



December 16, 2020

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Dear Sirs/Mesdames:

Re: Request for Comments – Regarding Statement of Priorities for Financial Year to End March 31, 2022

The Private Capital Markets Association of Canada (“PCMA”) is pleased to provide our comments in connection with OSC Notice 11-791 *Statement of Priorities* as set out below.

About the PCMA

The PCMA is a not-for-profit association founded in 2002 as the national voice of the exempt market dealers (“EMDs”), issuers and industry professionals in the private capital markets across Canada.

The PCMA plays a critical role in the private capital markets by:

- assisting hundreds of dealer and issuer member firms and individual dealing representatives to understand and implement their regulatory responsibilities;
- providing high-quality and in-depth educational opportunities to the private capital markets professionals;
- encouraging the highest standards of business conduct amongst its membership across Canada;
- increasing public and industry awareness of private capital markets in Canada;
- being the voice of the private capital markets to securities regulators, government agencies and other industry associations and public capital markets;
- providing valuable services and cost-saving opportunities to its member firms and individual dealing representatives; and
- connecting its members across Canada for business and professional networking.

Additional information about the PCMA is available on our website at www.pcmacanada.com.

General Comments

As recommended by the Ontario's Capital Markets Modernization Taskforce (the "**Taskforce**"), the PCMA believes that expanding the mandate of the Ontario Securities Commission (the "**OSC**") to include fostering capital formation and competition in the markets is of great importance.

Whether or not this comes to fruition in the near term, the PCMA is of the opinion that the OSC should prioritize the ease of capital formation in the forthcoming year.

This can happen in two ways. Creating and modifying regulations that foster capital formation and reducing red tape.

The 2019 OSC report on Reducing Regulatory Burden in Ontario's Capital Markets stated the following:

"Reducing regulatory burden is especially critical for these businesses. According to a 2018 research report by the Canadian Federation of Independent Business, small businesses with fewer than five employees face significantly higher costs for regulatory compliance than larger ones with 100 or more employees – over five times higher on a per-employee basis.

Meanwhile, the economic impact of reducing regulatory load on smaller firms is heightened because of their important role in Ontario's economy. Small and medium-sized businesses employ 88 percent of the people working in Ontario's private sector, and were responsible for 84 per cent of private sector employment growth between 2013 and 2017."

We believe the OSC must make this more of an operational priority since this directly impacts many Ontario Small and Medium Enterprises ("SMEs") that have experienced unprecedented challenges as a result of the COVID-19 pandemic. It has been over a year since the OSC has published its report in November 2019, titled "Reducing Regulatory Burden in Ontario's Capital Market" and we are yet to see tangible results. These smaller firms, whom would most benefit from various burden reduction initiatives, continue to suffer from the slow pace of regulatory change that directly impacts Ontario's economy. Recognizing the challenges brought about by the COVID19 Pandemic, it is imperative that the OSC acts quickly to help these small firms.

As per our submission to the Taskforce, we implore the OSC to undertake the following in the next 12 months.

Introduce Additional Accredited Investor Categories

The PCMA supports the Taskforce's recommendation to expand the definition of an "accredited investor" ("**AI**") under the accredited investor exemption set out in section 2.3 (the "**AI Exemption**") of National Instrument 45-106 – *Prospectus Exemptions* ("**NI 45-106**"). We believe expanding the AI definition will increase the number of AIs in Ontario and arguably increase the universe of Ontario investors who will have access to investment opportunities in the private capital markets and employment by Ontario issuers who will have access to more capital to grow their businesses, create jobs and stimulate the economy.

The PCMA agrees that if an individual meets the requisite proficiency standard to recommend an investment product for others, the individual should be able to make a similar investment decision for oneself. We note that in addition to courses referred to in the Report (Canadian Securities Course Exam; the Exempt Market Products Exam; the CFA Charter or the Series 7 Exam and the New Entrants Course Exam), there are other industry courses identified in NI 31-103 and under SRO regulations that could be considered as satisfying proficiency requirements to qualify an individual as an AI.

The PCMA further submits certain professional certifications and designations may also provide evidence of investor sophistication and such individuals should also be included in the AI definition. There are a number of examinations that test an individual's knowledge and understanding in the areas of securities and investing, and individuals must pass examinations to obtain the necessary professional certification. If there are concerns with whether individuals have the requisite experience, the OSC could also consider requiring an individual to self-certify that they are a sophisticated investor as is permitted in the United Kingdom.

We note that the Alberta Securities Commission and the Financial and Consumer Affairs Authority of Saskatchewan published Multilateral Notice and Request for Comment 45-327 – *Proposed Prospectus Exemptions for Self-Certified Investors*. Although the PCMA believes expanding the number of sophisticated investors who can invest under an available prospectus exemption is laudable, this should be done under the AI exemption and not creating a new exemption with limits. Notwithstanding this differing view, we appreciate the progress on this initiative and will be providing comments on that proposal by separate cover to those Commissions.

