

## ALBERTA SECURITIES COMMISSION

### BLANKET ORDER 45-514

**Citation: Certain Private Placements, 2014 ABASC 467**

**Date: 20141120**

#### Definitions

1. Terms defined in the *Securities Act* (Alberta) (the **Act**), National Instrument 14-101 *Definitions*, National Instrument 33-105 *Underwriting Conflicts* (**NI 33-105**) or Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets* (**MI 51-105**) have the same meaning in this Blanket Order.

2. In this Blanket Order:

"designated exchange" means any of NASDAQ OMX; Borsa Italiana, MTA Tier; London Stock Exchange, except AIM; Hong Kong Stock Exchange; Deutsche Börse, except the First Quotation Board and the Entry Standard tier; Xetra, Prime Standard and General Standard tiers; SIX Swiss Exchange; Bourse de Luxembourg, except Euro MTF; Tokyo Stock Exchange, 1st Section and 2nd Section; Shanghai Stock Exchange; The Stock Exchange of Thailand, except The Market for Alternative Investment (mai); National Stock Exchange of India; Bombay Stock Exchange; Osaka Stock Exchange; Korea Stock Exchange; and Singapore Exchange; and

"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 Alberta 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 Alberta in certain circumstances.

(b) Section 92(3)(b) of the Act prohibits any person or company, except with the written permission of the Executive Director of the Alberta Securities Commission (the **Commission**), from making representations that a security will be listed or quoted on, or that an application has been made to list or quote a security on, any exchange or quotation and trade reporting system.

(c) 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.

- (d) The exemptions from MI 51-105 provided by Blanket Order 51-513 *Re Relief from Multilateral Instrument 51-105 Issuers Quoted in the U.S. Over-the-Counter Markets (51-513)* do not fully address the unnecessary and unintended constraints.

### Order

4. The Commission, considering that it would not be prejudicial to the public interest, orders under section 213 of the Act as set out below:

- (a) An OTC issuer is exempt from section 3 of MI 51-105 if it would otherwise apply only by reason of the OTC issuer carrying on promotional activities in or from Alberta or distributing a security to a person or company in Alberta (or both), provided that:
- (i) the OTC issuer has securities listed on a designated exchange; or
  - (ii) all of the following apply:
    - (A) the distribution is exempt from the prospectus requirement;
    - (B) the promotional activities in or from Alberta are directed only at permitted clients; and
    - (C) each person or company in Alberta to which the OTC issuer distributes a security is a permitted client.
- (b) A person or company is exempt from section 92(3)(b) of the Act if the representation otherwise prohibited by section 92(3)(b) is made in connection with a distribution to which both of the following apply:
- (i) the distribution is exempt from the prospectus requirement; and
  - (ii) each person or company that purchases a security pursuant to the distribution is a permitted client.
- (c) A person or company 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:
- (i) the distribution is exempt from the prospectus requirement; and
  - (ii) each person or company that purchases a security pursuant to the distribution is a permitted client.

5. The Commission, considering that it would not be prejudicial to the public interest, orders under section 214 of the Act that 51-513 is revoked.

This Blanket Order ceases to have effect after 20 November 2017.

**For the Commission:**

*“original signed by”*

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Stephen Murison  
Vice-Chair

*“original signed by”*

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Tom Cotter  
Vice-Chair