



## The Requirements and the Exemptions under the Securities Act

The *Securities Act (Ontario)*<sup>1</sup> (the “Act”), regulates both the initial issuance of shares and any resale of those securities.

In general, the two principal requirements in the context of the sale of securities are: 1) a person trading in securities must be registered (licensed); and 2) a person who wishes to distribute<sup>2</sup> securities must file a prospectus with the appropriate regulators and deliver a copy of the prospectus to the purchasers of securities.

The registration requirement ensures that only properly qualified and responsible individuals are involved in selling securities. The prospectus requirement provides for the protection of investors by requiring the issuer to provide a “full, true and plain” disclosure of the securities offered for sale and a meaningful remedy (rescission or damages) if there are any misrepresentations in that disclosure.

The legislative exemptions for the above-noted requirements provide the foundation for the exempt market or “private placement” market in Canada. These exemptions provide for situations where a purchaser participating in a trade is deemed not to be in need of the protections provided by a prospectus or a registered dealer.

In Ontario, the below exemptions are the most common and are available under the Act:

**Private Issuer Exemption:** this exemption provides for the waiver of the prospectus and registration requirements for distribution by a private issuer to persons who have certain pre-existing relationships with the issuer (including directors, officers, employees, founder or control persons and certain members of the family of a director, executive officer, founder and control person):

- security holders of the issuer;
- accredited investors (as defined below); and
- persons that are not considered to be the public.

More specifically, a private issuer is an issuer that is: 1) not a reporting issuer; 2) whose securities (other than non-convertible debt securities) are subject to restrictions on transfer in the issuer’s constating documents (Articles of Incorporation or By-Laws) or securityholder’s Agreement; 3) are beneficially owned, directly or indirectly, by not more than 50 persons other than employees and former employees of the issuer or its affiliates; and 4) has distributed securities only to the persons described above.

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<sup>1</sup> R.S.O. 1990, Chapter S.5.

<sup>2</sup> The term “distribution” includes the sale of previously unissued securities and the sale of previously issued securities by a “control block” holder.



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**Accredited Investor Exemption:** this exemption is available for acquisitions of securities, for a minimum amount of \$150,000.00, payable in cash at the time of the trade, by certain prescribed sophisticated investors, which include: companies with at least \$5 million in net assets (as of the date of their most recent financial statements); an individual who beneficially owns (or, together with a spouse, beneficially own) financial assets with an aggregate realizable value (before taxes but net of any related liabilities) of at least \$1 million or whose net income exceeded \$200,000 (or, together with a spouse, \$300,000) in each of the two most recent years; and a spouse, parent, brother, sister, grandparent or child of an officer, director or promoter of the issuer.

The above does not constitute an exhaustive definition of “Accredited Investor”. A more detailed list is available under the *Act*, and includes mutual funds, banks, licensed insurance companies, governments, etc.

Issuers who distribute securities in reliance on the above specified exemptions must file an exempt trade report with respect to the distribution. The report must include information regarding the type and price of securities distributed, the exemption relied upon and information concerning the purchaser (including name, address and telephone number). It is therefore important that the issuer notifies (and obtains confirmation) from the purchasers that their personal information will be disclosed to the Ontario Securities Commission.