

Goodmans^{LLP} Update

OSC Publishes Report on Exempt Market Activity

The Ontario Securities Commission (OSC) recently published *OSC Staff Notice 45-717 - Ontario's Exempt Market: A review of capital raised in Ontario through prospectus exemptions since 2017* (the “**Report**”). The Report summarizes private or “exempt market” activity in Ontario by non-investment fund issuers between 2017 and 2019, and the use of a number of new prospectus exemptions during that period. The Report is limited to information required to be reported to the OSC, and therefore does not provide a complete picture of all exempt market activity. Overall, the Report notes a marginal decline in the amount of capital raised in Ontario’s exempt market in each year covered by the Report, although the number of issuers remained relatively stable and investor participation – particularly among individuals – increased considerably over that period.

Key Trends

The Report highlights the key drivers of Ontario’s exempt market since 2019, including the types of issuers that raised capital and the investors they raised it from. Highlights of the Report include:

- While Ontario’s exempt market is comprised of a diverse set of participants, overall a small number of institutional investors and foreign issuers account for a disproportionately large share of capital raised.
- The number of individual investors accessing the exempt market has grown year over year from 2017 to 2019. In 2019, approximately 20,700 individuals invested in issuers in the finance, real estate and mortgage sectors (collectively referred to as “**financial issuers**”), up 12% from 2018 and 54% from 2017.
- Since 2017, reliance on the exempt market by Ontario-based non-financial issuers declined (both in terms of gross proceeds raised and number of issuer participants). However, exempt market activity from financial issuers increased.
- 17% of gross proceeds in 2019 were raised by public companies (including foreign companies that are Canadian reporting issuers), with 56% of those companies being mining issuers.
- The accredited investor exemption accounts for substantially all capital raised in Ontario’s exempt market, with 9 out of 10 issuers relying on it to raise 95% of gross proceeds in 2019.

Newer Prospectus Exemptions

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

- the offering memorandum exemption, which allows companies to raise funds from a broad range of investors using a simplified offering document and more limited ongoing reporting requirements than those applicable to public companies in Ontario;

Authors



Chris Sunstrum
csunstrum@goodmans.ca
416.597.4270



Julian Di Bartolomeo
jdi bartolomeo@goodmans.ca
416.849.6933

Goodmans^{LLP} Update

- 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;
- an “existing security holder” exemption, which allows public companies listed on specified exchanges to raise funds from existing security holders; and
- a crowdfunding exemption, which allows Canadian companies to raise capital from the public through a single online funding portal registered with securities regulators.

The Report provides an update with respect to the reliance on these newer prospectus exemptions, including:

- Between 2017 and 2019, over 1,300 issuers relied upon the offering memorandum, family, friends and business associates and existing securities holder exemptions, raising over \$1 billion.
- The offering memorandum exemption was the second most frequently used prospectus exemption by individual investors in 2019 (after the accredited investor exemption). There has been an increase in the number of individuals relying on both the accredited investor and offering memorandum exemption since 2017.
- Since coming into effect, there has been no reported use of the crowdfunding exemption. The CSA proposed new rules intended to improve harmonization of the regulatory framework for crowdfunding and create a streamlined system to allow start-ups and other small businesses to raise money.

For more information on the Report or to discuss prospectus exemptions that may be available to your organization, please contact any member of our [Corporate Finance and Securities Group](#).

All Updates are available at www.goodmans.ca. This Update is intended as a general summary for educational purposes only and should not be relied upon as legal advice with respect to any particular set of circumstances. If you require advice as to your circumstances, please contact any member of our Corporate Finance and Securities Group.
© Goodmans LLP, 2020.