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March 8, 2013

VIA E-MAIL

Ontario Securities Commission
20 Queen St. West
19th Floor, Box 55
Toronto, Ontario M5H 3S8

Attention: John Stevenson, Secretary
jstevenson@osc.gov.on.ca

Dear OSC Staff:

Re: OSC Staff Consultation Paper 45-710 Considerations for New Capital Raising Prospectus Exemptions (the Concept Proposal)

This submission is made by the Exempt Market Dealers Association of Canada (the **EMDA**) in response to the request for comments published by the Ontario Securities Commission (**OSC**) on December 14, 2012 in connection with the Concept Proposal.

WHO IS THE EMDA?

The EMDA is a not-for-profit association founded in 2002 as the national voice of exempt market issuers, exempt market dealers (**EMDs**) and participants in the exempt market across Canada. We have recently celebrated our 10th Anniversary.

The EMDA plays a critical role in the exempt market by:

- assisting its hundreds of dealer and issuer member firms and individuals to understand and implement their regulatory responsibilities;
- providing high quality and in-depth educational opportunities to exempt market participants;
- encouraging the highest standards of business conduct amongst its membership across Canada;
- increasing public and industry awareness of the exempt market and its role in the capital markets;
- being the voice of the exempt market to securities regulators, government agencies, other industry associations and the 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 EMDA is located on our website at: www.emdacanada.com.

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WHO ARE EXEMPT MARKET DEALERS?

EMDs may act in two primary capacities in the capital markets: (a) as a dealer or underwriter for any securities which are prospectus exempt; or (b) as a dealer for any securities, including investment funds which are prospectus qualified (mutual funds) or prospectus exempt (pooled funds), provided they are sold to clients who qualify for the purchase of exempt securities. The qualification criteria for exempt purchasers and exempt securities are found in National Instrument 45-106 *Prospectus and Registration Exemptions* (**NI 45-106**).

EMDs are fully registered dealers who engage in the business of trading in exempt securities, or any securities to qualified exempt market clients. EMDs are subject to full dealer registration and compliance requirements and are directly regulated by the provincial securities commissions. The regulatory framework for EMDs is set out in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) which applies in every jurisdiction across Canada.

EMDs must satisfy the same "Know Your Client" (**KYC**), "Know Your Product" or (**KYP**) and trade suitability obligations as other registered dealers who are IIROC or MFDA members. NI 31-103 sets out a comprehensive dealer regulatory framework (substantially similar for all categories of dealer, including investment dealers) which requires EMDs to satisfy a number of regulatory obligations including:

- educational proficiency;
- capital and solvency standards;
- insurance;
- audited financial statements;
- KYC;
- KYP;
- trade suitability;
- compliance policies and procedures;
- books and records;
- client statements;
- trade confirmations;
- disclosure of conflicts of interest and referral arrangements;
- complaint handling;
- dispute resolution;
- maintenance of internal controls and supervision sufficient to manage risks associated with its business;
- prudent business practices requirements;
- registration obligations; and
- submission to regulatory oversight and dealer compliance reviews.

EMDs may focus on certain market sectors (*e.g.*, oil and gas, real estate, mining or minerals, technology, venture financing, etc.) or may have a broad cross-sector business model. EMD clients may be companies, institutional investors, accredited investors (**AIs**), or eligible investors who are qualified to purchase exempt securities pursuant to an offering memorandum (**OM**).

EMDs provide many valuable services to small and medium size enterprises (**SMEs**), large businesses, investment funds, merchant banks, financiers, entrepreneurs, and individual investors, through their ability to participate in the promotion, distribution and trading of securities, as either a principal or agent.

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EMDA COMMENTS ON THE CONCEPT PROPOSAL

We thank the OSC for engaging in a dialogue with market participants on new ways to raise capital in Ontario and appreciate the opportunity to respond. Below are our comments to the OSC's Concept Proposal.

OSC's Guiding Principles

The OSC's Concept Proposal identified two main themes raised in comment letters and consultation sessions with respect to the **AI Exemption**¹ and the **Minimum Amount Exemption**²: (a) providing greater access to the exempt market for issuers and investors; and (b) the desire for harmonization of the exemptions across Canadian jurisdictions. (pg. 4)

The Concept Proposal states that the objectives of the OSC's policy review are to determine how to best regulate the exempt market in a manner that: (a) enhances its role in raising capital for businesses, particularly SMEs; (b) provides retail investors with greater access to investment opportunities without compromising investor protection; and (c) better aligns the interests of issuers and investors. (pg. 4)

The OSC further states that it is guided by the principle that business and regulatory costs and other restrictions on the business and investment activities of market participants should be proportionate to the significance of the regulatory objectives sought.

Currently, there are approximately 40 prospectus exemptions found in NI 45-106; however, many exemptions are not harmonized or applicable in all jurisdictions. The EMDA has always supported and advocated greater harmonization and streamlining of the exempt market regulatory regime. The OSC has the opportunity to take a holistic regulatory approach to reforming the exempt market with a focus to modernizing, streamlining, and harmonizing the prospectus exemption regime.

The Prospectus Exemption Gap

The EMDA believes we have a prospectus exemption gap in Ontario. Some may refer to it as a funding gap and we refer you to other commentators who we understand will be providing the OSC with economic data in support of this position. However, from our perspective, there is a big gap in the capital raising ecosystem between the private issuer exemption on the one hand, and the AI Exemption and the Minimum Amount Exemption on the other. As your statistics indicate in the Concept Proposal, less than 4% of investors across Canada and in Ontario qualify as AIs. Accordingly, in order to stimulate capital formation and in turn our economy, we believe the initiatives set out in the Concept Proposal are a step in the right direction to help fill that gap.

EMDA Survey Results

The EMDA has prepared a survey involving the new capital raising exemptions set out in the Concept Proposal and our survey results are at Schedule "A" attached hereto (the **EMDA Survey**).

EMDA providing Education and Information about Crowdfunding

The EMDA believes that education and information is important when it comes to considering Ontario's proposed new capital raising exemptions; in particular, Crowdfunding. Accordingly, the EMDA has collaborated with the

¹ For purposes of this letter, the term "**AI Exemption**" refers to the accredited investor exemption set out in Section 2.3 of NI 45-106.

² For purposes of this letter, the term "**Minimum Amount Exemption**" refers to the minimum amount or \$150,000 prospectus exemption set out in Section 2.3 of NI 45-106.

National Crowdfunding Association of Canada³ and **North of 41**⁴, two other Associations, in designing a Crowdfunding survey for their members. We understand that each Association will be providing the OSC with their own comment letter and survey results which are independent of our own submission.

