



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

Corporate Finance Branch
January 21, 2015

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Presentation Outline

Time	Topic	Page
1:30 – 1:35	Welcome and Introduction to the OSC SME Institute	4
1:35 – 1:40	Regulatory Landscape in Canada	6
1:40 – 1:50	Key Principles of Securities Regulation	12
1:50 – 2:15	Sales of Securities Without a Prospectus	21
2:15 – 2:45	Common Methods of Going Public	71
2:45 – 3:00	Questions	100



Welcome and Introduction to the OSC SME Institute

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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



Regulatory Landscape in Canada

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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

OSC Corporate Finance 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

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

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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
 - National Instrument 45-106 *Prospectus and Registration 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?

- 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

- 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

Selling Securities Without a Prospectus

- Exempt distributions
- Background on the exempt market
- Rationale for exemptions
- Proposed changes to the exempt market
- 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

- Size of the exempt market in Ontario
 - The exempt market in Canada has become increasingly important for investors and issuers
 - The total amount of capital raised in Ontario through exempt distributions reported to the OSC in 2012 was approximately \$104 billion of which \$37 billion was raised by non-investment fund issuers

Background

- 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
 - Registrant obligations, including know-your-client (or KYC) and suitability, apply when selling or advising in securities sold in the exempt market

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

- 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. information circular
 - Regulation under another regime
-

CSA and OSC Reviews of the Exempt Market

- CSA review of accredited investor and minimum amount investment exemptions
 - Proposed amendments published for comment February 27, 2014
- OSC expanded exempt market review
 - Proposed amendments published for comment March 20, 2014
 - Offering memorandum exemption
 - Crowdfunding exemption
 - Family, friends and business associates exemption
 - Existing security holder exemption

Commonly Used Exemptions for Capital Raising

Exemption	Available in Ontario	Available in other Canadian Jurisdictions	Reporting Requirements
Private issuer	Yes	Yes	No
Founder control person and family	Yes	No	No
Family, friends and business associates	Not at this time	Yes	Yes
Accredited investor	Yes	Yes	Yes
Minimum amount	Yes	Yes	Yes
Rights offering	Yes	Yes	NI 45-101 alternative disclosure required and provided to regulators
Existing security holder	Yes, as of February 11, 2015	Yes	Yes
Securities for debt	Yes	Yes	Yes
Offering memorandum	Not at this time	Yes	Yes

Private Issuer Exemption

Issuer of security	"Private issuer" – maximum 50 securityholders (excluding employees)
Purchaser	Certain specified persons
Type of security	Any security
Seller	Any seller (issuer or one of specified persons)
Other key conditions	Purchaser purchases as principal
Source	Section 2.4 of NI 45-106

Private Issuer Exemption

- 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

Current (Ontario)- Founder, Control Person and Family Exemption

Issuer of security	Any issuer
Purchaser	Founder, specified family members, control person
Type of security	Any security
Seller	Any seller
Other key conditions	Purchaser purchases as principal
Source	Section 2.7 of NI 45-106

Current (Ontario)- Founder, Control Person and Family Exemption

- Section 2.7 of NI 45-106
- Applies to a distribution of a security to a specified list of purchasers
 - List of purchasers includes
 - Founder of issuer
 - Affiliate of a founder of the issuer
 - Family member of an executive officer, director or founder of the issuer or
 - A person that is a control person of the issuer

Proposed (Ontario)– Family, Friends and Business Associates Exemption

- OSC expanded exempt market review – proposed adoption of a family, friends and business associates exemption
 - Published for comment March 20, 2014
- Similar to form of exemption available in rest of the country, with some key differences
- Exemption applies to distributions of securities to purchasers that have a specified relationship with the issuer
 - Includes “close personal friend” and “close business associate” of a director, executive officer or control person of the issuer or an affiliate of the issuer
 - Risk acknowledgment form to be signed by key parties

