

Multilateral CSA Notice**Multilateral Instrument 45-107 *Listing Representation and Statutory Rights of Action Disclosure Exemptions*****June 25, 2015****Introduction**

All of the members of the Canadian Securities Administrators (the **CSA**), other than the securities regulatory authorities in Ontario and British Columbia (the **participating jurisdictions** or **we**), are implementing Multilateral Instrument 45-107 *Listing Representation and Statutory Rights of Action Disclosure Exemptions* (**MI 45-107**).

MI 45-107 is not being proposed in Ontario and British Columbia as in those jurisdictions local instruments address or are expected to address the issues discussed below, as necessary. Provided all necessary ministerial approvals are obtained, MI 45-107 will come into force on September 8, 2015.

Substance and Purpose of MI 45-107

MI 45-107 provides exemptions from certain requirements of the securities legislation of the participating jurisdictions that apply in the context of prospectus exempt financings conducted by foreign issuers and by investment dealers or international dealers acting as underwriters, and offered to institutional and other sophisticated investors in Canada on a private placement basis.

The purpose of MI 45-107 is two-fold. First, in the context of the international financings referred to above, it provides an exemption from the statutory prohibition against making a representation about the intention to list securities on an exchange or market. Second, it provides an exemption from the requirement that applies in some of the participating jurisdictions, that an offering document used in connection with a prospectus exempt distribution include a prescribed statement with respect to certain statutory rights of action. As a consequence, MI 45-107 eliminates two of the disclosure requirements that result in the preparation of a “wrapper” when foreign securities are offered under a prospectus exemption in Canada as part of a global offering. This may facilitate participation by sophisticated investors that qualify as permitted clients in foreign securities offerings.

MI 45-107 will codify certain discretionary exemptive relief that the CSA has been granting in the context of U.S. and international offerings of securities to Canadian institutional and other sophisticated investors and consequently alleviate the need for these discretionary exemption applications.

Background

The participating jurisdictions previously requested comment on MI 45-107. On November 28, 2013 we published a Notice and Request for Comment relating to MI 45-107 (the **November 2013 materials**).

Summary of Written Comments Received by the participating jurisdictions

The comment period for the November 2013 materials ended on February 26, 2014 and the participating jurisdictions received submissions from seven commenters. The comment letters on the November 2013 materials can be viewed on the Alberta Securities Commission's website at www.asc.ca and on the Autorité des marchés financiers website at www.lautorite.qc.ca.

We have considered the comments received and thank all of the commenters for their input. The names of the commenters are contained in Annex B and a summary of their comments, together with our responses, is contained in Annex C.

Summary of Changes to the November 2013 materials

After considering the comments received, we have made some revisions to the November 2013 materials that were published for comment. Those revisions are reflected in MI 45-107 which we are publishing concurrently with this notice. As these changes are not material, we are not republishing MI 45-107 for a further comment period.

The key changes from the November 2013 materials are as follows:

- We removed the requirement to provide a description of the statutory rights of action for misrepresentation that are available in New Brunswick, Nova Scotia and Saskatchewan in the exempt offering document or notice delivered to a permitted client. Instead, the exempt offering document or notice is only required to include notification that statutory rights of action exist. We have proposed standardized language for the disclosure statement.
- We revised MI 45-107 to use the terms “registered dealer” or “international dealer” rather than “specified firm registrant”. This will align MI 45-107 with the terms of the discretionary exemptive relief orders as well as with the amendments made to NI 33-105 *Underwriting Conflicts* (**NI 33-105**).

Related Amendments

The CSA is also proposing amendments to NI 33-105 to provide relief, in the context of these same U.S. and international offerings to institutional and other sophisticated investors, from the

requirement in NI 33-105 to provide disclosure relating to connected and related issuers in a prospectus-exempt disclosure document. The proposed exemption from NI 33-105 will apply to all offerings (registered or unregistered) made in the U.S. to U.S. investors, provided that the same disclosure that is provided to U.S. investors is also provided to Canadian investors.

Local Matters

Annex D is being published in any local jurisdiction that is making related changes to local securities legislation, including changes to local notices or other policy instruments in that jurisdiction. It also includes any additional information that is relevant to that jurisdiction only.

Contents of Annexes

The following annexes form part of this Multilateral CSA Notice:

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| Annex A | MI 45-107 |
| Annex B | List of Commenters |
| Annex C | Summary of Comments and Responses |
| Annex D | Local Matters |

Questions

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Annex A

MULTILATERAL INSTRUMENT 45-107 LISTING REPRESENTATION AND STATUTORY RIGHTS OF ACTION DISCLOSURE EXEMPTIONS

Definitions

1. In this Instrument

“eligible foreign security” means a security offered primarily in a foreign jurisdiction as part of a distribution of securities in either of the following circumstances:

- (a) the security is issued by an issuer
 - (i) that is incorporated, formed or created under the laws of a foreign jurisdiction,
 - (ii) that is not a reporting issuer in a jurisdiction of Canada,
 - (iii) that has its head office outside of Canada, and
 - (iv) that has a majority of the executive officers and a majority of the directors ordinarily resident outside of Canada;
- (b) the security is issued or guaranteed by the government of a foreign jurisdiction;

