investors could also receive suitability advice from a registered exempt market dealer?**

We do not believe it is appropriate to expand the provision to permit investors to receive suitability advice from exempt market dealers (“EMDs”). Given that potential investors under the Proposed Exemption are not required to meet any criteria related to their sophistication or ability to withstand loss, it is important that they receive suitability advice from dealers that are subject to the most comprehensive standards and oversight relating to proficiency, duty of care, suitability, know your client, and know your product. IIROC regulations and rigorous oversight ensure potential investors will receive appropriate advice in respect of securities issued under the Proposed Exemption. Given the results of audits of EMD activities undertaken by Ontario, Alberta and British Columbia, it is clear that EMDs do not consistently meet the standards necessary to provide the requisite amount of investor protection under the Proposed Exemption.

- 4. One of the benefits of the prospectus system is the due diligence process that the issuer and its underwriter undertakes in an effort to support the prospectus certificate in respect of full, true and plain disclosure of all material facts. An issuer using the exemption is required to state that there are no undisclosed material facts. Should we require the investment dealer to confirm this as well?**

While the distribution of securities without a disclosure document may introduce risks for any investor, we believe that the degree of investor protection afforded by the Proposed Exemption is consistent with, or higher than that provided by other exemptions that are relationship based, or based on income and asset thresholds, but do not require a suitability assessment to be performed by a qualified and accountable advisor.

Requiring dealers to confirm that there are no undisclosed material facts, will add significant costs, and time delays to the financing process, effectively nullifying the benefits associated with the use of this exemption. In order for the dealer to make this confirmation, a separate and independent due diligence process, likely involving counsel would generally be required. This would be costly and time consuming, to the extent that the exemption would not likely be widely used.

Part of the rationale for the Proposed Exemption is the recognition that investors can purchase securities on the secondary market through an investment dealer

without restrictions or such additional due diligence. Requiring this additional step would remove the comparability, as dealers can rely on the issuers' disclosure obligations when dealing in the secondary market. Given that there are statutory rights of action for rescission or damages available to purchasers in the event of a misrepresentation in the issuer's continuous disclosure, this additional certification is not necessary.

5. Are there additional conditions that should be considered to address investor protection?

The investor protection aspect of the Proposed Exemption is based on the quality of the suitability assessment. Given that the Proposed Exemption can only be utilized through a registered IIROC dealer, the standard of care applicable to the suitability review provides investors with a high degree of protection.

6. Should there be a limit on the size of an offering under this condition?

Given the protections built into the Proposed Exemption, no restrictions on the size of the offering are necessary.

7. Should there be a limit on the amount of an investor's investment?

As noted, IIROC dealers are required by regulation to undertake a robust suitability assessment for their clients in respect of the investment process. This assessment includes a determination of the appropriate investment in any particular security given the investor's specific profile and circumstances. As such, no limits in respect of the amount of an individual's investment are necessary.

Conclusion

We believe the Proposed Exemption as presented is a positive step in assisting issuers in raising capital, expanding the capital raising process to include more retail investors and appropriately protecting investors. In order for the Proposed Exemption to be truly effective, it must be available to all Canadian investors. The capital raising process for listed companies is typically national in scope, and providing investment opportunities only to certain investors on the basis of geography is illogical and unfair. This piecemeal approach to regulation adds unnecessary expense and complexity to the process without providing improved investor protection. We encourage the CSA to implement a uniform exemption so that the benefits can accrue to all Canadian listed issuers and investors.

Thank you for considering our comments. If you have any questions, please don't hesitate to contact me.

Yours sincerely,

Susan Copland



November 9, 2015

To: Alberta Securities Commission
Christopher Peng
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Calgary, Alberta T2P 0R4
Fax: 403.297.2082
Christopher.peng@asc.ca

Dear Sirs,

RE: Proposed ASC Rule 45-516 Prospectus Exemptions for Retail Investors and Existing Holders

In response to your request for comments on this new Proposed Prospectus Exemption dated September 10, 2015, I respond to the questions as follows:

Questions:

1. If you are an issuer listed on one of the Canadian exchanges, will you use the proposed exemption?

Yes, as a public issuer, we would use this exemption.

