



EXEMPT EXPERTS

John Stevenson
Ontario Securities Commission
20 Queen St W, 19th Floor
Toronto, ON M5H 3S8

March 6, 2013

Re: OSC Staff Consultation Paper 45-710

Sir,

I thank you for the opportunity to comment on the possible expansion of Prospectus Exemptions in Ontario. We have selected what we believe to be the most critical questions in your consultation and having the following comments:

Should an Offering Memorandum exemption be adopted in Ontario? If so, why?

Yes. Our experience in over the past decade with Issuers in multiple provinces have proven to us that the OM is the key document with which small business are raising funds. This is primarily due to the drastically lower cost required for preparation of an OM compared to a full prospectus; simply, the prospectus is no longer a practical instrument unless a company is already well established in the capital markets. With the banks unwilling to lend to start-ups without a personal guarantee and the public markets cost prohibitive, there is nowhere left for the Ontario business person to go.

On the investor side, there is a desire for investments not linked to the performance of the public markets. This trend can be seen both through the wide use of such investments by accredited investors across Canada, including Ontario, and by hundreds of thousands of non-accredited investors in Western Canada. And yet in Ontario the average, or even above-average, wage earner is denied the ability to invest anywhere except the public market.

Additionally, the current Ontario Government policy on the exempt market is somewhat hypocritical. If the market is so wild and dangerous that investors ought to be protected from it, why does every Ontario government pension plan have noticeable holdings in it (OMERS 15%, OTPP 10%, HOOPP 5%, OPTrust 4% with a goal of 15%)? More so, if the public market is the best place for investors, why does OTPP's private equity group have the highest historical rate of return in their fund, at over 19%? Lastly, why do government and other pensioned workers get to benefit from indirect participation in the exempt market, while the small business owner, already hurting from an inability to access funding for their business, is left out? Quite simply, the existing policy in Ontario is inequitable and unjust.

This is not to suggest that there are no problems in the exempt market. Fraud and misrepresentation exist in our market, just as they do in any market of sufficient size; the only markets that don't contain fraud are those too small to be worth a crook's effort. These issues are also not limited to a specific type of market participant: issuers, EMDs and investors have all been guilty of breaching securities laws.

Bus 403.476.0280
Fax 403.668.8343

Exempt Experts Inc.
Suite 1020, 140-10th Avenue SE
Calgary, Alberta T2G 0R1

www.exemptexperts.com



EXEMPT EXPERTS

However, the recognition of the problems by the various commissions has resulted in strong efforts towards fixing them. The adoption of 31-103 has been a great help in removing unscrupulous firms and sales people from the marketplace. The requirement for OMs to contain audited financial statements was a good start towards requiring appropriate disclosure from issuers, as I will discuss in more detail below. The public education campaigns about the role of the commissions in protecting investors should also result in fewer investors falsifying their qualifications as accredited investors.

The exempt market today is a world apart from the exempt world of a decade ago when Ontario chose not to adopt the original OM exemption. We believe the increased investor protection, disclosure and enforcement now present in the Canadian exempt market is such that there is no valid reason not to adopt this exemption.

Should there be any monetary limits on (the OM) exemption?

Yes. In our opinion, the Alberta model of no issuer limits but differing investor limits based on income and net worth is the ideal system. On the issuer side, the market is the best judge of the limit; if investors believe the proposed business plan and desired amount is reasonable, they fund it; if not, it goes unfunded. On the investor side, we think the Alberta limit of \$10,000 for everyone is fair. The Alberta eligible investor limit is also reasonable. Additionally, regardless of the limit that Ontario adopts, we would like to see continued efforts by the CSA and its member commissions towards a unified position on limits, as such a standard would reduce the burden on cross-jurisdiction offerings.

If there should be monetary limits on the OM exemption, should they be in addition to any limits imposed under any crowdfunding exemption?

No. Crowdfunding and the OM exemption are entirely unrelated and all aspects of each, including limits, should be considered exclusive of the other.

Should there be mandatory disclosure required in an OM? If so, what level of disclosure should be required?

Yes. We don't believe there is a need to reinvent the wheel. NI 45-106F2 is working well across the country and Ontario should adopt its requirements. Ontario's adoption of the existing instrument would also assist issuers in preparing cross-jurisdiction offerings.

Would a sophistication-based exemption be useful for issuers, particularly SMEs, in raising capital?

Yes. This exemption would be useful for small business owners, as their social networks are likely to include such sophisticated investors and the cost associated with these offerings are very low.

Bus 403.476.0280

Fax 403.668.8343

Exempt Experts Inc.
Suite 1020, 140-10th Avenue SE
Calgary, Alberta T2G 0R1

www.exemptexperts.com



EXEMPT EXPERTS

What educational qualifications should be met? Should we broaden the relevant educational qualifications?

In the discussion paper accompanying the Staff Notice, the OSC noted that it had considered including other designations such as CAs or LLBs, but were of the opinion that these designations did not ensure an appropriate level of financial knowledge. This is mindboggling, especially when it comes directly after a note that the OSC believes an MBA provides a sufficient background. Exactly what investment skill does an MBA in Marketing provide that the average CA lacks?

If, as proposed, the education requirement is in addition to an experience requirement, then the allowable designations should be broadened significantly. This is because you are no longer considering the knowledge of an 'average' designation holder, but instead the knowledge of a designation holder with work experience in the financial industry. So while an LLB who practises family law might not have the requisite background in securities, one who has worked in the industry probably does. Given this, we fail to see the harm in including the following designations;

- Chartered Accountant (CA)
- Certified Financial Manager (CFM)
- Certified Financial Planner (CFP)
- Certified General Accountant (CGA)
- Chartered Financial Consultant (CH.F.C.)
- Certified Management Accountant (CMA)
- Chartered Professional Accountant (CPA)
- Fellow of the Canadian Securities Institute (FCSI)
- Financial Management Advisor (FMA)
- Juris Doctorate (JD, sometimes issued instead of an LLB)
- Bachelor of Laws (LLB)
- Masters of Laws (LLM)
- Professional Engineer (PEng)
- Personal Financial Planner (PFP)

Other comments

In addition to the offering document disclosure, we believe the OSC and CSA should look at implementing an ongoing disclosure regime for private issuers. While this should be limited to issuers of a certain size, say more than \$2M raised, to ensure an appropriate cost/benefit ratio, we think the provision of audited or reviewed annual financial statements would enhance investor protection. Additionally, we believe that such a change would be welcomed by many industry participants and note that we have already seen a significant push by larger EMDs to require issuers they carry to provide such ongoing disclosure.

Bus 403.476.0280

Fax 403.668.8343

Exempt Experts Inc.
Suite 1020, 140-10th Avenue SE
Calgary, Alberta T2G 0R1

www.exemptexperts.com



EXEMPT EXPERTS

With regards to the structure of investments, we believe the limitations proposed do not appropriately take into account the provisions of the Income Tax Act. Structures such as Mutual Fund Trusts and Limited Partnerships hold significant tax advantages over simple corporations and are widely used in the exempt market in Western Canada as a result.

In closing, I again thank you for the chance to comment and hope to see the final instrument in the near future.

Sincerely,

A handwritten signature in black ink that reads "Ryan Hault". The signature is written in a cursive, slightly slanted style.

Ryan Hault, CA, CPA (WA, USA)
CFO
Exempt Experts Inc.

Bus 403. 476.0280
Fax 403. 668.8343

Exempt Experts Inc.
Suite 1020, 140-10th Avenue SE
Calgary, Alberta T2G 0R1

www.exemptexperts.com