The EMDA, in collaboration with **Canada's Venture Capital & Private Equity Association (CVCA)** also organized a major conference on February 12, 2013 in Toronto, Ontario at the National Club called ***Crowdfunding in the Canadian Context***, which was sold out with over 200 attendees. We note that OSC Staff and New Brunswick Securities Commission Staff attended the event.

Lastly, our EMDA Chair has also spoken at various events since last year in providing education and information about Crowdfunding. One of the many goals of the EMDA is to raise the awareness of new ways to raise capital.

Below are our specific comments and responses in respect of questions posed in the Concept Proposal.

SECTION 5.3 – EXPLORATION OF AN OM PROSPETUS EXEMPTION

The EMDA believes the most important proposed new capital raising exemption is Ontario's adoption of an OM exemption, however, not in the form set out in the Concept Proposal. We believe this is more important than the proposed Crowdfunding exemption and should be the highest priority for the OSC.

The OSC's general principles in the Concept Proposal noted that the prospectus exemptions should focus on capital raising for SMEs. Since Ontario's proposed OM exemption imposes various investment limits on issuers and investors, the EMDA believes this exemption is ill-suited for SMEs and accordingly, submits that Ontario has not appropriately dealt with the funding gap/prospectus exemption gap for these types of issuers.

The restrictions on the amount of capital that can be raised and the maximum size of the investment per investor are the same as the proposed Crowdfunding exemption. As a result of these limitations, an issuer will need to find a minimum of 600 investors to raise the maximum permitted offering of \$1.5 million. No SME could do this; it would have to engage a dealer. There are few dealers that would find this engagement worthwhile given the small size of the investments permitted and the proportionately small commissions. The cost of preparing an OM, issuing securities, maintaining records of at least 600 investors, plus the costs of using a dealer is prohibitive when only a maximum of \$1.5 million may be raised. This is not in line with the OSC's general principle that business and regulatory costs should be proportionate to the benefits to the issuer.

Our EMDA Survey results clearly support our position. Below are the EMDA Survey results that specifically respond to questions posed in the Concept Proposal.

- **Should an OM exemption be adopted in Ontario? If so, why?**

EMDA Survey Results:

- 91% believe the OM Exemption should be adopted in Ontario
- 28% opted for the BC form of OM Exemption

³ See <http://www.ncfacanada.org>

⁴ See <http://www.northof41.org>

- 48% opted for the AB form of OM Exemption
- 12% opted for the ON form of OM exemption (set out in the Concept Proposal)
- 12% are undecided

We note that removing the undecided component, fully 100% of respondents with a decided position would like Ontario to adopt a form of OM exemption. This is consistent with the results of the EMDA survey conducted in relation to our 2012 Comment Letter (defined below).

- **Should there be a harmonized national OM exemption?**

EMDA Survey Results:

- 93% - yes

The EMDA has advocated harmonization, streamlining and modernizing of the exemption regime. We have proposed a harmonized OM exemption which we refer to as the 'Eligible Investor Exemption', as a potential nationalized approach to the OM exemption. We discuss this in greater detail below.

- **Should there be any monetary limits on this exemption? If so, should those limits be in addition to any limits imposed under any Crowdfunding exemption?**

EMDA Survey Results:

- 21% - yes
- 79% - no

The EMDA does not believe there should be any limits to the OM exemption which is the same approach as followed by the OM Exemption in all other jurisdictions in Canada.

- **Should there be any restrictions on the type of security that could be purchased? For example, should this exemption be available for purchases of securities of investment funds, limited partnership interests or complex products (including securitized products and derivatives)?**

EMDA Survey Results:

- 39% - yes
- 61% - no

We note the proposed OM exemption does not apply to limited partnerships and trusts that are often used to raise money for specific projects. The restrictions on the type of securities that can be sold under the OM exemption prohibits capital raising for these types of entities and will force issuers to choose other investment vehicles that may not be as tax efficient.

Our EMDA Survey results support expansion of the proposed OM exemption to other types of securities/entities.

- **Should a purchaser be required to receive investment advice from an adviser in order to rely on this exemption?**

EMDA Survey Results:

- 52% - yes
- 48% - no

Our proposed Eligible Investor Exemption, described below, includes advice from a dealer (including an EMD).

- **Should OMs be publicly posted as a condition of the OM exemption (e.g., on an issuer's website or on a central website i.e., SEDAR-like database)?**

EMDA Survey Results:

- 88% - yes
- 12% - no

The EMDA believes issuers should be required to publicly post OMs on a centralized website where it is easily accessible and searchable by the public. This is a feature of our proposed Eligible Investor Exemption, described below. We believe the public posting of OMs will provide greater transparency to the marketplace, increase compliance with the prescribed disclosure and, over time, improve the quality of OMs.

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

This question was not asked in the EMDA Survey; however, it is answered by the unanimous support for the OM Exemption in Ontario. The EMDA bases the Eligible Investor Exemption on the AB form of OM Exemption. (See footnote 5)

- **Should we require registrant involvement as a condition of this exemption? If so, what category of registration should be required?**

This question was not asked in the EMDA Survey, but it is a feature recommended as part of our Eligible Investor Exemption.

EMDA support for an OM exemption

In February 2012, the EMDA submitted a comment letter in response to the CSA's review of the AI and the Minimum Amount Exemptions (the **2012 Comment Letter**), where we encouraged the CSA to address the policy concerns raised by the current **OM Exemption**⁵. We then proposed the CSA consider a new exemption that strikes the right balance in protecting investors, fostering fair and efficient capital markets, effectively manages risk and is proportionate to its cost to industry and the restrictions it imposes on market participants. This exemption is

⁵ For purposes of this letter, "**OM Exemption**" refers to OM exemption set out in section 2.9 of NI 45-106; specifically the **BC form of OM Exemption** set out in section 2.9(1) of NI 45-106 and the **AB form of OM Exemption** set out in section 2.9(2) of NI 45-106.

consistent with the general principles articulated by the OSC in its examination of the **OM Exemption**⁶ as set out in the Concept Proposal.

The EMDA believes it is more difficult to raise capital in Ontario because the province has not adopted any form of OM exemption. We have repeatedly heard from issuers and dealers about decisions to leave Ontario for western Canada to take advantage of the superior capital raising opportunities offered under the OM Exemption. We believe this harms Ontario's capital markets, diverts capital raising to other provinces and territories of Canada and has a deleterious impact on investment in Ontario.

