



AMENDMENTS TO THE ONTARIO EXEMPT MARKET

OFFERING MEMORANDUM EXEMPTION AND FAMILY, FRIENDS & BUSINESS ASSOCIATES EXEMPTION

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AGENDA

1. Ontario Offering Memorandum Exemption

- Overview
- Investor Qualifications and Investments Limits of the Offering Memorandum Exemption
- Key aspects of the Offering Memorandum Exempt

2. Family, Friends & Business Associates Exemption

- Overview
- Close Personal Relationship
- Close Business Associate
- Key aspects of the Family, Friends & Business Associate Exemption

OFFERING MEMORANDUM EXEMPTION

Overview

- Found in section 2.9 (2.1) of National Instrument 45-106 Prospectus Exemptions (NI 45-106)
- Allows investments from a wider range of investors through the use of an offering memorandum
- Issuers must prepare and deliver to investors an offering memorandum in the prescribed form
- The offering memorandum must disclose certain information about the issuer and include audited financial statements, but does not require the same level of disclosure as a prospectus
- Investors rights include a two-business-day withdrawal right and a right of action for rescission or damages if the offering memorandum contains a misrepresentation

OFFERING MEMORANDUM EXEMPTION

“Eligible Investors”

- 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 for Individuals

- A \$10,000 investment limit per 12 month period for non-eligible investors
- A \$30,000 investment limit per 12 month period for eligible investors
- A \$100,000 investment limit per 12 month period for eligible investors who receive advice from a portfolio manager, investment dealer or exempt market dealer confirming the investment above \$30,000 is suitable
- No investment limits for non-individuals

OFFERING MEMORANDUM EXEMPTION

KEY FEATURES OF 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

OFFERING MEMORANDUM EXEMPTION

KEY FEATURES OF EXEMPTION

Element of Exemption	Key Features
Risk Acknowledgment Form	<ul style="list-style-type: none"> • All investors are required to complete and sign a form highlighting the key risks associated with investing in securities acquired under the exemption • Individual investors will also be required to complete two new schedules to the offering memorandum which ask investors to confirm their status (as an eligible investor, non-eligible investor, accredited investor or an investor who would qualify to purchase securities under the family, friends and business associates exemption)
Ongoing Disclosure Obligations	<ul style="list-style-type: none"> • Non-reporting issuers that use the OM Exemption must provide investors: <ul style="list-style-type: none"> • Audited annual financial statements, prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises • Notice that describes how the investment proceeds have been used • In New Brunswick, Nova Scotia and Ontario with notice on a timely basis of a discontinuation of its business, a change in its industry or a change in its control

FAMILY, FRIENDS AND BUSINESS ASSOCIATES

- **Overview**

- Found in section 2.5 of National Instrument 45-106 Prospectus Exemptions (NI 45-106)
- Allows reporting and non-reporting issuers to raise capital from investors who are principals of the business or within the personal networks of principals of the business
- Intended to enable early stage businesses to raise capital
- The Ontario exemption is largely harmonized with an exemption that is currently available in other Canadian jurisdictions

FAMILY, FRIENDS AND BUSINESS ASSOCIATES

- **Close Personal Relationship**

- The onus is on the issuer or selling-security holder to establish whether a close personal relationship exists
- Sufficient prior business dealings to assess the capabilities and trustworthiness of the issuer
- Must be a direct relationship
- Similarly to a close personal relationship a close business associate cannot solely be founded on participation in an internet forum

FAMILY, FRIENDS AND BUSINESS ASSOCIATES

- **Close Business Associate**

- The onus is on the issuer or selling-security holder to establish whether a close business relationship exists
- Generally defined as having known an individual for a sufficient period of time to be in a position to assess their capabilities and trustworthiness
- A close personal friend can include a family member who is not specifically listed in the exemptions, such as the aunt, uncle or cousin of a principal of an issuer
- Not solely connected through some form of social media, such as Facebook, Twitter or LinkedIn

FAMILY, FRIENDS AND BUSINESS ASSOCIATES

KEY FEATURES OF EXEMPTION

Element of Exemption	Key Features
Issuer of security	<ul style="list-style-type: none">• Available to both reporting and non-reporting issuers• Not available to investment funds
Types of securities	<ul style="list-style-type: none">• Not available for short-term securitized products
Purchaser	<ul style="list-style-type: none">• Specified principals of the issuer, specified family members, close personal friends, close business associates
Seller	<ul style="list-style-type: none">• Issuer or selling security holder
Risk Acknowledgement Form	<ul style="list-style-type: none">• Sets out the key risks related to the investment and confirming how the investor qualifies to make the investment• Must be signed by the 1) investor, 2) the director, executive officer, control person or founder of the issuer with whom the investor has asserted the relationship

QUESTIONS?

CONTACT



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