

Comments on the Exempt Market Review OSC Staff Consultation Paper 45-107

and related

Comments on Proposed NI 51-103 and Proposed Amendment to NI 41-101, NI 44-101 and NI 45-106

Introduction

These comments are from the perspectives of an Ontario based private sector funded engineer/analyst and entrepreneur that has been active in managing the buy side, sell side and corporate issuer perspectives of public small cap Canadian company ventures that have been subject to the challenges of raising risk capital while managing the multiple aspects of Canadian securities regulations and related compliance costs.

It has been prompted by a view that small cap Ontario based issuers and exempt market dealers have been placed in a significant competitive disadvantage compared to other Canadian jurisdictions and in particular British Columbia.

This view is based on experience in roles as an Officer and Director of Greenock Resources Inc. (GKR – Venture) and founder of the Ontario registered EMD and Portfolio Manager, Hershaw & Associates Investment Counsel. Prior recent experience creating similar flow through drilling fund structures, in both the Offering Memorandum format available to only Accredited Investors and Prospectus available to broader audience confirms that the exempt investor pool is too small to support Ontario based investment initiatives.

The basic recommendations are:

1. Ontario should adopt in total without exception the British Columbia rules and regulations as they apply to Exempt Market Dealers, Offering Memorandum Exemptions and Proposed National Instrument NI 51-103 and related amendments to NI 41-101, NI 44-101 and NI 45-106. This recommendation would help to harmonize national regulations in a cooperative way and provide incentive for Ontario to move to the passport system for securities regulation.
2. Ontario should fully support, and possibly help to finance leading edge crowd-funding portal developments that leads rather the follows the practice of other jurisdictions in Canada and around the world. The disruptive change of the new integrated digital investment portal infrastructure requires assurance of success such that the initial sponsors need to be well funded, secure and provide open access to a way variety of issuers across Canada.
3. As the starting case, all Canadian securities regulators should provide the TSX Venture Exchange (or an appropriate affiliate) an exclusive one year window to develop a state of the art crowd-funding portal the will allow any current TSXV Issuer to access without restriction online investors from any Canadian or open international jurisdiction.
4. During the one year exclusivity period, the TSXV will develop the technical specifications to have integrated access to all CDS, Trading, SEDAR, and disclosure databases. After the one year

exclusivity period, the TSXV will be required to provide appropriate licencing arrangements to any other the crowd funding portals that wish to make use of the leading edge technical systems and procedures that are developed by the TSXV. Competition will be encouraged however there will be controls over basic technical standards to ensure seamless communication between competing portals with direct secure links to discount and full service brokerage accounts to allow direct delivery of digital book based of purchased share certificates. These systems would be available for private company investors.

5. Low cost regulatory user fees paid by issuers and registrants should be used to fund the development of regulations that promote the capital market infrastructure and economic growth. The investor protection aspects of securities regulators should be funded out of general tax revenues in the same way as other police and judicial government expenses are funded. They are separate functions with different objectives and should be funded by the appropriate users.

Rationale

Canada has a robust and competitive provincial securities regulatory system that has often been criticised as being inefficient compared to a consolidated national securities commission. For many years, the author sided with the conventional wisdom that the efficiency of consolidation would reduce the fee structure for issuers and registrants. In the current era of low cost digital communication, there is not any evidence that consolidation will create efficiency. Indeed there is evidence that consolidation may even impede securities regulatory competition, innovation and bold restructuring which is necessary for Canada to compete in a rapidly changing global environment.

It is also unlikely that the regulatory fee structure will become less expense even though this should be an economic development priority. Larger organizations seem to create larger overheads. Competition from all of Canada's regulators creates a "Race to the Top" which is a necessity in the current environment of weak economic growth and large structural budget deficits at all level of federal, provincial and municipal government.

To provide a simple contrast, while each securities commission has by default many overlapping goals and values there are stated differences in priorities. From a review of the opening statements of respective annual reports; the Ontario Securities Commission puts a big emphasis on "Investor Protection" while the BC Securities Commission profiles fostering "A Dynamic and competitive securities industry that provides investment opportunities and access to capital". Both of the goals are important, but from a risk perspective they do create different policy responses and internal resources allocations.

The BC policy format seems to foster higher risk capital formation necessary for entrepreneurial start-up companies. The obvious conclusion is that various provincial regulators should take the lead on respective areas of expertise and defer to their professional colleagues in other provinces that have demonstrated expertise. There seems to a perception that because Ontario has the largest securities commission that it has the most expertise in the vast array of securities regulations. In reality, Ontario has slightly over a third of total regulatory expenses, population and economy of Canada. It does not have a dominant position when compared to the regulatory budgets and staff found in the rest of Canada.

An interesting fact is to examine the head office jurisdiction of the minds and management of the 2013 TSX Venture 50. This group of 50 companies is selected as the most successful TSXV companies in any given year. It is interesting to note that although Ontario has the largest population and economy it is underrepresented with only 9 of the TSX Venture 50 companies based in that province (18%). The head office jurisdiction is an important job multiplier for related professional services. It is a fact BC regulations compared to Ontario make it easier to raise risk capital in the exempt market.

Other Recommendations

Although not directly related to the specific Consultation issues, the following are regulatory infrastructure updates that would improve productivity. These initiatives would integrate with crowd-funding technologies.

1. Update the technical search and digital database capabilities of SEDAR. The existing format of a digital database of paper based documents has not been updated for at least 10 years. For example, it would be useful to have search capabilities that produced contact details of all Officer and Directors of Issuing Companies with accompanying resumes and compensation details.
2. Develop regulatory practices for digital information proxy circular and annual meeting voting systems that are directly linked to CDS shareholder databases. Private operators like Broadridge complete portions of this process, but there is no reason further efficiencies cannot be developed to reduce overhead expenses.
3. Develop modern searchable databases for SEDAR filings of NI 43-101 and NI 55-101 Technical reports.
4. Adopt the bi-annual financial reporting cycle for Venture Issuers. The funds spent on the 3 and 9 month financial reports would be better utilized on modernizing offering memorandums, continuous disclosure and crowd-funding portals.
5. Make it a policy mandate of provincial securities commission to develop regulatory initiatives that promote economic development and jobs in all part of Canada. The Central Banks of the world are successfully moving beyond just focusing on inflation control to include economic growth and job creation as a primary mandate. Securities regulation must consider how it promotes economic growth and not just accept that regulatory barriers should be developed to provide a form of investor protection. There is little evidence that the barriers created by the Accredited Investor rules protect anyone from making poor investment decisions or prevented fraud.
6. Provide a 50% Tax Credit for the first \$250,000 of regulatory overhead for TSXV Issuers that is related to Audit, accounting, legal, annual meeting, disclosure fees, SEDAR Filings, TSXV listing fees, technical reports and officer and director compensation. Creating sustainable TSXV Issuers

combined with new infrastructure like state of the art crowd-funding portals may create a vast array of new companies and opportunities across all sectors throughout Canada.

7. Develop appropriate securities and corporate legislation that allows low cost mergers and acquisitions for small less successful TSXV companies. Templates should be developed to allow efficient restructuring of excess debts, management and director changes and other necessary changes to promote a dynamic and fair capital market system. Policy innovation should ensure unsuccessful ventures do not stagnate while allowing fair but balanced treatment of incumbent rights. Too often necessary restructuring is impeded by expensive regulatory and legal barriers that costs the original shareholders and results in negative outcome for all parties.

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Regards,

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