

November 24, 2015 (webinar)
November 25, 2015 (in-person session)



Registrant Outreach Session

The OSC exempt market reform initiative

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Agenda

- Background on exempt market review
- New capital raising prospectus exemptions
- Amendments to existing prospectus exemptions
- Reports of exempt distribution
- Compliance and oversight

Background on exempt market review

- Original scope of review
 - CSA Staff Consultation Note 45-401 *Review of Minimum Amount and Accredited Investor Exemptions* (November 2011)
 - Broad consultations in early 2012
 - Expanded exempt market review
 - Feedback from first review prompted expanded review
 - OSC Staff Consultation Paper 45-710 *Considerations for New Capital Raising Prospectus Exemptions* (December 2012)
 - OSC Notice 45-712 *Progress Report on Review of Prospectus Exemptions to Facilitate Capital Raising* (August 2013)
 - OSC publication for comment – March 20, 2014
 - Offering memorandum exemption
 - Crowdfunding regime
 - Existing security holder exemption
 - Family, friends and business associates exemption
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New capital raising prospectus exemptions

- ***Amendments to National Instrument 45-106 Prospectus Exemptions published on October 29, 2015***
 - Introduces an offering memorandum prospectus exemption in Ontario and amends the existing offering memorandum exemption in certain other jurisdictions
- ***Multilateral Instrument 45-108 Crowdfunding published on November 5, 2015***
 - Introduces a crowdfunding prospectus exemption and registration framework for funding portals in Ontario and certain other jurisdictions

New capital raising prospectus exemptions

- ***Amendments to OSC Rule 45-501 Ontario Prospectus and Registration Exemptions published on November 27, 2015***
 - Introduced an existing security holder exemption in Ontario
 - Effective February 11, 2015
- ***Amendments to National Instrument 45-106 Prospectus Exemptions published on February 19, 2015***
 - Introduced the family, friends and business associates exemption in Ontario
 - Effective May 5, 2015

Amendments to existing prospectus exemptions

- ***Amendments to National Instrument 45-106 Prospectus Exemptions published on February 19, 2015***
- Amended the accredited investor prospectus exemption and minimum amount investment prospectus exemption
- Effective May 5, 2015



Offering memorandum exemption

Offering memorandum exemption

- Section 2.9 of NI 45-106
- Exemption applies to a distribution by an issuer in a security of its own issue to a purchaser
 - Purchaser purchases as principal
 - Delivery of offering memorandum
 - Signed risk acknowledgement form
- There are two primary models
 - BC model – no restriction on purchaser or investment size
 - ON model – investment limits for a purchaser
 - ON model – not available for investment funds
- Subject to Ministerial approval, it will come into effect on January 13, 2016

Key features of the offering memorandum exemption

| Element of exemption | Key features |
|----------------------------------|---|
| Issuer qualifications | <ul style="list-style-type: none">- Available to both reporting and non-reporting issuers- Not available to investment funds- No industry or other restrictions |
| Types of securities | <ul style="list-style-type: none">- Not available for distributions of specified derivatives and structured finance products |
| Offering parameters | <ul style="list-style-type: none">- No limit on size of offering or number of offerings- No restriction on length of time an offering can remain open |
| Registrant involvement | <ul style="list-style-type: none">- No prohibition on using registrants that are related to an issuer |
| Marketing and advertising | <ul style="list-style-type: none">- No new restrictions on advertising- Marketing materials incorporated into an offering memorandum and therefore subject to liability if misrepresentation |

Key features of the offering memorandum exemption

| Element of exemption | Key features |
|---|--|
| <p>Investor qualifications</p> | <ul style="list-style-type: none"> - Retained substantially the same definition of eligible investor: - Net assets, alone or with a spouse, in the case of an individual, exceed \$400,000 - Net income before taxes exceeded \$75,000 alone or \$125,000 with a spouse, in each of the two most recent calendar years and reasonably expects to exceed that level in current year |
| <p>Investment limits – acquisition cost of all securities acquired under OM exemption in the 12 month period</p> | <p><u>Individuals:</u></p> <ul style="list-style-type: none"> - Accredited investors and investors who qualify under family, friends and business associates exemption - no limits - Eligible investors - \$30,000 per year - Eligible investors who receive advice from an investment dealer, portfolio manager or exempt market dealer that the investment is suitable - up to \$100,000 per year - Non-eligible investors - \$10,000 per year <p><u>Non-individuals:</u></p> <ul style="list-style-type: none"> - No investment limits |

