



January 10, 2022

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
comments@osc.gov.on.ca

Dear Sirs/Mesdames:

Re: OSC Staff Notice 33-753 - OSC Consultation on Tied Selling and other Anti-Competitive Practices in the Capital Markets (the “Request for Comment”)

The Private Capital Markets Association of Canada (“PCMA”) is pleased to provide our comments in connection with the Request for Comment 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 dealers 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.

Fostering Capital Formation as a New Purpose Under the Act

The PCMA strongly supports the decision by the Ontario Government to amend the *Ontario Securities Act* (the “**Act**”) to now include “fostering capital formation”. The PCMA believes it is important to explicitly broaden the purposes of the Act with a separate and distinct purpose involving fostering capital formation. This is a different concept than competition and confidence in the capital markets and must be balanced with the other purposes of the Act.

Increasing Competition for Capital Market Services in Ontario

The PCMA’s response to the Request for Comment is limited to Question #9.

9. Are there regulatory changes that the Commission should consider to increase competition for capital markets services in Ontario?

The PCMA supports the vision of the Capital Markets Modernization Taskforce (the “**Taskforce**”) of a regulatory framework that leads to a level playing field between small and large market participants, increasing competition and helping to grow Ontario's economy.

The PCMA respectfully submits that the Commission adopt Recommendation #22 set out in the Taskforce’s Final Report¹. The Taskforce recommends allowing EMDs to participate as selling group members in prospectus offerings and be sponsors of reverse-takeover transactions in connection with Capital Pool Companies (“**CPCs**”) listed on the TSX Venture Exchange.

EMDs have traditionally played an important role in assisting start-ups and early-stage issuers to raise capital at the pre-IPO stage under available prospectus exemptions. This is necessary capital that all issuers require in order to grow their business.

According to the OSC Staff Notice 45-717 – *Ontario’s Exempt Market* dated December 2020,² \$88.6 billion of gross capital was raised by Ontario investors of which 95% was through the use of the accredited investor prospectus exemption. Approximately, one third (32%) of these issuers were reporting issuers accounting for 17% of the gross capital raised. Conversely, over two thirds (68%) of the issuers were non-reporting issuers accounting for 83% of the gross capital raised. These numbers illustrate the size and importance of the private capital markets in Ontario.

According to *Richard Carleton*, Chief Executive Officer of the Canadian Securities Exchange (the “**CSE**”), between 2017 through the end of November 2021, issuers listed on the CSE raised more than CA\$11 billion in financings in capital from the exempt market. During each of these years, Mr. Carleton states that between 20 and 27 EMDs participated in these exempt offerings. He believes it is in the interest of both investors and companies seeking capital to permit EMDs to once again participate in prospectus offerings and certain reverse take-over transactions.

¹ “**Final Report**” means the Capital Markets Modernization Taskforce: Final Report January 2021, available at: <https://www.ontario.ca/document/capital-markets-modernization-taskforce-final-report-january-2021>.

² See: https://www.osc.ca/sites/default/files/2020-12/sn_20201210_45-717_ontario-exempt-market.pdf

Mr. Carleton said, “allowing more firms to participate in the capital formation process should, through competitive forces, reduce the cost of capital for issuers, while offering more investors greater choice and access to earlier stage public companies”. He noted “EMDs played a critical role in pre- and early post-public financings to develop and nurture the cannabis industry when these companies were not supported by bank owned firms in Canada. It is time for the OSC to allow EMDs to more fully participate in prospectus offerings alongside investment dealers.

There are many more EMDs than IIROC firms in Canada. According to OSC Staff Notice 33-752 – *Summary Report for Dealers, Advisers and Investment Fund Managers* dated August 10, 2021,³ Ontario oversees 255 EMDs while IIROC regulates approximately 174 firms.⁴ The PCMA believes that given the unique role EMDs play in capital raising, capital formation would be fostered by allowing EMDs and IIROC firms to work more collaboratively with one another. Similarly, competition is encouraged by allowing EMDs to increase their product base. These are stated purposes of the Act.

