

NEW PROSPECTUS EXEMPTION FOR CANADIAN LISTED ISSUERS FOR PLACEMENTS TO EXISTING SECURITY HOLDERS

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Further to our November [update](#), Canadian securities regulators in all jurisdictions other than Newfoundland and Labrador have adopted a new capital-raising prospectus exemption for issuers listed on the Toronto Stock Exchange (**TSX**), the TSX Venture Exchange (**TSX-V**), and the Canadian Securities Exchange (**CSE**). Effective March 13, 2014 these reporting issuers may raise capital by distributing securities directly to their existing security holders without a prospectus, subject to the following conditions:

1. the issuer has a class of equity securities listed on the TSX, TSX-V, or CSE;
2. the issuer has filed all required timely and periodic disclosure documents;
3. the offering consists only of the class of equity securities listed on the TSX, TSX-V, or CSE, or units consisting of the listed security and a warrant to acquire the listed security;
4. the issuer makes the offering available to all existing security holders who hold the same type of listed security;
5. the issuer issues a news release disclosing the proposed offering, including details of the use of the proceeds; and,
6. each investor confirms in writing to the issuer that, as at the record date, the investor held the type of listed security that the investor is acquiring under the exemption.

Additionally, the security holder must confirm in writing that he or she holds securities in this issuer as of the record date. Unless the investor obtains suitability advice from a registered investment dealer, individuals are limited to investing an aggregate of not more than \$15,000 in a 12-month period under this exemption. Further, issuers must represent to prospective purchasers in a subscription agreement that there are no undisclosed material facts or material changes and must provide investors with rights of action in the event it makes misrepresentation in its continuous disclosure. Finally, issuers must file offering materials, other than a subscription agreement, if any, that they provide to an investor in connection with this exemption no later than the day such materials were first provided to the investor. Securities issued pursuant to the exemption are subject to a four month resale restriction and issuers must file a report of exempt distribution within ten days after each distribution.

This exemption permits retail investors to make an additional investment in an issuer without going to the secondary market, which entails purchasing shares at market price and paying brokerage fees. Issuers benefit from increasing their ability to access existing shareholders as an additional source of small-cap financing without the up-front costs of a prospectus. As this new capital-raising exemption has garnered wide support from regulators, issuers, and investors, the blanket order by which most provinces implemented the exemption, no longer contains a sunset clause and will continue to be available indefinitely beyond the previously proposed 2015 deadline.

Regulators in all jurisdictions except Ontario and Newfoundland and Labrador have now adopted this exemption. The adopted exemption is substantially the same as the earlier proposal, however, there are five notable changes included in response to comments received during the consultation process:

1. the adopted exemption is wider in scope as it applies to issues listed on the TSX, TSX-V, and the CSE rather than just to junior venture issuers on the TSX-V;
2. the regulators confirm that the record date on which investors must hold securities to be eligible for the exemption is at least one day prior to the date an issuer issues the offering news release;
3. the requirement to make the offering available to all existing security holders who hold the same type of listed security;
4. the issuers must describe in the offering news release how they intend to allocate oversubscriptions; and
5. where adopted by blanket order, the rule will no longer have a sunset clause.

The Ontario Securities Commission (**OSC**) is currently considering a prospectus exemption for existing securities holders and intends to publish this and other proposed exemptions for comment on or around March 20, 2014. As of the date of this article, the OSC had not yet published these proposals; however, we will provide timely updates as soon as the OSC does so.

Those interested in the existing security-holder exemption are encouraged to review the details in our previous [update](#) and Multilateral CSA Notice 45-313.

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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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