Key features of the offering memorandum exemption

| Element of exemption | Key features |
|----------------------------------|--|
| Risk acknowledgement form | <ul style="list-style-type: none"> - Current form to be completed by all investors – Form 45-106F4 - Two new schedules to be completed by individual investors to confirm investor status and investment limits |
| Point of sale disclosure | <ul style="list-style-type: none"> - Offering memorandum must be provided to investors - Subject to liability if misrepresentation |
| Cooling off period | <ul style="list-style-type: none"> - Investors have two business day right of withdrawal |
| Resale restrictions | <ul style="list-style-type: none"> - Subject to resale restrictions |
| Ongoing disclosure | <p><u>Reporting issuers:</u></p> <ul style="list-style-type: none"> - Subject to ongoing continuous disclosure obligations, such as annual financial statements, MD&A, material change report <p><u>Non-reporting issuers:</u></p> <ul style="list-style-type: none"> - Audited annual financial statements - Annual notice of use of proceeds – Form 45-106F16 - In Ontario, New Brunswick and Nova Scotia, a notice of specified key events – Form 45-106F17 |



Multilateral Instrument 45-108

Crowdfunding

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Multilateral Instrument 45-108 *Crowdfunding*

- Multilateral Instrument 45-108 *Crowdfunding* was published in final form on November 5, 2015 in Ontario, Manitoba, Québec, New Brunswick, and Nova Scotia
- Subject to Ministerial approval, it will come into effect on January 25, 2016
- The Financial Consumer Affairs Authority of Saskatchewan republished Multilateral Instrument 45-108 *Crowdfunding* on November 5, 2015 for a 60-day comment period

Key features of Multilateral Instrument 45-108 *Crowdfunding*

| Element of exemption | Key features |
|---------------------------------|---|
| Issuer qualification | <ul style="list-style-type: none"> - Entities incorporated/organized in, head office in, majority of directors resident in Canada - Reporting and non-reporting issuers - Not available to investment funds or blind pools |
| Types of securities | <ul style="list-style-type: none"> - Non-complex securities |
| Offering limit | <ul style="list-style-type: none"> - \$1.5M in a 12-month period per issuer group |
| Distribution period | <ul style="list-style-type: none"> - 90 days |
| Point of sale disclosure | <ul style="list-style-type: none"> - Offering document - Financial statements - Optional materials: term sheets, videos, other summaries |

Key features of Multilateral Instrument 45-108 *Crowdfunding*

| Elements of exemption | Key features |
|--|---|
| Investment limits | <p><u>Retail investor:</u></p> <ul style="list-style-type: none"> - \$2,500 per investment - In Ontario, \$10,000 in total in a calendar year <p><u>Accredited investors:</u></p> <ul style="list-style-type: none"> - \$25,000 per investment - In Ontario, \$50,000 in total in a calendar year <p><u>Permitted clients:</u></p> <ul style="list-style-type: none"> - In Ontario, no investment limits |
| Compliance with investment limits | <ul style="list-style-type: none"> - In Ontario, Form 45-108F3 <i>Confirmation of Investment Limits</i> - Validation by funding portals |
| Risk acknowledgement | <ul style="list-style-type: none"> - Prior to entering an online funding portal's platform - Prior to purchasing (Form 45-108F2 <i>Risk Acknowledgement</i>) |
| Cooling off period | <ul style="list-style-type: none"> - Investors have a two business day right of withdrawal |

Key features of Multilateral Instrument 45-108 *Crowdfunding*

| Elements of exemption | Key features |
|-------------------------------------|--|
| Ongoing disclosure | <p><u>Non-reporting issuers:</u></p> <ul style="list-style-type: none"> - Annual financial statements - Annual use of proceeds - In ON, NB, and NS, notice of specified key events <p><u>Reporting issuers:</u></p> <ul style="list-style-type: none"> - Reporting obligations under securities laws |
| Solicitation and advertising | <ul style="list-style-type: none"> - Prohibition on advertising and soliciting - Exception: <ul style="list-style-type: none"> - <u>Issuers:</u> <ul style="list-style-type: none"> - May only inform purchasers that it proposes to distribute securities under the crowdfunding prospectus exemption and direct purchasers to the funding portal - <u>Funding portals:</u> <ul style="list-style-type: none"> - Permitted to advertise its business operations - Prohibited from recommending or endorsing a particular issuer or distribution, including highlighting or showcasing an issuer or its distribution |
| Resale | <ul style="list-style-type: none"> - Subject to resale restrictions |

