OSC adopts self-certified investor prospectus exemption

November 14, 2022

The Ontario Securities Commission (OSC) has adopted a temporary prospectus exemption which allows individuals that possess the necessary business knowledge through qualifying education or work experience, but may not meet the financial thresholds or other criteria, to qualify as "accredited investors" (the Self-Certified Investor Exemption). As of Oct. 25, 2022, the Self-Certified Investor Exemption is effective under Ontario Instrument 45-507 entitled "Self-Certified Investor Prospectus Exemption (Interim Class Order)".

The Self-Certified Investor Exemption is being implemented by way of an interim class order by the OSC in response to a recommendation from the Capital Markets Modernization Taskforce, which called on the OSC to expand the "accredited investor" definition to those individuals who have completed and passed relevant proficiency requirements indicating a high degree of understanding of investments and capital markets.

The Self-Certified Investor Exemption is a pilot project that will run for 18 months (from Oct. 25, 2022 to April 25, 2024), unless extended by the OSC or included in National Instrument 45-106 – *Prospectus Exemptions* by way of an amendment.

What you need to know

- The Self-Certified Investor Exemption allows non-investment fund issuers with a head office in Ontario to distribute securities to investors who have self-certified as having met at least one qualifying criteria (a Self-Certified Investor).
- Self-Certified Investors must:
    i. certify that they meet one of the qualifying criteria, and
    ii. complete a risk acknowledgement (which is a more fulsome version of the risk acknowledgement form that individuals subscribing under the "accredited investor" prospectus exemption are required to complete).
- Self-Certified Investors are limited to an annual investment limit of $30,000 (in a single investment or aggregated across multiple issuers).
- Issuers relying on the exemption must file a report of exempt distribution, together with a completed Confirmation of Qualifying Criteria contained in Annex 1 of the Interim Class Order, within 10 days of the distribution.

- The first trade of a security acquired under the Self-Certified Investor Exemption will be subject to restrictions on resale for a minimum period of four months and one day from the date of issuance, in accordance with Section 2.5 of National Instrument 45-102 – *Resale of Securities*.

Self-Certified Investor qualifying criteria

Qualifying education includes holding certain financial qualifications, including a Chartered Financial Analyst Charter, a Chartered Professional Accountant designation or completing an undergraduate degree or MBA degree with a qualifying focus. An individual will be considered to have qualifying work experience if they have management, policy-making, engineering, product or other relevant operational experience at a business that operates in the same industry or sector as the issuer and who, because of this experience, is able to adequately assess and understand the risk of investment.

Purchases of securities under the Self-Certified Investor Exemption can also be made by a "permitted designate" of a Self-Certified Investor, which includes a spouse.

Takeaways

The OSC is following the lead of the regulators in Saskatchewan and Alberta who adopted a similar exemption on March 31, 2021. The Self-Certified Investor Exemption recognizes that income or asset-based tests do not guarantee financial and investment sophistication, and in practice, disqualifies certain individuals that possess the necessary business knowledge from participating in investment opportunities.

The utilization of the Self-Certified Investor Exemption may provide greater investment opportunities for qualified investors and as a result may increase the investor pool for issuers. The compliance burden on issuers seeking to utilize the exemption is mitigated by only requiring an issuer to confirm that it does not know and would not reasonably be expected to know that the statements made by the Self-Certified Investor with respect to their qualification for use of the exemption are false.

Learn more

For further information on utilizing the Self-Certified Investor Exemption, please feel free to contact any of the key contacts listed below.

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