

FINDERS BE AWARE - BCSC PROPOSES TO REVOKE TRADE-BASED EXEMPTION

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On January 3, 2013, the British Columbia Securities Commission (BCSC) gave notice that it is considering revoking a trade-based exemption which permits finders to place prospectus-exempt (private placement) securities without the requirement for registration under the Securities Act (British Columbia). The following summarizes (i) the current registration regime and (ii) the impact the proposed changes may have on finders.

current registration regime

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 created a new category of registration for exempt market dealers (EMD) and created a "business trigger" for dealer registration. Concurrent with the implementation of NI 31-103 the CSA also revoked certain dealer registration exemptions under National Instrument 45-106 – *Prospectus and Registration Exemptions* (the capital raising exemptions). In short, under the current registration regime a person in the business of trading securities in Canada is required to register as a dealer, unless an exemption from registration is available.

In conjunction with NI 31-103, the securities commissions in each of British Columbia, Alberta, Manitoba, Saskatchewan, Northwest Territories, Nunavut and Yukon provided an exemption from the requirement to register for persons selling only private placement securities under the capital raising exemptions.¹ Persons seeking to rely on the exemption must, among other things, (i) not be registered in any jurisdiction, (ii) not have provided advice to the purchaser with respect to suitability, (iii) with the exception of British Columbia, not provide financial services to the purchaser, (iv) obtain from the purchaser a signed risk acknowledgement in the prescribed form, (v) not hold or have access to the purchaser's assets and (vi) file an information report in the prescribed form.

The BCSC is now proposing to revoke the trade-based exemption summarized above. According to BC Notice 2013/01, the BCSC proposes to revoke the exemption because:

- (a) the impact on capital raising will be negligible;

- (b) those relying on the exemption are not complying with its investor protection conditions; and
- (c) private placement market investors will be better protected if they purchase securities through registrants.

The proposed revocation of the exemption is noteworthy to persons receiving a finder's fee in a private placement.

impact on finders

If the exemption is revoked then any finder who is considered to be in the business of trading securities who places a British Columbia resident in a private placement will be required to register as a dealer or EMD, as the case may be.

Determining whether a person is in the business of trading securities is highly fact dependent. Likely persons who receive finder's fees on a semi-regular basis would be considered in the business of trading securities. Operating without registration is a serious offence under applicable securities legislation and for that reason if the exemption is revoked a finder would be prudent to seek legal advice to determine whether his/her/its activities trigger dealer registration.

The BCSC has extended the comment period and is accepting comments on its proposal until February 28, 2013.

by Cory Kent and James Munro

¹ In British Columbia see BC Instrument 32-513 - Registration Exemption for Trades in Connection with Certain Prospectus-Exempt Distributions.

* Law Corporation

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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