Experimenting with flavours and exemptions – Supporting early-stage Ontario businesses

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The Ontario Securities Commission (OSC) has announced a number of time-limited exemptions from the dealer registration requirements to support capital raising for early-stage Ontario businesses. These initiatives are part of the OSC TestLab Program and include an extension of the self-certified investor prospectus exemption, and dealer registration exemptions for early-stage businesses and not-for-profit angel investor groups. There is also a new, more streamlined, reporting requirement for distributions of securities using the self-certified investor prospectus exemption.

Ontario Instrument 32-508 *Not-For-Profit Angel Investor Group Registration Exemption (Interim Class Order)* provides an exemption from the dealer registration requirement to a "not-for-profit" angel investor group that trades in securities issued by an Ontario early-stage business, subject to numerous conditions.

In the order, an "angel investor" is defined as "an individual with business or entrepreneurial experience who provides mentorship and money to issuers primarily in the start-up phase". An "Ontario early-stage business" is defined generally as an issuer that is:

a. in the start-up phase of its development;
b. operating from or doing business in Ontario where either (1) or (2) applies: (1) The head office of the issuer is located in Ontario; or (2) At least 25 per cent of the payroll of the issuer is for employees and consultants who reside in Ontario;
c. not a reporting issuer in any jurisdiction of Canada or in any foreign jurisdiction; and
d. not an investment fund.

Activities permitted under the exemption include introducing Ontario early-stage businesses looking for capital to the members of the angel investor group and holding meetings for these businesses to present their business to the members of the group. The groups will be permitted to collect compensation up to 5% of the value of the securities invested. Among several other conditions, the angel investor group must:

- conduct its activities primarily for not-for-profit purposes;

- have no more than 500 members, each of which is an accredited investor or eligible to be a self-certified investor;
- provide specified financial information to its members;
- identify, address and disclose conflicts of interest;
- maintain records for at least 7 years; and
- deliver to the OSC specified information about the angel investor group and the relevant Ontario early-stage businesses annually.

Ontario Instrument 32-509 *Early-Stage Business Registration Exemption (Interim Class Order)* provides Ontario early-stage businesses a dealer registration exemption, provided all conditions set out in the order are met. As stated in the notice announcing these initiatives, a business distributing its own securities with regularity may be in the business of trading securities, requiring registration or an exemption from registration. Each analysis is fact specific.

There are several conditions to be considered an "eligible business", including that the business must be in the early or development stages, have a primary business purpose that is not investing in real estate, mortgages, other businesses or other assets, not be engaged in holding or investing in crypto assets, and not be an investment fund.

Eligible businesses that are raising capital (on their own or through a dealer) will be allowed to engage in permitted marketing activities, including posting the terms of an offering on websites and announcing offerings on social media, as well as participating in permitted "demo days". Eligible early-stage businesses not utilizing a registered dealer will be permitted to raise funds of up to $3 million from accredited investors and from self-certified investors and will be allowed to file a streamlined report of exempt distribution using Form 32-509F2 *Alternative Report of Exemption Distribution* without paying any fees and filed on a quarterly basis.

Ontario Instrument 45-509 *Report of Distributions under the Self-Certified Investor Prospectus Exemption (Interim Class Order)* allows an issuer distributing securities under this exemption to report distributions on a quarterly basis using Form 45-509F1 *Alternative Report of Exempt Distribution* without an associated fee.

The orders providing registration exemptions expire on **October 25, 2025**, unless extended by the OSC, and the reporting exemption remains in effect until the earlier of that date or amendments to National Instrument 45-106 *Prospectus Exemptions* that addresses the same matter.

By

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