

RIGHTS (OFFERING) ON THE MONEY: CSA ANNOUNCES CHANGES TO RIGHTS OFFERING PROSPECTUS EXEMPTIONS

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On September 24, 2015, the Canadian Securities Administrators ("**CSA**") announced a long anticipated change to the rights offering prospectus exemption, which is expected to result in greater access and use of the exemption by reporting issuers. Rights offerings provide issuers with the ability to distribute rights to purchase their securities to existing shareholders, generally at a discount to the market price, allowing the issuer to raise money while providing shareholders with an opportunity to avoid dilution. While theoretically appealing to both the issuer and shareholders, this exemption was previously rarely used, in part due to the time and cost of compliance with the requirements of National Instrument 45-101 *Rights Offerings*.

While rights offerings can be conducted by reporting issuers outside the process prescribed by the new exemption requirements through the use of a prospectus, the new exempt distribution procedure provides a faster and more cost-effective way of conducting this type of financing. The previous exempt rights offering regime had several drawbacks that made it an unappealing option for issuers, however the following changes are intended to create a streamlined prospectus exemption for rights offerings that continues to offer shareholder protection.

Notice

A new notice requirement is being implemented. A notice must be filed on SEDAR and sent to securityholders holding the class of securities to be issued when the rights are exercised, and must include information on how the securityholders will access the rights offering circular electronically. The CSA has provided guidance that the rights offering notice is not expected to be longer than two pages in length.

Circular

Currently, a rights offering circular would need to be prepared in order to rely on the rights offering prospectus exemption, and such circular would need to be reviewed by the relevant securities regulators. Once the streamlined process is implemented, the form of circular will be simplified into a question and answer format, which the CSA expects to be no longer than ten pages in length, that must be filed concurrently with the notice, but does not need to be sent to securityholders and is not subject to commission review.

Dilution Limit

Issuers were not permitted to issue more than 25% of their already outstanding securities through the rights offering exemption within a 12-month period. This dilution limit will be increased to 100% within a 12-month period, allowing for greater use of the exemption.

Statutory Secondary Market Civil Liability

Investors will have a statutory right of damages for any misrepresentations of the issuer made pursuant to the use of the rights offering prospectus exemption. This includes not only misrepresentations in the required filings such as the notice and the circular, but also any documents filed in association with the required filings, and public oral statements made by persons related to the issuer. Further, failure to make timely disclosure can also attract liability. The secondary market liability provisions are implemented through reference to the individual securities legislation of each Canadian jurisdiction. The liability is not limited to the responsible issuer, but can be extended to directors, officers, and other parties such as experts and influential persons, in accordance with applicable legislation.

As a whole, this process is expected to reduce the time and cost associated with a rights offering, making it a more attractive option for reporting issuers seeking to raise capital. Though the circular is no longer subject to review by securities commissions prior to filing, additional protection for investors in the form of statutory secondary market civil liability provides securityholders with the ability to recover damages for any misrepresentations advanced by the issuer or its directors and officers. The anticipated result of these changes to the rights offering regime is increased use of such offerings for capital raising purposes.

The new rights offering exemption is expected to come into force on December 8, 2015.

by Sasa Pudar

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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