Proposed OM exemption

Unfortunately, the OSC proposes an OM exemption in the Concept Proposal that bears no resemblance to the OM Exemption currently in use in the other Canadian provinces or in Australia (a jurisdiction cited by the OSC). As presented, the proposed OM exemption appears to be '**Crowdfunding II**' rather than a meaningful OM exemption. The OSC's general principles in the Concept Proposal noted the exemptions should focus on capital raising for SMEs. We suggest that by not having a meaningful OM exemption, the OSC has omitted capital raising for SMEs in its proposals.

We refer to the proposed OM exemption as 'Crowdfunding II' because it contains the same restrictions on the amount of capital that can be raised and the maximum size of the investment per investor as the proposed Crowdfunding exemption. As noted above, as a result of these limitations, an issuer will need to find a minimum of 600 investors to raise the maximum permitted offering of \$1.5 million. No SME could do this; it would have to engage a dealer. There are few dealers that would find this engagement worthwhile given the small size of the investments permitted and the proportionately small commissions. The cost of preparing an OM, issuing securities, maintaining records of at least 600 investors, plus the costs of using a dealer is prohibitive when only a maximum of \$1.5 million may be raised. Again, this is not in line with the OSC's general principle that business and regulatory costs should be proportionate to the benefits for the issuer.

We submit that the OM exemption proposed by the OSC will have limited use to issuers requiring a significant amount of capital. In particular, it is unlikely that the proposed OM exemption would be a meaningful capital raising tool for SMEs in Ontario.

Investor protection

The OSC states that it has found numerous compliance deficiencies in its reviews of EMDs and is concerned that increasing the scope of the exempt market could increase these issues. The EMD category is relatively new, as it only came into effect on September 28, 2009. The various transition periods granted, numerous staff notices, NI 31-103 amendments and the issuance of blanket orders creating the "Northwest Exemption" has created a great deal of confusion. Given this background, there is likely to be some misunderstanding and mistakes. Over time, EMD compliance issues will diminish as they did with mutual fund dealers who adapted to their new regulatory regime of the early 2000's.

The OSC has stated it has the same concerns about a lack of investor protection for those who invest under the OM Exemption as it did in 2004. Unfortunately, the OSC did not provide any further analysis which makes it difficult to respond to this comment. Moreover, the OSC did not provide any analysis supporting its assumption that the OM Exemption was failing in Canada let alone that the AB model of the OM Exemption was better or worse than the BC form of OM Exemption. However, the OSC states in the Concept Proposal that there appears to be a lack of

⁶ For purposes of this letter, the term "**OM exemption**" (lowercase 'e' in exemption) refers to the form of OM exemption contemplated by the OSC in the Concept Proposal.

understanding of the exempt market by Ontario investors despite the fact they are AIs. Instead of mandating disclosure from issuers in order for investors to make an informed decision, the OSC has instead opted for avoidance and prohibition.

Taking this approach means that over 96% of Ontario investors are prohibited from investing in exempt securities. We are further concerned about future demographic changes as baby boomers retire and may fail to satisfy income or asset tests under the AI Exemption. Effectively, this would further shrink the available pool of individual investors who can participate in the exempt market and does not reflect that exempt products may remain entirely suitable for these investors. In addition to reducing the pool of capital available for issuers, avoidance and prohibition further leads to the view by retail investors that “the rich get richer” and ordinary retail investors are deprived of investments with higher returns.

The use of avoidance and prohibition seems to be a tool whereby the OSC can protect investors from themselves. However, regulating investors is not the mandate of the OSC. Regulators should be creating an environment that permits investors to make an informed investment. In the public markets, regulators create this environment by mandating issuers to disclose information and mandating the use of a registered investment dealer. The EMDA submits that investor protection in the exempt market can be better achieved through mandated disclosure of the key features and risks of the investment, requiring an investment professional to determine whether an investment is suitable for investors in light of their risk tolerance, investment objectives, time horizon and personal circumstances. The EMDA has included these features in our proposed Eligible Investor Exemption, discussed below, and recommended in our 2012 Comment Letter.

Eligible Investor Exemption

The EMDA proposes the OSC and the CSA adopt a harmonized **Eligible Investor Exemption**. The Eligible Investor Exemption is based on the AB form of OM Exemption with two additional features that are used by the securities regulators to regulate the public markets: the mandated use of a registered dealer, including an EMD, and a centralized website to post OMs.

We recommend the Eligible Investor Exemption should mandate the use of a registered dealer which is accountable for KYC, KYP and suitability determinations. We are not merely advocating this because our members include EMDs, but because these obligations are the core principles of investor protection established under NI 31-103 and reflect the fundamental focus on investment suitability, not arbitrary thresholds like income and financial assets. The EMDA believes the introduction of a registered dealer is a powerful investor safeguard that strikes the right balance in regulating risk while permitting more investors to participate in the exempt capital market.

The EMDA believes issuers should be required to publicly post OMs on a centralized website where it is easily accessible and searchable by the public. We believe the public posting of OMs will provide greater transparency to the marketplace, increase compliance with the prescribed disclosure and, over time, improve the quality of OMs.

The EMDA submits that the Eligible Investor Exemption meets the general principles identified by the OSC and will:

- increase the pool of ‘eligible investors’ to approximately 13% of investors (based on income)⁷ compared to 4% under the AI Exemption (an opportunity for Ontario to increase investment in SMEs by three-fold);

⁷ See pg. 75 of the Concept Proposal. See chart titled, “Share of Ontarians with Income – 2010” at Appendix D of the Concept Proposal. 13.6% is derived by added up the percentage of Ontarians with incomes greater than \$75,000 as set out in the Chart - Income Data: 7.3% + 4.1% + 1.0% + 0.4% + 0.8% = 13.6%.

- allow the public (*i.e.*, non-eligible investors under the AB model of the OM Exemption) to make limited investments in exempt products;
- provide a more robust form of OM exemption (although it will not be harmonized);
- allow SMEs to raise more significant amounts of capital;
- create an environment where investors are informed (through mandated disclosure of issuer information), and receive assistance from an investment professional to ensure investments are suitable; and
- provide increased transparency of exempt market offerings through the public posting of OMs leading to better quality OMs. Furthermore, the use of a dealer will ensure that investments are suitable for investors resulting in a better alignment of the interests of issuers and investors.

PROSPECTUS EXEMPTIONS BASED ON RELATIONSHIPS WITH THE ISSUER

You have asked certain questions involving other prospectus exemptions based on relationships with the issuer and our comments are set out below.

Consultation Questions, p. 12

- **Is the 50 security holder limit under the private issuer exemption too restrictive? If so, what limit would be appropriate? Please explain.**

The limit is not restrictive, although it appears arbitrary, but the definitions of certain types of enumerated investors are unclear (see below). The EMDA believe a closely-held issuer exemption (**CHI Exemption**) with a 50 security holder limit would offer more clarity for issuers.

