

Corporate Securities Law

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OSC Publishes Report on Exempt Market Activity and Recent Regulatory Reforms

The Ontario Securities Commission (OSC) recently published OSC Staff Notice 45-715 2017 Ontario Exempt Market Report (the “**Report**”) which, among other things summarizes Ontario exempt market activity by non-investment fund issuers over the past two years and how it compares to the broader Canadian capital markets, and assesses the impact of recently introduced prospectus exemptions. The Report follows the adoption by the OSC over the past couple of years of a number of new prospectus exemptions that are intended to facilitate greater capital formation by small issuers, as well as recent amendments to the information required to be included in the report that must be filed with the OSC when certain prospectus exemptions (including the accredited investor exemption) are relied upon.

New Prospectus Exemptions

Canadian securities regulators adopted a number of new prospectus exemptions in recent years, including:

- an “existing security holder” exemption, which allows public companies listed on specified exchanges to raise funds from existing security holders holding the type of security being offered;
- a “family, friends and business associates” exemption, which allows companies to raise capital from specified principals of the issuer, specified family members, close personal friends and close business associates;
- the offering memorandum exemption, which allows companies at different stages of development to raise funds from a wide range of investors based on a simplified form of offering

documents being made available to investors (and, in the case of private companies, more limited ongoing reporting requirements than those applicable to public companies in Ontario); and

- a crowdfunding exemption, which allows Canadian companies to raise funds online from the public through a single funding portal registered with securities regulators.

These new prospectus exemptions were intended to provide issuers – particularly small and medium-sized issuers – with greater access to capital formation, while also expanding investment opportunities for all investors.

The Report found that, collectively, the new prospectus exemptions have gained traction among Canadian issuers, with the family, friends and business associates exemption having been relied upon most frequently and the most proceeds being raised using the offering memorandum exemption.

Exempt Market Activity

The Report indicates that gross proceeds raised in the Ontario exempt market continued to grow in 2016. Highlights of the Report include:

- Ontario investors invested approximately \$72 billion through prospectus-exempt offerings in 2016. While Canadian issuers represented almost two-thirds of issuers participating in Ontario’s exempt market in 2016, they only accounted for only 37% of the capital raised in Ontario.
- Accredited Investors, mainly institutional investors, contributed over 90% of the total capital invested in the Ontario exempt market in 2016. Most of the capital was invested in large issuers, primarily foreign-based financial entities.
- The OSC estimates that, between 2014 and 2016, approximately 57% of Canadian issuers in Ontario’s exempt market were small issuers (i.e., companies that raised less than \$1 million

Goodman's Update

annually), but that these small issuers represented less than 1% of gross proceeds raised in Ontario's exempt market by Canadian issuers annually. However, the Report found a notable increase in small Canadian issuer activity within the Ontario exempt market in 2016, with the number of financings increasing by almost 30% and gross proceeds increasing by approximately 40% year-over-year.

- In 2016, approximately \$133 million was raised in Ontario under the new prospectus exemptions described above by approximately 400 issuers, with nearly half of the issuers having raised capital in Ontario for the first time since 2014.

Within the context of the overall Canadian capital markets, Ontario's exempt market accounted for less than one-fifth of the total gross proceeds raised by Canadian issuers domestically and less than one-tenth of gross proceeds raised globally.

The Report reflects the OSC's commitment to transparency and allows the regulator to monitor the effectiveness of the recently introduced capital-raising tools and oversight efforts in the exempt market.

Please contact any member of our Corporate Securities Group to discuss these developments.