



Raising Capital

A primer for small and medium-sized enterprises (SMEs)

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Welcome and Introduction to the OSC SME Institute

Objectives

Our goal is to:

- Help SMEs navigate the regulatory waters
- Demystify disclosure requirements so companies can focus on building their business
- Reduce SMEs' cost of compliance so that this money can be better spent on strategic initiatives
- Provide an opportunity for informal dialogue with OSC staff



The Regulatory Landscape in Canada

The Regulatory Landscape in Canada

- Securities regulatory authorities
- OSC Corporate Finance Branch
- OSC Compliance and Registrant Regulation Branch

Securities Regulatory Authorities

- In Canada, securities regulation is a provincial and territorial responsibility
- Each jurisdiction of Canada has its own Securities Act and securities regulatory authority (e.g., Ontario Securities Commission)
- The securities regulatory authorities are members of the Canadian Securities Administrators (CSA)
- CSA assists in coordinating what securities regulatory authorities do

Securities Regulatory Authorities (cont'd)

- Rules adopted by all jurisdictions are called “national instruments”
 - National instruments have forms (national instruments and forms have the force of law)
 - National instruments also have companion policies (which provide guidance on how the national instrument should be interpreted, but do not have the force of law)
- Copies of national instruments, forms and companion policies that apply in Ontario are available on the OSC website at **www.osc.gov.on.ca**

The OSC Corporate Finance (CF) Branch

- Branch of OSC that administers rules applicable to public companies and their insiders
- Disclosure of material information that investors and other market participants need to make informed investment decisions
- Continuous disclosure filings and prospectuses
- Applications for exemptive relief from legislative requirements
- Matters relating to reports of exempt distributions, insider reports, early warning reports and take-over bids
- Requirements related to securities offered under a prospectus exemption

The OSC Compliance and Registrant Regulation (CRR) Branch

- Branch is responsible for reviewing and licensing firms and individuals and monitors ongoing compliance
- Applications for registration and changes to registration of firms and individuals
- Conducts on-site compliance reviews and focused compliance reviews
- Applications for exemptive relief from registration and other regulatory requirements



Key Principles of Securities Regulation

The Prospectus Requirement

- If you are selling securities to an investor in a “distribution”, you must do so under a prospectus unless an exemption from the prospectus requirement is available
 - Section 53 Securities Act – prospectus requirement
 - Some prospectus exemptions found in Securities Act
 - National Instrument 45-106 *Prospectus Exemptions*
- A prospectus is a key investor protection tool
 - Provides investors with important information about the company and the securities being offered
 - Disclosure should help investors evaluate the prospectus and risks of the company so they can make an informed investment decision

Key Concepts

- Security
- Trade
- Distribution
- Registration requirement
- Reporting issuer
- Relevant definitions in section 1(1) of the Securities Act (Ontario)

What is a Security?

- A “Security” includes:
 - Common and preferred shares
 - Bonds, debentures, notes and other evidences of indebtedness
 - Rights, subscription receipts, warrants and options
 - Investment contracts
 - Inclusive definition that is purposely broad, flexible, with focus on substance over form to protect purchasers

What is a Trade?

- A “Trade” includes:
 - Sale or disposition of security for valuable consideration
 - Any receipt by a registrant of an order to buy or sell a security
 - Any act, advertisement, solicitation, conduct or negotiations directly or indirectly in furtherance of a trade (pre-sale activities)

What is a Distribution?

- A “Distribution” includes:
 - A trade in securities of an issuer that have not previously been issued
 - A trade in previously issued securities of an issuer by a control person
 - A trade in securities by investors who acquired those securities in reliance on certain prospectus exemptions
- A trade that is a distribution requires the purchaser to be provided with a prospectus, unless an exemption is available
- Deemed distribution on resale of securities issued under prospectus exemption unless resale rules complied with

Registration Requirement

- Registration requirement
 - Must be registered to engage in the business of trading
 - OSA section 25
 - National Instrument 31-103 *Registration requirements, exemptions and ongoing registrant obligations*
 - “In the business”
 - Is the activity for a business purpose?
 - Engaging in activities similar to a registrant
 - Intermediating trades or acting as a market maker
 - Directly or indirectly carrying on the activity with repetition, regularity or continuity
 - Being or expecting to be, remunerated or compensated
 - Directly or indirectly soliciting purchasers

Registration Requirement (cont'd)

- Entity that issues its own securities may have to register as a dealer
 - Frequently trades in securities
 - Employs or contracts with individuals to perform activities on its behalf that are similar to those performed by a registrant
 - Solicits investors actively
- In general, securities issuers with an active non-securities business do not have to register if they
 - Do not hold themselves out as being in the business of trading
 - Trade securities infrequently
 - Are not compensated for trading
 - Do not produce a profit from trading

The Overall Framework Revisited

- General requirement – no distribution of securities without a prospectus
 - Prospectus is filed and receipted by the securities regulators
 - Sales can be made to anyone
 - Issuer becomes a “reporting issuer” (“public company”)
- Exemption from prospectus requirement
 - Referred to as “exempt market”
 - Issuing securities where no prospectus required
 - Sales can only be made to certain investors – depending on the limits in the exemption being relied on
 - Available to both reporting and non-reporting (private) issuers



