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SECURITIES ALERT

PERLEY-ROBERTSON, HILL & McDOUGALL LLP/s.r.l.

BETTER CAPITAL RAISING OPPORTUNITIES FOR SMALL BUSINESSES AND START-UPS

A New Family, Friends and Business Associates Exemption for Ontario

The first source of funding for many small businesses or start-ups is the owner's network of family, friends and business associates. While other jurisdictions have a prospectus exemption catering to this fundraising opportunity, for several years Ontario has not. The Ontario Securities Commission ("**OSC**") recently published a notice and request for comment containing an update of the OSC's exempt market review and the proposed exemptions that might result from that review. One of these proposed exemptions includes family, friends and business associates (the "**FFBA Exemption**").

The proposed FFBA Exemption recognizes that existing networks of family, friends and business associates may be the most cost-efficient way for early stage companies to raise capital without disclosure requirements or intermediary involvement. It will likely broaden access to capital beyond what is currently available under the existing Private Issuer exemption and Ontario's much narrower Founder, Control Person and Family Exemption (which it is intended to replace). It will also increase investment opportunities for investors who are closely related to the corporation but who would not have qualified under the existing exemptions. The proposed FFBA Exemption introduces two new requirements. First, an issuer will be required to submit a report of exempt distribution to the OSC containing additional information regarding the investor's connection to the issuer. In addition, a risk acknowledgement form must be signed by the investor and the person within the issuer who has a relationship with the investor.

The proposed FFBA Exemption has the following key conditions:

- It is available to both reporting and non-reporting issuers.
- The issuer does not have to be incorporated or organized in Canada and there are no requirements as to where directors and officers of the issuer must reside.
- Common shares, non-convertible preference shares, securities convertible into common shares or non-convertible preference shares, units of limited partnerships or flow-through shares may be distributed.
- It will apply to distributions by both issuers and selling security holders.
- There is no limited on the size of the offering or on the use of proceeds raised under the exemption.
- The issuer is not allowed to advertise or solicit investors in connection with a distribution under the exemption.
- Payment of any commission, finder's fee, referral fee or similar payment in connection with a distribution under the exemption is prohibited.
- The OSC has included guidance as to the meaning of a close personal friend and a close business associate with regards to the exemption. The onus will be on the issuer to determine whether a close personal relationship exists and this determination may be subject OSC scrutiny.
- There is no limit on the amount an investor may invest under the exemption.

An issuer using the proposed FFBA Exemption or an investor investing under the proposed FFBA Exemption must sign a risk acknowledgement form disclosing the identity of the director, executive officer, founder or control person of the issuer, that person's position at or relationship with the issuer, the category of the relationship asserted by the investor with that person and how long the investor has known that person where the investor is asserting that he or she is a close personal friend or close business associate. The form must be signed by both the investor and the director, executive officer, founder or control person of the issuer with whom the investor has asserted the relationship and also by the issuer. These forms must be retained by the issuer for a period of eight (8) years after the distribution.

The first trade of securities issued under the proposed FFBA Exemption will be subject to a four (4) month hold period if they are issued by a reporting issuer. For non-reporting issuers the securities will be subject to an indefinite hold period and can only be resold under another prospectus exemption or under a prospectus.

The proposed FFBA Exemption is subject to adjustment after the receipt of public comments, which are due by June 18, 2014. However, it seems likely to go ahead substantially as described above later this year. If so, it will provide small businesses, start-ups and entrepreneurs in Ontario with enhanced access to capital.

For more than 40 years, Perley-Robertson, Hill and McDougall has provided financing solutions to a wide variety of clients, including privately held companies, public companies, reporting issuers and companies listed on NASDAQ, the Toronto Stock Exchange, the TSX Venture Exchange and various OTC and private markets. In addition to providing advice on securities registration and compliance, we have completed venture capital funding transactions, debt and/or equity private placements, initial public offerings, prospectus offerings, capital pool company listings and qualifying transactions, reverse takeovers and limited partnership fundings. Whatever your financing requirements, we are confident we can find a cost efficient solution tailored to your needs.

Contact us today and speak with a member of our securities law team.

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