Key features of Multilateral Instrument 45-108 *Crowdfunding*

| Elements of exemption | Key features |
|--|--|
| Registration categories | <ul style="list-style-type: none"> - Restricted dealer - Exempt market dealer or investment dealer |
| Recommendation and advice | <p><u>Restricted dealers:</u></p> <ul style="list-style-type: none"> - Not permitted to provide a recommendation or advice <p><u>Investment dealers and exempt market dealers:</u></p> <ul style="list-style-type: none"> - Must comply with all of the requirements of their registration, including KYC, KYP and suitability |
| Obligations of the funding portal | <ul style="list-style-type: none"> - Conduct background checks on the issuer and its directors, officers and promoters - Review the offering document and other permitted materials - Deny access to the platform in certain circumstances |
| Prohibited activities | <ul style="list-style-type: none"> - No related issuers |
| Reporting requirements | <ul style="list-style-type: none"> - Termination of the distribution during the distribution period - Semi-annual reporting of certain information |



Family, friends and business associates exemption

Family, friends and business associates exemption

| Element of exemption | Key features |
|-----------------------------|---|
| Issuer of security | - Reporting issuers and non-reporting issuers but not investment funds |
| Purchaser | - Specified principals of the issuer, specified family members, close personal friends, close business associates |
| Type of security | - Not available for short-term securitized products |
| Seller | - Issuer or selling security holder |
| Other key conditions | - Rick acknowledgement form |
| Source | - Section 2.5 of NI 45-106 |

Family, friends and business associates exemption

- Allows reporting and non-reporting issuers (but not investment funds) to raise capital from investors who are principals of the business or within the personal networks of principals of the business
- Development of exemption
 - OSC expanded exempt market review – proposed adoption of a family, friends and business associates exemption
 - New exemption in Ontario – in force May 5, 2015
 - Developed exemption using existing model of exemption in other jurisdictions as starting point, but some differences
 - Intended to enable early stage businesses to raise capital

Family, friends and business associates exemption

- Risk acknowledgement form
- Further guidance on determining whether an investor qualifies as a close personal friend or close business associate
- Guidance explaining that in Ontario, the use of registrants, finders or advertising, as well as payment of commissions or fees to find purchasers is inconsistent with the exemption
- Subject to resale restrictions



Accredited investor exemption

Accredited investor exemption

| Element of exemption | Key features |
|-----------------------------|---|
| Issuer of security | - Any issuer (investment funds and non-investment funds, reporting issuers and non-reporting issuers) |
| Purchaser | - Accredited investors |
| Type of security | - Any security |
| Seller | - Any seller |
| Other key conditions | - Accredited investor must purchase as principal |
| Source | - Section 2.3 of NI 45-106 |

Accredited investor exemption

- Accredited investors include – individuals
 - Alone or with spouse certain net income (before taxes) in two most recent years
 - \$200,000 (alone)
 - \$300,000 (with spouse) OR
 - Alone or with spouse financial assets of at least \$1 million, net of related liabilities (excludes real estate)
 - Financial assets – generally liquid or easy to liquidate
 - Cash
 - Securities
 - Contract of insurance, deposit or evidence of deposit OR
 - Alone or with spouse net assets of at least \$5 million (includes real estate)

Accredited investor exemption

- Accredited investors include – non-individuals
 - Canadian federal or provincial governments, crown corporations or government agencies
 - Canadian municipalities
 - Foreign governments
 - Canadian financial institutions
 - Pension funds regulated by the Office of the Superintendent of Financial Institutions or pension commission of jurisdiction of Canada
 - Registered charities
 - Certain investment funds

Amendments to accredited investor exemption

- CSA review of accredited investor and minimum amount exemption
- Concerns with exemption
 - Investors may not understand the risks associated with the investment
 - Individuals may not qualify as accredited investors
- Amendments in force May 5, 2015

Amendments to accredited investor exemption

- No change to the income and asset thresholds in definition of accredited investor
- Require a risk acknowledgment form from individual accredited investors (other than permitted clients)
- Expanded companion policy guidance regarding verification of purchaser status
- Amendment to the accredited investor exemption in Ontario to permit fully managed accounts, where the adviser has a fiduciary relationship with the investor, to purchase any securities on an exempt basis, including investment fund securities
- Introduce family trusts as a new category of accredited investor

Amendments to accredited investor exemption

- Risk acknowledgment form for accredited investors
 - Only individual accredited investors described in paragraphs (j), (k) or (l) of the definition of accredited investor need to complete the form
 - Does not include permitted clients – defined in paragraph (j.1)
 - Describes key risks in plain language and requires investor to acknowledge each risk
 - Investor must confirm which category of individual accredited investor he or she qualifies under

Amendments to companion policy guidance

- Expanded companion policy guidance on the steps sellers could take to verify the status of purchasers who acquire securities under certain prospectus exemptions
- Exemptions based on purchaser characteristics
 - Seller must obtain information from the purchaser to determine whether the purchaser meets the applicable test
 - Not sufficient for a seller to accept standard representations in a subscription agreement or an initial beside a category of accredited investor in the risk acknowledgment form