Sales of Securities Without a Prospectus

Sales of Securities Without a Prospectus

- Exempt distributions
- Background on the exempt market
- Rationale for exemptions
- Exempt market review
- New capital raising prospectus exemptions and amendments to existing exemptions
- Commonly used exemptions for capital raising
- Reports of exempt distributions
- Resale restrictions

Exempt Distributions

- Sale of securities without a prospectus
- Saves time and cost
- Avoids public company (“reporting issuer”) responsibilities
- Several different exemptions available
- National Instrument 45-106 *Prospectus and Registration Exemptions*
- Ontario Securities Act

Background on the Exempt Market

- Size of the exempt market in Ontario
 - The exempt market in Canada has become increasingly important for investors and issuers
 - In 2014, issuers raised a total of \$121 billion through prospectus exempt distributions in Ontario
 - Approximately 67% or \$80 billion of this total represented gross flows to investment companies and funds
 - The remaining \$41 billion represented capital raised by non-investment fund issuers
 - The accredited investor exemption was the most widely used prospectus exemption in Ontario
 - In 2014 it represented 92% of the capital raised

Background on the Exempt Market (cont'd)

- Does not mean unregulated market
 - NI 45-106 specifies to whom securities can be sold and/or under what circumstances
 - Require some of the transactions in this market to be reported to us so that we can monitor compliance
 - NI 31-103 sets out registration requirements for those selling or advising in securities

Rationale for Exemptions

- Idea that there is a reason in each case that full disclosure in a prospectus is not necessary
- Balancing capital raising with investor protection

Rationale for Exemptions (cont'd)

- Nature of investor
 - Certain level of sophistication
 - Ability to withstand financial loss
 - Financial resources to obtain expert advice
- Nature of security
 - Lower risk profile associated with security
- Alignment of economic interests
 - e.g. between employees and employers
- Alternative disclosure regime
 - e.g. offering memorandum
- Regulation under another regime

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

New Capital Raising Prospectus Exemptions

Amendments to National Instrument 45-106 *Prospectus Exemptions* published on October 29, 2015

- Introduced an offering memorandum prospectus exemption in Ontario and amends the existing offering memorandum exemption in certain other jurisdictions
- Effective January 13, 2016

Multilateral Instrument 45-108 *Crowdfunding* published on November 5, 2015

- Introduced a crowdfunding prospectus exemption and registration framework for funding portals in Ontario and certain other jurisdictions
- Effective January 25, 2016

New Capital Raising Prospectus Exemptions (cont'd)

Amendments to OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions* published on November 27, 2014

- 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

Amendments to National Instrument 45-106 *Prospectus Exemptions* published on September 24, 2015

- Amended the rights offering prospectus exemption
- Effective December 8, 2015

Commonly Used Exemptions for Capital Raising

Exemption	Available in Ontario	Available in Other Canada Jurisdictions	Reporting Requirements
Private issuer	Yes	Yes	No
Family, friends and business associates	Yes, as of May 5, 2015	Yes	Yes
Accredited investor	Yes	Yes	Yes
Minimum amount	Yes	Yes	Yes
Rights offering	Amended rights offering regime effective Dec. 8, 2015	Yes	Alternative disclosure in circular must be filed
Existing security holder	Yes, as of Feb 11, 2015	Yes	Yes
Securities for debt	Yes	Yes	Yes
Offering memorandum	Yes, as of Jan 13, 2016	Yes	Yes
Crowdfunding	Yes, as of Jan 25, 2016	Yes (MB, QC, NB, NS)	Yes

Private Issuer Exemption

Element of Exemption	Key Features
Issuer of security	<ul style="list-style-type: none">• “Private issuer”<ul style="list-style-type: none">• Maximum 50 securityholders (excluding employees)
Purchaser	<ul style="list-style-type: none">• Certain specific persons
Type of security	<ul style="list-style-type: none">• Any security
Seller	<ul style="list-style-type: none">• Any seller (issuer or one of specified persons)
Other key conditions	<ul style="list-style-type: none">• Purchaser purchases as principal
Source	<ul style="list-style-type: none">• Section 2.4 of NI 45-106

Private Issuer Exemption (cont'd)

- Private issuer security holders include:
 - Director, officer, employee, founder or control person of issuer
 - Director, officer or employee of affiliate of issuer
 - Certain relatives of director, executive officer, founder or control person and certain relatives of spouse of director, executive officer, founder or control person
 - Close personal friend or close business associate of director, executive officer, founder or control person
 - Existing security holder of the issuer
 - Accredited investor
 - A person that is not the public

