



May 29, 2012

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Cc: The Honourable Dwight Duncan
Minister of Finance
financecommunications.fin@ontario.ca

Lisa Enright
Chair, Small and Medium Enterprises Committee
Ontario Securities Commission
lenright@osc.gov.on.ca

Dear Sir:

Re: Ontario Securities Commission (“OSC”) Statement of Priorities For Financial Year to End March 31, 2013

About the Western Exempt Market Association

Our association was founded in 2011 by a number of firms and individuals involved in the exempt market securities industry, who saw a need for a collective voice to preserve the flexibility and unique culture of the exempt market. While we are located in Western Canada, our collective members include multiple Ontario based firms who also feel the need to be part of an active voice on our industry’s behalf. Through our members, we have firsthand insight and knowledge of the operation and corresponding needs of the exempt market in Canada.

Our mandate is to be active in the growth of the exempt market’s public profile and the improvement of its reputation. We look forward to helping further develop a practical regulatory framework that fosters development of the exempt market by allowing entrepreneurs to efficiently raise capital and investors to participate in a broader range of investment options while being adequately protected. With this in mind, we submit the following comments in response to OSC Notice 11-766 - Request for Comment Regarding Statement of Priorities for Financial Year to End March 31, 2013.

General Commentary

The OSC’s mandate is “to provide protection to investors from unfair, improper and fraudulent practices, and foster fair and efficient capital markets and confidence in capital markets”. While we acknowledge the great efforts of the OSC in regards to their

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enforcement actions, we feel that the current limited exemptions available for the purchase and sale of exempt market securities in Ontario has fostered an environment that is neither fair nor efficient for Ontario's capital markets and investors.

In Ontario, the lack of exempt market purchase exemptions available (to those other than the wealthy) has effectively created a situation where the OSC is establishing what a proper portfolio looks like (all bank/MFDA/IIROC product) as opposed to allowing the very advisors they've afforded registration to make that determination themselves. The exempt market, just like the public markets has risk. We're not denying that; all investing does. Having said that, would it not be prudent to allow all investors to invest a certain, even if very small, portion of their portfolio into securities that aren't market correlated? Particularly if their advisor thinks it's in their best interests to do so?

Much like the rest of the world, Ontario's economy is in need of revitalization and creation of small business is likely the solution that is needed. The primary driver of small business is access to capital and there is no better way to provide that access than to provide more flexibility in the exempt market. The new economic realities have created a very tight credit crunch for all businesses; small businesses in particular. It is surely a sad state of affairs when entrepreneurs are left with so few options to access capital that many line up to get on television to beg for a loan or equity investment from a "Dragon".

Given the above, our feedback is solely related to your consideration to adopting alternate capital raising exemptions in addition to the accredited investor ("AI") and \$150,000 ("MA") exemptions. In particular, we feel that the OSC should proceed with adoption of the Offering Memorandum ("OM") exemption as it would meet their stated goal to "help investors get the necessary information to enable them to make better investment decisions".

Increasing Choices for Investors

The exempt market generally offers comprehensible non-volatile investments where senior management is easily accessible. Having said that, a vast majority of the Ontario population do not meet the lofty thresholds of an "accredited investor" and do not generally have the ability to place \$150,000 into a single investment. As such, the exempt market is generally unavailable to them and is reserved for the "other 1%".

Any Ontario resident can finance 100% of a \$40,000 car, immediately lose \$10,000 as they drive it off the lot and nobody cares. Yet in the same province, they could meet the next Steve Jobs who'd like them to invest \$5,000 in his new start-up through his OM and Ontario's securities rules won't let them. The OM rules in every other jurisdiction in the country would let you invest so why are Ontario residents excluded from such opportunities? We are certain that the general population of Ontario are intelligent enough to make their own investment decisions (particularly with the help of a registered advisor) and we are just as certain that they would like to see the OSC adopt an exemption that would allow them to participate in the exempt market just like the rest of the country.