- **Should the OSC consider re-introducing the closely held issuer exemption in addition, or as an alternative, to the private issuer exemption? If yes, should the conditions be changed?**

Yes, the OSC should re-introduce the CHI Exemption as an alternative to the private issuer exemption under section 2.4 of NI 45-106 (the **PI Exemption**).

84% of EMDA Survey respondents supported the re-introduction of the CHI Exemption in Ontario. See Question #3 in Schedule "A" attached hereto.

Issuers should have a choice in using either exemption. We recognize that issuers who raise capital under the PI Exemption may not understand they can only raise capital from a prescribed list of investors. For example, a friend of a friend of an officer and/or director of a private issuer cannot invest under the existing PI Exemption, but they could under the CHI Exemption. Moreover, the definition of a "close personal friend" and/or "close business associate", although discussed in the Companion Policy to NI 45-106, is a mixed question of fact and law where issuers are left to ascertain whether a person is a close enough friend or business associate to satisfy the exemption.

The EMDA believes the CHI Exemption replaces the uncertainty and subjectivity of the PI Exemption with a new test of ready application. This should greatly facilitate financing efforts of issuers who seek to raise capital under this exemption and represents another way the OSC can fill the prospectus exemption gap.

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However, the EMDA believes the number of investors who are eligible under the CHI Exemption should be increased to 50 from 35 excluding AIs or current or former directors, officers and employees of the issuer or an affiliated entity of the issuer or current or former consultants.

Issuers should be free to engage EMDs to assist them in raising capital under the CHI Exemption and pay any commissions or promotional expenses related thereto.

We note that page 16 of the Concept Proposal discusses the Crowdfunding regime in Australia which is akin to a business introduction and matching service. We note the AU Class Order limits offers to a maximum of 20 unqualified investors (*i.e.*, the public) and limits the aggregate amount raised in any 12-month period to A\$5 million. We believe this exemption is more like the CHI Exemption than the type of Crowdfunding framework adopted by the U.S. and proposed by the OSC in the Concept Proposal.

- **Should the OSC consider adopting a family exemption that allows for securities to be issued to an unlimited number of family members of the directors, executive officers or control persons of the issuer or its affiliates? Please explain.**

This question limits the exemption to an unlimited number of family members of the directors, executive officers or control persons of the issuer or its affiliates. The EMDA believes the OSC should adopt the family, friends and business associates exemption as set out in s. 2.5 of NI 45-106. 97% of EMDA survey respondents supported the adoption of a family, friend and business associates exemption in Ontario. See Question #4 at Schedule "A" attached hereto.

Ontario is the only Canadian jurisdiction that has not adopted this exemption.

The EMDA believes this should be a stand-alone exemption and not merely a prescribed category of investor under the PI Exemption and accordingly harmonized across all Canada.

- **Are there other changes that should be made to the current Ontario exemptions referred to above?**

Yes, as stated above, we believe the OSC should adopt the family, friends and business associates exemption as set out in s. 2.5 of NI 45-106.

SECTION 5.2 – EXPLORATION OF CROWDFUNDING

EMDA Supports Crowdfunding

88% of EMDA Survey respondents believe Canada should adopt a Crowdfunding exemption. See Question 5 at Schedule "A" attached hereto.

The EMDA supports equity Crowdfunding as a new way to raise capital provided that it strikes the right balance between investor protection and fair and efficient capital markets. The EMDA is concerned that allowing portals to raise capital without adequate investor protection would not only harm investors but also the exempt market as a whole. The EMDA recommends the OSC take a cautious approach to Crowdfunding. We recommend taking sufficient time to get it right, rather than rush and risk investor harm.

Notwithstanding the foregoing, EMDs and other market participants are cautious yet open-minded about adopting a Crowdfunding framework, however, they seek to understand how it fits into the ecosystem of capital raising and how they can benefit.

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For example, some EMDs look at Crowdfunding as providing a potential new source of client issuers who have successfully completed a Crowdfunding offering. As an issuer that was initially Crowdfunded grows and requires more capital, it may seek to work with other market participants, such as EMDs. In the ecosystem of capital raising, an issuer can graduate from working with a Crowdfunding portal to an EMD who can raise larger amounts of capital from arguably fewer investors. Moreover, some potential investors under a Crowdfunding offering may qualify as investors under other existing prospectus exemptions. In such circumstances, EMDs see the benefits of a referral arrangement with a Crowdfunding portal referring such investors (*e.g.*, AIs) to them and undertaking a contemporaneous offering alongside the Crowdfunding portal but under existing prospectus exemptions. In short, Crowdfunding potentially provides EMDs with a new source of clients; both investors and issuers.

However, the biggest concern the EMDA has with Crowdfunding is the absence of any information in the Concept Proposal on the registration requirements for Crowdfunding portals. In particular, how will Crowdfunding portals be different than EMDs? We agree with the OSC that certain traditional dealer or adviser obligations, such as the obligation to provide client-specific suitability advice about investments that are made through a portal may not be well suited to a portal's particular business model. Accordingly, the EMDA believes a 'one-size fits all' approach to registration will not work and prospective Crowdfunding portal operators will have to seek exemptive relief from the OSC from specific dealer or adviser registration requirements based on their model. We have provided additional comments about Crowdfunding portal registration below.

Need for a Nationalized and Harmonized Approach

The EMDA recommends a nationalized and harmonized Crowdfunding exemption across Canada which was supported by 85% of EMDA survey respondents. See Question #23 at Schedule "A" attached hereto.

We understand Ontario has undertaken its consideration of a Crowdfunding exemption outside of the CSA. Someone has to lead such an initiative and we thank the OSC for committing the significant time, resources and effort in investigating Crowdfunding. We encourage the OSC to share its information and data with the other CSA members. We are concerned that the OSC's proposed Crowdfunding framework is different than that proposed by the other CSA members (except British Columbia) as set out in **Multilateral CSA Notice 45-311**.⁸ The Crowdfunding model proposed by the other CSA members builds on the OM Exemption while Ontario has a new and different framework. Similarly, Ontario's proposed OM exemption does not fit with the existing OM Exemption adopted elsewhere across Canada.

The EMDA believes the OSC and CSA members should adopt the form of Crowdfunding framework being considered by the OSC, while the OSC should adopt a form of the OM Exemption (*i.e.*, the EMDA's proposed Eligible Investor Exemption as discussed earlier in our letter). Not doing so will impair the operation of fair and efficient capital markets, increase the cost of capital and further entrench the problems for issuers that have to comply with one set of requirements in Ontario and another set in the rest of Canada. We believe the CSA, in the absence of a national securities commission, must continue to work together to resolve these matters for the betterment of the capital markets across Canada.