EMDs and their investors are a critical source of early-stage growth capital for small and medium-sized enterprises (“SME”), including those in the cannabis, mining, crypto and technology sectors, through private placements and other alternative financing stages. This type of capital formation is crucial to Ontario’s economic development, and it should continue to be supported and encouraged by the OSC through its regulatory framework.

When a nascent issuer reaches the stage in its lifecycle when it is able to access the public capital markets and undertake a prospectus offering, investors and issuers alike may place considerable value on the continued participation by the EMD(s) who supported the issuer’s early growth as a private company (*i.e.*, a non-reporting issuer). Companies with small market capitalizations are heavily reliant on continued access to capital markets through the services provided by EMDs, especially after a public offering. In fact, there may be no or little support by an IIROC dealer afterwards. Simply, these issuers, and other stakeholders, benefit from having more dealers participating in the underwriting syndicate, particularly at the co-manager and selling group level.

The PCMA submits it is counterproductive to the capital raising process that, after nurturing the issuer’s growth, sometimes over a period of years, an issuer should be denied the ability to appoint its EMD to participate in a milestone financing event such as a public financing. This is especially true when the EMD and its investors played a critical role in an issuer’s past financings and success.

Not all issuers succeed, but when they do, it is customary and appropriate for the EMD that helped such an issuer raise early-stage capital to be formally recognized for those efforts, and to be financially compensated. An important component of that compensation is afforded by way of being granted a position, albeit a junior position, in the underwriting syndicate as a selling group member.

EMDs are currently prohibited from participating as selling group members in prospectus offerings even though this was previously allowed prior to December 2017. The PCMA submitted a detailed comment letter dated March 5, 2014, to the Canadian Securities Administrators (the “CSA”) against the CSA’s proposed change to prohibit EMDs from participating as selling group members in prospectus offerings. Please see the detailed comment letter at:

³ See: https://www.osc.ca/sites/default/files/2021-08/sn_20210810_33-752_summary-report-for-dealers.pdf

⁴ Based on review of IIROC website on January 9, 2022, at: <https://www.iiroc.ca/investors/dealers-we-regulate>

https://www.osc.ca/sites/default/files/pdfs/irps/comments/com_20140310_31-103_koscakb.pdf, which provides a detailed analysis of EMDs and prospectus offerings at such time.

The PCMA submits that EMDs provide an important distribution channel, as well as a source of information, support, and guidance, for issuers in the private capital markets, including SMEs, and accordingly, believes that EMDs should be able to sell any type of security as a selling group member in connection with a prospectus offering. Moreover, allowing EMDs to participate as selling group members in prospectus offerings does not result in investor harm. The PCMA is not aware of any evidence of same published by the OSC or any CSA member.

EMDs Acting as Agents in CPC Offerings

For the reasons expressed above, the PCMA also supports the Taskforce's recommendation that EMDs be allowed to act as agents in CPC offerings (used by smaller issuers under the TSXV's capital-raising framework because the TSXV's CPC Policy requires at least one agent in the CPC offering to be an IIROC member).

Call to Action

The PCMA has not seen any action by the Ontario Government or the OSC to move forward with having EMDs participate in prospectus offerings. The PCMA was encouraged by the support provided by the Taskforce in recommending this initiative and believes it is time that the OSC acts towards its implementation.

Simply, if bank owned dealers are restricting competition through tied-selling then it is time to broaden access to prospectus-qualified offerings by involving EMDs as selling group members since it promotes competition and bolsters Ontario's capital markets.

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We thank you for the opportunity to provide you with our submissions and would be please to discuss this with you further at your convenience.

Yours truly,

PCMA Comment Letter Committee Members*

<i>"Brian Koscak"</i> PCMA Chair of Advocacy Committee & Executive Committee Member	<i>"Richard Carleton"</i> PCMA Director
<i>"David Brown"</i> PCMA Director	<i>"David Gilkes"</i> PCMA Executive Committee Member and Co-Chair of the Compliance Committee
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**The views expressed herein are those of the above members and not necessarily those of the organizations of which they are employed or affiliated.*

cc: PCMA Board of Directors