“executive officer” means, for an issuer, an individual who

- (a) is a chair, vice-chair or president,
- (b) is a chief executive officer or chief financial officer,
- (c) is a vice-president in charge of a principal business unit, division or function including sales, finance or production, or
- (d) performs a policy-making function in respect of the issuer;

“exempt offering document” means:

- (a) in New Brunswick, Nova Scotia and Saskatchewan, an offering memorandum as defined under the securities legislation of that jurisdiction, and

- (b) in all other jurisdictions, a document including any amendments to the document, that
 - (i) describes the business and affairs of an issuer, and
 - (ii) has been prepared primarily for delivery to and review by a prospective purchaser to assist the prospective purchaser in making an investment decision in respect of securities being distributed pursuant to an exemption from the prospectus requirement;

“listing representation prohibition” means the prohibition in the securities legislation set out in Appendix A;

“permitted client” has the same meaning as in section 1.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

“statutory rights of action disclosure requirement” means the provision in the securities legislation set out in Appendix B.

Exemption from Listing Representation Prohibition

2. The listing representation prohibition does not apply to a representation made in an exempt offering document in connection with a distribution of an eligible foreign security if

- (a) the distribution is made only to one or more permitted clients,
- (b) the representation does not contain a misrepresentation, and
- (c) the representation is made in compliance with the by-laws and rules of the exchange or quotation and trade reporting system referred to in the representation.

Alternative Disclosure of Statutory Rights

3. (1) In New Brunswick, Nova Scotia and Saskatchewan, the statutory rights of action disclosure requirement is satisfied in respect of a distribution of an eligible foreign security to a prospective purchaser that is a permitted client if the disclosure specified by subsection (2) is provided in one of the following ways:

- (a) in the exempt offering document;
- (b) in a document delivered to the permitted client at the same time as the exempt offering document;

- (c) in a written notice that has been delivered to the permitted client by a registered dealer or international dealer that provides the disclosure required by paragraph 2(b) and advises that the notice will apply to all future distributions.

(2) A person or company relying on subsection (1) must include disclosure that is substantively similar to one of the following disclosure statements:

- (a) if the disclosure is included in an exempt offering document:

Securities legislation in certain provinces or territories of Canada may provide a purchaser with remedies for rescission or damages if the offering memorandum (including any amendment thereto) contains a misrepresentation, provided that the remedies for rescission or damages are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser's province or territory. The purchaser should refer to any applicable provisions of the securities legislation of the purchaser's province or territory for particulars of these rights or consult with a legal advisor.

- (b) if the disclosure is provided other than in an exempt offering document:

If, in connection with a distribution of an eligible foreign security, as defined in [Multilateral Instrument 45-107 Listing Representation and Statutory Rights of Action Disclosure Exemptions, or other applicable provision] we deliver to you an offering document that constitutes an offering memorandum under applicable securities laws in Canada, you may have, depending on the province or territory of Canada in which the trade was made to you, remedies for rescission or damages if the offering memorandum (including any amendment thereto) contains a misrepresentation, provided that the remedies for rescission or damages are exercised by you within the time limit prescribed by the securities legislation of your province or territory. You should refer to any applicable provisions of the securities legislation of your province or territory for the particulars of these rights or consult with a legal advisor.

Limitation of Application

- 4. Sections 2 and 3 do not apply to a distribution of an eligible foreign security if a prospectus has been filed with a Canadian securities regulatory authority for the distribution.

Effective Date

- 5. This Instrument comes into force on September 8, 2015.

Appendix A

to Multilateral Instrument 45-107 *Listing Representation and Statutory Rights of Action Disclosure Exemptions*

Listing Representation Prohibition

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| Alberta: | Subsection 92(3) of the <i>Securities Act</i> (Alberta) |
| Manitoba: | Subsection 69(3) of the <i>Securities Act</i> (Manitoba) |
| New Brunswick: | Subsection 58(3) of the <i>Securities Act</i> (New Brunswick) |
| Newfoundland and Labrador: | Subsection 39(3) of the <i>Securities Act</i> (Newfoundland and Labrador) |
| Northwest Territories: | Subsection 147(1) <i>Securities Act</i> (Northwest Territories) |
| Nova Scotia: | Subsection 44(3) of the <i>Securities Act</i> (Nova Scotia) |
| Nunavut: | Subsection 147(1) of the <i>Securities Act</i> (Nunavut) |
| Prince Edward Island: | Subsection 147(1) of the <i>Securities Act</i> (Prince Edward Island) |
| Quebec: | Fourth paragraph of section 199 of the <i>Securities Act</i> (Quebec) |
| Saskatchewan: | Subsection 44(3) of the <i>Securities Act</i> (Saskatchewan) |
| Yukon: | Subsection 147(1) of the <i>Securities Act</i> (Yukon) |

Appendix B

to Multilateral Instrument 45-107 *Listing Representation and Statutory Rights of Action Disclosure Exemptions*

