OSC Reports Uneven Use of New Prospectus Exemptions

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On June 15, 2017, the Ontario Securities Commission (the "**OSC**") published OSC Staff Notice 45-715 *2017 Ontario Exempt Market Report* (the "**Report**"). The Report summarizes exempt market activity in Ontario and provides data regarding the use of recently introduced prospectus exemptions.

While Canadian issuers represented just 37% (or $27 billion) of capital raised in Ontario last year through prospectus-exempt offerings, they accounted for approximately 67% (or 1,600) of issuers who participated in Ontario's exempt market in 2016. Other findings highlighted by the OSC in the Report include the following:

- approximately 57% of the Canadian issuers that participated in Ontario's exempt market were small issuers that raise less than $1 million each year ("**Small Issuers**"). Small Issuers accounted for less than 1% of annual gross proceeds raised by Canadian issuers in Ontario through prospectus-exempt offerings;
- in 2016, the number of Small Issuers in Canada grew by 30% and the gross proceeds raised by these issuers grew by 40%, notably in the natural resources, consumer goods and services and real estate and mortgage finance industries;
- 400 Canadian issuers, about a quarter of Canadian exempt market issuers, relied on new prospectus exemptions in 2016. Together, those issuers raised an aggregate of $133 million and half of these issuers raised capital in Ontario after not having done so in 2015;
- natural resource issuers represented 37% of issuers that relied on new prospectus exemptions, the largest industry group by number of issuers. Real estate and mortgage finance issuers accounted for 70% of the capital raised under the new exemptions;
- institutional investors and other accredited investors contributed over 90% of the total capital invested in the Ontario exempt market; and
- Ontario's exempt market represented less than 20% of the total gross proceeds raised by Canadian issuers domestically and less than 10% of gross proceeds raised globally.

The Report also provided a breakdown of the use of each recently introduced prospectus exemption. Notably, the crowdfunding exemption was not used at all.

Activity Under Recently Introduced Exemptions in 2016

Exemption	Effective Date	Number of Issuers	Gross Proceeds
Offering memorandum	January 13, 2016	103	$68 million
Family, friends and business associates	May 5, 2015	302	$63 million
Existing security holder	February 11, 2015	24	$2 million
Crowdfunding	January 25, 2016	0	$0

Regarding the lack of use of the crowdfunding exemption, the OSC stated that:

> There has been "crowdfunding" in the broader sense given that a small number of issuers have used online funding portals to raise proceeds under the accredited investor or offering memorandum exemption. Moreover, a number of portals registered in the exempt market dealer or restricted dealer category have indicated they may facilitate issuers relying on the crowdfunding exemption in the future.

The National Crowdfunding Association of Canada (**"NCFA"**), by contrast, released a report last December calling on policymakers to "remove unnecessary burdens and harmonize confusing regulations."[1] In particular, the NCFA report cited Canada's multi-provincial regulatory environment as an impediment to more efficient capital markets.

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[1] National Crowdfunding Association of Canada, "2016 Alternative Finance Crowdfunding in Canada" (Toronto: 13 December 2016) online: < http://ncfacanada.org/2016-alternative-finance-crowdfunding-in-canada-industry-report>.

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