Consultation Questions, p. 28

- **Would a Crowdfunding exemption be useful for issuers, particularly SMEs, in raising capital?**

Yes, a Crowdfunding exemption would be useful for issuers, however, not necessarily for SMEs.

⁸ "**Multilateral CSA Notice 45-311**" means Multilateral CSA Notice 45-311 *Exemptions from Certain Financial Statement-Related Requirements in the Offering Memorandum Exemption to Facilitate Access to Capital by Small Businesses*.

In addressing the prospectus exemption gap referenced earlier in our letter, we believe that Crowdfunding provides an opportunity to fill the gap for start-ups and early stage companies, but not necessarily SMEs who have larger capital requirements than can be obtained under the Crowdfunding exemption. Accordingly, the EMDA believes that Ontario's adoption of the OM Exemption (*i.e.*, the EMDA's proposed Eligible Investor Exemption as discussed earlier in our letter) is well suited for SMEs while Crowdfunding is more appropriate for start-up and early stage companies.

Crowdfunding and Start-Ups and Early Stage Companies

A Crowdfunding exemption would help fill the funding gap in Ontario for certain types of issuers. If Ontario, and moreover Canada, does not provide a Crowdfunding exemption, many issuers and entrepreneurs may re-locate to jurisdictions where Crowdfunding is legally permitted and most likely the United States. This would be a terrible loss of talent and business opportunities for Ontario and Canada and have a negative impact on our economy, jobs and entrepreneurialism.

Crowdfunding, through the use of social media, provides greater exposure to issuers and to a larger pool of potential investors. Outside of the close personal friends and business associates of, for example, officers, directors and promoters of an issuer, such individuals may not know any angel investors, private equity firms, venture capital firms or EMDs that may help them raise capital. For example, the amount raised may be too small or the issuer may be too early stage to attract those types of investors or dealers. Crowdfunding at least has the potential to fill this gap for smaller and early stage companies.

OM Exemption and SMEs

As stated earlier in our letter, the EMDA believes Ontario's proposed OM exemption is really 'Crowdfunding II' and will not address the funding gap (*i.e.*, prospectus exemption gap) for SMEs. This is equally important for reporting issuers. For example, recent media reports suggest that many public junior mining companies whose securities are listed on the TSX Venture Exchange lack sufficient capital to continue as going concerns. Ontario's adoption of a form of OM Exemption would immediately help fill this funding gap for both SMEs and certain junior reporting issuers.

- **Have we recognized the potential benefits of this exemption for investors?**

Yes, the OSC has recognized the potential benefits of this exemption for investors who are seeking greater access to different types of investment opportunities across Canada including opportunities in the exempt market. This is the so-called democratization of investment opportunities.

The OSC should also consider the benefit of a Crowdfunding portal as a repository where investors can view many different offerings by non-public companies and which allows investors to view investment opportunities they may not have otherwise considered or had access to.

- **What would motivate an investor to make an investment through Crowdfunding?**

An investor is motivated for many reasons to make an investment, let alone through Crowdfunding. He or she may invest based on management expertise, interest in an industry or space, belief in the demand for a product/service and the general risk/reward and financial metrics of an investment.

Crowdfunding, through social media, is likely to get an investor more engaged and interested in an investment. Some refer to Crowdfunding as '**investment infotainment**'; an investment that is made on the internet and fuelled by social media that is both informational and entertaining to investors. For example, a video posted on a Crowdfunding portal allows an investor to see and hear the 'pitch' by an issuer (like Dragon's Den on television)

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and allows the investor to draw their own conclusions on the merits of a particular offering. But investors are not alone in this - they can rely on each other.

The so-called 'crowd' also motivates an investor to invest. This 'crowd intelligence' is based on the crowd, through social media' ferreting out fraud or incorrect statements made by the promoter(s) of a Crowdfunding offering. This assumes the more people investing or considering investing will actually undertake more or different due diligence than traditionally done, which arguably gives an investor a higher degree of confidence and trust in management and the issuer.

Lastly, Crowdfunding may motivate an investor to invest since it provides more transparency for any financings by family and close personal friends and business associates. For example, it is highly unlikely that an issuer who posts an offering on a portal without any investment by their family and close personal friends and business associates will be successful. Crowdfunding allows the public to gain more confidence and trust in making an investment where an offering has the support of the family and close personal friends and business associates of the promoter(s) of an offering. We understand that different deals have different tipping points for investment and once a deal achieves a certain tipping point (*e.g.*, a percentage of funds raised in connection with an offering, such as, for example, 50% of the minimum offering from family and friends), the public has more trust and confidence in making an investment in a particular offering.

- **Can investor protection concerns associated with Crowdfunding be addressed and, if so, how?**

Yes, investor protection concerns associated with Crowdfunding can be addressed in the manner set out in the Concept Proposal. The proposed Crowdfunding exemption seeks to strike the right balance between investor protection and fair and efficient capital markets. In addition, we believe investors can be further protected by education, limiting investment amounts and through the regulation of a Crowdfunding portal as discussed below.

Education

Portals should be required to provide investors with education about Crowdfunding and the risks of investing.

For example, portals can provide investors with a video presentation on Crowdfunding and require investors to successfully pass a test. This provides an additional layer of investor protection and evidence that an investor understands how Crowdfunding works and that they can lose their entire investment.

Investors can sign a Crowdfunding Risk Acknowledgement Form providing another level of acknowledgement of the risks associated with Crowdfunding.

Lastly, the OSC can collect and publish statistics on Crowdfunding, on an aggregate and individual portal basis, which would provide another level of information and education for investors on Crowdfunding.

Limiting the investment amount per offering

Investors can be protected by limiting the amount they can invest per offering.

Limiting the aggregate investment an investor can make in any 12-month period

Investors can be also be protected by limiting the amount they can invest in any 12-month period. It should represent an amount an average investor can afford to lose in any 12-month period.

Registration of Crowdfunding Portal

Investors can also be protected by requiring a Crowdfunding portal to be registered as a restricted dealer with the OSC.

- **What measures, if any, would be the most effective at reducing the risk of potential abuse and fraud?**

Crowdfunding portals should be required to undertake background checks on all officers, directors, promoters and significant shareholders of an issuer seeking to raise capital under the Crowdfunding exemption. These could take the form of Personal Information Forms that such individuals are required to complete and submit to the OSC in connection with public offerings.