Proposed (Ontario)– Family, Friends and Business Associates Exemption

- Exemption available to both reporting issuers and non-reporting issuers but not investment funds
- Only available for distributions of specified securities
 - Common shares
 - Non-convertible preference shares
 - Securities convertible into common shares and non-convertible preference shares
 - Non-convertible debt securities linked to interest rate
 - Units of limited partnership
 - Flow-through shares
- No limit on offering size
- Advertising to solicit investors prohibited
- Subject to resale restrictions

Accredited Investor Exemption

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

Accredited Investor Exemption

- The accredited investor exemption is the most used capital raising exemption (based on reports filed with the OSC)
- It accounts for approximately:
 - 70% of distributions
 - 90% of funds raised
- In 2012, approximately \$34 billion was raised under the accredited investor prospectus exemption in Ontario by non-investment fund issuers

Accredited Investor Exemption

- 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)

Proposed Amendments to Accredited Investor Exemption

- CSA review of accredited investor and minimum amount exemption
 - Review prompted by financial crisis of 2007/2008
- Consideration of two key questions
 - Is the minimum amount exemption in its current form appropriate for our markets?
 - Is the accredited investor exemption in its current form appropriate for our markets? In particular, do the current income and asset thresholds in the definition of accredited investor remain appropriate?
- Proposed amendments published February 27, 2014
 - New risk acknowledgment form for individual accredited investors
 - Companion policy guidance on verifying purchaser status

Proposed Amendments to Accredited Investor Exemption

- Risk acknowledgment form
 - Describes key risks of investing under accredited investor exemption
 - Describes categories of individual accredited investor in plain language
 - Investor must indicate which accredited investor criteria he or she meets
- Companion policy guidance
 - Additional guidance on the steps a seller can take to verify whether a purchaser is an accredited investor

Minimum Amount Exemption

Issuer of security	Any issuer (investment funds and non-investment funds, reporting issuers and non-reporting issuers)
Purchaser	Any investor
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

Minimum Amount Exemption

- The minimum amount prospectus exemption is less used compared to the accredited investor exemption
- In 2012, approximately \$1.5 billion was raised under this exemption in Ontario by non-investment fund issuers

Proposed Amendments to Minimum Amount Exemption

- CSA review of accredited investor and minimum amount exemption
- Proposed amendments published February 27, 2014
- Proposal to repeal this exemption for sales of securities to individual purchasers
- Would still be available for non-individuals (i.e. corporations, limited partnerships)

Rights Offering Exemption

Issuer of security	Any issuer (investment funds and non-investment funds, reporting issuers and non-reporting issuers)
Purchaser	Existing security holders of the issuer
Type of security	Right granted by the issuer to purchase a security of its own issue
Seller	Issuer of the right
Other key conditions	Written notice provided to the regulator Regulator does not object or confirms acceptable information provided Compliance with NI 45-101 (rights offering rule)
Source	Section 2.1 of NI 45-106

Rights Offering Exemption

- Process
 - National Instrument 45-101 *Rights Offerings*
 - Issuer gives the regulators prior written notice of proposed trade
 - Regulators have 10 days to object to proposed trade OR confirm acceptable information has been delivered to the regulators
 - Issuer must comply with requirements of NI 45-101

Rights Offering Exemption

- Under NI 45-101, the issuer relying on the rights offering prospectus exemption must deliver to the regulator:
 - A rights offering circular in draft and final form (Form 45-101F)
 - If issuer is not a reporting issuer, a statement of the issuer signed by a senior officer confirming
 - (a) that the issuer is in compliance with the requirements of its incorporating legislation concerning the distribution of information to securityholders; and
 - (b) no material change has occurred that has not been previously disclosed in writing to securityholders
 - A copy of any agreement entered into, or proposed to be entered into, by the issuer with a managing dealer
 - A copy of any technical reports for a mining or oil and gas issuer
 - The details of any other rights offering completed by the issuer within the 12 months immediately preceding the date the rights offering circular in draft form was sent to the regulator

