

Update on Securities Law

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Private Placements:

Private placements are a hodge-podge of exceptions in Canada, with different thresholds and hold periods in each province. In May 1999, the Ontario Commission issued a “concept paper” proposing to replace the current exemptions (the private company exemption, the \$150,000 exemption, the seed capital exemption and the government incentive security exemption), with two new exemptions:

(1) **The Closely-Held Issuer Exemption.** This exemption would permit issuers to raise a total of \$3 million, through any number of financings, from up to 35 investors without concern for the “qualifications” of the investors. No prospectus or other disclosure document would be mandated and issuers relying upon this exemption would be subject to few regulatory requirements;

(2) **The Accredited Investor Exemption.** This exemption would permit issuers to raise any amount at any time from certain classes of investors (including prescribed institutions, persons and corporations with a certain net worth and the issuer's management) on the basis that these qualified persons and entities should be considered sophisticated and able to withstand financial loss. No offering memorandum or other disclosure document would be mandated, although it is contemplated that civil liability of a lesser standard than that imposed on prospectus offerings would apply to selling documents voluntarily delivered to accredited investors.

Internet Offerings:

Last year, e-minerals exploration corp. became the first Canadian direct Internet financing. Shares of the junior resource company were sold to Canadian investors via the Internet, without a dealer. Investors were able to retrieve the prospectus online, complete a subscription form, and buy with a credit card. The company was a start-up zinc exploration company with no history of operations. It raised approximately \$400,000 gross.

The company was registered as a “securities issuer”, an exemption which has been available for a number of years. Securities issuers can sell directly to the public without a dealer, by traditional mail, Internet, presumably by fax, or any combination. To become registered, the issuer must demonstrate dealer-equivalent knowledge and set-up a system to steer investors away if the company doesn't match an appropriate risk/return profile or if the investor is outside the jurisdiction.

The advantage of a securities issuer offering is that no dealer is required. Not only is the dealer's commission saved, but the costs associated with the dealer's "due diligence" review is saved. The disadvantage is that there is no dealer to promote the offering, or sustain it in the markets.

A middle-ground which might be negotiated on a case-by-case basis would be the payment of reduced commissions to dealers for referring investors to the offering, without requiring the dealer to sign-off on the prospectus. Additionally, a dealer could be retained as a "market maker" on the CDN. Allen & Allen has had discussions with the Ontario Commission regarding this middle-ground.

Civil liability Proposal:

The Commissions are proposing to give secondary investors "deemed reliance" on corporate statements that, currently, only primary investors have. If an investor buys or sells in the secondary market while a material fact is undisclosed, he or she will be deemed to rely on the misinformation and can join a class action lawsuit against the issuer, its directors and chief officers, and influential promoters and insiders.

Please call if you have any questions - 865-0303

Allen and Allen

WILLIAM ALLEN has a general practice, including estate planning, estate administration, business law, and securities law. A graduate of the University of Toronto, William Allen was called to the Bar in 1954. He later obtained a Masters of Law (LL.M.) from Osgoode Hall. He has lectured for the Canadian Bar Association and the Law Society of Upper Canada. He is the author of Estate Planning Handbook (with three editions, published in 1985, 1991 and 1999).

JOHN ALLEN has a general practice. He co-authored the 1999 Estate Planning Handbook. He was called to the Bar in 1991 and clerked with the Ontario Superior Court. A graduate of Queen's University, he has a Bachelor of Arts, Bachelor of Science, is a graduate of the "Canadian Securities Course", the "Professional Financial Planning" course, is designated as a Certified Financial Planner, and is completing a Masters of Law (LL.M.) specializing in securities law.

ASSOCIATIONS We work in association with Gaylanne Phelan and Marsha Onyett and with Michael Woods. John and Michael publish another newsletter entitled "The Legal Edge", which deals with small business and estate planning. All these newsletters are available on our website: www.virtual-law.com