

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

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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](#).

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