Rights Offering Exemption

- Exemption not available in certain cases
- Stand-by commitments
- Additional subscription privilege
- Appointment of depository
- Form 45-101F *Information Required on a Rights Offering Circular*
- Generally not subject to resale restrictions

Proposed Amendments to Rights Offering Exemption

- Proposed amendments published by CSA on November 27, 2014
- Comment period ends on February 25, 2015
- Available to non-investment fund reporting issuers
- 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

Proposed Amendments to Rights Offering Exemption

- 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 Effective in Ontario February 11, 2015

Issuer of security	Reporting issuers (excluding investment funds) listed on specified exchanges
Purchaser	Existing security holders of the issuer
Type of security	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	The listed reporting issuer
Other key conditions	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 advice is obtained
Source	Section 2.9 of OSC Rule 45-501

Existing Security Holder Exemption Effective in Ontario February 11, 2015

- Published by OSC on March 20, 2014 for comment
- Published in final form November 27, 2014
- 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
 - Report of exempt distribution (Form 45-106F1) required

Existing Security Holder Exemption Effective in Ontario February 11, 2015

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

Existing Security Holder Exemption & 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 offerings
- 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
- 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

Currently Not Available in Ontario - 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
- Two primary models
 - “BC model” – no restriction on purchaser or investment size
 - “Alberta model” – purchaser must be an “eligible investor” or acquisition cost is not more than \$10,000
 - “Alberta model” also limits application for investment funds

Proposed Introduction of Offering Memorandum Exemption in Ontario

- Published by OSC on March 20, 2014 for comment
- Certain other CSA jurisdictions also published proposed changes to OM exemption on March 20, 2014 (AB, SK, QC, NB)
- Comment period closed June 18, 2014
 - Approximately 787 comment letters received by OSC on OM exemption

Proposed Introduction of Offering Memorandum Exemption in Ontario

Element of exemption	Proposal
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"> - 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 OM and therefore subject to liability if misrepresentation

Proposed Introduction of Offering Memorandum Exemption in Ontario

Element of exemption	Proposal
<p>Investor qualifications</p>	<ul style="list-style-type: none"> - Substantially the same definition of eligible investor <p><u>Individuals:</u></p> <ul style="list-style-type: none"> - Net asset test – \$250,000 excluding primary residence - Net income test – levels of income at \$75,000 alone and \$125,000 with a spouse (consistent with existing Alberta model of OM exemption) <p><u>Non-individuals:</u></p> <ul style="list-style-type: none"> - Net asset test – \$400,000 - No net income test
<p>Investment limits</p>	<p><u>Individuals:</u></p> <ul style="list-style-type: none"> - Accredited investors - no limits - Eligible investors - \$30,000 per year - Not an accredited or eligible investor - \$10,000 per year <p><u>Non-individuals:</u></p> <ul style="list-style-type: none"> - No investment limits

Proposed Introduction of Offering Memorandum Exemption in Ontario

Element of exemption	Proposal
Risk acknowledgement form	<ul style="list-style-type: none"> - Must be signed by individual investors - New form – Form 45-106F13
Point of sale disclosure	<ul style="list-style-type: none"> - OM must be provided to investors - Subject to liability if misrepresentation - Using current form requirements – in phase 2, will update forms
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 CD obligations <p><u>Non-reporting issuers:</u></p> <ul style="list-style-type: none"> - Audited annual financial statements - Annual notice of use of proceeds - Notice of certain specified events

Proposed Crowdfunding Exemption

- Published for comment by Ontario, Saskatchewan, Manitoba, Quebec, New Brunswick and Nova Scotia on March 20, 2014
- What is crowdfunding?
 - Method of funding a project or venture through small amounts of money raised from a large number of investors or funders over the internet via a portal intermediary
- 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

