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SECURITIES ALERT

A Busy Year for Capital Raising Exemptions

Summary of changes in the past year

The past year has seen the introduction of many new capital raising prospectus exemptions in Ontario. This summary provides a brief overview of the new capital raising opportunities available to start-ups and small and medium-sized enterprises (SMEs) and the corresponding investment opportunities that have opened up in the past year.

The existing security holder prospectus exemption came into force in Ontario on February 11, 2015. This exemption recognized that most small listed issuers previously relied almost exclusively on the accredited investor exemption when issuing shares without a prospectus. The exemption allows listed issuers to access capital from their current shareholders more easily and provides shareholders of listed issuers with access to the often “sweetened” private placements of listed issuers that were previously for the most part only available to the small number of investors able to take advantage of the accredited investor exemption.

The family, friends and business associates (FFBA) prospectus exemption came into force in Ontario on May 5, 2015. The FFBA exemption recognizes that existing networks of family, friends and business associates are probably the most cost-efficient way for early stage companies to raise capital without disclosure requirements or intermediary involvement. It replaced Ontario’s much narrower founder, control person and family exemption and increases investment opportunities for investors who are closely related to a corporation but who would not have qualified under previously existing exemptions.

The offering memorandum (OM) prospectus exemption came into force in Ontario on January 13, 2016. The change extended the OM exemption already available in Alberta, New Brunswick, Nova Scotia, Québec and Saskatchewan and introduced the OM exemption in Ontario. The introduction of the OM exemption in Ontario allows business enterprises, particularly SMEs, to benefit from more cost-effective access to capital from investors than was previously permitted under Ontario securities law.

The crowdfunding prospectus exemption came into force in Ontario on January 25, 2016. The crowdfunding exemption 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 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 Ontario Securities Commission also worked with other jurisdictions to amend the **rights offering prospectus exemption**, which came into force in Ontario on December 8, 2015. Rights offerings are one of the fairer ways for issuers to raise capital as they provide security holders



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with an opportunity to protect themselves from dilution. However, issuers seldom used the previous rights offerings exemption because of the associated time and cost. The new rights offering exemption is designed to be faster and more efficient but it is only available to reporting issuers other than investment funds. As a result, the rights offering exemption changes the capital raising potential of both reporting and non-reporting issuers, albeit in very different ways

Readers are reminded that the availability of either a new or old prospectus exemption does not mean there is a corresponding registration exemption. Any person or entity distributing securities under one or more prospectus exemptions must always consider whether its activities result in it being "in the business" of trading in securities. If it is "in the business" of trading in securities, it is generally subject to dealer registration requirements.

In summary, the past year has seen a lot of change. As the saying goes "times of change are times of opportunity." We would be pleased to elaborate on any of these capital raising opportunities.

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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