Family, Friends and Business Associates Exemption

Element of Exemption	Key Features
Issuer of security	<ul style="list-style-type: none">• Reporting issuers and non-reporting issuers but not investment funds
Purchaser	<ul style="list-style-type: none">• Specified principals of the issuer, specified family members, close personal friends, close business associates
Type of security	<ul style="list-style-type: none">• Not available for short-term securitized products
Seller	<ul style="list-style-type: none">• Issuer or selling security holder
Other key conditions	<ul style="list-style-type: none">• Risk acknowledgement form
Source	<ul style="list-style-type: none">• Section 2.5 of NI 45-106

Family, Friends and Business Associates Exemption (cont'd)

- 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 (cont'd)

- 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

Element of Exemption	Key Features
Issuer of security	<ul style="list-style-type: none">Any issuer (investment funds and non-investment funds, reporting issuers and non-reporting issuers)
Purchaser	<ul style="list-style-type: none">Accredited investors
Type of security	<ul style="list-style-type: none">Any security
Seller	<ul style="list-style-type: none">Any seller
Other key conditions	<ul style="list-style-type: none">Accredited investor must purchase as principalRisk acknowledgment form for individuals
Source	<ul style="list-style-type: none">Section 2.3 of NI 45-106

Accredited Investor Exemption (cont'd)

- 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 (cont'd)

- 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

Accredited Investor Exemption (cont'd)

- Individuals qualifying for the accredited investor income threshold are a small minority
- Available data suggests that persons with income at or above \$200,000 account for approximately:
 - 1.3% of tax filers in Ontario
 - 1.1% of tax filers across Canada
 - (Source: Statistics Canada)

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 (cont'd)

- 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 (cont'd)

- 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

Minimum Amount Investment Exemption

Element of Exemption	Key Features
Issuer of security	<ul style="list-style-type: none">Any issuer (investment funds and non-investment funds, reporting issuers and non-reporting issuers)
Purchaser	<ul style="list-style-type: none">Non-individual investors only
Type of security	<ul style="list-style-type: none">Any security
Seller	<ul style="list-style-type: none">Any seller
Other key conditions	<ul style="list-style-type: none">Purchaser purchases and principalAcquisition cost of security is at least \$150,000Must be paid in cash at time of distribution
Source	<ul style="list-style-type: none">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

Rights Offering Exemption

Element of Exemption	Key Features
Issuer of security	<ul style="list-style-type: none">• Reporting issuers
Purchaser	<ul style="list-style-type: none">• Rights are distributed to each security holder on a pro rata basis• Rights holders may exercise their right to acquire the security
Type of security	<ul style="list-style-type: none">• Right granted by the issuer to purchase a security of its own issue
Seller	<ul style="list-style-type: none">• Issuer of the right
Other key conditions	<ul style="list-style-type: none">• Prescribed disclosure in notice and circular• 100% dilution limit• Addition of statutory secondary market civil liability• Pro-rata offer to existing security holders
Source	<ul style="list-style-type: none">• Section 2.1 of NI 45-106

Amendments to Rights Offering Exemption

- Final amendments published by CSA on September 24, 2015
- The amendments came into force on December 8, 2015
- Reduced time and cost in conducting a rights offering
- Address investor protection concerns as well as concerns regarding compliance
- Key changes:
 - Remove the CSA's review of a rights offering prior to the use of the exemption
 - Increase the dilution limit from 25% to 100%
 - Introduce of a new notice and streamlined requirements for the circular
 - Introduce secondary market civil liability for securities acquired under a rights offering

Rights Offering Exemption

Process

- Issuer files and sends notice to all security holders, summarizing key terms of the offering
- Issuer files circular
- Issuer must comply with requirements of section 2.1 of NI 45-106

Rights Offering Exemption (cont'd)

Key Disclosure to be provided to security holders

- Introduce a new notice summarizing key terms of the offering and mailed to security holders in lieu of the circular
- Streamline the disclosure requirements of the circular to be posted on SEDAR
- Focus of disclosure
 - Description of use of proceeds,
 - Various thresholds of use of proceeds, and
 - Liquidity for issuers in poor financial condition

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 specific 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 NI 45-501

Existing Security Holder Exemption (cont'd)

- 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 (cont'd)

- 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 (cont'd)

- 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
 - Minimum subscription amount
- Secondary market civil liability applies to securities acquired under the exemption
- Subject to resale restrictions

Existing Security Holder Exemption and Rights Offerings - Compared

- Eligible investors
 - Only existing security holders may participate in the existing security holder exemption. In a rights offering, rights may be traded on the secondary market to a new security holder who may exercise the right to acquire securities of the company.
 - Investors are not subject to an annual investment limit under a rights offering
- Pro-rata allocation
 - Pro rata allocation of securities is required under the Rights Offering Exemption
- Prescribed document
 - No prescribed document for Existing Security Holder Exemption
- Offer period
 - No prescribed offer period for Existing Security Holder Exemption
 - Minimum two day exercise period for Rights Offering Exemption
- Resale restrictions
 - Securities distributed under the Existing Security Holder Exemption are subject to a four month resale hold period

Securities for Debt

- Prospectus requirement does not apply to:
 - A trade/distribution
 - By a reporting issuer
 - In a security of the issuer
 - To a creditor
 - To settle a bona fide debt of the issuer
 - Section 2.14 of NI 45-106