Amendments to companion policy guidance

- Key elements of “reasonable steps” include:
 - Understand the terms and conditions of the exemption
 - Establish appropriate policies and procedures
 - Confirm all parties acting on seller’s behalf understand the conditions of the exemption
 - Verify the purchaser meets the criteria of the exemption
 - Obtain information to confirm purchaser meets criteria
 - If any concerns, make further inquiries and/or request independent documentation
 - Keep relevant and detailed documentation



Minimum amount investment exemption

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Minimum amount investment exemption

| Element of exemption | Key features |
|-----------------------------|--|
| Issuer of security | - Any issuer (investment funds and non-investment funds, reporting issuers and non-reporting issuers) |
| Purchaser | - Non-individual investors only |
| Type of security | - Any security |
| Seller | - Any seller |
| Other key conditions | - Purchaser purchases as principal - Acquisition cost of security is at least \$150,000 - Must be paid in cash at time of distribution |
| Source | - Section 2.10 of NI 45-106 |

Amendments to minimum amount investment exemption

- CSA review of accredited investor and minimum amount exemption
- Amendments effective May 5, 2015
- Amendments limit the sale of securities under the exemption to non-individual purchasers
- Concerns with this exemption:
 - Requires a significant investment of \$150,000 to meet the terms of the exemption
 - Individuals may over concentrate their securities holdings in one investment
 - \$150,000 purchase amount is not an adequate proxy for investor sophistication



Existing security holder exemption

Existing security holder exemption

| Element of exemption | Key features |
|-----------------------------|--|
| Issuer of security | <ul style="list-style-type: none"> - Reporting issuers (excluding investment funds) listed on specified exchanges |
| Purchaser | <ul style="list-style-type: none"> - Existing security holders of the issuer |
| Type of security | <ul style="list-style-type: none"> - Can only consist of a class of equity securities already listed on a specified exchange or units of the listed security and a warrant to acquire the listed security |
| Seller | <ul style="list-style-type: none"> - The listed reporting issuer |
| Other key conditions | <ul style="list-style-type: none"> - Offer must be made to all security holders - 100% dilution limit per offering - Investment limit of \$15,000 per investor in any 12 month period unless suitability advice is obtained from an investment dealer |
| Source | <ul style="list-style-type: none"> - Section 2.9 of OSC Rule 45-501 |

Existing security holder exemption

- Effective February 11, 2015
- Substantially harmonized across CSA
- Allows listed public companies to raise capital on a cost effective basis from existing investors in reliance on public disclosure record

Existing security holder exemption

- Disclosure
 - Issuer must issue a news release describing the proposed distribution and use of proceeds in reasonable detail
 - No prescribed form of point of sale disclosure but materials must be filed on SEDAR
- Investment limit of \$15,000 in the previous 12 months; can exceed if suitability advice obtained from a registered investment dealer
- Allows an increase of up to 100% in the number of outstanding securities of the same class

Existing security holder exemption

- Offer to security holders
 - Only available to security holders who held the listed security as at the record date
 - Duration of offer not prescribed
 - No requirement to allocate securities on a pro rata basis
- Secondary market civil liability applies to securities acquired under the exemption
- Subject to resale restrictions



Reports of exempt distribution

Reports of exempt distribution

- Form – Part 6 of NI 45-106
 - Form 45-106F1
 - Form 45-106F6 (BC only)
 - Timing
 - 10 days after distribution
 - Investment funds can file annually for distributions under certain prospectus exemptions
 - Exemptions triggering reporting requirement include
 - Accredited investor
 - Family, friends and business associates
 - Offering memorandum
 - Minimum amount investment
 - Existing security holder
 - E-form for 45-106F1
 - Mandatory electronic filing began February 19, 2014
-

Reports of exempt distribution

- CSA initiative currently underway to develop new report
 - Tailored to type of issuer
 - Investment funds
 - Non-investment fund issuers
 - Contemplate additional disclosure items
- Objectives:
 - Reduce the compliance burden for issuers and underwriters by having a harmonized report of exempt distribution
 - Provide regulators with information necessary to more effectively oversee the exempt market and develop policy
- Proposed harmonized report of exempt distribution published for 60 day comment period on August 13, 2015
- Comment period ended on October 13, 2015 – received 18 comment letters



Compliance and oversight

Compliance and oversight

- OSC developing a compliance and oversight program to monitor distributions under the new capital raising prospectus exemptions
- Program will have three main elements
 - Assessing compliance
 - Enhancing awareness
 - Data gathering
- Assessing Compliance
 - Investment limits
 - Risk acknowledgement form
 - Due diligence
 - Staff training
 - Offering documents- disclosure to investors



Questions?

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