Statutory Rights of Action Disclosure Requirement

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| New Brunswick: | Section 2.2 of Local Rule 45-802 <i>Implementing National Instrument 45-106 – Prospectus and Registration Exemptions</i> |
| Nova Scotia: | Subsection 65(3) of the <i>Securities Act</i> (Nova Scotia) |
| Saskatchewan: | Subsection 80.2(1) of the <i>Securities Act</i> (Saskatchewan) |

Annex B

List of Commenters

1. AGF Investments Inc.
2. Alberta Investment Management Corporation
3. Caisse de dépôt et placement du Québec
4. Davies Ward Philips & Vineberg LLP
5. Ontario Teachers' Pension Plan Board
6. RBC Global Asset Management Inc.
7. The Securities Industry and Financial Markets Association (SIFMA)

Annex C

Summary of Comments and Responses

| Issue | Summarized Comment | CSA Response |
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| <p>Inconsistencies between the notice requirements in proposed sections of National Instrument 33-105 <i>Underwriting Conflicts</i> (NI 33-105), exemptive relief orders granted to a number of large institutional Canadian and foreign dealers (Wrap Exempt Dealers) from Canadian-specific disclosure requirements that must be included in a wrapper (the Discretionary Orders) and the disclosure requirements in proposed MI 45-107 and OSC Rule 45-501 <i>Ontario Prospectus and Registration Exemptions</i> (OSC Rule 45-501)</p> | <p>The proposed disclosure requirement in MI 45-107 does not mesh with the notice requirement of the proposed amendments to NI 33-105.</p> <p>In addition, the Discretionary Orders permit the Wrapper Exempt Dealers to provide a notification of the existence of statutory rights of action to permitted clients instead of a description of the statutory rights of action.</p> <p>Proposed MI 45-107 and proposed OSC Rule 45-501 would only provide for alternative means by which the statutory rights of action could be described. This presents two difficulties:</p> <ul style="list-style-type: none"> • The statutory rights of action differ among the four provinces that have disclosure requirements for the statutory rights of action, resulting in excessively lengthy disclosures; and • Although a fully comprehensive | <p>The relevant jurisdictions (Saskatchewan, Nova Scotia and New Brunswick) support only requiring notification that statutory rights exist.</p> <p>Proposed standardized language (which is identical to that proposed in the amendments to OSC Rule 45-501) will be added to section 3 of MI 45-107.</p> |

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| | <p>description of the statutory rights of action could be provided, it would be less useful to investors than a description of statutory rights of action tailored to the particular offering.</p> | |
| | <p>Two commenters submitted that, the proposed amendments to NI 33-105 and proposed MI 45-107 would work best if the Canadian disclosure requirements could be satisfied though short standardized disclosure in the offering document. NI 33-105 achieves this in part by enabling a notice to permitted clients to be provided within the offering document. However, this notice requirement does not mesh with the proposed disclosure requirement in MI 45-107 which would continue to require a description of the statutory rights of action available in three provinces.</p> <p>The required disclosure should be limited, at most, to notification of the existence of statutory rights of action, as is</p> | |

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| | <p>the case of the notices provided by dealers relying on discretionary orders, instead of a description of these rights.</p> | |
| | <p>We understand from our discussions with dealers that they favour the option proposed in NI 33-105 to include a short Canadian section in an offering document rather than sending out and tracking separate notices to Canadian investors. We are concerned, however, that dealers will be reluctant to use this option if they are required to include the same lengthy description of statutory rights of action included in Canadian wrappers in order to comply with requirements currently applicable in Ontario, Saskatchewan, New Brunswick and Nova Scotia.</p> <p>Requiring instead only a notification of the existence of statutory rights of action, as required for a prospectus filed in Canada, would eliminate this potential obstacle thereby facilitating access to distributions of foreign securities for Canadian permitted clients.</p> | |
| <p>Remove limitation of</p> | <p>The exemptions in MI 45-107</p> | <p>We do not agree that the</p> |

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| <p>Exemptions to Non-Reporting Issuers</p> | <p>(as well as NI 33-105) are restricted to issuers that are non-reporting issuers in Canada (definition of “designated foreign security”).</p> <p>However, because a non-Canadian entity that is a reporting issuer may be entitled to make its filings in paper format, checking the SEDAR website alone is not sufficient to verify that a non-Canadian issuer is not a reporting issuer in any Canadian jurisdiction. A dealer must also check the reporting issuer lists maintained by each of the 13 Canadian provincial and territorial securities regulatory authorities.</p> <p>We submit that there is no policy basis for such restriction. The various other restrictions included in the definition of “designated foreign security” achieve the purpose of the proposed exemptions.</p> | <p>definition of “designated foreign security”¹ should include securities issued by reporting issuers. In our view, the policy basis for excluding reporting issuers is the fact that by choosing to become reporting issuers, issuers take active steps to engage with and participate in the Canadian securities regulatory regime and as a result such issuers should be required to comply with Canadian securities requirements.</p> <p>In our view, issuers should know if they are a reporting issuer in a Canadian jurisdiction, as this will impact various requirements that must be complied with under Canadian securities law.</p> |
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¹ Note that the term “eligible foreign security” is now used instead of “designated foreign security”.

Annex D
Local Matters