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# SECURITIES ALERT

## Investor Crowdfunding Coming to Ontario Expected to Come into Effect on January 25, 2016

The securities regulatory authorities in Manitoba, Ontario, Québec, New Brunswick and Nova Scotia have published the final form of Multilateral Instrument 45-108 *Crowdfunding* (MI 45-108), which includes a crowdfunding prospectus exemption and a registration framework for funding portals (collectively, the 45-108 crowdfunding regime). Provided all necessary Ministerial approvals are obtained, MI 45-108 will come into force in Ontario and the other jurisdictions on January 25, 2016.

The 45-108 crowdfunding regime is expected to enable start-ups and corporations in their early stages of development to raise capital online from a large number of investors through a single registered funding portal. There will be a limit on the total amount that can be raised by issuers and investors will be subject to investment limits as a means of limiting their exposure to risk. To be exempt, all crowdfunding must be conducted through a registered funding portal.

The MI 45-108 crowdfunding regime has the following key conditions:

- Issuers may only offer non-complex securities, such as common shares, non-convertible preference shares, flow through shares or limited partnership units.
- Issuers may not raise more than \$1,500,000 under this exemption within the 12 month period ending on the last day of the distribution period.
- Investors are subject to the following investment limits:
  - For an investor that does not qualify as an accredited investor
    - \$2,500 per investment, and
    - in Ontario, \$10,000 in total in a calendar year
  - For an accredited investor (other than a permitted client)
    - \$25,000 per investment, and
    - in Ontario, \$50,000 in total in a calendar year.
  - in Ontario, there are no investment limits for a permitted client
- Issuers are required to prepare an offering document in a format prescribed by MI 45-108.
- Investors must complete a Risk Acknowledgement Form requiring them to positively confirm having read and understood the risk warnings and information in the offering document before they can enter into an agreement to purchase securities
- Issuers are accountable for and are subject to liability on the offering document and other permitted materials, and investors are provided with a related right of action
- There is a prohibition on advertising and general solicitation
- Non-reporting issuers must make available to investors (i) annual financial statements, (ii) a notice of use of proceeds, and (iii) in New Brunswick, Nova Scotia and Ontario, a notice of a discontinuation of the issuer's business, a change in the issuer's industry or a change of control of the issuer.

- Reporting issuers must continue to comply with all of their disclosure requirements
- Issuers can only distribute securities through a single funding portal that is registered as an investment dealer, exempt market dealer or restricted dealer and must post the offering document and other permitted materials solely on that funding portal's online platform.
- Funding portals are prohibited from offering securities of a related issuer.
- A funding portal must fulfill certain gatekeeper responsibilities prior to allowing an issuer access to its online platform, including reviewing the issuer's disclosure in the offering document and other permitted materials for completeness, accuracy and any misleading statements.
- A funding portal must review information and obtain background checks on the issuer and its directors, executive officers and promoters, and deny an issuer access to the funding portal in certain circumstances

The 45-108 crowdfunding regime provides startups and small corporations with a new way to reach out to a large number of retail investors (the crowd) to raise capital. It also imposes significant and complex procedural, disclosure and shareholder obligations that these same corporations may well be encountering for the first time. Corporations considering using this exemption are well advised to seek advice prior to jumping into the crowdfunding pool.

*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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