

Goodmans^{LLP} Update

Canadian Securities Administrators Publish Amendments to Streamline At-the-Market Distributions

The Canadian Securities Administrators (CSA) published amendments that will streamline at-the-market distributions (“**ATM Distributions**”) in Canada (the “**Amendments**”). The Amendments will eliminate the need for exemptive relief from Canadian securities regulators to implement an ATM program, and will become effective on August 31, 2020, provided all ministerial approvals are obtained.

Background

ATM Distributions are not as common in Canada as they are in the U.S. market. Industry participants have observed that the lack of ATM Distributions may be due to the restrictions and obligations imposed by the current regulatory framework. The current framework is derived, in part, from the rules previously adopted by the U.S. Securities and Exchange Commission (the “**SEC**”), where ATM Distributions have been conducted since the early 1980s. The SEC has since relaxed or abandoned many of the requirements for ATM Distributions making the U.S. regime more favourable for ATM Distributions.

Current Canadian Regulatory Regime

Securities issued in an ATM Distribution are required to be qualified under a base shelf prospectus and a prospectus supplement. Due to the nature of ATM Distributions, an issuer and the underwriter (or agent) must obtain discretionary exemptive relief from the securities regulators, which typically include:

- an exemption for the underwriter (or agent) from the requirement to deliver a prospectus to purchasers (the “**Delivery Requirement**”).
- an exemption for the issuer and underwriter (or agent) from certain of the prospectus form requirements, including an alternative statement of statutory rights and alternative certificate forms (the “**Form Requirements**”).
- an exemption from the requirement to translate the offering documents (the “**Translation Requirement**”).

In addition, under the current regime, sales under ATM Distributions are limited to a daily cap of 25% of the daily trading volume of the class of securities (the “**25% Daily Cap**”) and an annual limit of 10% of the aggregate market value of the issuer’s outstanding equity securities of the same class (the “**10% Aggregate Cap**”). The current regime also requires the filing of a monthly report disclosing the number and average price of shares distributed over the month, total gross proceeds, commission and net proceeds (the “**Monthly Reporting Requirement**”).

The Amendments

The Amendments codify the exemptions from the Delivery Requirement and Form Requirements and remove the 25% Daily Cap and 10% Aggregate Cap. The Monthly Reporting Requirement has also been amended to permit reporting on a quarterly basis as opposed to monthly. Issuers are still required to apply to the Autorité des

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marchés financiers for exemptive relief pertaining to the Translation Requirement. In addition, the Amendments clarify that issuers may file a designated news release disclosing a material fact rather than filing a prospectus supplement or an amended prospectus. The Amendments will impose other requirements on issuers, such as providing a statement on the base shelf prospectus cover page that it may qualify an ATM Distribution.

The Amendments implemented by the CSA are based on the reasonable expectations regarding the conduct of market participants. The CSA indicated they will remain alert to potential abuses and will be monitoring ATM Distributions moving forward. The Amendments are a welcome change for issuers seeking an alternative and cost effective method of raising capital. The alignment of the Canadian framework with that seen in the U.S. should also result in the increased use of ATM Distributions.

For further information regarding these developments and how they impact your company, please contact any member of our [Corporate Finance and Securities Group](#).

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