



ASC NOTICE

PROPOSED REVOCATION OF ASC BLANKET ORDER 31-505 REGISTRATION EXEMPTION FOR TRADES IN CONNECTION WITH CERTAIN PROSPECTUS-EXEMPT DISTRIBUTIONS-REQUEST FOR COMMENTS

August 15, 2018

Introduction

Staff of the Alberta Securities Commission (ASC) advise that we are considering recommending that the ASC revoke ASC Blanket Order 31-505 *Registration Exemption for Trades in Connection with Certain Prospectus-Exempt Distributions* effective March 27, 2010 (BO 31-505).

Staff of the ASC invite interested parties to comment on the proposed revocation of BO 31-505 on or before September 19, 2018.

Background

In 2009, the Canadian Securities Administrators (CSA) adopted National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103). NI 31-103 introduced an “in the business” trigger for dealer registration and created a new category of registration for exempt market dealers. The CSA also revoked registration exemptions that paralleled prospectus exemptions found in section 2.3 (accredited investor), section 2.5 (family, friends and business associates), section 2.9 (offering memorandum) and section 2.10 (minimum investment amount) (together, the capital raising exemptions) of former National Instrument 45-106 *Prospectus and Registration Exemptions*.

Despite the fact that the trigger for registration changed from a “trade” trigger to an “in the business” trigger, there was a concern among certain CSA jurisdictions that the loss of these parallel registration exemptions might impact financings in the junior capital market. As a result, British Columbia, Alberta, Manitoba, Saskatchewan, Northwest Territories, Nunavut, and Yukon provided an exemption from the requirement to register as a dealer when selling securities under the capital raising exemptions, subject to certain conditions (Northwestern Exemption).

Reasons for the Proposed Revocation

We are proposing to revoke BO 31-505 for the following reasons:

1. Revoking BO 31-505 would have a negligible impact on capital raising in Alberta. In 2017, funds raised by Alberta finders in reliance on the Northwestern Exemption represented 0.11% of the total funds raised under the capital raising exemptions.

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2. Based on a review of our filings, we note that there appears to be a concerning level of non-compliance in that a significant number of filers are in breach of their conditions under the exemption because they either:
 - (a) Provide advice;
 - (b) Make suitability recommendations or determinations;
 - (c) Hold or have access to their investor's assets;
 - (d) Have previously provided financial services to their investors other than in connection with a capital raising exemption; or
 - (e) Any combination of the above.

The rationale for the continuation of the BO 31-505 may no longer exist. The revocation of BO 31-505 will not impede capital raising in Alberta but will increase investor protection. Alberta investors who acquire securities from a market participant who relies on the Northwestern Exemption do not deal with a registrant who is required to know their client, know their product, provide suitable recommendations, and who is subject to the other obligations set forth in NI 31-103. With the removal of the Northwestern Exemption these investors will benefit from the additional protections found under the registration regime.

Question:

1. Do you have any comments, with supporting rationale, on the proposed revocation of the Northwestern Exemption?

Transition Provisions

The securities regulatory authorities in each of British Columbia, Manitoba, Nunavut, the Northwest Territories and the Yukon (collectively, the CSA Jurisdictions) published today Multilateral CSA Notice 32-302 *Notice of Revocation for Certain Local Orders Providing Registration Exemption for Trades in Connection with Certain Prospectus-Exempt Distributions and Update on BC Instrument 32-517 Exemption from Dealer Registration Requirement for Trades in Securities of Mortgage Investment Entities* (Notice 32-302). Notice 32-302 announced that the substantially harmonized registration exemptions in each of the CSA Jurisdictions that form the Northwestern Exemption (the local orders) will cease to be effective in their local jurisdictions on April 30, 2019.

The Financial and Consumer Affairs Authority of Saskatchewan is considering whether to revoke its General Order 45-918 *Registration Exemption for Trades in Connection with Certain Prospectus-Exempt Distributions* comprising the Northwestern Exemption and will advise of its approach in due course.

