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PERLEY-ROBERTSON,
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SECURITIES ALERT

Better Access to Capital for Listed Issuers New Prospectus Exemption Effective February 11, 2015

The Ontario Securities Commission (OSC) has indicated it will implement amendments to OSC Rule 45-501 *Prospectus Registration Exemptions* effective February 11, 2015 in order to implement the previously proposed existing security holder prospectus exemption (the "Exemption").

The Exemption recognizes that most small listed issuers today rely almost exclusively on the accredited investor exemption when issuing shares without a prospectus. Other exemptions available (such as offering memorandum, rights offering and short form offering exemptions) are rarely used. Further, after their initial public offering, small listed issuers rarely conduct prospectus offerings. This is largely because of the time and cost involved in preparing a prospectus.

The Exemption will provide listed issuers with increased access to capital and provide retail investors with access to the often "sweetened" private placements of listed issuers that are now usually only available to the small pool of investors able to take advantage of the accredited investor exemption.

The Exemption has the following key conditions:

- the issuer must have a class of equity securities listed on the Toronto Stock Exchange ("TSX"), the TSX Venture Exchange ("TSXV") Canadian Stock Exchange ("CSE") or, when recognized, the new Aequis Exchange;
- the issuer must not be an investment fund;
- the offering can consist only of the class of equity securities listed on the above-mentioned exchanges or units consisting of the listed security and a warrant to acquire the listed security;
- the issuer must allow all securities holders of record to subscribe to the offering;
- the issuer must treat all securities holders equally and should develop policies that provide reasonable assurance that any such offerings are allocated fairly among all of its securities holders;
- the offering cannot result in an increase of greater than 100% of the outstanding securities of the same class ;
- the issuer must issue a news release disclosing the proposed offering, including details of the use of proceeds;
- each investor must confirm in writing to the issuer that, as at the "record date", the investor held the type of listed security that the investor is acquiring under the Exemption;
- unless the investor has obtained advice regarding the suitability of the investment from a registered investment dealer, the aggregate amount invested by the investor in the last 12 months under the Exemption can not be more than \$15,000;
- secondary market civil liability under PartXXIII.1 of the *Securities Act* will apply to securities purchased under the Exemption; and

- although an offering document is not required, if an issuer voluntarily provides one, the document (other than a subscription agreement) must be filed on the same day it is provided to investors.

In addition, the Exemption will require the issuer to represent to prospective purchasers in the subscription agreement that there are no material facts or material changes relating to the issuer that have not been generally disclosed.

The first trade of securities issued under the Exemption will be subject to resale restrictions under section 2.5 of National Instrument 45-102 *Resale of Securities*, like most other capital raising prospectus exemptions. In addition, issuers will have to file a report of exempt distribution within 10 days after each distribution under the Exemption.

The Exemption is expected to come into force on February 11, 2015 and will provide new capital raising opportunities for all listed issuers. For further details, please contact any member of our Securities Law team.

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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