Five Provinces Confirm Investment Dealer Exemption is Suitable

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The securities regulatory authorities in British Columbia, Alberta, Manitoba, New Brunswick and Saskatchewan (the **Jurisdictions**) have now adopted a new exemption (the **Investment Dealer Exemption**) from the prospectus requirements under securities laws with an aim to provide retail investors greater access to the exempt market, while increasing the options available to issuers to raise capital from the public and maintaining appropriate investor protection.

Currently, participation in private placements is generally limited to certain insiders or close friends or other individuals related to insiders, as well as to accredited investors (who are sophisticated and wealthy investors).

The Investment Dealer Exemption will, subject to certain conditions, allow issuers listed on a Canadian exchange to raise money by distributing securities to any investor who has obtained suitability advice about the investment from a registered investment dealer. It is expected this will significantly expand the group of available purchasers in a private placement, as the investor does not need to meet any additional conditions or qualifications to permit their participation in a private placement. There is no limit on the amount of the investment that can be purchased using this exemption. The rationale for the exemption is that the investor will receive sufficient protection from the know-your-client, know-your-product and other obligations of the investment dealer under securities laws.

The adoption of this exemption in only the western Provinces of Canada continues a recent trend of fractured private market exemptions being implemented with Ontario, Canada's largest capital market, noticeably absent. With securities regulators moving towards the creation of a national Cooperative Capital Markets Regulator, it remains to be seen how this fractured approach will affect those efforts.

Conditions of Use

The Investment Dealer Exemption involves a number of conditions, largely applicable to the issuer and relating to the nature of the security being offered, rather than the investor.

For the Investment Dealer Exemption to be available, an issuer must be a reporting issuer in at least one jurisdiction of Canada and have a class of securities listed (the **Listed Security**) on one of the Toronto Stock Exchange, TSX Venture Exchange, Canadian Securities Exchange or Aequitas Neo Exchange Inc., and its public disclosure record must be current. The private placement must involve either the Listed Security, a unit consisting of the Listed Security and a warrant to acquire the Listed Security, or another security convertible, at the holder's option, into the Listed Security.

An issuer must disseminate a press release announcing the transaction which must include a description of the private placement, the proposed use of proceeds and any other material facts not otherwise generally disclosed, as well as a statement confirming that there are no other undisclosed material facts or material changes in respect of the issuer.

In addition, an issuer must provide investors in British Columbia, Manitoba, Saskatchewan or New Brunswick that rely on this exemption with a contractual right of action in the event of a misrepresentation in the issuer's public disclosure record, regardless of whether the investor relied on that misrepresentation. Investors in Alberta already have such a statutory right of action. If any offering documents are provided to the investor, such as an offering memorandum, the investor must have rights of rights of action in the event of any misrepresentation in that offering document.

Finally, the investor must have obtained advice regarding the suitability of the investment from a registered investment dealer.

The securities issued using the Investment Dealer Exemption will be subject to a four month hold period.

Practical Considerations

The Investment Dealer Exemption is yet another attempt by securities regulatory authorities in Canada to increase the options available to issuers to raise capital from the public without going through the expense and time associated with a prospectus offering. Issuers and investment dealers alike may seek to use the Investment Dealer Exemption as it may expand the pool of potential investors for private placements. Other recent changes include a crowdfunding exemption, an existing security holder exemption, and other amendments to National Instrument 45-106, including national adoption of an exemption using offering memorandums.

We expect that, for a brokered private placement, the lead agent or underwriter will make their registered investment dealers available to retail investors in order to facilitate the offering, as an added service to their investor clients.

Upon review of the practical implications of the Investment Dealer Exemption, the availability of the Investment Dealer Exemption will be somewhat limited as the exemption is not available in Canada's largest capital market Ontario. In addition, a brokered offering would require an underwriter or agent to be registered in the applicable Jurisdictions, and a registered investment dealer would similarly need to be registered in the applicable Jurisdictions.

If you would like more information about the Investment Dealer Exemption, please contact one of the authors or your usual contact in BLG's Securities and Capital Markets Group.

By

Stephen P. Robertson

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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

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