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# B. Ontario Securities Commission

## B.1 Notices

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**B.1.1 Notice of General Orders – Ontario Instrument 32-508 Not-For-Profit Angel Investor Group Registration Exemption (Interim Class Order); Ontario Instrument 32-509 Early-Stage Business Registration Exemption (Interim Class Order); Ontario Instrument 45-509 Report of Distributions under the Self-Certified Investor Prospectus Exemption (Interim Class Order)**

**NOTICE OF GENERAL ORDERS:**

**ONTARIO INSTRUMENT 32-508  
NOT-FOR-PROFIT ANGEL INVESTOR GROUP REGISTRATION EXEMPTION (INTERIM CLASS ORDER)**

**ONTARIO INSTRUMENT 32-509  
EARLY-STAGE BUSINESS REGISTRATION EXEMPTION (INTERIM CLASS ORDER)**

**ONTARIO INSTRUMENT 45-509  
REPORT OF DISTRIBUTIONS UNDER THE SELF-CERTIFIED INVESTOR PROSPECTUS EXEMPTION  
(INTERIM CLASS ORDER)**

May 9, 2024

### **Introduction**

The Ontario Securities Commission (the **Commission**) is committed to ensuring that Ontario's regulatory environment continues to meet the evolving needs of businesses, investors and other market participants in Ontario. This includes balancing our newest mandates to foster capital formation and competitive capital markets with our longstanding mandates to protect investors from unfair, improper or fraudulent practices, foster fair and efficient capital markets and contribute to the stability of the financial system and the reduction of systemic risk.

New and growing businesses contribute to economic growth, competition and innovation in Ontario. These businesses create jobs, develop new and improved products and services, and find creative solutions that drive productivity. Early-stage capital helps these businesses start, grow and scale.

The Commission recently approved the extension of [Ontario Instrument 45-507 Self-Certified Investor Prospectus Exemption \(Interim Class Order\)](#) (the **Self-Certified Investor Prospectus Exemption Class Order**). The Self-Certified Investor Prospectus Exemption Class Order is intended to provide access to new sources of capital for issuers in Ontario, as well as provide more investment opportunities for investors in Ontario who can adequately assess and understand the risk of an investment through education or work experience but who may not meet any of the accredited investor criteria.

Building on the Self-Certified Investor Prospectus Exemption Class Order, and consistent with the Commission's expanded mandate to foster capital formation and competitive capital markets and with the recommendations from the [Capital Markets Modernization Taskforce Final Report](#), the Commission has made three time-limited orders under subsection 143.11(2) of the [Securities Act \(Ontario\)](#) (the **Act**) that are intended to further support early-stage capital raising in Ontario:

- a dealer registration exemption for not-for-profit angel investor groups (the **Angel Investor Group Registration Exemption**);
- a dealer registration exemption for eligible early-stage businesses (the **Early-Stage Business Registration Exemption**); and
- an exemption from the distribution reporting requirement in the Self-Certified Investor Prospectus Exemption Class Order to permit alternative streamlined reporting of distributions (the **Self-Certified Investor Reporting Exemption**)

(collectively, the **Early-Stage Capital Exemptions**).

The Early-Stage Capital Exemptions, along with the Self-Certified Investor Prospectus Exemption Class Order, are being introduced as part of [OSC TestLab](#). OSC TestLab is a Commission program that uses testing to accelerate the evaluation of

capital market innovations and new approaches to regulation to advance responsible innovation in Ontario's capital markets and economic growth for Ontario.

The Commission will be collecting data on the use of the exemptions through required forms. Ontario's Digital Data Directive requires the Commission and other government agencies to publish an inventory of their data sets unless the data cannot be published for legal, privacy, security, confidentiality or commercially sensitive reasons. The Commission will also be contacting businesses, investors and other key stakeholders in the early-stage capital raising ecosystem in Ontario for their perspectives as part of this initiative. The data and information collected will be used to help the Commission evaluate the Early-Stage Capital Exemptions and the Self-Certified Investor Prospectus Exemption Class Order, and will be reported on in aggregate form or on an anonymized basis.

### **Background**

Over the past decade, the Commission has introduced new prospectus exemptions and amended existing ones to facilitate capital raising for businesses, particularly small businesses, while protecting the interests of investors.

In February 2020, the Government of Ontario created the Capital Markets Modernization Taskforce (the **Taskforce**) to review and modernize Ontario's capital markets regulatory framework. The Taskforce finalized its review, and its [final report](#) was published in January 2021.

The Taskforce made several recommendations to better support access to capital for early-stage businesses through the lens of investor protection. The recommendations included, among others: (i) creating a "safe harbour" registration exemption for businesses and their associated persons, (ii) amending the registration requirements so that angel investor groups can work with their "accredited investor" members to encourage investments in early-stage businesses, and (iii) expanding the accredited investor definition to those individuals who have completed and passed relevant proficiency requirements indicating a high degree of understanding of investments and markets.<sup>1</sup>

In October 2022, the Commission published the Self-Certified Investor Prospectus Exemption Class Order, which came into effect on October 25, 2022. On January 30, 2024, the Commission made a rule under the Act, [OSC Rule 45-508 Extension to Ontario Instrument 45-507 Self-Certified Investor Prospectus Exemption](#) (the **Self-Certified Investor Prospectus Exemption Extension Rule**), which came into effect on April 25, 2024 and extended the Self-Certified Investor Prospectus Exemption Class Order by an additional 18-month period.

