Cassels

CSA Issues Notice of Revocation of Exemptions to Securities Registration

Jessica L. Lewis

August 20, 2018

On August 15, 2018, the Canadian Securities Administrators (the CSA) issued Multilateral CSA Notice 32-302 – *Notice of Revocation for Certain Local Orders Providing Registration Exemption for Trades in Connection with Certain Prospectus Exempt Distributions and Update on BC Instrument 32-517 Exemption from Dealer Registration Requirement for Trades in Securities of Mortgage Investment Entities* (MN 32-3202). MN 32-3202 gives notice that the local orders that comprise the "Northwestern Exemption" will cease to be effective on April 19, 2019. Local order BCI 32-517 *Exemption from Dealer Registration Requirement for Trades in Securities of Mortgage Investment Entities* (BCI 32-517) will also be allowed to expire as of February 15, 2019.

The removal of these local orders will allow investors in the private placement market to benefit from the protections of the registration regime. The revocation of these orders will also lead to greater harmonization of securities laws across Canada. The securities regulatory authorities of British Columbia, Manitoba, Nunavut, the Northwest Territories, and the Yukon (the Participating Jurisdictions) are acting to remove all regulations that form the Northwestern Exemption.

Key Takeaways

- The current registration exemptions pursuant to the Northwestern Exemption will cease to exist, meaning that all parties relying on the exemptions will need to wind up or apply for registration by April 19, 2019.
- The current registration exemptions for mortgage investment entities under BCI 32-517 will expire, meaning that those relying on it need to wind up or apply for registration by February 15, 2019.
- Transition provisions will be in place, meaning that it will be sufficient for anyone who has been properly relying on the exemptions to provide a substantially complete 33-109F6 *Firm Registration* and pay the related fees by the respective dates (CSA staff will also consider appropriate interim relief on a case by case basis for individuals having difficulty meeting the registration proficiency requirements by the deadlines).

Summary and Background

The goal of this revocation is to enhance investor protection. The local orders being revoked form the Northwestern Exemption. The Northwestern Exemption is a set of substantially harmonized registration

exemptions which provide conditional registration relief for persons or companies for trades in connection with certain prospectus-exempt distributions in the Participating Jurisdictions. Revoking the current exemptions will allow investors to benefit from the inherent protection of registration when investing in the private placement market in the Participating Jurisdictions. Transition provisions will be in place to allow those relying on the exemptions time to seek registration or complete an orderly wind-up.

Transition Provisions

All local orders in question will be revoked effective April 30, 2019. The transition protections take three forms:

- The transition exemptions will remain in effect until their expiry;
- If there are delays in processing, parties relying on the local orders can continue to operate in reliance on their respective relief as long as the proper securities regulatory authority has received a substantially complete 33-109F6 *Firm Registration* and been paid the related fees by the respective expiry date; and
- Staff will consider appropriate interim relief for individuals who have difficulty meeting the registration proficiency requirements by the respective expiry date.

Importantly, only parties who have been relying on the exemptions properly – meaning that they have been properly complying with the terms of the exemptions – can rely on the transition provisions.

The Upshot

The primary purpose of these amendments is to afford increased investor protection in the private placement marketplace. Investors will be able to benefit from seeking advice directly from registrants (including as to whether the investment is suitable for them in the circumstances). Additionally, the investor will benefit from the added protection of the due diligence a registrant must perform on the security to determine if it is suitable.

The revocation will also increase harmonization between the securities laws of the Participating Jurisdictions and the rest of Canada. This will be achieved by two means: first, all jurisdictions that participated in the Northwest Exemptions, save Saskatchewan and Alberta, have agreed to revoke their local orders effective April 30, 2019, meaning all will be in harmony with one another; and second, relevant for those jurisdictions participating in the Capital Markets Regulatory Authority (the CMRA), published commentary to the draft initial regulations for the Cooperative Capital Markets Regulatory System communicated that these exemptions would not carry forward to the CMRA. The revocation of the exemptions in the Participating Jurisdictions will then align these provinces and territories with all CMRA-regulated jurisdictions (which is expected to launch by the end of 2018).

Cassels

For more information on the notice, or a list of local orders being revoked, the publication can be accessed here.

If you have any questions on this topic, please contact the authors of this article, Brigeeta Richdale and Jessica Lewis, or any member of our Securities Litigation Group.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.