

Investor Watch Exempt Market Securities

What are Exempt Market Securities?

In Nova Scotia, when companies (issuers) sell securities such as stocks, options, or bonds, they are generally required to file a prospectus. This document contains material facts about both the issuer and the security. However, in certain cases securities can be sold without a prospectus and these investments are called exempt securities; the sale is called an exempt distribution or a private placement.

What should I know about Exempt Market Securities?

These investments are not for everyone. A prospectus is meant to ensure an investor has key facts to be able to make an informed decision. Without it, you may be taking a greater risk with your money. Be aware that:

- If you buy an exempt security, you may not have the same legal rights as you do under a prospectus.
- Most exempt securities are subject to resale restrictions. This means you may not be able to sell them for a certain period of time.
- Even if no resale restrictions apply, there might not be a market for the securities you purchased, either because you would not be able to find any purchasers or they may not qualify to purchase the securities.
- Some exempt securities are not liquid. Liquidity means that you can sell an investment in a short period of time and turn it into cash. Some exempt securities, such as hedge funds, may require longer periods to redeem.
- Because these investments are bought without a prospectus, there may be very limited information available on which to base your investment decision.
- When an issuer sells its exempt securities, it may not use a registered dealer as an agent. This means, when you buy from an issuer, you may not get the same protection you would get when you buy from a registered dealer.

The Accredited Investor Exemption

Although there are many types of prospectus and registration exemptions, this document deals primarily with the **accredited investor** exemption.

The Securities Act of Nova Scotia enables an issuer to use a prospectus exemption if it issues securities to **accredited investors**.

Securities law assumes that **accredited investors** can:

- Access the information needed to assess an investment without the help of a prospectus.
- Sustain the loss of their entire investment.

In Nova Scotia, there are many criteria which qualify **accredited investors**. The complete list is contained in National Instrument 45-106 located here. (<http://www.gov.ns.ca/nssc/docs/ni45-106.pdf>)

A partial list of criteria is included for your convenience. In Nova Scotia, an **accredited investor** is one who meets at least one of the following criteria:

- Either alone or with a spouse beneficially owns financial assets exceeding \$1,000,000.
- Has had net income exceeding \$200,000 in each of the two most recent calendar years.
- Either alone or with a spouse has net assets of at least \$5,000,000.

What should I do before buying exempt market securities?

- Perform your due diligence before making any investment decision.
- Obtain information about the issuer:
 - Ask the issuer if they have prepared an offering memorandum: This document provides similar information as a prospectus although it is not reviewed by the regulator.
 - SEDAR: If they are a reporting issuer, you can access all of the company's public disclosure documents filed with securities regulators in Canada at www.sedar.com.
 - The issuer's website: Many issuers have useful information on their websites.
 - Newspapers and other publications: Look for press coverage about the issuer.
 - Your registered dealer or advisor: Consult with a registered financial representative. Contact the NSSC (<http://www.gov.ns.ca/nssc/capitalmarkets/registrants.asp>) to make sure the representative is registered to give advice or sell securities.
- Determine whether the investment suits you. Get advice from a registered adviser before buying and do not hesitate to request information before you make a decision.
- Speak to the issuer, your legal counsel, or your advisor about the restrictions on resale before you buy. There may never be a market for the issuer's securities.
- Ask the issuer or your financial adviser about the type of information the issuer is legally required to provide to you in the future.
- Get the information in writing and avoid sales pitches that sound too good to be true. Be wary if sellers tell you the securities are guaranteed to increase in value or that the company will soon "go public" and be listed on a stock exchange. **Securities Laws do not allow these kinds of claims.**

Enforcement proceedings in Canada dealing with the accredited investor exemption.

Several provinces have undertaken enforcement proceedings against the companies listed below. These companies may have relied on the accredited investor exemption in Nova Scotia.

Euston Capital Corp:

http://www.albertasecurities.com/dms/1404/15181/15442_Euston_Capital_Corp._-Decision_-2007-02-14_-2186827v4.pdf

[http://www.sfsc.gov.sk.ca/ssc/files/decision/eustoncapitalcorpetal\(dec\)feb-9-06.pdf](http://www.sfsc.gov.sk.ca/ssc/files/decision/eustoncapitalcorpetal(dec)feb-9-06.pdf)

Instadial Technologies Corp:

http://www.albertasecurities.com/dms/1404/11952/13454_Instadial_Technologies_Corp_-Decision_-2005-12-07_-2026958.pdf

Limelight Entertainment Inc:

http://www.osc.gov.on.ca/Enforcement/Proceedings/RAD/rad_20070504_limelight.jsp

Maitland Capital Ltd.

http://www.osc.gov.on.ca/Enforcement/Proceedings/RAD/rad_20060912_maitland.jsp