



AMENDMENTS TO RIGHTS OFFERING REGIME

By Jonathan McCullough and Andreas Heiden

Recently, the Canadian Securities Administrators (the “**CSA**”) effected amendments to the prospectus-exempt rights offering regime. Rights offerings allow reporting issuers to distribute rights to existing securityholders to purchase securities, generally at a discount to the prevailing market price. Rights offerings can be conducted using a full blown prospectus or else, on a more limited basis, using an exemption from the prospectus requirement. Rights offerings have not been commonly used in Canada, mainly due to the time and cost associated with the old prospectus-exempt regime. The amendments are designed to simplify and streamline the prospectus-exempt rights offering process, and also increases the amount issuers can raise from such prospectus-exempt offerings. Issuers can now issue rights that give the holders the right to acquire up to 100% of the issuer’s outstanding share capital.

NEW REGIME

Under the new regime, documents provided to securityholders in connection with a prospectus-exempt rights offering will not be reviewed by securities regulators prior to use, significantly reducing the time and cost associated with the completion of a rights offering. The rights offering prospectus exemption is only available to reporting issuers, other than investment issuers, that are current in their continuous disclosure obligations.

Generally, the process for completing a prospectus-exempt rights offering under the new regime is outlined below:

Notice: Issuers will be required to file on SEDAR and send to securityholders a rights offering notice in a question-and-answer format that provides basic information regarding the offering and informs securityholders how to access the rights offering circular electronically. The CSA does not expect the rights offering notice to be longer than two pages.

Rights Offering Circular: Concurrently with the filing of the rights offering notice, issuers will be required to file on SEDAR a new, simplified rights offering circular. The circular is not required to be physically sent to securityholders. Like the rights offering notice, the circular will also use a question-and-answer

format and must include certain information about the issuer and the offering, including information regarding (i) use of proceeds; (ii) how to exercise the rights offered; (iii) the extent of insider participation; and (iv) the particulars of any stand-by commitments. The circular will also need to disclose any material facts and material changes that have not yet been disclosed and must include a statement that there are no undisclosed material facts or material changes. The CSA does not expect the rights offering circular to be longer than ten pages.

Exercise Period: The exercise period for the rights must be open for at least 21 days and cannot exceed 90 days.

News Release: On the closing date, the issuer must issue and file a news release disclosing certain information regarding the offering including (i) the aggregate gross proceeds of the offering; (ii) the number of securities issued to insiders, as a group, and to all other persons, as a group; and (iii) the amount of any fees or commissions paid in connection with the offering.

The amendments to the rights offering regime have also increased the dilution limit from 25% to 100% of an issuer's outstanding share capital. Limits on the subscription price for the security to be issued upon the exercise of rights will depend on whether the security is listed or not. The subscription price for listed securities must be lower than the market price at the time the rights offering notice is filed. The subscription price for unlisted securities must be lower than the fair value at the time the rights offering notice is filed (this restriction for unlisted securities will not apply if insiders are restricted from increasing their proportionate share through the offering).

SECONDARY MARKET LIABILITY

The secondary market liability provisions of Canadian securities laws will apply to rights offerings under the new regime. As a result, investors will have a statutory right of damages in respect of misrepresentations contained in the rights offering circular and other continuous disclosure documents relied upon in connection with the rights offering.

TORONTO STOCK EXCHANGE AND TSX VENTURE EXCHANGE GUIDANCE

The Toronto Stock Exchange ("**TSX**") and TSX Venture Exchange ("**TSX-V**") have now provided guidance on the application of their respective policies to the new rights offering regime. The TSX and TSX-V have advised that rights offering documents must still be pre-cleared with the applicable exchange and that the advance notification period to set the record date for rights has been reduced from seven to five trading days.

The TSX-V has provided further guidance, advising that the minimum subscription price for a security to be acquired upon exercise of a right has been reduced from \$0.05 to \$0.01. The minimum exercise price for a warrant forming part of a unit acquired upon the exercise of a right cannot be less than the market price prior to the news release, and in any event cannot be less than \$0.05.

TSX-V listed issuers can also elect to not list rights. However, listing rights will shield an issuer from having to obtain shareholder approval if a new control person is created because of a stand-by commitment, provided the subscription price for the rights is set at a significant discount. Other TSX and TSX-V rules will also continue to apply to rights offerings.

CONCLUSION

The amendments to the rights offering regime have resulted in a more simplified and streamlined prospectus-exempt rights offering process that should provide reporting issuers with a more practical means of raising capital through a rights offering process.

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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