

Prospectus Exemption Intended for Individuals with Relevant Proficiency Requirements: The “Self-Certified Investor Prospectus Exemption”

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By Michael Dolphin, Dhananjay Tomar

Introduction

On October 25, 2022, the Ontario Securities Commission (“OSC”) announced a new order, Ontario Instrument 45-507 entitled “Self-Certified Investor Prospectus Exemption” (“OSC Order”), pursuant to which relief is granted from the requirement to file a prospectus in respect of the distribution of securities in Ontario to certain individuals (“Self-Certified Investors”) with the relevant education and work-based proficiency requirements (the “Self-Certified Investor Exemption”).

Background

For background, the Capital Markets Modernization Taskforce (“Taskforce”) in its final report dated January 22, 2021, acknowledged the importance of capital formation for businesses and included a recommendation that the OSC expand the definition of an accredited investor (“Accredited Investor”), as defined in subsection 73.3(1) of the *Ontario Securities Act* and National Instrument 45-106 *Prospectus Exemptions*, to include certain individuals who have completed and passed relevant proficiency requirements indicating a high degree of understanding of investments and markets.

In order to promote capital formation pursuant to the Taskforce recommendation, the OSC introduced the Self-Certified Investor Exemption which allows purchasers in Ontario, who may not meet the financial thresholds or other criteria required to qualify as an Accredited Investor, to invest in issuers provided that they meet other criteria intended to demonstrate financial knowledge, investment knowledge or relevant industry-specific experience and acknowledge that they understand certain investment considerations and risks.

Effective Date and Term

The Self-Certified Investor Exemption came into effect on October 25, 2022, and will be effective until April 25, 2024, subject to extension by the OSC.

Qualifying Criteria for the Self-Certified Investor Exemption

In order to qualify under the Self-Certified Investor Exemption, the subscriber must be a Self-Certified Investor which is defined to include individuals with specific types of education or work experience. A full list of who is considered a Self-Certified Investor is available in the OSC Order, some examples include, a CFA charter holder, a CPA, an MBA with a focus on finance.

Requirements for the Self-Certified Investor Exemption

For an issuer to rely on the Self-Certified Investor Exemption, the head office of the issuer must be located in Ontario, the issuer cannot be an investment fund, the purchaser must provide representations to the issuer in the subscription agreement that, after giving effect to the distribution, the aggregate acquisition cost of the securities of all issuers acquired by the Self-Certified Investor under this OSC Order in the calendar year does not exceed \$30,000, the purchaser must complete and provide to the issuer the documents prescribed in the OSC Order and the issuer must file certain documents prescribed in the OSC Order along with the Form 45-106F1 *Report of Exempt Distribution* within 10 days of the closing of the distribution.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek the professional advice of one of our lawyers in the Securities Practice Group.

For more information or inquiries:



Michael Dolphin

Toronto
416.947.5005

Email:
mdolphin@weirfoulds.com

Michael Dolphin practises corporate and securities law, focusing on financings, public offerings, mergers and acquisitions, and corporate reorganizations. He is Chair of the firm's Securities & Public Companies Practice Group and Co-Chair of the Corporate Practice Group.



Dhananjay Tomar

Toronto
647.715.3543

Email:
dtomar@weirfoulds.com

Dhananjay or Jay Tomar is an Associate in the Securities & Public Companies Practice Group at WeirFoulds with a practice focusing on corporate and securities law.

WeirFouldsLLP

www.weirfoulds.com

Toronto Office

4100 – 66 Wellington Street West
PO Box 35, TD Bank Tower
Toronto, ON M5K 1B7

Tel: 416.365.1110
Fax: 416.365.1876

Oakville Office

1320 Cornwall Rd., Suite 201
Oakville, ON L6J 7W5

Tel: 416.365.1110
Fax: 905.829.2035