

Corporate Securities Law

March 4, 2014

Proposed Changes to Private Placement Rules

The Canadian Securities Administrators (CSA) published for comment proposed amendments to the two most utilized private placement exemptions: (i) the accredited investor exemption (the “**AI Exemption**”), and (ii) the minimum amount investment exemption (the “**MA Exemption**”). The proposals were made based on findings of a broad review of the exemptions.¹ The comment period expires May 28, 2014.

Proposed Amendments to the AI Exemption

The AI Exemption permits the distribution of securities without a prospectus to corporate and institutional investors and individual investors who meet certain criteria (including, for individual investors, certain income or asset thresholds).

In response to concerns that individual investors may not understand the risks of making an investment under the AI Exemption or may not qualify as accredited investors, the CSA has proposed that issuers relying on the AI Exemption be required to obtain a completed risk acknowledgement form from individual accredited investors who do not qualify as “permitted clients.” The CSA also provided additional guidance on the due diligence that issuers should exercise in verifying investor status to better ensure compliance with the AI Exemption.

In addition to these changes, the CSA has proposed amending the definition of accredited investor to

include family trusts established by an accredited investor for his or her family where a majority of the trustees are also accredited investors (to address the anomaly that under the current rules an accredited investor cannot purchase securities on behalf of a trust established for the benefit of his or her family). In Ontario, the definition of accredited investor will also be amended to allow fully managed accounts to purchase investment fund securities, as permitted in other provinces in Canada.

Proposed Amendments to the MA Exemption

The MA Exemption permits the sale of securities if the cash purchase price for the securities is greater than \$150,000. Under the CSA's proposed amendments, this exemption will be limited to non-individual investors. This change is intended to address concerns that the current threshold of \$150,000 in the MA Exemption may not accurately reflect the sophistication of individual investors or their ability to withstand financial loss. For example, individual investors may be encouraged to borrow money to meet the minimum investment threshold. The change is also intended to reduce the risk that individual investors will be motivated to over-concentrate their assets in one investment.

Conclusion

Notably, despite having extensively studied the monetary thresholds in the exemptions, the CSA has not proposed any changes to the thresholds.

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

¹ The consultation process was described in CSA Staff Consultation Note 45-401 *Review of Minimum Amount and Accredited Investor Exemptions*. The CSA subsequently published CSA Staff Notice 45-310 *Update on CSA Staff Consultation Note 45-401 Review of Minimum Amount and Accredited Investor Exemptions* on June 7, 2012.