Canada's Exempt Market – Growing, Growing, Growing

December 19, 2022

Despite a small dip in 2020, the OSC's recently published Exempt Market Report shows that the Ontario exempt market continues to expand, with increases to both the number of issuers raising prospectus exempt capital and the amount of capital raised.

Takeaways

- The **accredited investor exemption** remains the **most popular** tool for Ontario investors to access the exempt market, with 97 per cent of the gross proceeds being raised under, and 9/10 issuers relying on, this exemption; however, we expect that the new "listed issuer financing exemption" will add significant exempt market capital in 2023.
- The **majority** of the approximately **$175 billion** invested by Ontario investors in 2021 came from **institutional investors** (97.8 per cent) and went to **issuers headquartered outside of Canada** (70 per cent). Moving forward, retail participation in the exempt market may increase given the recent popularity of new exemptions available to individual and institutional investors.
- **Institutions** continue to invest in **debt-related** offerings while **individual** investors remain focused on Canadian **equity** offerings.
- Interest in **real estate and mortgage-related** investments grew from 37 per cent of individual investor capital in 2019 to 43 per cent in 2021.

Institutional investors and foreign issuers dominate prospectus-exempt offerings

In OSC Staff Notice 45-718 *Ontario's Exempt Market – A Review of capital raised in Ontario through prospectus exemptions* (the Exempt Market Report), the Ontario Securities Commission (OSC) has reported on capital raised by non-investment fund issuers relying on prospectus exemptions that trigger a post-trade reporting obligation (for example, the accredited investor exemption or the offering memorandum exemption). According to the Exempt Market Report, in 2021, approximately 45,500 investors accessed the exempt market, the vast majority of which were institutional investors (36,100 or 79 per cent). While the majority (52 per cent) of investments made by institutions were in foreign issuers, individual investors were more likely to invest

capital in Canadian issuers despite an increase in the number of U.S.-based issuers raising capital from individuals. Only 25 per cent of the issuers participating in Ontario's exempt market were reporting issuers who raised only 17 per cent of the aggregate gross proceeds in the province. With the recent adoption of new prospectus exemptions, and more specifically the listed issuer financing exemption (LIFE) which is only available to reporting issuers, going forward we may see an increasing number of reporting issuers access the exempt market in Ontario.

New prospectus exemptions gain traction; OM Exemption being amended

An increase in the use of the offering memorandum exemption (the OM Exemption) and the friends, family and business associates exemption (the FFBA Exemption) was seen in 2021, with gross proceeds of $239.9 million and $165 million raised in Ontario, respectively.

Notably, the OM Exemption was predominately used by mortgage and real estate issuers. Given the popularity of the OM Exemption in these sectors, the Canadian Securities Administrators (CSA) have also recently announced final amendments (OM Amendments) to the OM Exemption targeted at issuers engaged in "real estate activities" (Real Estate Issuers) and those that are "collective investment vehicles" (CIVs). The OM Amendments were initially proposed in September 2020.

As noted by the CSA in its Notice of Amendments to National Instrument 45-106 - *Prospectus Exemptions* (December 8, 2022), the OM Exemption was initially adopted as a tool to assist early stage and small businesses to raise capital outside of the costly prospectus regime. The CSA's expectation was that these issuers would use the OM Exemption to raise small amounts of capital in advance of becoming reporting issuers. However, this has not been the case, with larger and more complex issuers gravitating to the OM Exemption. The OM Amendments will come into force on March 8, 2023 and are intended to provide greater certainty for Real Estate Issuers and CIVs with respect to their disclosure obligations and provide improved information to investors in these sectors.

Over the last year, we have also seen a number of new prospectus exemptions come into force, including the OSC's adoption of a self-certified investor prospectus exemption on October 25, 2022 and the previously noted LIFE effective November 21, 2022. Notably, the LIFE was immediately put to use by a number of issuers across industries, exchanges and Canadian jurisdictions. As of the date of publication, BLG is aware of 33 offerings launched in reliance on the LIFE with the potential of raising an aggregate of approximately $134 million in less than a month's time. These LIFE offerings come close to matching what was raised under the OM Exemption and FFBA Exemption, in Ontario collectively, over the course of 2021.

Despite the increased use of new and alternative exemptions, the accredited investor exemption remained the most popular tool for raising prospectus-exempt capital in 2021. Indeed, 90 per cent of individual investors and 97 per cent of institutional investors relied on the accredited investor exemption for their investments. Given the recent popularity of the LIFE and the fact that investors can purchase freely-tradeable

securities thereunder, we anticipate a potential decline in the use of the accredited investor exemption going forward.

Financial issuers accounted for 41 per cent of the exempt market

Ontario issuers represented more than half of the capital raised by Canadian issuers in Ontario in 2021 (approx. $32 billion); however, Canadian issuers represented less than half of gross proceeds given significant investments made in foreign (including U.S.) issuers. Of the Ontario-based issuers, while there were significantly more mining issuers than financial issuers (238 compared to 172), financial issuers raised approximately 18 times more gross proceeds than those in the mining space ($16.5 billion compared to $0.9 billion).

Similar trends seen in British Columbia and Alberta

The British Columbia Securities Commission and the Alberta Securities Commission have also published data with respect to exempt market activity in their respective capital markets. In 2021, Albertans invested $29 billion in the exempt market, representing an increase of 56 per cent (or $10.5 billion) from 2020. However, the majority of this capital ($20.4 billion) was raised by investment funds and other financial vehicles, a significant portion of which went to two international funds. In British Columbia, capital raised by private placement increased 31 per cent to $70.19 billion in 2021 (a 20 per cent increase from 2020) with the majority of this capital ($44.54 billion) being raised by investment funds as well.

Like in Ontario, there was significant reliance on the accredited investor exemption by issuers distributing prospectus-exempt securities to Albertans (98 per cent of capital) and British Columbians (80 per cent of capital). In British Columbia, outside of investment funds, mining remained the most active sector with $10.23 billion raised by 814 B.C. mining companies. Technology and communication issuers and those in the real estate sector were also very active. In Alberta, the finance and insurance industry raised the most capital ($4.6 billion) after investment funds and financial vehicles.

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