

Corporate Securities Law

January 27, 2016

Developments to Private Placement Rules Continue as Five Provinces Adopt New Prospectus Exemption

As development of private placement exemptions continues, securities regulators in British Columbia, Alberta, Saskatchewan, Manitoba and New Brunswick have adopted another exemption to the prospectus requirement (the “**Investment Advice Exemption**”). Subject to certain conditions, a reporting issuer may rely on the Investment Advice Exemption where securities are distributed to non-accredited investors who have obtained investment advice from a registered investment dealer. The Investment Advice Exemption became effective on January 14, 2016.

The introduction of the Investment Advice Exemption comes on the heels of a number of other private placement exemptions recently introduced by members of the Canadian Securities Administrators. For more information relating to these exemptions, see our Updates dated February 23, 2015, *Update on Continuing Refinements to Private Placement Rules*; October 26, 2015, *Further Developments in Private Placement Exemptions for Start-ups*; November 3, 2015, *Offering Memorandum Exemption Finalized for Ontario*; and November 10, 2015, *Equity Crowdfunding Exemption Finalized*.

The Investment Advice Exemption is intended to provide reporting issuers with greater access to capital and to allow a broader subset of retail investors to participate in private placements. To ensure such investors are adequately protected, the Investment Advice Exemption includes the following requirements:

- the investor must have obtained advice about the suitability of the investment and, where the investor is resident in a Canadian jurisdiction, the advice was obtained from a registered investment dealer in that jurisdiction;
- the investor must purchase the security as principal;
- the issuer must be a reporting issuer in at least one Canadian jurisdiction, have a class of equity securities listed on the TSX, TSX-V, Canadian Securities Exchange or Aequitas Neo Exchange Inc. and have filed all required continuous disclosure documents;
- the offering can consist only of a listed security, a unit consisting of a listed security and a warrant to acquire another listed security, or another security convertible into a listed security at the security holder's sole discretion;
- the news release announcing the private placement must disclose certain required information relating to the distribution; and
- except in Alberta, where a statutory right of action applies, the investor must be provided with a contractual right of action in the event of a misrepresentation in a continuous disclosure document, regardless of whether the investor relied on the misrepresentation.

For further information regarding the ongoing development of private placement exemptions in Canada and corporate finance in general, please contact any member of our Corporate Securities Group.