

CSA Staff Notice 47-302
Pre-marketing of underwriters' options on bought deals

Paragraph 7.1(a) of National Instrument 44-101 - *Short Form Prospectus Distributions* provides an exemption from the prospectus requirement for pre-marketing bought deals. The exemption states that the prospectus requirement does not apply to solicitations of expressions of interest before the filing of a preliminary short form prospectus for securities to be qualified for distribution under a short form prospectus if, among other things, the issuer has entered into an enforceable agreement with an underwriter who has agreed to purchase the securities.

A practice has developed on bought deal offerings for issuers to grant underwriters an option, exercisable prior to closing, to purchase securities in addition to the securities the underwriters agreed to purchase under the underwriting agreement (underwriters' option). Rather than being underwritten securities, the securities that are the subject of the underwriters' option are in effect "agency securities" (and for the purposes of this notice are referred to as optioned securities).

In our view, the exemption in Part 7 does not extend to pre-marketing of the optioned securities because they are not the subject of an enforceable agreement with an underwriter who has agreed to purchase the securities.

We intend to review the regulatory restrictions on pre-marketing and to specifically consider the issue of whether Part 7 should be amended to permit pre-marketing of optioned securities.

We recognize that the exemption in Part 7 also does not extend to the pre-marketing of securities underlying post-closing over-allotment options to purchase up to 15% of the securities offered under the prospectus (also known as greenshoe options). To the extent that there is pre-marketing of securities underlying a greenshoe option, exemptive relief will be required before such pre-marketing occurs. We are willing to consider recommending such relief on a case-by-case basis.

Questions

Please refer your questions to any of the following people:

Patricia Leeson
Manager Corporate Finance
Alberta Securities Commission
(403) 297-5222

Andrew S. Richardson, CA
Deputy Director, Corporate Finance
British Columbia Securities Commission

(604) 899-6730
Susan W. Powell
Legal Counsel, Corporate Finance
New Brunswick Securities Commission
(506) 643-7697

Bill Slattery
Deputy Director Corporate Finance and Administration
Nova Scotia Securities Commission
(902) 424-7355

Erez Blumberger
Assistant Manager, Corporate Finance
Ontario Securities Commission
(416) 593-3662

David Coultice
Senior Legal Counsel
Ontario Securities Commission
(416) 204-8979

Benoit Dionne
Manager, Corporate Finance
Autorité des marchés financiers
(514) 395-0558 ext. 4411

Éric Boutin
Securities Analyst
Autorité des marchés financiers
(514) 395-0558 ext. 4447

Ian McIntosh CA
Deputy Director - Corporate Finance, Securities Division
Saskatchewan Financial Services Commission
(306) 787-5867

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