

# OSC Continues to Examine New Capital Raising Prospectus Exemptions

September 16, 2013

On August 28, 2013, the Ontario Securities Commission (the “OSC”) released OSC Notice 45-712 – *Progress Report on Review of Prospectus Exemptions to Facilitate Capital Raising* (the “Progress Report”). The Progress Report provides an update to the OSC Staff Consultation Paper 45-710 (the “Consultation Paper”) released on December 14, 2012, as described in our previous [Bulletin](#). The purpose of the Consultation Paper was to initiate a broad review of the exempt market to consider whether the OSC should propose new prospectus exemptions that would facilitate capital raising, while being mindful of the need to protect the interests of investors.

The Progress Report sets out the following four key themes identified by the OSC during its review:

- the need to facilitate capital raising by small and medium-sized enterprises through expanded prospectus exemptions while maintaining investor protection;
- the importance of harmonizing prospectus exemptions across Canada;
- the emergence of crowdfunding as a new way for some start-ups and small and medium-sized enterprises to raise capital; and
- the importance of regulatory monitoring and oversight in the exempt market and the additional resources required to effectively monitor and oversee exempt market activity if new prospectus exemptions are adopted.

After considering feedback from stakeholders and keeping the four key themes noted above in mind, the OSC is continuing to pursue two of the prospectus exemptions that were discussed in the Consultation Paper, a crowdfunding exemption and an offering memorandum exemption, and is now considering two additional exemptions, a family, friends and business associates exemption and a streamlined rights offering exemption.

The OSC will no longer be considering an investor sophistication exemption, a registrant advice exemption, changes to the existing private issuer exemption and the re-introduction of the closely-held issuer exemption, as originally set out in the Consultation Paper.

## Crowdfunding Exemption

Crowdfunding is a method of raising a small amount of funds for a project or venture from a large number of people over the Internet via an internet portal. The OSC recognizes that for crowdfunding to be a viable method of raising capital, the regulatory framework must provide investors with adequate protections, while at the same time not imposing excessive regulatory costs on issuers and funding portals. The crowdfunding concept proposed in the Consultation Paper follows many of the rules in the Jumpstart Our Business Startups Act, which was passed in the United States on April 5, 2012. If adopted in the form being contemplated, the crowdfunding exemption would permit issuers, other than investment funds to whom the exemption will not apply, to make small offerings of securities over the Internet to investors, including non-accredited, retail investors, in prospectus exempt offerings.

### **Offering Memorandum Exemption**

Under section 2.9 of National Instrument 45-106, every Canadian jurisdiction, other than Ontario, currently has an offering memorandum exemption. The OSC intends to develop a proposal for an offering memorandum exemption in Ontario that is substantially similar to the existing Alberta model. In developing this exemption, the OSC will consider the need for additional cost-effective and user-friendly measures, as well as imposing possible limits on the types of securities offered and investment limits. This is a significant change from the concept discussed in the Consultation Paper, which was similar to the crowd funding concept and subject to the same limitations on the size of investment and amount that could be raised in reliance on the exemption. The new proposal would potentially allow significant financing to be raised from retail investors without a prospectus or the issuer becoming a reporting issuer.

### **Family, Friends and Business Associates Exemption**

The OSC may also adopt an exemption similar to the family, friends and business associates exemption available in all other Canadian jurisdictions. This would allow start-ups and early-stage companies to benefit from greater access to capital from their network of family, friends and business associates than is currently permitted under Ontario securities law. The OSC will consider if additional conditions could be added to the proposed exemption to mitigate its concerns regarding the scope of “close personal friends” and “close business associates” in order to prevent the sale of securities to investors who lack a close relationship with the issuer.

### **Streamlined Rights Offering Exemption**

The OSC plans to work with other Canadian securities regulators to consider a streamlined rights offering exemption in order to improve its efficiency and effectiveness for reporting issuers. The OSC will consider whether it would be appropriate to develop an exemption that would permit a reporting issuer to issue securities to its existing security holders on a private placement basis without an offering document and in reliance on the issuer’s continuous disclosure.

### **Accredited Investor Exemption**

In addition to the four exemptions detailed above, the OSC intends to amend the accredited investor exemption to permit fully managed accounts, where the adviser has a fiduciary relationship with the investor, to purchase any securities on an exempt basis, including investment fund securities. This amendment would harmonize this category of the exemption with other Canadian jurisdictions.

The OSC cautions that no assurance can be given that any new prospectus exemptions or amendments will be adopted in Ontario and notes that a number of things must occur before any such proposal could take effect, including publishing any proposed rule for a minimum 90-day comment period.

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