Proposed Crowdfunding Exemption

Element of exemption	Proposal
<p>Issuer qualifications</p>	<p><u>General</u></p> <ul style="list-style-type: none"> - Available to both reporting and non-reporting issuers - Not available to investment funds - Not available to non-reporting real estate issuers or blind pools <p><u>Nexus to Canada</u></p> <ul style="list-style-type: none"> - Incorporated or organized in Canada - Head office in Canada - Majority of directors resident in Canada
<p>Types of securities</p>	<ul style="list-style-type: none"> - Only available for distributions of specified securities <ul style="list-style-type: none"> - Common shares - Non-convertible preference shares - Securities convertible into common shares and non-convertible preference shares - Non-convertible debt securities linked to an interest rate - Units of a limited partnership - Flow-through shares under the <i>Income Tax Act</i> (Canada)

Proposed Crowdfunding Exemption

Element of exemption	Proposal
<p>Offering parameters</p>	<p><u>General</u></p> <ul style="list-style-type: none"> - Cannot raise more than \$1.5 million under exemption during 12 months preceding current offering - Distribution cannot remain open longer than 90 days <p><u>Sufficient financial resources</u></p> <ul style="list-style-type: none"> - Offering document must disclose minimum offering - Distribution cannot be completed unless: <ul style="list-style-type: none"> - Minimum offering fully subscribed - At time of completion of distribution, issuer has sufficient financial resources to meet its next milestone or, if no milestone, carry out activities set out in its business plan
<p>Solicitation and advertising</p>	<ul style="list-style-type: none"> - Offering materials can only be made available to potential investors through portal - Potential investors can be directed to portal through print and social media

Proposed Crowdfunding Exemption

Element of exemption	Proposal
Investor qualifications	- None
Investment limits	<ul style="list-style-type: none"> - Investors cannot invest: <ul style="list-style-type: none"> - More than \$2,500 in single investment - More than \$10,000 in total under exemption in calendar year
Risk acknowledgement form	<ul style="list-style-type: none"> - Must be signed by investors - New form – Form 45-108F2
Point of sale disclosure	<ul style="list-style-type: none"> - Crowdfunding offering document in Form 45-108F1 must be provided to investors - Videos and term sheets can also be made available - Subject to liability if misrepresentation
Cooling off period	- Investors have two business day right of withdrawal
Resale restrictions	- Subject to resale restrictions

Proposed Crowdfunding Exemption

Element of exemption	Proposal
Ongoing disclosure	<p><u>Reporting issuers:</u></p> <ul style="list-style-type: none">- Subject to continuous disclosure obligations <p><u>Non-reporting issuers:</u></p> <ul style="list-style-type: none">- Audited or reviewed annual financial statements- Annual notice of use of proceeds- Notice of certain specified events- Books and records

Proposed Crowdfunding Portal Regime

Element of exemption	Proposal
Registration	<ul style="list-style-type: none"> - Registered as a restricted dealer - Dual registrations not permitted
Obligations	<p><u>General obligations</u></p> <ul style="list-style-type: none"> - General registrant obligations applicable to exempt market dealers (some exceptions) - Exempt from know-your-client (KYC), suitability and certain other requirements <p><u>Additional obligations</u></p> <ul style="list-style-type: none"> - Conduct background checks on issuers and principals - Understand general structure, features and risks of offering - Review issuer information posted on portal - Deny access if reason to believe offering is fraudulent - Provide investor education materials
Permitted activities	<ul style="list-style-type: none"> - May apply criteria to limit offerings on platform, subject to conditions

Proposed Crowdfunding Portal Regime

Element of exemption	Proposal
<p>Prohibited activities</p>	<p><u>Advice</u></p> <ul style="list-style-type: none"> - Cannot provide specific recommendations or advice to investors - Cannot endorse or comment on merits or expected returns of investment <p><u>Solicitation</u></p> <ul style="list-style-type: none"> - Cannot engage in solicitation (or compensate employees or agents for solicitation) <p><u>Investor funds or securities</u></p> <ul style="list-style-type: none"> - Cannot hold or handle investor funds or securities <p><u>Interest in issuer</u></p> <ul style="list-style-type: none"> - Cannot invest in issuer on platform (subject to receiving fees in form of securities that do not exceed 10% ownership interest) <p><u>Secondary trading</u></p> <ul style="list-style-type: none"> - Cannot facilitate secondary trading