If, we decide to proceed with the revocation of BO 31-505 we are proposing that it be revoked on April 30, 2019 in accordance with the timelines of Notice 32-302 and the CSA Jurisdictions. This will allow those who presently rely on the Northwestern Exemption time to complete an orderly wind-up of their business or seek registration.

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Question:

2. Will the proposed transition provision provide sufficient time for your business to complete an orderly windup or seek registration. If not, please explain with details.

Request for Comments

If you have comments in respect of the proposal to revoke BO 31-505 please send in writing to:

Bonnie Kuhn
Senior Legal Counsel, Market Regulation
600, 250-5th Street S.W.
Calgary, Alberta T2P 0R4
(403) 355-3890
bonnie.kuhn@asc.ca

The comment period will be open until September 19, 2018.

All written comments will be posted on our website. Accordingly, you should not include any personal information in them.

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September 17, 2018

BY EMAIL

Bonnie Kuhn
Senior Legal Counsel, Market Regulation
600, 250-5th Street S.W.
Calgary, Alberta T2P 0R4
Email: bonnie.kuhn@asc.ca

Dear Sirs/Mesdames:

Re: Proposed Revocation of ASC Blanket Order 31-505 Registration Exemption for Trades in Connection with Certain Prospectus-Exempt Distributions – Request for Comments (the “31-505 Proposed Revocation”)

The Canadian Advocacy Council¹ for Canadian CFA Institute² Societies (the CAC) appreciates the opportunity to comment on the 31-505 Proposed Revocation. We are supportive of the proactive nature of the proposals to revoke exemptions which are not being utilized and, when utilized, are relied upon incorrectly.

Given the crucial functions performed by registered dealers, including KYC, KYP and suitability determinations, we do not see a compelling rationale to maintain the Northwestern Exemption at this time. The Canadian Securities Administrators are otherwise working to enhance the client – advisor relationship through additional regulation, including with respect to over-the-counter derivatives in Proposed National Instrument 93-101 *Derivatives: Business Conduct* and to securities registrants under the proposed client focused reforms through the proposed amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*. Given the heightened regulatory expectations of registrants set out in these proposals, it would be incongruent to continue to allow intermediaries to rely on older registration exemptions for transactions where absent the exemption, clients would receive vastly more protection.

¹The CAC represents more than 15,000 Canadian members of 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.cfasociety.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 of ethical behavior in investment markets and a respected source of knowledge in the global financial community. Our aim is to create an environment where investors' interests come first, markets function at their best, and economies grow. There are more than 154,000 CFA charterholders worldwide in 165+ countries and regions. CFA Institute has eight offices worldwide and there are 151 local member societies. For more information, visit www.cfainstitute.org or follow us on Twitter at @CFAInstitute and on Facebook.com/CFAInstitute.

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We also understand that the Northwestern Exemption will be revoked in most other jurisdictions where it is currently available, and we are supportive of harmonizing exemptions across all Canadian jurisdictions to avoid confusion among investors and potentially cause an inefficiency in our markets.

We agree that the revocation should take place on the same date as the revocation in the other Canadian jurisdictions. While the timelines may be tight for those intermediaries who rely on the Northwestern Exemption to seek registration if they choose to do so, the ASC could potentially consider case by case relief for those dealers who apply for registration by a certain date during the registration review process, similar to the transition periods contemplated by Multilateral CSA Notice 32-302 *Notice of Revocation for Certain Local Orders Providing Registration Exemption for Trades in Connection with Certain Prospectus-Exempt Distributions* and Update on BC Instrument 32-517 *Exemption from Dealer Registration Requirement for Trades in Securities of Mortgage Investment Entities*.

Concluding Remarks

We thank you for the opportunity to provide these comments. We would be happy to address any questions you may have and appreciate the time you are taking to consider our points of view. Please feel free to contact us at cac@cfacanada.org on this or any other issue in future.

(Signed) *The Canadian Advocacy Council for
Canadian CFA Institute Societies*

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