Another visit to the ATM: CSA finalizes rules for At-the-Market equity programs

June 17, 2020

On June 4, 2020, the Canadian Securities Administrators (CSA) approved and published amendments to National Instrument 44-102 – *Shelf Distributions* (NI 44-102) to streamline the process for at-the-market (ATM) equity programs in Canada. The amendments come into force August 31, 2020, and serve as a welcome change for issuers looking to access capital efficiently on short notice, while managing volatile stock markets. For issuers navigating the ongoing COVID-19 pandemic, the adoption of an ATM program may be especially useful as a capital raising tool, with more conventional methods of financing currently unavailable.

What you need to know:

- The amendments remove many of the restrictions and regulatory burdens imposed on issuers launching an ATM program. Most notably, they will:
- eliminate the cap on the maximum amount of capital that can be raised under an ATM program, which was previously limited to 10 per cent of an issuer's market capitalization at the time of launching the ATM program (the 10% Market Cap);
- eliminate the cap on the aggregate number of securities that may be distributed under the ATM program on any trading day, which was previously restricted to 25 per cent of the issuer's daily trading volume;
- eliminate the requirement to obtain exemptive relief before launching an ATM program;
- streamline the reporting requirements to allow all issuers to report distributions on a quarterly basis only – providing valuable relief to issuers who could not satisfy the "highly liquid securities" test and were required to report on a monthly basis; and
- bring NI 44-102 in line with the ATM rules in place in the United States, which eases the regulatory burden for cross-listed issuers adopting a cross-border ATM program.

Background

As described in our previous article, an ATM program allows issuers to issue treasury securities through the facilities of a stock exchange at variable market prices, in varying

amounts and on an as-needed basis. In contrast to more conventional underwritten offerings, there is no obligation on the part of the issuer to issue or sell any securities under the ATM program once it has been implemented. ATM programs are an effective capital-raising alternative for issuers in sectors normally characterized by capital-intensive projects (*e.g.*, mining, oil and gas and cannabis), where conventional methods of financing have been unavailable.

In order to implement an ATM program prior to the amendments, an issuer was required to apply to the securities regulators for exemptive relief from the requirement to physically deliver a copy of the prospectus to purchasers, along with the withdrawal rights and action for non-delivery rights. This was in addition to other prospectus form requirements to reflect the mechanics of ATM programs. The amendments eliminate the need to apply for this relief, and also remove the most burdensome constraints that previously applied to ATM programs under NI 44-102, as well as the conditions typically imposed in exemptive relief orders.

Already have an ATM program? Transition considerations.

Issuers with an existing ATM program will be entitled to rely on the amendments without having to file an amended base shelf prospectus. However, in order to take advantage of the new amendments, including to increase the overall size of the ATM program beyond the 10% Market Cap, issuers will be required to amend (or amend and restate) their current ATM prospectus supplements. We note that any such amendments can be undertaken without regulatory review, making the process for filing the new ATM prospectus supplement relatively straightforward. In addition, an issuer that wants to take advantage of the new amendments will be required to update and amend its equity distribution agreement, which governs the terms under which securities are sold into the market under the ATM program.

Want to learn more about ATM programs or the amendments?

If you want to discuss whether an ATM program is right for you, or already have one in place and want to implement any of the amendments, reach out to any of the key contacts listed below or your lawyer in BLG's Capital Markets Group.

By

Cameron A. MacDonald

Expertise

Capital Markets, Corporate Finance, Mining, Energy - Oil & Gas

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.