

March 29, 2018

Introduction

The Alberta Securities Commission (the **ASC**) has adopted Blanket Order 45-519 *Prospectus Exemptions for Resale Outside of Canada* (the **Blanket Order**), to be effective on June 12, 2018.

Substance and Purpose

The Blanket Order provides two prospectus exemptions, substantially similar to those contained in section 2.14 and proposed section 2.15 of National Instrument 45-102 *Resale of Securities* (**NI 45-102**). These allow for the resale of securities (and underlying securities) if the issuer is not a reporting issuer in any jurisdiction of Canada and if the resale is through an exchange, or a market, outside of Canada or to a person or company outside of Canada. Both of the exemptions in the Blanket Order are subject to an anti-avoidance provision.

Background

The CSA published a notice of amendments to NI 45-102 on March 29, 2018 which, subject to necessary approvals, will become effective on June 12, 2018. The amendments introduce a new prospectus exemption to facilitate the resale of securities of a foreign issuer outside of Canada. Except in Alberta and Ontario, the new exemption will be located in section 2.15 of NI 45-102. In Alberta, the new exemption and the existing exemption, contained in section 2.14 of NI 45-102, are located in the Blanket Order. Such relocation of these resale exemptions is a step towards providing overall consistency in our contemplated approach to cross-border trading for both primary distributions outside Canada and the resale of securities outside Canada.

Questions

Please refer questions to:

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ALBERTA SECURITIES COMMISSION

BLANKET ORDER 45-519

Citation: Re Prospectus Exemptions for Resale Outside of Canada, 2018 ABASC 46

Date: 20180326

Definitions

1. Terms defined in the *Securities Act* (Alberta) (the **Act**), National Instrument 14-101 *Definitions* or National Instrument 45-102 *Resale of Securities* (**NI 45-102**) have the same meaning in this Blanket Order.
2. "executive officer" means, for an issuer, an individual who is
 - (a) a chair, vice-chair or president,
 - (b) a chief executive officer or a chief financial officer, or
 - (c) in charge of a principal business unit, division or function including sales, finance or production and that fact is disclosed in any of the following documents:
 - (i) the issuer's most recent disclosure document containing that information that is publicly available in a foreign jurisdiction where its securities are listed or quoted;
 - (ii) the offering document provided by the issuer in connection with the distribution of the security that is the subject of the trade.
3. "foreign issuer" means an issuer that is not incorporated or organized under the laws of Canada, or a jurisdiction of Canada, unless any of the following applies:
 - (a) the issuer has its head office in Canada;
 - (b) the majority of the executive officers or directors of the issuer ordinarily reside in Canada.

Background

4. Securities distributed under exemptions from the prospectus requirement are often subject to resale restrictions under NI 45-102.
5. Except in Alberta and Ontario, sections 2.14 and 2.15 of NI 45-102 provide certain exemptions from the prospectus requirement to permit the resale of securities through a foreign exchange or market or to a person or company outside Canada if the issuer has a minimal connection to Canada.

6. Staff of the Alberta Securities Commission (the **Commission**) suggest that it would not be contrary to the public interest to provide substantially similar prospectus exemptions to those in sections 2.14 and 2.15 of NI 45-102 provided they are subject to an anti-avoidance provision.

Order

7. Considering that it would not be prejudicial to the public interest, the Commission makes the following orders under section 213 of the Act:

- (1) Subject to section 8 of this Blanket Order, the prospectus requirement does not apply to the first trade of a security distributed under an exemption from the prospectus requirement if
 - (a) the issuer of the security
 - (i) was not a reporting issuer in any jurisdiction of Canada on the distribution date, or
 - (ii) is not a reporting issuer in any jurisdiction of Canada on the date of the trade;
 - (b) on the distribution date, after giving effect to the issue of the security and any other securities of the same class or series that were issued at the same time as or as part of the same distribution as the security, residents of Canada
 - (i) did not own directly or indirectly more than 10 percent of the outstanding securities of the class or series, and
 - (ii) did not represent in number more than 10 percent of the total number of owners directly or indirectly of securities of the class or series; and
 - (c) the trade is made
 - (i) through an exchange, or a market, outside of Canada, or
 - (ii) to a person or company outside of Canada.
- (2) Subject to section 8 of this Blanket Order, the prospectus requirement does not apply to the first trade of an underlying security if
 - (a) the convertible security, exchangeable security or multiple convertible security that, directly or indirectly, entitled or required the holder to acquire the underlying security was distributed under an exemption from the prospectus requirement;

- (b) the issuer of the underlying security
 - (i) was not a reporting issuer in any jurisdiction of Canada on the distribution date of the convertible security, exchangeable security or multiple convertible security, or
 - (ii) is not a reporting issuer in any jurisdiction of Canada on the date of the trade;
 - (c) the conditions in paragraph (1)(b) would have been satisfied for the underlying security at the time of the initial distribution of the convertible security, exchangeable security or multiple convertible security; and
 - (d) the condition in paragraph (1)(c) is satisfied.
- (3) Subject to section 8 of this Blanket Order, the prospectus requirement does not apply to the first trade of a security distributed under an exemption from the prospectus requirement if
- (a) the issuer of the security was a foreign issuer on the distribution date;
 - (b) the issuer of the security
 - (i) was not a reporting issuer in any jurisdiction of Canada on the distribution date, or
 - (ii) is not a reporting issuer in any jurisdiction of Canada on the date of the trade; and
 - (c) the trade is made
 - (i) through an exchange, or a market, outside of Canada, or
 - (ii) to a person or company outside of Canada.
- (4) Subject to section 8 of this Blanket Order, the prospectus requirement does not apply to the first trade of an underlying security if
- (a) the convertible security, exchangeable security or multiple convertible security that, directly or indirectly, entitled or required the holder to acquire the underlying security was distributed under an exemption from the prospectus requirement;
 - (b) the issuer of the underlying security was a foreign issuer on the distribution date of the convertible security, exchangeable security or multiple convertible security;

- (c) the issuer of the underlying security
 - (i) was not a reporting issuer in any jurisdiction of Canada on the distribution date of the convertible security, exchangeable security or multiple convertible security, or
 - (ii) is not a reporting issuer in any jurisdiction of Canada on the date of the trade; and
- (d) the condition in paragraph (3)(c) is satisfied.

8. The exemptions in sections 7(1), (2), (3) and (4) of this Blanket Order are not available with respect to any transaction or series of transactions that is part of a plan or scheme to avoid the prospectus requirement in connection with a trade to a person or company in Canada.

9. This Blanket Order takes effect on June 12, 2018.

For the Commission:

“original signed by”

Stan Magidson
Chair & CEO

“original signed by”

Tom Cotter
Vice-Chair