

July 27, 2017

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CSA Consultation Paper 51-404: *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers (CSA Consultation Paper)*

This letter is submitted in response to the CSA Consultation Paper published on April 6, 2017. This letter is focused on the “at-the-market” (ATM) offering issues raised in the CSA Consultation Paper. We thank you for the opportunity to comment on this important topic.

ATM Offerings

ATM offerings are an established tool to raise equity in the U.S. From 2010 to the end of 2016 over \$160 billion of ATM equity capacity was announced in the U.S. Over 500 U.S. public companies have filed at least one ATM prospectus supplement since 2010. Approximately 60% of the ATM issue capacity has been utilized.

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Not only are they an established way to raise equity, but the programs are becoming increasingly popular. Of the over 500 programs since 2010, U.S. public companies announced 198 ATM programs in 2015 and 209 ATM programs in 2016. ATM offerings are popular with issuers because they can provide a lower cost of capital relative to other financing options.

Recognizing the acceptance of ATM offerings in the U.S, since 2006 20 Canadian listed companies also listed in the U.S. have established ATM programs on their U.S exchange only (in other words excluding the possibility of issuances on a Canadian exchange), while only 13 Canadian listed companies have established ATM programs on a Canadian exchange.

We believe that ATM offerings have not become as popular in Canada as in the U.S. for several reasons, but including the regulatory requirement to obtain specific regulatory exemptive relief and when obtained the conditions typically imposed in connection with that relief. However, from our extensive discussions with issuers around ATM offerings we also sense that there is a much heightened interest among a broad range of issuers, big and small, in considering an ATM offering as part of their equity raising “tool box”. As such, we see ATM offerings as a very important topic to address in a review of the regulatory burden on issuers.

In practice, the exemptive relief obtained by Canadian issuers to allow ATM offerings contains some very typical standard relief. This includes relief from prospectus delivery and prospectus certificate requirements, and consequential relief in respect of certain of purchasers’ statutory rights. This relief has been granted on the basis of a typical set of conditions. Historically these conditions have included monthly reporting of trades. Recently an exemptive relief decision has been issued requiring quarterly disclosure, which is similar to the U.S. requirement, on the basis of the issuer’s stock satisfying certain trading liquidity tests. At a minimum, we would suggest that this exemptive relief package should be codified in securities legislation as part of a basic update of the ATM offering rules in NI 44-102 which would avoid the need for issuers to apply for exemptive relief for an ATM offering.

In the U.S. there are no specific volume limits on ATM offerings. NI 44-102 contains a 10% of market capitalization limit on the aggregate number of securities that can be distributed under an ATM program. In addition, the typical exemptive relief obtained by Canadian issuers for ATM offerings imposes a daily 25% of daily trading volume condition on ATM offerings. To date we see the aggregate 10% limit as not especially constraining on ATM offerings given that an issuer can re-file an ATM program once an existing 10% threshold is reached.

However, we see the 25% of daily trading volume limit (which does not exist in the U.S.) as being very constraining on an issuer’s ability to effectively utilize an ATM program because it hampers an issuer’s ability to fill reverse inquiries for larger blocks of shares from larger investors. Buyers of blocks are eligible for prospectus exempt trades in private placement circumstances, and we submit that block trades (a cross at market price) have less of an impact on the market price of a stock than continual small issuances by an issuer. This may also be the case relative to typical prospectus offerings that usually are done at a discount to market price. We therefore submit that for ATM offerings, the CSA should either allow unsolicited block trades as an exception to the 25% daily trading volume limit (as is the case for normal course issuer bids), or should do away with the 25% daily limit altogether.

Thank you for allowing us to comment on this subject.

Yours truly,

CANACCORD GENUITY CORP.,

A handwritten signature in blue ink, appearing to read "Ron Sedran", with a horizontal line extending to the right.

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