

JUNE, 2014

SECURITIES ALERT

Enhanced Capital Raising Opportunities for Ontario Based Corporations

Ontario's Proposed Offering Memorandum Exemption

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 the proposed exemptions is a new offering memorandum prospectus exemption (the “**OM Exemption**”). The OM Exemption may have the largest impact on capital raising among all the proposed exemptions. It will be similar to exemptions already available in other jurisdictions although it will likely differ in detail. Corporations seeking to raise funds in multiple jurisdictions will have to comply with all the differing versions of the various OM Exemptions.

The proposed OM Exemption would allow corporations to raise capital from retail investors without the need to file a prospectus. It will also increase access to investment opportunities for Ontario retail investors. In order to provide protection for this increased investor base, the proposed OM Exemption will require non-reporting issuers to prepare audited financial statements, indicate how proceeds were used and disclose certain specified events. Additional investment protection measures such as investment limits and the requirement for a risk acknowledgement form signed by the investor are also required.

The proposed OM 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 or have its head offices in Canada and there are no requirements as to where directors and officers of the issuer must reside.
- Most types of securities may be distributed, except for complex securities such as certain specified derivatives or structured finance products.
- There is no limit on the size of the offering or on the number of offerings an issuer may make under this exemption.
- There are no specific restrictions on advertising related to offerings made under this exemption.
- There is no restriction on fees being paid to “finders.”
- Investors meeting the requirements of either a net income test or a net asset test or who have obtained advice from a specified “eligibility advisor” will be considered to be “eligible investors.”
- Eligible investors may invest up to \$30,000 under this exemption in a calendar year. Investors who are not eligible may invest up to \$10,000 under this exemption in a calendar year.
- An investor investing under the proposed OM Exemption must sign a risk acknowledgement form. These forms must be retained by the issuer for a period of eight (8) years after the distribution.
- Investors under this exemption will have a two business day right of withdrawal and a statutory right of action to sue in the event of a misrepresentation.



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

Use of the proposed OM Exemption will subject the issuer to ongoing disclosure requirements. For corporations that are already reporting issuers there will be no change to the current ongoing disclosure requirements. Corporations that are non-reporting issuers will be subject to an increased level of disclosure. A non-reporting issuer using the proposed OM exemption will be required to file audited annual financial statements within 120 days of the end of its most recent financial year, accompanied by a notice disclosing in reasonable detail the use of the aggregate gross proceeds raised by the corporation in all distributions under the proposed OM Exemption. Further, non-reporting issuers using the proposed OM Exemption will be required to make reasonably available to the investor a notice of the following within 10 days of the event.

- A fundamental change in, or discontinuance of, the corporation's business.
- A significant change in the corporation's capital structure
- A major reorganization, amalgamation or merger.
- A take-over or issuer bid involving the corporation
- A significant acquisition
- Changes in the corporation's directors and executive officers.

These reporting obligations will remain until the non-reporting issuer either becomes a reporting issuer or ceases to carry on business.

The first trade of securities issued under the proposed OM 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. In either case, issuers must file a report of a distribution under this exemption with the appropriate securities commission.

The proposed OM Exemption is subject to adjustment after the receipt of public comments, which are due by June 18, 2014. However, if it goes ahead substantially as described above later this year, it will provide both reporting and non-reporting Ontario issuers 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.

Mike Gerrior Head, Securities Law Group mgerrior@perlaw.ca +1.613.566.2813	Rob Kinghan Partner rkinghan@perlaw.ca +1.613.566.2848
Lorraine Mastersmith Partner lmastersmith@perlaw.ca +1.613.566.2810	Dirk Boucher Partner dboucher@perlaw.ca +1.613.566.2850
Dave Lowdon Lawyer djlowdon@perlaw.ca +1.613.566.2809	Phil Aubry Lawyer paubry@perlaw.ca +1.613.566.2746
Tiffany Lee Bianchi Lawyer tbianchi@perlaw.ca +1.613.566.2831	Sue Kavanagh Manager, Corporate Services skavanagh@perlaw.ca +1.613.566.2824