Offering Memorandum Exemption

Ontario's SMEs are vital to the province's current and future economic prospects. SMEs are underserved by the large dealers and they are generally unable to access the public capital markets and may have challenges with doing traditional debt financing through banks. Consequently, private capital is an important funding source that SMEs rely on to finance and grow their businesses.

In Ontario, private capital is primarily raised under the AI Exemption. The pool of AIs in Ontario is limited. With this in mind, the OSC's *Exempt Market Advisory Committee* recommended that Ontario adopt the offering memorandum exemption set out in s. 2.9 of NI 45-106 (the "**OM Exemption**") to, among other things, expand the pool of private capital available to SMEs.

Since its adoption on January 13, 2016, however, the OM Exemption has been underused.

We respectfully submit that the OSC should consider make the following improvements to the OM Exemption:

- the investment limits imposed on eligible investors who receive suitability advice should be removed. The investor's dealer is best positioned to determine, in accordance with his or her professional judgment and the requirements under NI 31-103, the suitable investment amount;

- the requirement to include opening balance audited financials for issuers that are not engaged in an active business, i.e. special purposes vehicles, should be eliminated. The cost of producing audited nominal financial statements is not warranted and provides no protection for investors; and
- private investment funds, specific derivatives and structured finance products should be allowed to rely on the OM Exemption. Alternatively, the OSC should narrow the type of “complex” issuers and/or products that they are targeting with this prohibition.

The PCMA’s believe its recommendations, if adopted, will increase the pool of capital available to SMEs and reduce the cost of raising private capital under the OM Exemption, without jeopardizing Ontario investors’ interests.

Form 45-106F1 – Report of Exempt Distribution

An annual filing for Form 45-106F1 – *Report of Exempt Distribution* for all types of exempt securities should be considered. The CSA currently allows investment funds distributed under prospectus exemptions to file annually, but all other exempt distributions have to be filed within 10 calendar days and depending on the jurisdiction of distribution, this may need to be filed three different ways. This is costly and time consuming. We understand that this would be a CSA effort and not solely the OSC. In addition to recommending changing the frequency of the filing, we must ask about the information that is being collected through this filing. Particularly, why is more personal information collected than for public market trades? (*i.e.*, name, residential address, phone number and email) What is this information being used for? What is the goal of the information being collected? A lot of information has been collected; will data be provided on a summary level to registrants? Data is knowledge and knowledge should be shared.

OSC Risk Assessment Questionnaire

The burden of having to complete a Risk Assessment Questionnaire (“**RAQ**”) every two years too frequent relative to the huge burden it puts on firms to collect such information and participate in related OSC field reviews. It should be once *every four years* and the results should be shared among all CSA members. While it may be construed as not wanting to provide information, it is about the time, money and effort in how this information is collected and then inputted into the RAQ.

The RAQ does not appear to appreciate what information EMDs have readily available versus have to collect manually, which for a large EMD firm, can take many, many weeks. EMDs, unlike other dealer registrants, do not have the systems or technology service providers to easily provide the required data.

Late fees for Disclosure of Outside Business Activities

The OSC should eliminate late fees for outside business activities. Although there is a moratorium, we are concerned the OSC will bring them back. The late fees are \$100/day and up to \$5,000 per calendar year and restart the next year. For example, a dealing representative may forget their accountant/lawyer set up a holding company a few years ago and they did not report it through inadvertence. This financial penalty discourages reporting of changes and we understand it is not imposed by any other CSA member in Canada.

Directed Commissions

The OSC should explicitly allow directed commission payments to holding companies of advisors/dealing representatives. This is allowed for mutual fund dealing representatives, but not other registrants. In 2016, IIROC did a paper but the concept was not implemented. The OSC should explicitly allow individual registrants to structure their affairs in a tax efficient manner.

No Action Letters

The PCMA suggests that ‘no action letters’ similar to what is used by the SEC could ease some of the compliance burden. These letters address specific fact situations which provide guidance to registered firms and individuals on how the regulators will deal with these situations. In the current “us versus them” environment, self-reporting of new processes or innovations are not done by registrants for fear of enforcement action or administrative penalties.

No action letters would provide market participants with some confidence as the industry evolves and disruption continues. It will also allow the OSC and CSA members to keep current with innovations and new practices as it will encourage collaboration with the industry.

Terms of Reference for EMP Exam

The PCMA is very concerned that there have been no changes made to the Exempt Market Product Exam with the introduction of Client Focussed Reforms.

We strongly believe the OSC, along with other CSA members, must prepare Terms of Reference to allow other course providers to provide appropriate materials for registrants. We believe this should be a heightened imperative in light of the wholesale changes made to registrant regulation in Canada.

Closing Remarks

The PCMA would like to thank to the OSC for soliciting feedback from various stakeholders.

Yours truly,

“Craig Skauge”

PCMA Vice Chair

“Brian Koscak”

Chair of Advocacy
Committee & PCMA Vice
Chair

cc: Tommy Baltzis, PCMA Chair
PCMA Board of Directors