Helping Small Business and Reinventing the Economy

Small businesses in the Province of Ontario are no different than those in the rest of the country in that they require investment capital to start up and to expand in the future. However, there is a major difference in Ontario in that the current limited prospectus exemptions make it very difficult for those businesses in need of capital to go out and raise it. Many businesses that are based in Ontario and employ Ontario residents are forced to go to Western Canada to raise money for their business due to the lack of capital raising exemptions in their home province. Does that make any sense?

It would be prudent for the OSC to adopt an exemption that would make it easier for Ontario small business owners to raise capital, particularly given the current state of the economy. The OM exemption would provide the fuel that the Ontario economy needs and ultimately lead to the creation of countless businesses and jobs.

Focused Regulation

As was stated in CSA Staff Consultation Note 45-401, regulators have concerns that some individuals purchasing securities under the AI exemption are not, in fact, accredited investors. It was also noted in Note 45-401 that the MA exemption often causes the

unintended consequence of investors subscribing for more than is prudent given their personal circumstances solely to meet the \$150,000 threshold. We share these concerns however while we acknowledge that they exist across the country, we feel that these problem scenarios occur much more frequently in Ontario due to the lack of proper exemptions being available to those wishing to participate in the exempt market.

Adoption of the OM exemption would permit all Ontario residents to invest in the exempt market and accordingly that would significantly reduce the amount of investors falsely claiming to be accredited and reduce investors participating in the very behaviour that securities rules are designed to prevent (i.e. portfolio concentration in a limited number of illiquid securities).

The amount of resources that will be made available to the OSC by them having to worry less about investors misrepresenting their financial status should equate to the resources necessary to implement and monitor the OM exemption.

Conclusion

The exempt market is a critical component of our capital markets for entrepreneurs, small business, start ups, and investors. As it relates to business, our industry fills the financing needs of those who do not meet the criteria of the traditional brokerage world. As it relates to investors, our industry fills the need of lower cost, easy to understand, non-volatile investments. In the provinces that permit it, the OM exemption has made the exempt market, and accordingly comprehensible investment opportunities, accessible to millions of Canadian investors who would otherwise be unable to participate. The OM exemption also allows investors to purchase an amount of securities prudent to their comfort level and to their given circumstances. Perhaps most importantly, the OM exemption has resulted in billions of dollars being placed into entrepreneurial ideas, start ups, and small businesses which are at the heart of the Canadian economy.

We have been informed by numerous Ontario-based exempt market dealers that they have witnessed how the absence of the OM exemption in Ontario has stymied Canada's largest capital market. There are strong feelings amongst the Ontario EMD community that the increasingly isolated, hyper-regulatory atmosphere in Ontario threatens the competitiveness and prosperity of the province itself. The OSC must weigh the potential benefits of the adoption of the OM exemption versus the potential drawbacks. As stated above, in our opinion and that of many others, there are substantial benefits that adoption of this exemption will bring for investors, businesses, the economy, and even the OSC. The only potential drawback we can see is that some issuers will inevitably dishonestly rely on this exemption as has been seen in other jurisdictions. However, we submit that one of the core reasons for the existence of regulators, such as the OSC, is to ensure compliant usage of the available exemptions. If issuers are improperly utilizing the OM exemption they should be informed first and then, if need be, penalized. In short, the OSC should be focused on adopting as many prudent capital raising exemptions as possible and enforcing the proper utilization of the same.

Logic dictates that the OSC thoroughly consider adoption of the OM exemption. It is not only timely, because of the lack of critical capital available to businesses, but also sensible for investor protection. It is an obvious "alternate capital raising exemption" that supports the OSC's desire to heighten disclosure standards. What reasonable stakeholder would reject the notion of fostering an efficient capital market while championing investor protection by simply recognizing an exemption that has already proven effective in all other provinces across Canada?

Sincerely,

"signed"

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Western Exempt Market Association
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