There is a risk that some issuers may not use the proceeds as set out in their offering document. We believe an independent investor representative should have a right, but not the obligation, to be a member of an issuer's board of directors if the issuer completes a Crowdfunding offering. This ensures a level of oversight to ensure the issuer executes as promised especially when it comes to executing their business plan and using the proceeds of the offering as contemplated in their information statement.

We are concerned that many investors who lose all their money will confuse a failed business for fraud. Businesses fail for many reasons including poor management. We believe the OSC should allocate designated resources to educate the public about Crowdfunding and the risks that investors can lose their entire investment.

- **Are there concerns with retail investors making investments that are illiquid with very limited options for monetizing their investments?**

Yes, however, with proper education investors can be made aware of the illiquid nature of these types of investments as exist with similar investments made in the exempt market.

As you know, securities sold under the U.S. Crowdfunding framework will be free-trading after a year. There is concern that Canada does not have similar re-sale rule that would allow such securities to be free-trading after a certain period of time. Under existing law, the integrity of the closed system would prohibit such re-sales in the absence of a prospectus or prospectus exemption.

Our primary concern with permitting any re-sales outside of the existing prospectus exemptions is the larger question involving the development of a continuous disclosure system for non-reporting issuers. We believe the OSC should develop a viable Crowdfunding framework first, then consider any new re-sale rules involving the exempt market as a whole, including Crowdfunding securities.

We posed a re-sale question in our EMDA Survey (See Question 11 at Schedule "A" attached hereto) about when Crowdfunding securities should be free-trading. There was no clear answer.

When preparing the question, we considered that many start-ups will fail as a general proposition irrespective of how capital is raised (*i.e.*, in the traditional manner or within a portal). Accordingly, such failures will likely occur within the first 12, 18, 24 and 36 months after a Crowdfunding offering. Therefore, with this in mind, the OSC may consider permitting a form of re-sale after a period of time (*i.e.*, longer than one year) provided that it has put in place a continuous disclosure regime for non-reporting issuers. In the absence of such a regime, it is not clear how a purchaser can make an informed decision when trading securities in the secondary market.

There are many issues that need to be considered in developing any resales regime for non-public companies, however, at this time, we recommend that the OSC defer any such review until a later time.

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- **Are there concerns with SMEs that are not reporting issuers having a large number of security holders?**

Yes, there are concerns with SMEs that are not reporting issuers having a large number of security holders. For example, a SME with over 50 non-employee shareholders would no longer qualify under the PI Exemption. In the absence of any existing or new prospectus exemptions, investors in private issuers may find it difficult to sell their shares with an issuer who no longer satisfies the PI Exemption. Moreover, Ontario's OSC Rule 62-504 restricts the non-reporting issuer exemption for take-over and issuer bids to issuers with fewer than 50 non-employee shareholders, meaning in the absence of any relief or change in the law, sales and issuer redemptions must comply with the full take-over and issuer bid regime under Ontario securities law that also applies to public companies.

A large number of shareholders also makes it difficult or next to impossible to obtain any unanimously signed shareholder resolution (which are common for small private issuers) notwithstanding the work involved from an investor relations perspective in managing such a large group of investors. However, there are a number of ways this can be addressed. For example, Crowdfunding investors can be pooled into a single investment vehicle, such as a trust, limited partnership (LP) or corporation. In such circumstances, Crowdfunding investors would receive trust units in a trust, limited partnership units in an LP or shares in a corporation and those funds in turn would be invested by the entity in securities of the Crowdfunding issuer. Therefore, there would be a single investment entity representing the 'crowd' on the books and records of the issuer (*i.e.*, trust, LP or corporation), which would be easier for an issuer to manage as well as making it easier to undertake any follow-on financings by, for example, angels, private equity or venture capital firms. This is what is done by Symbid which operates an equity Crowdfunding portal in the Netherlands; however, the investment vehicle of choice by that portal is a co-operative.

If such single investment entities are not created, then, in the absence of any new prospectus exemptions, another means to deal with a large number of investors is to issue non-voting securities to these investors to limit their participation in an issuer, however, Crowdfunding investors will still have rights under corporate law to vote on certain matters, for example, matters involving fundamental changes.

Lastly, another means of dealing with a large number of investors is to set out their rights in a shareholders' agreement where investors, as a condition of participating in a Crowdfunding offering, are bound to this shareholders' agreement.

The EMDA believes such matters should not be regulated by the OSC but left to industry to come up with the appropriate solutions.

- **If we determine that Crowdfunding may be appropriate for our market, should we consider introducing it on a trial or limited basis? For example, should we consider introducing it for a particular industry sector, for a limited time period or through a specified portal?**

EMDA Survey respondents were almost evenly split on whether a Crowdfunding exemption should be approved on a trial or limited basis. See Question 6 at Schedule "A" attached hereto. However, the EMDA believes Crowdfunding should be introduced on a trial or limited basis since there is not enough relevant experience in Canada or internationally that can provide sufficient lessons learned to ensure our 'made-in-Canada' solution is appropriate for our marketplace. We are more concerned that this new capital raising exemption be introduced properly and safely than to invite potential investor harm if rushed.

We note the SEC and FINRA have yet to introduce any rules and regulations governing any proposed U.S. Crowdfunding framework and recent media reports suggest there may be continued delays in 2013. Although we do not believe we need to wait until the SEC and FINRA have finalized their rules and regulations, a trial or limited form of Crowdfunding in Canada would allow portals, investors and issuers to gain the necessary experience, understanding and data to ensure this form of capital raising is viable in Canada. We do not propose any particular

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time-limit for such a trial, other than that the OSC/CSA should review any trial Crowdfunding experiment regularly and see how it can be harmonized with the U.S. once its rules are finalized.

We do not believe Crowdfunding should be introduced for a particular sector but should be provided through participants that have: (a) a viable technology that can be viewed by the OSC as a condition of registration; (b) adequate financial resources to undertake any trial of Crowdfunding in Canada; and (c) adequate capital markets experience depending on their particular business model.

Consultation Questions, p. 31

Issuer restrictions

- **Should there be a limit on the amount of capital that can be raised under this exemption? If so, what should the time limit be?**

61% of EMDA Survey respondents indicated that Crowdfunding should have no limit on the amount of capital that an issuer can raise in any 12-month period. See Question 9 in Schedule "A" attached hereto. On its face, this may be concerning, however, it is arguably a moot point since the greater the number of investors required to finance a transaction the less likely an issuer is to reach its financing goals since it will be difficult to attract such a large number of investors. For example, assuming investors are limited to \$2,500 per investment, it could take at least 1,200 investors to raise \$3 million, and 2,400 investors to raise \$6 million. Attracting such a large number of investors for a private company is arguably unrealistic though technically possible.