Reports of Exempt Distributions

- 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
 - 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

- 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

- 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

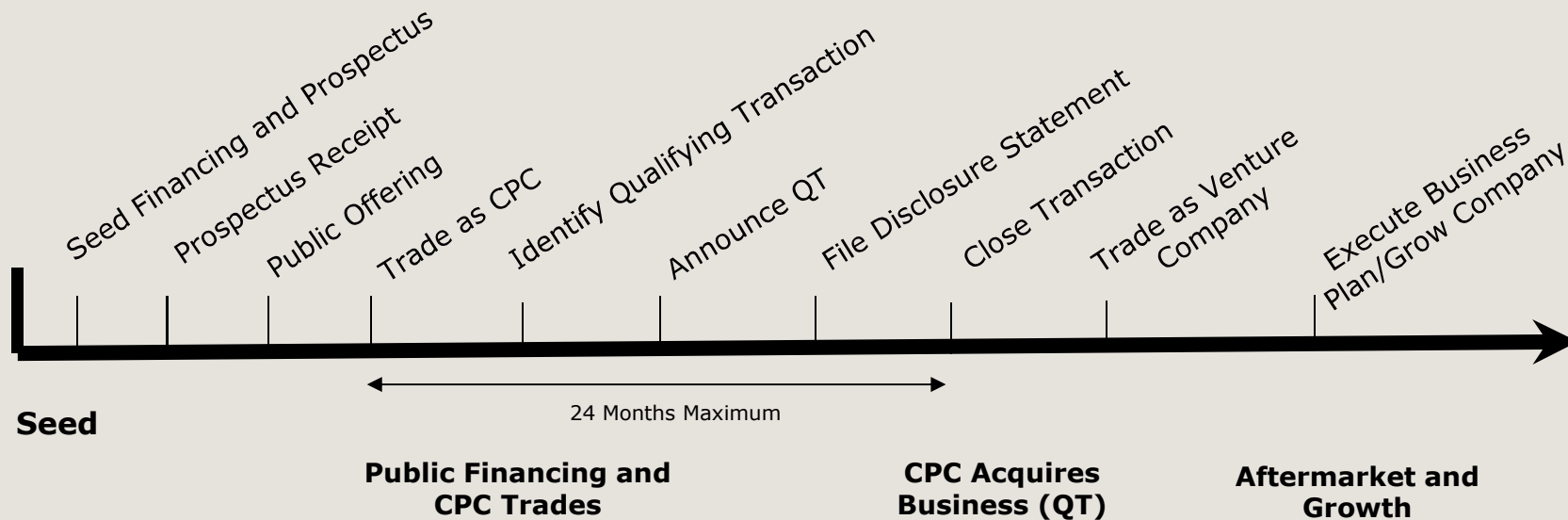
Reverse Take-Over

- 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 Process



Slide provided by TSX Venture Exchange

TSXV Capital Pool Program

- Protections included in 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

- Protections included in CPC program (cont'd)
 - 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