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
- Came into effect in Ontario on January 13, 2015

Offering Memorandum Exemption (cont'd)

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
Type of securities	<ul style="list-style-type: none">• Not available for distributions of specified derivatives and structures 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 registrant that are related to an issuer
Marketing and advertising	<ul style="list-style-type: none">• No new restrictions on advertising• Marketing materials incorporate into an offering memorandum and therefore subject to liability if misrepresentation

Offering Memorandum Exemption (cont'd)

Element of Exemption	Key Features
Investor qualifications	<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
Investment limits — acquisition cost of all securities acquired under OM exemption in a 12 month period	<p>Individuals:</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>Non-individuals:</p> <ul style="list-style-type: none"> No investment limits

Offering Memorandum Exemption (cont'd)

Element of Exemption	Key Features
Risk acknowledgment 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>Reporting issuers:</p> <ul style="list-style-type: none"> • Subject to ongoing continuous disclosure obligations, such as annual financial statements, MD&A, material change report <p>Non-reporting issuers:</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

Crowdfunding Exemption

- Multilateral Instrument 45-108 published in final form on November 5, 2015 in Ontario, Manitoba, Québec, New Brunswick, and Nova Scotia, and comes into effect on January 25, 2016.
- Saskatchewan republished MI 45-108 on November 5, 2015 for a 60-day comment period.
- What is crowdfunding?
- Method of funding a project or venture through amounts of money raised from members of the public over the internet via an online portal
- Different crowdfunding models
 - Donation model
 - Reward model
 - Pre-purchase model
 - Peer-to-peer lending model
 - Equity securities model
- Focus is on crowdfunding involving a distribution of securities to the public
- MI 45-108 includes crowdfunding prospectus exemption and a registration framework for funding portals

Crowdfunding Exemption (cont'd)

Element of Exemption	Key Features
Issuer qualifications	<p>General:</p> <ul style="list-style-type: none"> • Available to both reporting and non-reporting issuers • Not available to investment funds • Not available to blind pools <p>Nexus to Canada:</p> <ul style="list-style-type: none"> • Incorporated/organized in, head office in, majority of directors resident in Canada • Principal operating subsidiary, if any, incorporated/organized in Canada or the U.S.
Type of securities	<ul style="list-style-type: none"> • Only available for distributions of specified non-complex securities <ul style="list-style-type: none"> • Common shares • Non-convertible preference shares • Securities convertible into common shares or non-convertible preference shares • Non-convertible debt securities linked to an interest rate • Units of a limited partnership • Flow-through shares under the Income Tax Act (Canada)

Crowdfunding Exemption (cont'd)

Element of Exemption	Key Features
Offering parameters	<ul style="list-style-type: none"> • Issuer group cannot raise more than \$1.5 million under exemption in a rolling 12 month period • Distribution cannot remain open longer than 90 days
Sufficient proceeds	<ul style="list-style-type: none"> • Distribution cannot be completed unless sufficient proceeds have been raised to accomplish issuer's business objectives • Includes proceeds from distribution and any concurrent distribution(s) by issuer group • Can distribute securities under other prospectus exemptions with different price, terms and conditions
Solicitation and advertising	<ul style="list-style-type: none"> • Prohibition on advertising and soliciting • Exceptions: <ul style="list-style-type: none"> • Issuer: <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 • Funding portal: <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

Crowdfunding Exemption(cont'd)

Element of Exemption	Key Features
Investment limits	<p>Retail investor:</p> <ul style="list-style-type: none"> • \$2,500 per investment • In Ontario, \$10,000 in total in a calendar year <p>Accredited investor:</p> <ul style="list-style-type: none"> • \$25,000 per investment • In Ontario, \$50,000 in total in a calendar year <p>Permitted client:</p> <ul style="list-style-type: none"> • In Ontario, no investment limits • In Ontario, Form 45-108F3 <i>Confirmation of Investment Limits</i> • Validation by funding portal
Risk acknowledgment	<ul style="list-style-type: none"> • Prior to entering online funding portal's platform • Prior to purchasing (Form 45-108F2 <i>Risk Acknowledgement</i>)
Resale restrictions	<ul style="list-style-type: none"> • Subject to resale restrictions

Crowdfunding Exemption (cont'd)

Element of Exemption	Key Features
Cooling off period	<ul style="list-style-type: none"> Investors have 48 hours after date of purchase agreement to withdraw
Point of sale disclosure	<ul style="list-style-type: none"> Crowdfunding offering document in Form 45-108F1 must be provided to investors <ul style="list-style-type: none"> must be accompanied by financial statements Term sheets, videos and other summaries can also be made available Subject to liability <ul style="list-style-type: none"> Non-reporting issuers – untrue statement of a material fact Reporting issuers - misrepresentation
Ongoing disclosure	<p>Non-reporting issuers:</p> <ul style="list-style-type: none"> Annual financial statements with scaled attestation requirements Annual disclosure of use of proceeds In ON, NB, and NS, notice of specified key events <p>Reporting issuers:</p> <ul style="list-style-type: none"> Continuous disclosure obligations under securities laws

