



CURRENT DEVELOPMENTS

Canadian Securities Matters

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Table of contents

This edition provides a summary of newly effective and forthcoming regulatory matters in Canada in the quarter ended September 30, 2022.

03

Canadian securities: New guidance

- 03 OSC Rule 32-509 (Commodity Futures Act) and amendments to OSC Rule 91-502 (Trades)
- 03 CSA Notice of Amendments to National Instrument 45-106 Prospectus Exemptions to Introduce the Listed Issuer Financing Exemption

04

Canadian securities: Proposed guidance

- 04 Canadian securities regulators propose amendments to implement an access-based model for investment fund reporting issuers

Canadian securities: New guidance

OSC Rule 32-506 (Commodity Futures Act) Exemptions for International Dealers, Advisers and Sub-advisers; Amendment to OSC Rule 91-502 Trades in Recognized Options under the Securities Act

On August 4, 2022, the Ontario Securities Commission (OSC) delivered to the Ontario Minister of Finance (the Minister), Rule 32-506 (Commodity Futures Act) *Exemptions for International Dealers, Advisers and Sub-Advisers* (OSC Rule 32-506), which was made by the OSC on April 26, 2022 as a rule pursuant to section 65 of the *Commodity Futures Act* (Ontario) (the CFA) along with an amendment (the 91-502 Amendment) to OSC Rule 91-502 *Trades in Recognized Options* (OSC Rule 91-502) pursuant to section 143 of the *Securities Act* (Ontario).

The two instruments (the Instruments) are collectively a part of the regulatory burden reduction initiative and codify relief that was, until recently, routinely granted by the OSC under both the CFA and OSC Rule 91-502 to international dealers, international advisers and international sub-advisers (collectively, international firms). The Instruments codify exemptive relief for international firms in order to:

- enhance institutional investor access to international options and futures markets and thereby reduce regulatory costs for such investors; and
- reduce regulatory burden by eliminating the need for international firms to file applications for exemptive relief.

The Minister may approve or reject the Instruments or return them for further consideration.

If the Minister approves the Instruments or does not take any further action by September 29, 2022, they will come into force on October 14, 2022.

CSA Notice of Amendment to NI 45-106 Prospectus Exemption – New Listed Issuer Financing Exemption

The Canadian Securities Administrators (CSA) are amending National Instrument 45-106 *Prospectus Exemptions* (NI 45-106) to introduce a new prospectus exemption available to reporting issuers that are listed on a Canadian stock exchange (the Listed Issuer Financing Exemption). They are also making consequential amendments to National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)* (NI 13-101) and National Instrument 45-102 *Resale of Securities* (NI 45-102).

The Listed Issuer Financing Exemption will provide a more efficient method of capital raising for reporting issuers that have securities listed on a Canadian stock exchange and that have filed all timely and periodic disclosure documents required under Canadian securities legislation.

The exemption relies on the issuer's continuous disclosure record, as supplemented with a short offering document, and will allow these issuers to distribute freely tradeable listed equity securities to the public. Under the rule, issuers will generally be limited to raising the greater of \$5 million or 10% of the issuer's market capitalization to a maximum total dollar amount of \$10 million. In order to use the exemption, the issuer must have been a reporting issuer in a jurisdiction of Canada for at least 12 months.

Under the exemption, issuers, and in some jurisdictions, the executives signing the offering document and the issuer's directors will be subject to statutory liability if the offering document contains a misrepresentation. The offering document will not be reviewed by CSA staff before use.

This instrument comes into force on November 21, 2022.

Canadian securities: Proposed guidance

Canadian securities regulators propose amendments to implement an access-based model for investment fund reporting issuers

On September 27, 2022, the CSA issued a notice and request for comment on an alternative to delivering financial statements, which include interim financial reports, and interim and annual management reports of fund performance for investment fund reporting issuers. The access-based model proposed by the CSA is seeking to modernize the current delivery of continuous disclosure document requirements and reduce the regulatory burden on investment fund reporting issuers.

Under the proposed amendments, the requirements for an investment fund that is a reporting issuer to send designated documents, to solicit standing instructions and send annual notices, and solicit annual instructions would be repealed and replaced with requirements to:

- post designated documents in a prominent manner on the investment fund's designated website;
- issue, file on SEDAR, and post on the investment fund's designated website, a news release announcing the availability of the designated documents;
- send a designated document to a Securityholder who requests a copy; and
- send a designated document that is filed by the investment fund to a registered holder or a beneficial owner of securities of the investment fund (Securityholder) who provides the investment fund with standing instructions to receive copies of all documents commencing with the next document filed after the Securityholder has provided those standing instructions and continuing until the Securityholder changes those standing instructions.

The proposed amendments do not amend the requirement to file designated documents on SEDAR.

The 90-day comment period ends December 26, 2022.

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