



IN THE MATTER OF THE SECURITIES ACT S.N.B. C. S-5.5 (the Act)

AND

IN THE MATTER OF
EXEMPTIONS FOR CERTAIN PRIVATE PLACEMENTS TO PERMITTED CLIENTS

Blanket Order 51-506

Section 208

Definitions

1. Terms defined in the Act, National Instrument 14-101 *Definitions*, Multilateral Instrument 33-105 *Underwriting Conflicts* or Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets* (MI 51-105) have the same meaning in this order.
2. In this Instrument:
 - (a) “designated exchange” means any of
 - (i) NASDAQ OMX;
 - (ii) Borsa Italiana, MTA Tier;
 - (iii) London Stock Exchange, except AIM;
 - (iv) Hong Kong Stock Exchange;
 - (v) Deutsche Börse, except the First Quotation Board and the Entry Standard tier;
 - (vi) Xetra, Prime Standard and General Standard tiers;
 - (vii) SIX Swiss Exchange;
 - (viii) Bourse de Luxembourg, except Euro MTF;
 - (ix) Tokyo Stock Exchange, 1st Section and 2nd Section;
 - (x) Shanghai Stock Exchange;
 - (xi) The Stock Exchange of Thailand, except The Market for Alternative Investment (mai);
 - (xii) National Stock Exchange of India;
 - (xiii) Bombay Stock Exchange;
 - (xiv) Osaka Stock Exchange;
 - (xv) Korea Exchange; and
 - (xvi) Singapore Exchange.
 - (b) "permitted client" means a permitted client as defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

Background

3. Certain existing provisions of New Brunswick securities laws impose unnecessary and unintended constraints on private placements to institutional investors.
 - (a) Under section 3 of MI 51-105, an issuer that has issued a class of OTC-quoted securities and that does not have a class of securities listed or quoted on certain specified exchanges is a reporting issuer in New Brunswick in certain circumstances.
 - (b) Section 2.1(1) of NI 33-105 prohibits a specified firm registrant from acting either as an underwriter in a distribution of securities in which it is the issuer or selling securityholder or as a direct underwriter in a distribution of securities of or by a connected issuer or a related issuer of the specified firm registrant, unless the distribution is made under a prospectus or another document that contains certain specified information. Further, where the specified information is required to be disclosed by section 2.1(1) of NI 33-105, section 4.1 requires in certain circumstances that a purchaser of securities be given a valuation of the issuer.
 - (c) The exemptions from MI 51-105 provided by Blanket Order 51-502 Exemptions from Multilateral Instrument 51-105 Issuers Quoted in the U.S. Over-the-Counter Markets (51-502) do not fully address the unnecessary and unintended constraints.
4. The Financial and Consumer Services Commission (the "Commission") has delegated to the Executive Director of Securities the Commission's power under section 208 of the *Act* to exempt, in whole or in part, a person or class of persons from any requirement of any National Instrument, Multilateral Instrument, or Local Instrument, subject to such terms and conditions considered appropriate.
5. The Executive Director of Securities considers that it would not be prejudicial to the public interest to make the following order.

IT IS ORDERED pursuant to section 208 of the *Act*:

6. An OTC issuer is exempt from section 3 of MI 51-105 if it would otherwise apply only by reason of the OTC carrying on promotional activities in or from New Brunswick, or distributing a security to a person resident in New Brunswick (or both), provided that:
 - (a) the OTC issuer has a class of securities listed on a designated exchange;
 - (b) the OTC issuer does not have any class of securities other than non-convertible debt listed on an exchange or quoted on a quotation and trade reporting system; or
 - (c) all of the following apply:
 - (i) the distribution is exempt from the prospectus requirement;
 - (ii) the promotional activities in or from New Brunswick are directed only at permitted clients; and
 - (iii) each person in New Brunswick to which the OTC issuer distributes a security is a permitted client.
7. A person is exempt from sections 2.1(1) and 4.1 of NI 33-105 in connection with a distribution to which both of the following apply:
 - (a) the distribution is exempt from the prospectus requirement; and

(b) each person that purchases a security pursuant to the distribution is a permitted client.

DATED at Saint John, New Brunswick this 31st day of August, 2015.

“original signed by”

Kevin Hoyt
Executive Director, Securities