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Raising Money In Ontario - New Developments in Prospectus Exemptions

AS PART OF THEIR ONGOING 'EXEMPT MARKET REVIEW' CANADIAN SECURITIES ADMINISTRATORS ("CSA"), INCLUDING THE ONTARIO SECURITIES COMMISSION ("OSC"), HAVE RECENTLY IMPLEMENTED NEW PROSPECTUS EXEMPTIONS AND HAVE ANNOUNCED CHANGES TO EXISTING EXEMPTIONS DESIGNED TO FACILITATE CAPITAL FORMATION, PARTICULARLY BY EARLY-STAGE ENTITIES. THE KEY DEVELOPMENTS ARE SUMMARIZED BELOW.

New 'Existing Securityholder' Prospectus Exemption For Listed Issuers

On February 11th, 2015, the previously announced '**Existing Securityholder' prospectus exemption** became effective in Ontario. This new Ontario exemption, which is harmonized with similar exemptions in other Canadian jurisdictions, enables issuers, other than investment funds, whose securities are listed on any of the Toronto Stock Exchange, TSX Venture Exchange, Canadian Securities Exchange and Aequitas NEO Exchange to issue securities directly to their existing securityholders. It is designed to assist issuers which may continue to experience challenges in completing public offerings after they have become exchange-listed by providing them with a relatively easy way to access potential investors

who have already demonstrated an interest in the issuer's securities, while at the same time providing existing shareholders, many of whom may not otherwise have access to public offerings, the opportunity to participate in primary offerings of securities of the issuer.

The new 'Existing Securityholder' prospectus exemption comes with a number of conditions and restrictions including:

- An offering under the 'Existing Securityholder' exemption may not increase the outstanding securities of the class offered by more than 100%.
- All holders of the offered class of securities will be entitled to participate in the offering however the issuer will not be required to allocate offered securities to them on a pro rata basis.

- Investors will be restricted to a trailing 12 month investment limit of \$15,000 under this exemption if advice regarding the suitability of the investment has not been obtained from a registered investment dealer.
- Issuers will not be required to provide investors with any offering documents nor will investors be required to sign risk acknowledgments.
- Issuers must announce the offering and certain details thereof by means of a press release.

New 'Family, Friends and Business Associates' Prospectus Exemption

The OSC recently announced that effective May 5th, 2015 Ontario issuers and investors (other than investment funds) would, for the first time, have access to the **'Family, Friends and Business Associates' prospectus exemption** in s. 2.5 of NI 45-106 which is currently only available outside of Ontario, while at the same time the existing 'Founder, Control Person and Family' prospectus exemption in s. 2.7 of NI 45-106, which is currently available in Ontario, will be repealed. In general terms the 'Family, Friends and Business Associates' prospectus exemption will permit issuances of securities to a broad group of persons related to management and controlling shareholders of an issuer and including close personal friends and close business associates of management and controlling shareholders. As

a condition of using this new prospectus exemption issuers and investors will be required to sign a risk acknowledgment form and issuers will be required to file a Form 45-106F1 with the securities regulator of the jurisdiction in which the issuance of securities occurs, within 10 days of such issuance. Although other existing prospectus exemptions permit issuances of securities to similar types of investors, the net effect of the new 'Family, Friends and Business Associates' prospectus exemption will be to increase the number and scope of potential investors for issuers as, unlike the existing 'private issuer exemption' it is not restricted to 'private issuers' having 50 or fewer securityholders (net of employees) and the number and types of eligible investors under this new exemption are much broader than the 'Family, Friends and Business Associates' prospectus exemption which it replaces.

Further Delays in 'Crowdfunding' and 'Offering Memorandum' Prospectus Exemptions

There continues to be a lack of clarity on the final terms, and no definitive timeline for implementation, of the long-awaited **'Crowdfunding'** and , in Ontario, **'Offering Memorandum'** prospectus exemptions. The OSC recently announced that it and the other CSA members were continuing to review comments received in 2014 on the draft 'Crowdfunding' and 'Offering Memorandum' prospectus exemptions and it is their goal to

publish the Crowdfunding regime and Offering Memorandum exemption either in final form or, if warranted, for a second comment period, in "summer 2015".

Important Changes to the Accredited Investor and Minimum Amount Prospectus Exemptions

Despite considering amendments to minimum income and asset requirements the CSA have maintained the status quo in terms of the financial means criteria for accredited investors. However, the CSA announced three material changes to the accredited investor exemption which will take effect on May 5, 2015:

- Issuers relying on the accredited investor exemption will be required to obtain from investors who are individuals a signed risk acknowledgement form.
- Family trusts will be added as a new category of accredited investor.
- In Ontario, managed (i.e. fully discretionary) accounts will be permitted to purchase securities of an investment fund as an accredited investor (Ontario previously carved-out investment funds).

It is also notable that beginning on May 5, 2015 the minimum amount (\$150,000) prospectus exemption will no longer be available for investors who are individuals but will continue to be available for investors which are corporations and other entities.