

Multilateral CSA Notice 45-311
*Exemptions from Certain Financial Statement-Related Requirements
in the Offering Memorandum Exemption to Facilitate Access to
Capital by Small Businesses*

December 20, 2012

Introduction

The securities regulatory authorities in Yukon, Alberta, Saskatchewan, Northwest Territories, Nunavut, Manitoba, Québec, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador (the “participating jurisdictions” or “we”) are each publishing a harmonized interim local order (OM-form exemption order) that provides exemptions from certain requirements of Form 45-106F2 *Offering memorandum for non-qualifying issuers* (Form 45-106F2). Form 45-106F2 is the required form under the offering memorandum prospectus exemption (OM exemption) in section 2.9 of National Instrument 45-106 *Prospectus and Registration Exemptions*. The OM exemption is available in all jurisdictions other than Ontario.

The objective in issuing the OM-form exemption orders is to facilitate capital raising for early stage businesses and other small and medium sized enterprises (SMEs) while maintaining appropriate investor protection. The OM-form exemption orders will be issued concurrently with this notice or as soon as possible following the notice. The OM-form exemption orders will be effective immediately upon being issued. Each OM-form exemption order will be available on the website of the securities regulatory authority issuing it.

This notice summarizes the OM-form exemption orders and includes a request for comments.

Background

Securities legislation requires that purchasers of securities be provided with a prospectus that contains full, true and plain disclosure of all material facts relating to the securities being offered. However, securities legislation has always provided exemptions from the prospectus requirement in situations where purchasers do not need the protections of the prospectus requirement or alternative protections are available.

The OM exemption was intended to provide a variety of issuers, including early stage businesses and other SMEs, with a cost-effective capital-raising option. We have heard from some early stage businesses and SMEs that the OM exemption is too costly to use. The main concern they raise is the cost of preparing audited financial statements. Based on this feedback we have considered whether it is appropriate to provide exemptions from certain financial statement-related and audit requirements in Form 45-106F2 for early stage businesses and SMEs.

Substance of OM-form exemption orders

The OM-form exemption orders provide a harmonized alternative for financings below a certain threshold. Under this alternative regime, certain issuers relying on the OM exemption are exempt from:

- the requirement to obtain an audit on financial statements or other financial information, and
- the requirement for financial statements to be prepared using Canadian GAAP applicable to publicly accountable enterprises (IFRS).

An issuer can rely on the OM-form exemption orders subject to certain conditions, including the following:

- the issuer is not a reporting issuer, investment fund, mortgage investment entity or an issuer engaged in the real estate business;
- the issuer is not distributing complex securities;
- the amount raised by an issuer group (the issuer and certain related issuers) under the OM-form exemption orders must never exceed \$500,000; and
- the aggregate acquisition cost of all securities distributed under the OM-form exemption orders by an issuer group to a purchaser in a distribution and in the 12 months preceding the date of such distribution, must not exceed \$2,000.

The OM exemption includes a number of other conditions. They continue to apply to issuers relying on the OM-form exemption orders. They include the resale restrictions, the risk acknowledgment form requirement, the obligation to file reports of exempt distribution, the payment of applicable fees and language requirements. Nothing in the OM-form exemption orders modifies any rights, recourses or rights of action that an investor may have under securities legislation.

The OM-form exemption orders do not include any exemption from dealer or adviser registration requirements.

An issuer group that wishes to go beyond any of the maximum thresholds under the alternative regime provided by the OM-form exemption orders can do so if it complies with the standard terms of the OM exemption or relies on one of the other capital raising prospectus exemptions.

The OM-form exemption orders continue until December 20, 2014. During this time, we will review the comments received from market participants and monitor the use of the OM-form exemption orders to determine whether to pursue further regulatory amendments and, if so, the nature and extent of any such amendments.

Crowdfunding and other SME initiatives

We have been and will continue to monitor initiatives that develop in other jurisdictions related to financing of early stage businesses and SMEs.

Securities-based crowdfunding is one area that has received media attention. This type of capital raising is currently permitted in a few international jurisdictions. It involves raising small

amounts of money from a large number of investors over the Internet via a website, generally referred to as a funding portal. While it is contemplated by the U.S. *Jumpstart our Business Startups Act* (JOBS Act), it is not yet permitted in the U.S. and will not be until the Securities and Exchange Commission (SEC) and others make the necessary rules to provide a regulatory framework.

The OM-form exemption orders are not intended to address, nor be our response to, securities-based crowdfunding. Nevertheless, we have compared the existing securities regulatory regime in Canada (in all jurisdictions other than Ontario) and, in particular, the OM exemption with the crowdfunding provisions of the JOBS Act. Although the SEC has not yet provided the details, the contemplated disclosure requirements for issuers using the JOBS Act crowdfunding exemption seem similar to those under the OM exemption.