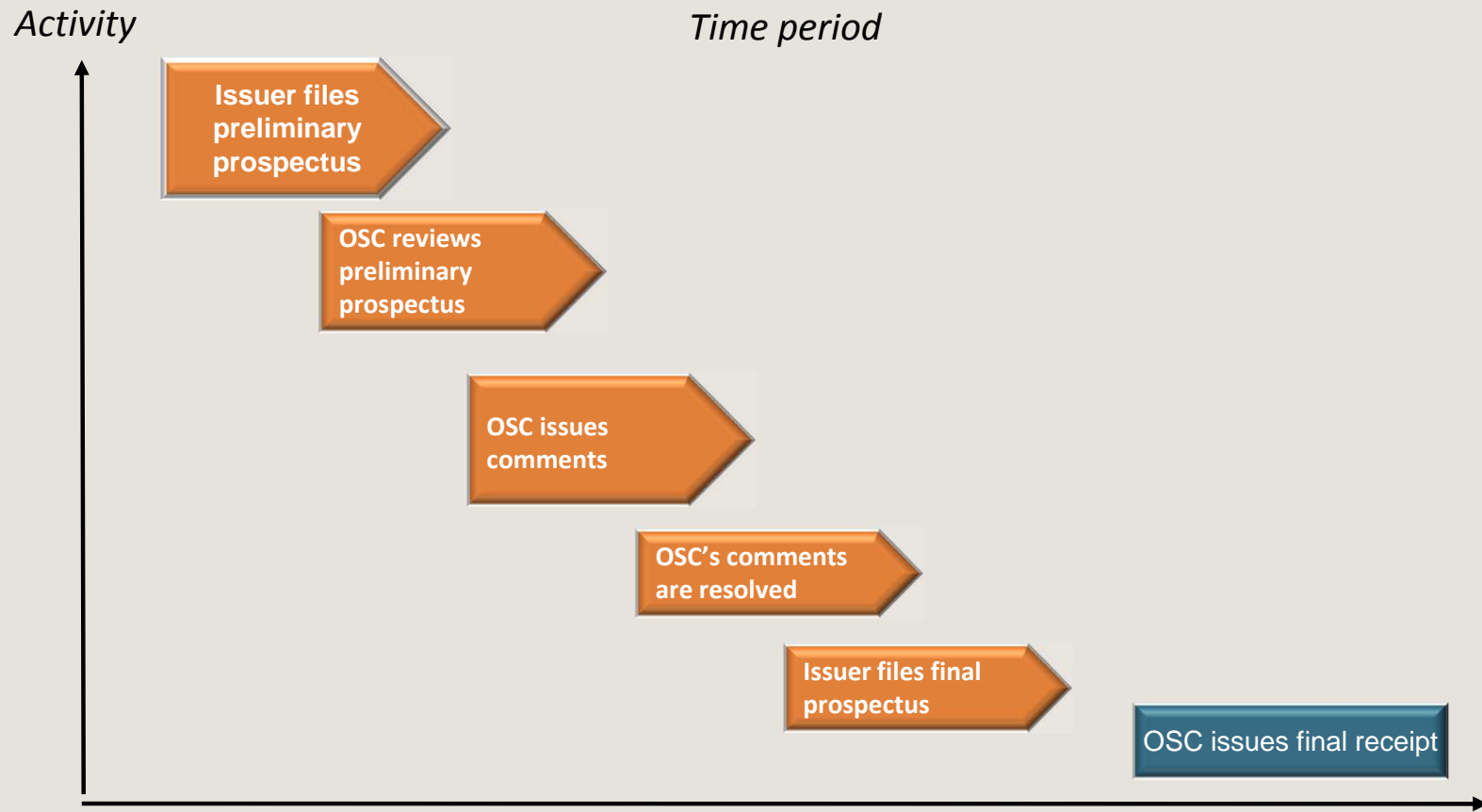
- Same general advantages and disadvantages as reverse take-over, except:
 - Advantages
 - Little due diligence required on CPC since recently created special purpose vehicle
 - Well established program with defined parameters facilitates regulatory review
 - Can be completed more quickly than conventional 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

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

Conducting the IPO

General Sequence of Events



Note (1): Additional procedures involved if securities offered both inside and outside Ontario but only OSC reviews if OSC is the principal regulator

Note (2): Additional procedures for shelf and PREP prospectuses

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

- 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
 - 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

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

- 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
 - 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
 - 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

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?

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