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## Investment and New Capital Raising Exemptions for Start-ups, Small and Medium-Sized Businesses in Ontario

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With the decline of our dollar and oil prices, there is some good news for investors in Ontario as private market investments in Ontario that were once only available to high-net-worth – individuals are now accessible to a wider range of investors. Along with these corresponding investment opportunities this past year has seen the introduction of many new capital raising prospectus exemptions in Ontario. This article provides a brief summary of these investment opportunities and new capital raising opportunities for start-ups as well as small and medium-sized businesses introduced over the course of the past year. These exemptions will be of particular interest to those companies wanting to avoid all of the costs associated with issuing a prospectus to raise new capital.

On February 11, 2015, Ontario adopted the existing security holder prospectus exemption. This exemption allows reporting issuers in Ontario to raise funds more efficiently by connecting with their existing shareholder base without a prospectus. As a result, this exemption eliminates the significant costs connected with filing a prospectus if certain requirements are met. This exemption also balances the need for investor protection with the need for small and medium-sized businesses to effectively raise additional capital required to run or grow the business.

On May 5, 2015, Ontario followed other Canadian jurisdictions and adopted a family, friends and business associates prospectus exemption which is expected to provide a cost-effective way for issuers (other than investment funds) to raise capital from their networks of family, close personal friends and close business associates. This exemption increases investment opportunities for individuals and allows for the sale of securities by a selling security holder or an issuer to principals of the issuer as well as certain family members, close personal friends and close business associates. The exemption is based on investors having a sufficiently close relationship with a principal of the issuer to assess the capabilities and trustworthiness of the principals and access information about their investment.

Provincial regulators introduced on January 13, 2016 the new offering memorandum (OM) exemption in Ontario. Until January, Ontario had been the only Canadian province without an OM exemption for raising capital privately. The OM exemption finally allows businesses, particularly small and medium-sized companies, to benefit from greater access to capital from a wider range of investors than had been previously permitted under Ontario securities law. However, the OM exemption is subject to investment limits for certain investors, such as a maximum of \$30,000 for eligible investors, cumulatively, for all investments made in reliance upon the OM exemption in any 12-month period unless they receive suitability advice from a portfolio manager, investment dealer or exempt market dealer, in which case this limit is increased to \$100,000. Further, there is no limit for investors who qualify as accredited investors or family, friends and



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business associates. Prior to the OM exemption, only individuals who qualified as accredited investors were allowed to invest in the exempt market.

The crowdfunding exemption came into force in Ontario on January 25, 2016. This exemption was one of the more highly anticipated exemptions of the year which allows start-ups and businesses to raise capital in exchange for equity stakes in their business through online registered crowdfunding portals. These crowdfunding platforms will be responsible for background checks and other due diligence on companies and investors. Although accredited investors have been allowed to participate in equity crowdfunding since 2013, the new regulations allows all investors to participate, with restrictions on how much they can invest, as well as limits on what the company can raise in order to limit risk.

On December 8, 2015, the rights offering prospectus exemption was amended in Ontario to establish a more simplified rights offering regime. The new rights offering regime, which is available to reporting issuers that are not investment funds, does not require that a rights offering circular be reviewed by the securities commissions, increases the dilution limit to 100% (instead of 25%) and simplifies the prescribed rights offering circular. In addition, this provides security holders with an opportunity to protect themselves and as a result each security holder is entitled to receive no more than a *pro rata* portion of the securities available.

These exemptions have been adopted to facilitate capital raising by businesses at different stages of development with the objective of modernizing Ontario's exempt market regulatory regime, while also providing adequate protections to investors. We would be pleased to elaborate further on any of these investment and/or capital raising opportunities.

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