### **The Early-Stage Capital Exemptions**

The Early-Stage Capital Exemptions together with the Self-Certified Investor Prospectus Exemption Class Order are intended to support capital raising by early-stage businesses in Ontario. These initiatives are time-limited and are balanced and supported by appropriate investor protections.

### **Description of the Orders & Reasons**

#### The Angel Investor Group Registration Exemption

##### *Description*

[Ontario Instrument 32-508 Not-For-Profit Angel Investor Group Registration Exemption \(Interim Class Order\)](#) provides that a not-for-profit angel investor group is exempt from the requirement to be registered as a dealer in subsection 25(1) of the Act when trading in securities issued or proposed to be issued by an Ontario early-stage business provided that the conditions set out in the order are met.

The Angel Investor Group Registration Exemption will allow not-for-profit, Ontario-based angel investor groups to engage in the following activities without being registered:

- (a) identify and introduce Ontario early-stage businesses seeking capital to its members;
- (b) make information on Ontario early-stage businesses seeking capital available to its members;
- (c) hold regular meetings for Ontario early-stage businesses to present their business to its members;
- (d) facilitate its members' due diligence in Ontario early-stage businesses;
- (e) keep its members up-to-date on the Ontario early-stage businesses that members have invested in; and

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<sup>1</sup> The [Capital Markets Modernization Taskforce: Final Report January 2021](#) includes 74 policy recommendations intended to modernize Ontario's capital markets and drive innovation, competition and diversity, resulting in job and wealth creation. The recommendations referred to are included in the final report at recommendations 15, 52 and 23 respectively.

- (f) provide educational resources.

Not-for-profit angel investor groups will also be permitted to collect transaction-based compensation limited to a maximum of 5% of the value of the securities invested.

Details on these conditions, as well as the other conditions necessary to be satisfied for reliance on the Angel Investor Group Registration Exemption, are included in the order. More information on the order may be found in the Frequently Asked Questions at [OSC TestLab: Early-Stage Capital](#).

### *Reasons*

Angel investors play an important role in funding early-stage businesses in Ontario.<sup>2</sup> Angel investor groups bring together angel investors interested in supporting Ontario early-stage businesses and provide them with opportunities to invest in early-stage businesses seeking capital to grow and scale their operations. Many angel investor groups also support their members' due diligence and provide educational resources to their members and early-stage businesses.

Many not-for-profit angel investor groups in Ontario receive government funding to support their operations but wish to become self-sufficient. Certain not-for-profit angel investor groups seek to receive a fee from working with their members to collaboratively finance Ontario early-stage businesses, such as success fees.

Determining if an entity is carrying on activities requiring registration under securities legislation is based upon the activities of the entity and not on how the entity labels itself or its activities. Whether an angel investor group is "in the business" of trading or advising and therefore subject to the dealer or adviser registration requirement under the Act will generally be fact specific.

Having considered the circumstances of angel investor groups, the Taskforce recommendation and the Commission's expanded mandate, the Commission intends to explore a regulatory response to the Taskforce recommendation to modernize securities laws to support early-stage financing of Ontario early-stage businesses by not-for-profit angel investor groups. In the interim, the Commission is satisfied that it would not be prejudicial to the public interest to provide, on an interim basis, an exemption from the dealer registration requirement subject to the conditions of the order.

### The Early-Stage Business Registration Exemption

#### *Description*

[Ontario Instrument 32-509 Early-Stage Business Registration Exemption \(Interim Class Order\)](#) provides that an early-stage business with its head office and business operations in Ontario, is exempt from the requirement to be registered as a dealer in subsection 25(1) of the Act, provided that the conditions set out in the order are met.

The Early-Stage Business Registration Exemption will allow an eligible early-stage business that is raising capital on its own or through a dealer to engage in permitted marketing activities, including posting the terms of an offering on its website, announcing the offering on social media, and sharing the terms of the offering during a demo day organized by a government body, not-for-profit group, academic institution, angel investor group, incubator, accelerator or innovation hub.

In addition, the Early-Stage Business Registration Exemption will allow an eligible early-stage business that is raising capital without a dealer to:

- (a) raise aggregate funds of up to \$3,000,000;
- (b) raise capital from accredited investors pursuant to the exemption in section 73.3 of the Act and section 2.3 of [National Instrument 45-106 Prospectus Exemptions \(NI 45-106\)](#) and from investors that confirm they meet one of the qualifying criteria under the Self-Certified Investor Prospectus Exemption Class Order; and
- (c) report distributions to the Commission using a streamlined [Form 32-509F2 Alternative Report of Exempt Distribution \(Form 32-509F2\)](#) without an associated fee.