Crowdfunding Exemption (cont'd)

Element of Exemption	Key Features
Registration	<ul style="list-style-type: none"> • Restricted dealer • Exempt market dealer or investment dealer
Obligation 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
Recommendation and advice	<p>Restricted dealers:</p> <ul style="list-style-type: none"> • Not permitted to provide a recommendation or advice <p>Investment dealers and exempt market dealers:</p> <ul style="list-style-type: none"> • Must comply with all of the requirements of their registration, including KYC, KYP and suitability
Prohibited activities	<ul style="list-style-type: none"> • Cannot distribute securities of related issuer • Cannot advertise or solicit (may advertise its business operations)

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

Reports of Exempt Distributions

- 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
- E-form for 45-106F1
 - Mandatory electronic filing began February 19, 2014

Resale Restrictions

- There are resale restrictions on securities sold under an exemption
 - In addition to restrictions on share transfers to qualify as a private issuer
- Rules complex and fact specific
 - Prescribed in NI 45-102 *Resale of Securities*



Common Methods of Going Public

Common Methods of Going Public

- Initial public offering
- Reverse take-over
- TSXV capital pool program

Initial Public Offering

- Traditional method of going public
- Involves preparation and regulatory clearance of prospectus
 - Prospectus provides material information about company and securities being distributed
- Advantage — facilitates broad distribution
- Disadvantage — cost and time considerations

Reverse Take-over

- Also known as reverse merger or back door listing
- Public company acquires private company
 - Public company is generally a “shell company” (has no active business but has public shareholders)
 - Private company has an active business
 - Can be effected through merger, asset purchase or share purchase
 - Private company becomes subsidiary of public company (or its assets vended to public company)
 - Shareholders of private company become majority shareholders of public company

Reverse Take-over (cont'd)

- Generally subject to approval of public company shareholders
 - Requires preparation of management information circular, proxy materials and shareholder meeting
 - Generally require prospectus level disclosure in circular for public company, private company and resulting company

Reverse Take-over (cont'd)

- Advantages
 - Most beneficial where private company's management and/or assets attractive and no financing required
 - Public company may bring management skills, relationships and/or assets
 - Can facilitate listing without financing
 - Pre-existing shareholder base of public company to satisfy exchange distribution requirements and help facilitate future financings

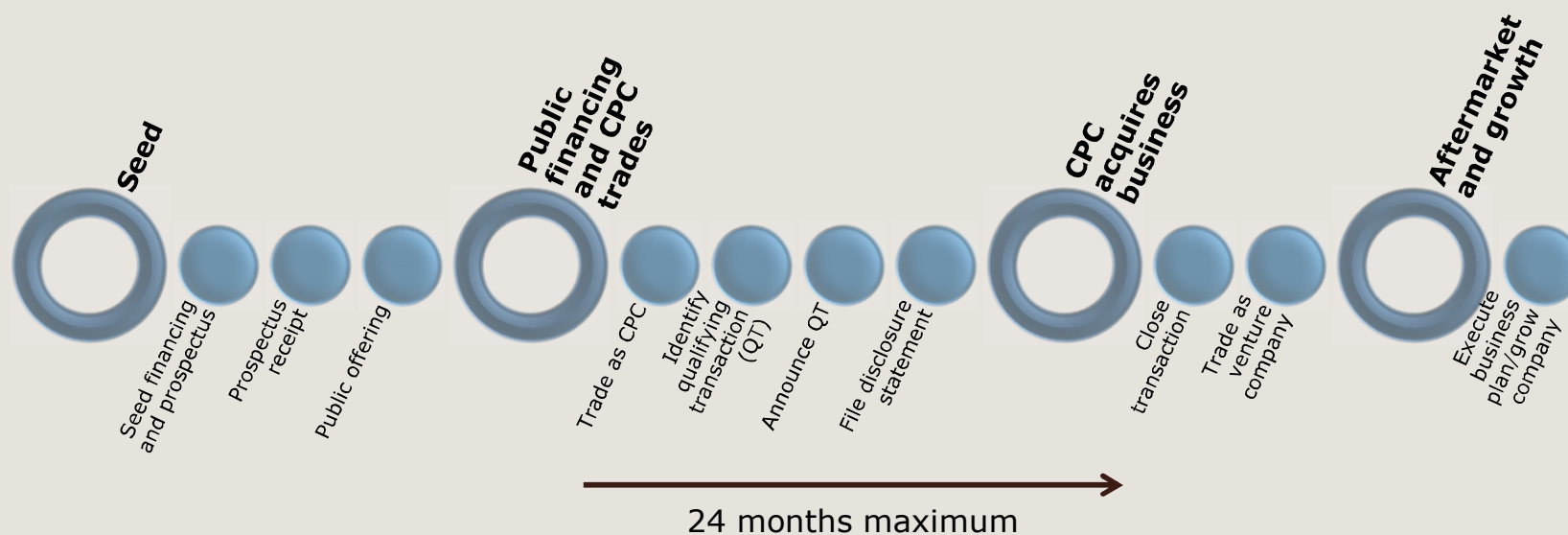
Reverse Take-over (cont'd)

