

August 2, 2019

BY EMAIL:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

The Secretary
Ontario Securities Commission
20 Queen Street West 22 Floor
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comments@osc.gov.on.ca

Me Anne-Marie Beaudoin, Corporate Secretary
Autorité des marchés financiers
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Dear Sirs/Mesdames:

Re: Proposed Amendments to National Instrument 44-102 *Shelf Distributions* and Change to Companion Policy 44- 102CP *Shelf Distributions* relating to At-the-Market Distributions (the “Proposed Amendments”)

The Canadian Advocacy Council of CFA Societies Canada ¹ (the CAC) appreciates the opportunity to provide the following general comments on the Proposed Amendments.

We understand the purpose of the Proposed Amendments is to replace the exemptive relief that has been required to be obtained by issuers engaged in ATM offerings of equity securities as part of the CSA’s broader regulatory burden reduction

¹ The CAC is an advocacy council for CFA Societies Canada, representing the 12 CFA Institute Member Societies across Canada and over 18,000 Canadian CFA charterholders. The council includes investment professionals across Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. Visit www.cfacanada.org to access the advocacy work of the CAC.

CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion of ethical behavior in investment markets and a respected source of knowledge in the global financial community. Our aim is to create an environment where investors’ interests come first, markets function at their best, and economies grow. There are more than 165,000 CFA charterholders worldwide in 164 markets. CFA Institute has nine offices worldwide and there are 156 local member societies. For more information, visit www.cfainstitute.org.

initiatives. We are broadly supportive of regulatory efforts to reduce burden while maintaining an appropriate level of investor protection. Our comments relate to the proposed options suggested by the CSA for liquidity expectations when issuers distribute securities under an ATM prospectus, as well as disclosure obligations for the use of an ATM offering.

The first option suggested by the Proposed Amendments would limit the aggregate number of securities of the class distributed on any trading day to 25% of the trading volume of that class on all marketplaces on that day (or otherwise qualify as “highly liquid securities”). We understand this requirement is a typical condition of the exemptive relief granted to issuers. The second approach would not include this cap. Currently, there is also a general cap contained in NI 44-102, which provides that the market value of securities distributed under an ATM prospectus supplement may not exceed 10% of the aggregate market value of the issuer’s outstanding securities of the same class (excluding shares held by certain insiders). The Proposed Amendments would remove this cap on the basis that dilution concerns are addressed by other factors such as the involvement of underwriters in the offering.

We are generally supportive of the first option which would incorporate a liquidity requirement, however we would respectfully suggest the few modifications outlined below.

We understand that issuers with larger and well developed capital programs and highly liquid securities have successfully raised money using an ATM offering while finding the Canadian regulations cumbersome. If the intended outcome of an ATM offering is to create quicker and more cost effective access to capital, then a cap may not be required for larger, more experienced companies with an active market following and transparency with respect to the expected use of proceeds. It would be beneficial for companies with securities that are dually listed on a U.S. exchange to have ATM rules that are harmonized, to the extent possible, with those in the United States to reduce unnecessarily complexity. For that reason, we do not believe either a daily cap based on trading volume or the general 10% cap should be placed on dual Canadian/ U.S. listed issuers.

On the other end of the spectrum, timely access to capital is of paramount importance for smaller (venture) cap issuers, especially during their growth phase. In this light, we believe there is some justification to align the daily cap with the percentage of issuance for which a major exchange would require approval as a result of dilution concerns. For these smaller issuers, we think a specific percentage cap would be preferable to excluding securities which meet the “highly liquid securities” definition.

While the underlying intention of the ATM regime is positive, investor protection and awareness measures should be contemplated. We believe issuers have an opportunity to increase awareness of the use of such programs. Although in a different context, when an issuer is engaging in a normal course issuer bid on the TSX (buying back their shares instead of selling them into the market), there are a number of clear limitations on the share buybacks and the disclosure that must be made to the market. For example, an issuer cannot file a notice with the TSX unless it has a present intention to purchase securities, and thus when the NCIB is commenced, the market is made

aware of the issuer's present intentions. The press release must include prescribed information, such as the number of securities the issuer intends to repurchase, and details of any prior purchases over the last year.

We note that in the absence of a timely news release coinciding closer to the start of any share issuances under an ATM offering, investors may not fully appreciate or be able to easily track the timing, magnitude and circumstances in which an issuer would typically utilize the offering. While the issuer would have filed a base shelf prospectus and prospectus supplement (or, potentially, a "designated news release") describing the ATM offering, investors may not be fully aware of the commencement and size of the distribution, and may be required to reconstruct any shares issuances made under an ATM long after the fact. In addition to considering specific additional news release or other public disclosure requirements, we believe that interim financial statements and other disclosure should continue to clearly note in the share tables any securities that were specifically issued under an ATM offering.

Concluding Remarks

We thank you for the opportunity to provide these comments. We would be happy to address any questions you may have and appreciate the time you are taking to consider our points of view. Please feel free to contact us at cac@cfacanada.org on this or any other issue in future.

(Signed) *The Canadian Advocacy Council of
CFA Societies Canada*

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