A business that decides to use a dealer<sup>3</sup> may rely on additional prospectus exemptions and is not subject to limits on the amount of capital that can be raised, other than limits included in the prospectus exemption being relied on.

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<sup>2</sup> The average age of a business at which angel investors invest is three years, while the average age of a business at which venture capitalists invest is six years. The size of the business at the time of the investment also reflects its age. When businesses receive angel investment, they are typically very small, with an average of six employees; whereas companies that receive venture capital are twice as large, with an average of 15 employees. [Innovation, Science and Economic Development Canada: Untangling the Seed and Early-Stage Funding Environment in Canada \(2022\)](#)

<sup>3</sup> In this scenario, a dealer may be any one of the following: a registered exempt market dealer, a not-for-profit angel investor group relying on the Angel Investor Group Registration Exemption, a funding portal relying on the dealer registration exemption in [National Instrument 45-110 Start-up Crowdfunding Registration and Prospectus Exemptions](#) or a funding portal as defined in [Multilateral Instrument 45-108 Crowdfunding](#).

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To rely on the Early-Stage Business Registration Exemption, eligible early-stage businesses must satisfy certain conditions which include, among others, that the business:

- (a) notifies the Commission of its intention to rely on the Early-Stage Business Registration Exemption;
- (b) has not engaged in one of the listed disqualifying events, such as being convicted or subject to administrative sanctions for securities fraud or other securities law violations; and
- (c) does not provide any person with compensation for finding investors or in connection with the distribution unless they are raising capital using a dealer.

Details on these conditions, as well as the other conditions necessary to be satisfied for reliance on the Early-Stage Business Registration Exemption, are included in the order. Additional information on the order and resources for businesses may also be found at [OSC TestLab: Early-Stage Capital](#).

### *Reasons*

Capital is essential for a business to start, scale and grow. The most common source of startup capital for businesses in Ontario is personal financing from the business' owners, followed by loans from financial institutions, funding from friends and relatives, and government grants. While most early-stage businesses will rely on these sources of startup capital, this funding may not be sufficient, and capital from other sources may be required to start, scale or grow a business.

Under current securities laws, a business that distributes its own securities with regularity and without the involvement of a registered dealer may be considered in the business of trading securities. If the business is "in the business of trading", it will require registration or an exemption from registration. There is no bright-line test to make this determination and the analysis is generally fact specific.

The Early-Stage Business Registration Exemption is intended to improve access to capital for early-stage businesses by allowing eligible early-stage businesses to engage in permitted marketing activities to raise awareness of their capital needs during the earliest and most critical capital raising stages and to engage in limited capital raising activities to raise up to \$3,000,000 in early-stage capital without being registered and without engaging a dealer.

Data on the use of the Early-Stage Business Registration Exemption and perspectives collected from key stakeholders in the early-stage capital raising ecosystem in Ontario will help the Commission evaluate the Early-Stage Business Registration Exemption and consider future policy-making.

Taking the above into account, as well as the Taskforce recommendation and the Commission's expanded mandate, the Commission is satisfied that it would not be prejudicial to the public interest to provide, on an interim basis, an exemption from the dealer registration requirement for eligible early-stage businesses, subject to the conditions of the order.

### The Self-Certified Investor Reporting Exemption

#### *Description*

[Ontario Instrument 45-509 Report of Distributions under the Self-Certified Investor Prospectus Exemption \(Interim Class Order\)](#) provides an exemption from the requirement in subsection 12(g) of the Self-Certified Investor Prospectus Exemption Class Order, provided that the issuer reports distributions on a quarterly basis using [Form 45-509F1 Alternative Report of Exempt Distribution \(Form 45-509F1\)](#).

#### *Reasons*

Generally, businesses distributing securities under prospectus exemptions are required to file a completed [Form 45-106F1 Report of Exempt Distribution](#), together with an applicable fee, within 10 days of the distribution. To further reduce the regulatory burden associated with providing this reporting to the Commission, the Commission is satisfied that it would not be prejudicial to the public interest to provide, on an interim basis, an exemption to businesses raising capital under the Self-Certified Investor Prospectus Exemption Class Order to allow the use of the alternative, streamlined [Form 45-509F1](#), which is substantively identical to [Form 32-509F2](#), to report distributions less frequently and without an associated fee.

### **Day on Which the Orders Cease to Have Effect**

The Early-Stage Capital Exemptions each come into effect on May 9, 2024. The Angel Investor Group Registration Exemption and the Early-Stage Business Registration Exemption each remain in effect until October 25, 2025, unless extended by the Commission. The Self-Certified Investor Reporting Exemption remains in effect until the earlier of October 25, 2025 or the effective date of an amendment to NI 45-106 that addresses substantially the same matter.

**Questions**

If you have any questions regarding the [Early-Stage Business Registration Exemption](#), please contact any of the following:

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