- Varying views re costs compared to IPO
- Costs include:
 - Purchase price of public company
 - Due diligence
 - Preparation of management information circular, proxy materials and shareholder meeting
 - Dealing with pre-existing brand and name of public company
 - Potential downward pressure on share price of resulting company due to sales by disinterested public company shareholders

TSXV Capital Pool Program

- Capital pool company (CPC) with no assets other than cash from seed round financing and no operations conducts IPO and becomes listed on TSXV
- CPC must identify appropriate business as its “qualifying transaction” within 24 months of listing
- CPC must then prepare and file filing statement or information circular with TSXV
 - Prospectus level disclosure required for CPC, private company and resulting issuer
 - Shareholder approval not required by TSXV for arm’s length QT
 - Resulting company must qualify for TSXV listing
- More information available at:
 - http://www.tmx.com/en/listings/listing_with_us/ways/capital_company.html

TSXV Capital Pool Program (cont'd)



Slide provided by TSX Venture Exchange

TSXV Capital Pool Program (cont'd)

Protections Included in the CPC Program

- Only permitted business of CPC is identification and evaluation of potential QT
- Majority of minority shareholder approval required for non-arm's length QT
- Suitability requirements for CPC board
- Seed capital
 - Prescribed minimum amount of seed capital must be contributed by officers and directors
 - Prescribed maximum amount of seed capital
 - Prescribed minimum seed share issuance price that is relative to IPO share issuance price
- Proceeds from sale of securities of CPC may only be spent on identification and evaluation of potential QT
 - Prescribed limits on non-arm's length payments; investor relations activities; and administration and related expenses

TSXV Capital Pool Program (cont'd)

Protections Included in the CPC Program

- Limits on agent's compensation – commissions, shares and options
- Limits on incentive stock options
- Escrow applies to:
 - Seed shares issued at a price lower than IPO price
 - Shares which are owned directly or indirectly by non arm's length parties
 - Seed shares purchased by members of the Pro Group (brokers)
- TSXV listing review process

TSXV Capital Pool Program (cont'd)

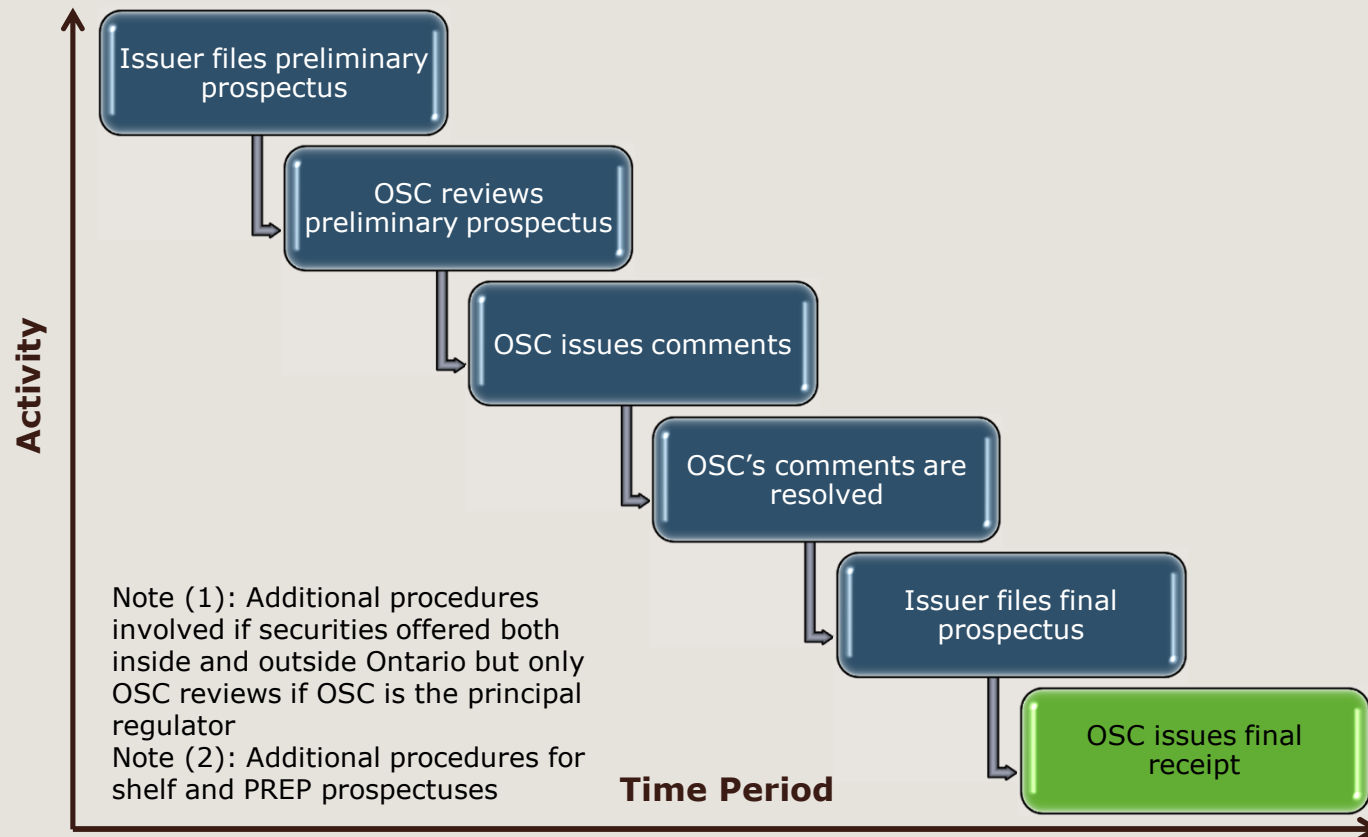
- Same general advantages and disadvantages as reverse take-over, except:
 - Advantages
 - Little due diligence required on CPC since recently created special purpose vehicle
 - Well established program with defined parameters facilitates regulatory review
 - Can be completed more quickly than conventional reverse take-over if structured so that CPC shareholder approval not required
 - Disadvantage
 - Low stock price in seed round financing and IPO may result in shareholders taking their profit and selling ASAP following the qualifying transaction
 - Concern mitigated by escrow provisions