2. Should the proposed exemption be available to reporting issuers traded on other markets?

Yes, the proposed exemption should be available to reporting issuers traded on other markets if properly regulated.

3. One of the conditions of the proposed exemption is that the investor must receive suitability advice from a registered investment dealer. Should we consider expanding this provision so that investors could also receive suitability advice from a registered exempt market dealer?

The person providing advice should be qualified to do so.

4. One of the benefits of the prospectus system is the due diligence process that the issuer and its underwriter undertakes in an effort to support the prospectus certificate in respect of full true and plain disclosure of all material facts. An issuer using the exemption is required to state that



there are no undisclosed material facts. Should we require the investment dealer to confirm this as well?

No, confirmation should be the responsibility of the issuer.

5. Are there additional conditions that should be considered to address investor protection? Please explain.

The same conditions should be considered as those for secondary trading markets.

- 6 Should there be a limit on the size of an offering under this exemption?

No, I do not feel there should be a limit on the size of the offering under this exemption.

7. Should there be a limit on the amount of an investor's investment?

No, I do not feel there should be a limit on the amount of an investor's investment.

Thank you for assisting with options to raise capital in these capital markets.

Yours Truly,

Gordon Keep



November 13, 2015

VIA EMAIL

Alberta Securities Commission
Suite 600, 250 – 5th Street SW
Calgary, Alberta T2P 0R4

Attention: Christopher Peng
Legal Counsel, Corporate Finance

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Dear Sirs/Mesdames:

Re: ASC Notice and Request for Comment – Proposed ASC Rule 45-516 *Prospectus Exemptions for Retail Investors and Existing Security Holders*

Toronto Stock Exchange and TSX Venture Exchange (each, an “**Exchange**” and collectively, the “**Exchanges**”) welcome the opportunity to comment on the request for comments entitled “Proposed ASC Rule 45-516 *Prospectus Exemptions for Retail Investors and Existing Security Holders*” published on September 10, 2015 (“**Request for Comments**”) by the Alberta Securities Commission (the “**ASC**”) regarding a prospectus exemption that would allow issuers listed on a Canadian exchange to raise money by distributing securities to investors who have obtained advice about the suitability of the investment from an investment dealer (the “**Proposed Exemption**”).

We recognize the importance of the exempt market for Canada, and are committed, along with the Canadian Securities Administrators (“**CSA**”) and other industry participants, to ensuring that the exempt market is fair to investors while providing the necessary opportunity for issuers to raise needed capital in a timely and cost-efficient manner. Both TSX Venture and TSX listed issuers rely heavily on private placements as a source of financing, and the Exchanges recognize the importance of the exempt market to their listed issuers.

We support initiatives that have the goal of facilitating capital formation for listed issuers and leveling the playing field for all investors, retail and institutional, and we applaud the ASC and other CSA members’ efforts in this regard. The Exchanges believe that the Proposed Exemption is an additional tool that may result in tangible benefits to listed issuers and their investors and ultimately, to the Canadian capital market, by fostering capital raising.

The Exchanges recognize that the Proposed Exemption balances investor protection concerns with the necessary opportunity for issuers to raise capital by requiring the investor to obtain suitability advice from a registered investment dealer about the investment. Additionally, the requirement that the issuer be listed on a Canadian stock exchange ensures that investors have

access to continuous disclosure about the issuer to assist in making an informed investment decision.

The Exchanges continue to strongly support the harmonization of prospectus exemptions across all Canadian jurisdictions and we are hopeful that the Proposed Exemption will benefit all market participants, regardless of the jurisdiction of their lead regulator. As with other exemptions aimed at facilitating capital raising through the exempt market, we strongly encourage the other members of the CSA to work together with the ASC to implement prospectus exemptions in a coordinated manner.

Thank you for the opportunity to comment on the Request for Comments and on the Proposed Exemption. Should you wish to discuss any of the comments with us in more detail, we would be pleased to respond.

Yours truly,

Ungad Chadda
Senior Vice President
Toronto Stock Exchange

John McCoach
President
TSX Venture Exchange