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Canadian Regulators Adopt Changes to the Exempt Market Regime

Authors: Nicolas Morin, Mindy B. Gilbert and Neil Kravitz

On February 19, 2015, the Canadian Securities Administrators (CSA) announced the adoption of amendments to the following exemptions currently contained in National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106): the accredited investor prospectus exemption (AI Exemption), the minimum amount investment prospectus exemption (Minimum Investment Exemption) and the short-term debt prospectus exemption (Short-Term Debt Exemption). The amendments include consequential amendments to Companion Policy 45-106CP *Prospectus and Registration Exemptions*.

On the same day, the Ontario Securities Commission (OSC) announced the introduction of a prospectus exemption for distribution of securities to directors, executive officers, control persons or founders of an issuer as well as to certain family members, close personal friends and close business associates of such persons (Family and Friends Exemption).

Summary of the Amendments

The amendments to the AI Exemption include the following:

- the introduction of a new risk acknowledgement form for individual accredited investors that describes, in plain language, the categories of individual accredited investor that are available under NI 45-106, and identifies the key risks associated with purchasing securities in the exempt market
- the inclusion of expanded guidance on the steps that an issuer and a seller should take to verify the status of purchasers acquiring securities under any of the "capital raising" exemptions contained in NI 45-106, including the AI Exemption

The Minimum Investment Exemption will no longer be available to individual purchasers.

The amendments to the Short-Term Debt Exemption include the following:

- the modification of the credit ratings required to distribute short-term debt (which consist primarily of commercial papers) under the Short-Term Debt Exemption
- the creation of a specific prospectus exemption for short-term securitized products such as asset-backed commercial papers and the consequential removal of short-term securitized products from the Short-Term Debt Exemption

Summary of the Family and Friends Exemption

The Family and Friends Exemption is substantially the same as the one that already exists in the other Canadian jurisdictions and provides issuers, including early-stage issuers, with greater access to capital through family, close personal friends and close business associates of directors, executive officers, control persons and founders of issuers. The reliance on the Family and Friends Exemption is conditional upon the receipt of a risk acknowledgement form signed by the issuer and the purchaser. The Family and Friends Exemption will be available to all issuers, other than investment funds.

Further guidance on the key elements necessary to establish the "close personal friend" and the "close business associate" relationships has also been added.

Purpose

The AI Exemption and the Minimum Investment Exemption

The amendments to the AI Exemption are aimed at addressing investor-protection concerns as some individual investors may not understand the risks of investing under the AI Exemption or may not in fact qualify as accredited investors. The amendment to the Minimum Investment Exemption addresses a concern that such exemption may not be a proxy for sophistication or the ability to sustain a financial loss for individual investors and will limit the over-concentration in one investment for individual investors.

The Short-Term Debt Exemption

The amendments to the Short-Term Debt Exemption are aimed at addressing investor protection and systemic risk concerns.

The Family and Friends Exemption

The OSC believes that the Family and Friends Exemption will benefit early-stages issuers, including startups and small and medium-sized enterprises, as their network of family, close personal friends and close business associates, who may not otherwise qualify as accredited investors, is often the first funding source for them.

Coming into Force

The CSA expects that the amendments will come into force on **May 5, 2015**. In Ontario, the amendments to the AI Exemption and the Minimum Investment Exemption will come into force on the later of May 5, 2015 and the date on which subsection 12(2) of Schedule 26 of the *Budget Measures Act, 2009* is proclaimed in force.

The OSC expects that the Family and Friends Exemption will be officially included in NI 45-106 on the same date as the AI Exemption and the Minimum Investment Exemption come into force.

Key Contacts: Robert S. Murphy and Nicolas Morin

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