Initial Public Offering (IPO)

- Conducting the IPO
- Regulatory Issues
- Venture Issuer Amendments
- Outcomes of Prospectus Reviews
- Dealing with the OSC

Conducting the IPO

General sequence of events



Regulatory Issues

- Quality of prospectus disclosure
- Offering structure and size
- Financial statements
- Management's discussion and analysis
- Escrow
- Cheap shares
- Additional requirements for mining companies

Regulatory Issues

Quality of prospectus disclosure

- Meets requirements of relevant prospectus form
 - Company's business, securities being offered and use of proceeds
- Balanced discussion
- Covers material information
- Internally consistent
- Uses plain language

Regulatory Issues

Offering structure and size

- Must have sufficient proceeds to accomplish purpose of issue following prospectus offering
- Must be able to continue operations for a reasonable period of time
- Director must refuse a receipt under s. 61 of the Act if
 - s. 61(2)(c) - insufficient proceeds to accomplish purpose of issue
 - S. 61(1) of Act – not in the public interest
- Guidance published in CSA Staff Notice 41-307 Concerns Regarding an Issuer's Financial Condition and the Sufficiency of Proceeds from a Prospectus Offering
- Concerns may be addressed by underwriting or minimum best efforts offering
- Broad enough distribution and public float to meet stock exchange original listing requirements

Regulatory Issues

Financial statements

- In general, an issuer's prospectus must include the following:

Annual:

For the three most recent annual periods:

- Statement of comprehensive income
- Statement of changes in equity
- Statement of cash flows

For the two most recent annual periods:

- Statement of financial position

Interim:

- Comparative interim financial report for most recent interim period (subsequent to most recent financial year end).

- In cases of a reverse take-over transaction or other transactions, must know who the issuer is
- Requirements set out in item 32 of Form 41-101F1

Regulatory Issues

Financial statements (cont'd)

- Financial statements also required for any significant or probable business acquisitions
- Generally, the same financial disclosure requirements as required by NI 51-102, Part 8 – Business Acquisition Reports
 - Two years of financial statements
 - Most recent year audited
 - Interim financial statements if necessary
 - Pro-forma financial statements
- Requirements set out in item 35 of Form 41-101F1

Regulatory Issues

Management Discussion & Analysis

- MD&A relating to most recent annual and interim financial statements must be included in the prospectus
- Must be reviewed/approved by issuer's audit committee/board of directors
- Requirements set out in item 8 of Form 41-101F1
 - Generally the same as Form 51-102 F1

Regulatory Issues

Management Discussion & Analysis (cont'd)

- MD&A is a narrative explanation “through the eyes of management” which:
 - Provides a balanced discussion of company’s results, financial condition and future prospects – openly reporting bad news as well as good news
 - Helps current and prospective investors understand what the financial statements show and do not show
 - Discusses trends and risks that have affected or are reasonably likely to affect the financial statements in the future
 - Provides information about the quality and potential variability of company’s earnings and cash flow

Regulatory Issues

Management Discussion & Analysis (cont'd)

Area	Common Deficiencies
Discussion of operations	<ul style="list-style-type: none">• Disclosure simply repeats differences in the financial statements without explanation of why changes occurred• Few details on the performance by business segments or lines of business
Liquidity and capital resources	<ul style="list-style-type: none">• Incomplete working capital discussion• Unclear disclosure of liquidity needs and how funded• Going concern uncertainty in financial statements unaccompanied by MD&A discussion
Related party transactions	<ul style="list-style-type: none">• Discloses the relationship or position of the related party but not their identity• Specific business purpose of transaction not disclosed
Risk disclosure	<ul style="list-style-type: none">• Laundry list of risks – no detail or discussion included on impact on business• Irrelevant risks – not relevant to entity's business or circumstances• Unclear discussion of how risks are managed