However, if the OSC requires a limit, the EMDA does not oppose prohibiting issuers from raising more than \$1.5 million in any 12-month period as set out in the Concept Proposal. However, we believe that any limit should be tied only to any capital raised under the Crowdfunding exemption and exclude any amounts raised under any other prospectus exemption, such as the AI Exemption.

- **Should issuers be required to spend the proceeds raised in Canada?**

No, issuers should not be required to spend the proceeds raised in Canada.

68% of EMDA Survey respondent strongly disagreed, disagreed or were undecided as to whether issuers should be required to spend the proceeds raised under a Crowdfunding exemption in Canada. See Question #10 at Schedule "A" attached hereto.

We live in a global marketplace and issuers should be free to deploy capital as required. Although Crowdfunding is supposed to stimulate our economy and create jobs in the jurisdiction where it is introduced, it will still have that effect provided that the head office of any issuer remains in Canada and such issuer remains established under the laws of a jurisdiction in Canada.

Investor protection matters

- **Should there be limits on the amount that an investor can invest under this exemption? If so, what should the limits be?**

67% of EMDA Survey respondent were against having any limit on the amount of capital an investor can invest under the Crowdfunding exemption. See Question #7 at Schedule "A" attached hereto.

Notwithstanding the foregoing, the EMDA, in taking a conservative approach, believes investors should be initially limited to \$10,000 in any 12-month period as set out in the Concept Proposal. This can be re-considered in the future after investors, issuers and portals have more experience with Crowdfunding.

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The EMDA believes there is correlation between investment limits and the regulation of portals. The more Crowdfunding portals are regulated, the greater the investment limits should be for investors. Conversely, the less Crowdfunding portals are regulated, the smaller the investment limits should be for investors.

67% of EMDA Survey respondents indicated that investors should not be limited on how much they can invest in any single issuer under the Crowdfunding exemption, subject to any annual investment limit. See Question #8 at Schedule "A" attached hereto. We appreciate that the OSC wants to ensure an investor's Crowdfunding investments are somewhat diversified even though a small amount of capital is involved (*i.e.*, \$10,000 annual investment limit under the Concept Proposal). However, if the OSC feels compelled to require such an investment cap per investment, it should be limited to 50% of any annual investment limit imposed on investors (*i.e.*, a \$5,000 maximum per investment under the Concept Proposal).

The OSC needs to be aware that any cap per investment requires a greater number of investors in order for an issuer to raise the maximum of \$1.5 million in any 12-month period. For example as previously discussed, to raise the maximum of \$1.5 million in any 12-month period requires 600 investors assuming they each invest \$2,500 or 300 investors if they each invest \$5,000. However, the actual number of investors will likely be much higher since not every investor will invest the maximum investment amount per investment.

We believe the OSC has taken the right approach in limiting any investment amounts to a fixed amount and not based on any individual investor income or asset tests. We believe for the small amount of investment dollars involved, such tests would add an unnecessary administrative burden on both investors and portals who would have to spend considerable resources to satisfy any such regulatory requirements. Moreover, as the OSC knows, investors are not always forthcoming in providing a portal, let alone a dealer, with personal financial information. The simple approach is the best and preferred approach.

The EMDA believes each Crowdfunding portal should be responsible for enforcing any investor or issuer investment limits in connection with any offerings undertaken on its website and based on investor and issuer affirmations.

- **What information should be provided to investors at the time of sale as a condition of this exemption? Should that information be certified and by whom?**

The OSC has suggested issuers provide an 'information statement' to investors as a condition of this exemption which includes three categories of information; financing facts, issuer facts and registration facts. We agree with this approach to a more simplistic form of disclosure than the prospectus-like disclosure required in an OM under the OM Exemption. However, market participants need to understand how the level of disclosure in an information statement will be different than the prescribed disclosure required under the OM Exemption. In the absence of any further guidance, our concern is that information statements will vary in their detail among issuers, especially if lawyers are involved, and become more than just summary documents as contemplated by the Concept Proposal. An information statement is a liability document and we note there are inconsistent interpretations regarding the level of disclosure required in an OM under the OM Exemption among CSA members and between corporate finance and enforcement staff within a particular CSA jurisdiction. We hope such interpretations can be reduced or eliminated with more guidance or rules from the OSC/CSA members involving such disclosure matters.

Although not a condition of the exemption, we believe issuers will likely post videos and/or PowerPoint presentations about their offering on a Crowdfunding portal and respond to the 'crowd' as questions are asked and comments are made about an issuer's people and business. We believe the OSC should be clear that any such information will form part of an issuer's disclosure record and any responsible parties will be liable for any misrepresentation. This is consistent with the OSC's approach involving any marketing materials provided by an

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issuer to investors under any other prospectus exemption. We believe the OSC should make it clear that promoters of an offering cannot say anything on a video presentation without having any responsibility.

The EMDA believes that an issuer, and its officers, directors and promoters, should be responsible for any misrepresentation in any offering document or information provided to investors in connection with a Crowdfunding offering. Additionally, a Crowdfunding portal should also have some liability for any misrepresentation made by an issuer in an offering document in its capacity as a gatekeeper to the capital markets; the degree of liability would vary depending on the portal's business model. The EMDA believes that imposing liability on a portal would incent the portal to be more responsible.

- **Should issuers that rely on this exemption be required to provide ongoing disclosure to investors? If so, what form should this disclosure take?**

Yes. This was supported by almost 90% of EMDA Survey respondents. See Question 14 at Schedule "A" attached hereto.

Investors want to know what is happening with their investment. Issuers should be required to provide investors with at least bi-annual financial and non-financial updates especially involving, among other things, how the investment funds are being used and any issues, concerns or unforeseen events involving the business. Arguably, investors will be more sympathetic and possibly more likely to help an issuer that is trying but failing than an issuer who tries and fails but provides no or minimal updates to investors.

Social media will either fuel speculation if issuers do not provide regular investor updates, or assist an issuer in providing those updates and getting investors more engaged and knowledgeable about their investments. We suggest that the Crowdfunding portal where funds were raised for a particular issuer may be an ideal place for issuers to post their ongoing disclosure documents for public viewing, notwithstanding an issuer's own website.

This disclosure can take the form of a Quarterly Management Update Report and interim unaudited financial information within 90 days following each quarter. The OSC should also consider requiring issuers to provide an Annual Management Update Report and audited financial statements within 120 days after the fiscal year-end of a non-reporting issuer (assuming the issuer raises more than \$500,000).