The availability of a prospectus exemption is only one aspect of securities-based crowdfunding. Another important consideration is the regulation applicable to the funding portals (the entities proposing to operate websites through which issuers may offer their securities to potential purchasers). Staff think that operating a funding portal that intermediates trades would trigger the dealer registration requirement under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

We note that the regulation of funding portals is developing in various ways in different international jurisdictions. At this time, we are not proposing a particular regulatory model for funding portals. CSA staff are prepared to consider applications for registration by funding portals on a case-by-case basis.

Comments

We invite market participants to comment on whether the conditions in the OM-form exemption orders sufficiently address the financing needs of early stage businesses and SMEs while still providing appropriate investor protection and whether we should consider other modifications to the OM exemption.

In addition, the Ontario Securities Commission (OSC) has recently published OSC Staff Consultation Paper 45-710 *Considerations For New Capital Raising Prospectus Exemptions*. Although we did not participate in the development of the OSC consultation paper, we encourage our market participants to review and comment on the questions raised in it and to share their comments with us as well.

We are inviting comments until **February 20, 2013**.

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 following participating jurisdictions:

Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission

Autorité des marchés financiers
Nova Scotia Securities Commission
New Brunswick Securities Commission
Newfoundland Securities Commission
Prince Edward Island Securities Office
Department of Community Services, Government of Yukon
Office of the Superintendent of Securities, Government of the Northwest Territories
Legal Registries Division, Department of Justice, Government of Nunavut

Please send your comments only to the addresses below. Your comments will be forwarded to the other participating jurisdictions.

Denise Weeres
Senior Legal Counsel, Corporate Finance
Alberta Securities Commission
Suite 600, 250-5th Street SW
Calgary, Alberta T2P 0R4
Fax: 403-297-2082
denise.weeres@asc.ca

Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal, Québec H4Z 1G3
Fax: 514-864-6381
consultation-en-cours@lautorite.qc.ca

Please note that comments received will be made publicly available and may be posted on the websites of certain of the participating jurisdictions. We cannot keep submissions confidential.

Questions

Please direct your questions to any of the following:

Michel Bourque
Senior Policy Advisor , Policy and Regulation
Department
Autorité des marchés financiers
514-395-0337 ext: 4466 or 1-877-525-0337
michel.bourque@lautorite.qc.ca

Valérie Dufour
Analyst, Corporate Finance
Autorité des marchés financiers
514-395-0337 ext: 4389 or 1-877-525-0337
valerie.dufour@lautorite.qc.ca

Denise Weeres
Senior Legal Counsel, Corporate Finance
Alberta Securities Commission
(403) 297-2930 or 1-(877) 355-4488
denise.weeres@asc.ca

Thomas Sloan
Legal Counsel, Market Regulation
Alberta Securities Commission
(403) 355.4478 or (877) 355-4488
thomas.sloan@asc.ca

Chris Besko
Deputy Director, Legal Counsel
Manitoba Securities Commission
(204) 945-2561
1-800-655-5244
chris.besko@gov.mb.ca

Susan Powell
Senior Legal Counsel, Regulatory Affairs
New Brunswick Securities Commission
506 643-7697
1-866-933-2222
susan.powell@nbsc-cvmnb.ca

Don Boyles
Program & Policy Development
Securities Commission of Newfoundland,
Newfoundland and Labrador
(709) 729-4189
dboyles@gov.nl.ca

Shirley Lee, Q.C.
Director, Policy and Market Regulation
and Secretary to the Commission
Nova Scotia Securities Commission
(902) 424-5441 or 1-855-424-2499
leesp@gov.ns.ca

Donn MacDougall
Deputy Superintendent of Securities,
Legal and Enforcement
Northwest Territories Securities Office
867-920-8984
donald_macdougall@gov.nt.ca

Louis Arki
Director, Legal Registries
Legal Registries
Department of Justice,
Nunavut
(867) 975-6587
larki@gov.nu.ca

Katharine Tummon
Superintendent of Securities
The Office of the Superintendent of Securities,
P.E.I.
(902) 368-4569
kptummon@gov.pe.ca

Sonne Udemgba
Deputy Director, Legal/Exemption
Financial and Consumer Affairs
Authority of Saskatchewan
(306) 787-5879
sonne.udemgba@gov.sk.ca

Frederik Pretorius
Superintendent of Securities
Director of Corporate Affairs
Department of Community Services,
Yukon
867.667-5225
Email: Fred.Pretorius@gov.yk.ca