

Corporate Securities Law

February 23, 2015

Update on the Continuing Refinements to Private Placement Rules

Changes continue to be made to the rules concerning private placements in Canada, including changes to some of the most commonly used prospectus exemptions.

The Canadian Securities Administrators (CSA) have announced two sets of amendments, largely to address investor protection concerns:

- consistent with proposals published last year (as described in our March 4, 2014 update, *Proposed Changes to Private Placement Rules*), the CSA has refined the rules governing the widely used accredited investor and minimum amount investment exemptions; and
- the CSA has refined the rules concerning exempt distributions of short-term debt, including creating a new exemption for short-term securitized products.

In Ontario, the CSA amendments will come into force on the later of May 5, 2015 and the date on which certain legislative measures are proclaimed in force.

In Ontario, as part of its ongoing review of the exempt market rules (described in our April 1, 2014 update, *Four New Private Placement Exemptions Proposed*), the Ontario Securities Commission (OSC) has taken steps intended to facilitate capital formation and to harmonize its rules with those applicable in other Canadian jurisdictions. Specifically:

- the OSC has adopted a family, friends and business associates exemption that is substantially harmonized with a similar exemption adopted by other CSA jurisdictions (and is broader than

the founder, control person and family exemption that has applied in Ontario), which will become effective on May 5, 2015; and

- an exemption for public issuers whose securities are listed in certain exchanges to raise capital from existing investors, also substantially harmonized with a similar exemption in other CSA jurisdictions, became effective on February 11, 2015.

The OSC has also provided an update on the status of other proposed new prospectus exemptions, an offering memorandum exemption and a crowdfunding exemption (the latter including requirements that would apply to the crowdfunding portal). The OSC advised that its goal is to publish those two new exemptions in final form or, if warranted, for a further comment period, in the summer of 2015.

CSA Amendments

Accredited Investor and Minimum Amount Exemptions

The CSA amendments to the accredited investor exemption and the minimum amount exemption are intended to address investor protection concerns and include, among other things:

- the introduction of a new risk acknowledgement form for individual accredited investors;
- expanded guidance on the steps a seller should take to verify the status of purchasers acquiring securities under prospectus exemptions; and
- restrictions on distributions to non-individual investors under the minimum amount exemption.

The CSA also extended the definition of “accredited investor” in Ontario to permit fully-managed accounts to purchase investment fund securities using the managed account category of the accredited investor exemption, as is already permitted in other Canadian jurisdictions.

Goodmans^{LLP} Update

Short-Term Debt Prospectus Exemption

The amendments to the short-term debt prospectus exemption are intended to address investor protection and systemic risk concerns and include, among other things:

- refinements to the credit rating requirements for short-term debt that can be distributed on an exempt basis; and
- the creation of a new exemption for the distribution of short-term securitized products, which in addition to credit ratings requirements imposes restrictions relating to the conduit, liquidity providers and the liquidity arrangements, as well as specified disclosure requirements.

OSC Amendments

Family, Friends and Business Associates Exemption

The family, friends and business associates exemption will allow for the sale of securities to principals of an issuer as well as certain family members, friends and business associates. The concept is that those with a sufficiently close relationship with the issuer or principal

have the capability to assess the trustworthiness of the principal and access information about their investment. Guidance has also been provided as to when an investor would qualify as a close personal friend or close business associate. As a condition to the investment a signed risk acknowledgment must be obtained from the investor.

Existing Securityholder Exemption

The new (to Ontario) prospectus exemption for existing securityholders allows public companies with securities listed on the Toronto Stock Exchange, TSX Venture Exchange, Canadian Securities Exchange or Aequitas NEO Exchange to raise capital from existing investors in reliance on a company's public disclosure record. The exemption incorporates investor protection measures, including, an investment limit of \$15,000 in any twelve-month period if advice regarding the suitability of the investment has not been obtained.

Please contact any member of our Corporate Securities Group to discuss the implications of these amendments.