Regulatory Issues

Management Discussion & Analysis (cont'd)

- OSC Staff Notice 51-722 *Report on a Review of Mining Issuers' Management's Discussion and Analysis and Guidance Report on a Review of Mining Issuers' Management's Discussion and Analysis and Guidance* (published February 6, 2014)
 - is meant to be an educational tool to assist issuers in complying with their MD&A disclosure obligations
 - summarizes the results of a review conducted by OSC staff
 - identifies areas for improvement
 - provides concrete examples on how issuers can present their information in a relevant and meaningful manner

Regulatory Issues

Management Discussion & Analysis (cont'd)

- We identified specific areas for improvement:
 - venture issuers without significant revenue from operations did not provide the breakdown of material components of exploration and evaluation (E&E) assets or expenditures
 - issuers with exploration projects did not discuss and itemize their exploration expenditures
 - issuers with a working capital deficiency provided very general discussion or no discussion about potential sources of financing and how they plan on continuing operations
 - issuers did not appropriately disclose the identity of the party involved in the related party transaction

Regulatory Issues

Escrow

- Escrow policy set out in NP 46-201 *Escrow for Initial Public Offerings*
- Purpose to tie principals to issuer for a period following IPO to carry out plans described in prospectus
 - Issues associated with cheap shares left to management, underwriters and stock exchanges
- “Principals” includes senior officers, directors, promoters and large shareholders
- Share releases
 - Over 18 months for TSX issuers and TSXV Tier 1 issuers (“established issuer”)
 - Over 36 months for smaller issuers (“emerging issuer”)

Regulatory Issues

Cheap shares

- Concern where large number of shares issued for nominal consideration prior to IPO, particularly if
 - Business has limited history of operations
 - Small IPO financing
- Two concerns
 - Can be used for market manipulation
 - IPO investors receive disproportionately low percentage of ownership compared to percentage of capital they invest in IPO

Regulatory Issues

Cheap shares (cont'd)

- Guidance provided in CSA Staff Notice 41-305 Share Structure Issues – Initial Public Offerings
 - Considers qualitative and quantitative factors
 - We may object to share structure in certain circumstances
 - Staff Notice not meant to provide certainty in every scenario

Regulatory Issues

Additional requirements for mining companies

- Technical report required for each material mineral property on which proceeds of prospectus offering being spent
 - Recommended work program
 - Prepared by independent qualified person (“QP”)
 - At least sufficient to advance property to next decision point
- Proceeds of prospectus offering sufficient to:
 - Complete work program to next decision point
 - Satisfy property payments and company’s short-term liquidity requirements

Regulatory Issues

Additional requirements for mining companies (cont'd)

- Decision point
 - Exploration results sufficient to determine whether or not property merits:
 - Further work being conducted on it
 - Going back to the market to raise additional financing to fund the additional work
 - Could be less than complete program
 - Generally Phase 1 of the recommended program
- Disclosure in prospectus should align with technical report
 - Stage of development
 - Nature and cost of program
 - Objectives and outcomes of program
- Meet stock exchange original listing requirements

Venture Issuer Amendments

- Streamlined disclosure requirements for venture issuers
- Amendments to NI 51-102, NI 41-101, and NI 52-110
- Nature and purpose of amendments
 - Targeted changes
 - Recognize stage of development
 - Reduce burden

Venture Issuer Amendments

- What changed?
 - MD&A quarterly highlights
 - Business acquisition reporting
 - Executive compensation disclosure
 - Prospectus disclosure
 - Audit committee requirements

Venture Issuer Amendments

MD&A Quarterly Highlights

- Tailored and focused
- Discusses material information
- Only for interim periods
- Optional

Venture Issuer Amendments

Business acquisition reporting

- Significance threshold raised to 100% from 40%
- No longer requirement for pro forma financial statements
- Consistent approach among filing types

Venture Issuer Amendments

Executive compensation disclosure

- New optional venture issuer form (Form 51-102F6V)
- Disclosure for three NEOs instead of five
- Information covers only two years
- No grant date fair value

Venture Issuer Amendments

Prospectus disclosure

- Reduce annual financial statement history from three to two years
- Harmonize:
 - MD&A
 - BAR
 - Executive compensation

Venture Issuer Amendments

Audit committee requirements

- Majority of members must be independent
- Can't be executive officers, employees or control persons
- Aligns with existing TSXV requirements

Outcomes of Prospectus Reviews

- Disclosure enhancements in prospectus
- Changes in structure of offering
- Other

Dealing with the OSC

- Responding to OSC comment letters
 - Provide a comprehensive response to each question asked
 - Include detailed analysis, if requested, which reconciles to financial statements and other filings
 - Cite authoritative accounting references in response to questions related to financial statements
 - Call for clarification
 - Address observations in future filings



Questions?

Contact Information

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