

## Corporate Securities Law

September 28, 2015

### CSA Finalize Proposed Amendments to Rights Offering Regime

The Canadian Securities Administrators have announced the implementation of a streamlined prospectus exemption for rights offerings. The amendments to the rights offering regime aim to make rights offerings more attractive by reducing the time and cost associated with raising capital from existing security holders. Provided all necessary approvals are obtained, the amendments will come into force on December 8, 2015.

#### Background

A rights offering involves the distribution of rights to purchase securities of an issuer made to that issuer's existing security holders, and falls within a specific exemption from the requirement for an issuer to file a prospectus. The previous prospectus exemption for rights offerings included a number of onerous conditions, including regulatory review of the rights offering circular and a restriction on issuing more than 25% of an issuer's securities under the exemption in any 12-month period. Historically, issuers have seldom used rights offerings to raise capital because of the associated time and cost. The new regime is intended to make rights offerings more accessible to issuers while maintaining investor protection.

#### Highlights of the New Regime

Highlights of the new regime include:

- *Reporting Issuers Only.* The new exemption will only be available to reporting issuers, other than investment funds. Non-reporting issuers will not be entitled to rely on the new exemption but may conduct rights offerings if they qualify for other prospectus exemptions.
- *Notice Requirement.* Issuers will be required to file and send to investors a two-page notice disclosing basic

details regarding the offering, including information on how to access the rights offering circular electronically.

- *Rights Offering Circular.* Issuers will be required to file on SEDAR (but not send to investors) a new form of rights offering circular. The circular, which is expected to be no longer than 10 pages, must be in a question-and-answer format and contain disclosure about the offering, proposed use of proceeds and the issuer's financial condition.
- *No Advance Regulatory Review.* The rights offering circular will not be subject to advance review and approval by securities regulators. This is expected to significantly reduce the time associated with completing a rights offering.
- *Statutory Liability.* Secondary market civil liability will now apply to rights offerings, providing investors with a right of action for a misrepresentation in the issuer's rights offering circular or other continuous disclosure documents.
- *Minimum Subscription Prices.* The subscription price for a security issuable on exercise of a right will have to be lower than: (a) for listed issuers, the market price, and (b) for non-listed issuers, the fair market value, in each case at the time the notice is filed.
- *Dilution Limit.* The existing dilution limit will be increased from 25% to 100% within any 12-month period.
- *Stand-By Guarantor Exemption.* Stand-by guarantors (who agree to acquire rights that are not subscribed for by existing security holders) will be entitled to purchase the securities on a prospectus exempt basis and without a four-month hold period if they are acquiring the securities as principal.
- *Minimal Connection Exemption.* Issuers with a minimal connection to Canada will continue to be able to conduct a rights offering that is exempt from the prospectus requirement so long as certain conditions are met.

Please contact any member of our Corporate Securities Group to discuss the implications of these changes.