The content of such Management Update Reports should be prescribed by the OSC and essentially be a progress report against the issuer's business plan and information statement including any current business challenges and opportunities.

- **Should the issuer be required to provide audited financial statements to investors at the time of the sale or on an ongoing basis? Is the proposed threshold of \$500,000 for requiring audited financial statements (in the case of a non-reporting issuer) appropriate?**

Although many start-ups and SMEs may not be 'offering corporations' under the OBCA, the Concept Proposal sets out an audit requirement for non-reporting issuers raising more than \$500,000. The EMDA agrees that the audit requirement should be linked to a threshold amount of capital raised and agrees that non-reporting issuers (*i.e.*, non-offering corporations) should be required to provide audited financial statements after they have raised in excess of \$500,000 since inception. This was also supported by 33% of EMDA Survey respondents. See Question 13 at Schedule "A" attached hereto. We remind the OSC to consider any corporate law considerations involving any such relief under the *Business Corporations Act* (Ontario).

The CSA (other than BC) has provided similar relief in Multilateral CSA Notice 45-311 for issuers seeking to raise capital under the OM Exemption and this is consistent with that approach.

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- **Should rights and protections, such as anti-dilution protection, tag-along rights and pre-emptive rights, be provided to shareholders?**

Yes, but they should be developed by the Crowdfunding portal and imposed on issuers seeking to raise capital on a portal. Crowdfunding portals should be required to spend the time, resources and effort to provide such protections in for example, a template or modular shareholders' agreement, that all issuers must adopt as a condition of undertaking a Crowdfunding offering with a particular Crowdfunding portal.

Each Crowdfunding portal should be free to prepare a form of agreement that it believes is suitable for investors. This should not be regulated by the OSC but left to industry to develop.

Funding portals and other registrants

- **Should we allow investments through a funding portal (similar to the funding portals contemplated by the Crowdfunding exemption in the JOBS Act)?**

Yes, the OSC should allow investments through a Crowdfunding portal (similar to the funding portals contemplated by the Crowdfunding exemption in the JOBS Act); provided that it also adopts a form of OM Exemption (*i.e.*, the Eligible Investor Exemption proposed by the EMDA).

If so:

- **What obligations should a funding portal have?**

The obligations of a Crowdfunding portal would vary depending on its business model. It is difficult to provide a 'one-size fits all' solution.

Although portal operators may have the technology and expertise in designing and operating a website, the EMDA is concerned that portal operators may have little to no background or experience in the capital markets. The securities industry has been regulated for decades with robust securities laws to protect investors. It should be no different for a Crowdfunding portal.

As a general comment, we believe a Crowdfunding portal should have liability to investors and not be immune from regulatory oversight. An investor's recourse should not be limited to the issuer or to themselves akin to 'buyer beware'.

The EMDA believes a portal should be responsible for undertaking some due diligence on the management (*i.e.*, what we refer to as "Know Your Issuer" or "**KYI**") and the business plan of an issuer and any offering documents and statements posted on its website. Equity Crowdfunding is different than non-equity Crowdfunding as offered by, for example, Kickstarter, Indiegogo or RocketHub in the U.S. Every deal should not necessarily be posted on the website of an equity Crowdfunding portal. We believe that Crowdfunding portals should be required to collect KYI information and decide which deals get posted and which do not.

66% of EMDA Survey respondents indicated that that they either strongly agree, agree or are undecided as to whether a portal should have any liability for an issuer's representation in connection with a Crowdfunding offering. See Question 16 at Schedule "A" attached hereto.

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- **Should funding portals be exempt from certain registration requirements? If so, what requirements should they be exempted from?**

Yes, Crowdfunding portals should be exempt from certain registration requirements. The EMDA does not believe a Crowdfunding portal should be required to be registered as an EMD; rather it should be registered as a type of restricted dealer under NI 31-103 and subject to OSC oversight.

The Crowdfunding model does not lend itself to certain registration and compliance requirements under NI 31-103. For example, as a general comment, Crowdfunding portals should have no or very limited suitability obligations under NI 31-103 since the amounts raised per investor are too small relative to the time, resources and effort required by a portal to undertake a suitability review for each investor. Moreover, the regulatory capital and insurance requirements under NI 31-103 will also have to be re-examined based on a portal's business model. For example, the business model of Crowdcube in the United Kingdom is very different from the business model of Circle-Up or AngelList in the United States. However, in contrast, all portals should be subject to the conflict of interest and referral arrangement rules under Part 13 of NI 31-103 as they apply to all dealers. Our comments on these matters are by no means exhaustive.

Accordingly, the EMDA believes the registration requirements for a portal will vary based on its business model and accordingly cannot provide any bright line requirements as one can under a Crowdfunding prospectus exemption (*e.g.*, investment limits per investor and investment and issuer capital raising limits in any 12-month period).

As the OSC reviews and gains more experience in the registration of Crowdfunding portals, which we believe should be undertaken initially on an exemptive relief basis, it can then provide more robust guidance on its registration and compliance requirements for different types of Crowdfunding business models/portal operators. This is another reason why the EMDA believes Crowdfunding should be adopted on a trial or limited basis as discussed above.

We note that FINRA has recently requested that funding portals complete and file an Interim Form with information about each portal's contemplated portal businesses. We recommend the OSC consider doing the same in Canada. This would help the OSC gauge interest by potential portal operators and get an idea of contemplated portal business models. We submit this information would be quite useful in assisting the OSC in offering guidance on its registration and ongoing compliance requirements for different types of portal models.⁹

- **Should a registrant other than the funding portal be involved in this type of distribution? If so, what category of registrant? Should additional obligations be imposed on the registrant?**

If a Crowdfunding portal is registered with the OSC as a restricted dealer, we do not believe any other registrant should be involved in this type of distribution.

We believe an issuer should be able to raise capital under the Crowdfunding exemption with a portal while also raising capital under another prospectus exemption with a registrant, including an EMD. This was supported by 84% of EMDA Survey respondents. See Question 12 at Schedule "A" attached hereto. Additionally, we believe that a Crowdfunding portal should be able to enter into referral arrangements with EMDs and direct those investors that qualify under another non-Crowdfunding prospectus exemption to an EMD who has full KYP, KYC and suitability obligations as set out in NI 31-103.

⁹ The Interim Form for Funding Portals is on FINRA's website at: <http://www.finra.org/Industry/Issues/Crowdfunding/>.

SECTION 6.2 – EXPLORATION OF A PROSPECTUS EXEMPTION BASED ON INVESTMENT KNOWLEDGE

Consultation Questions, p. 36

General questions

- **Would this exemption be useful for issuers, particularly SMEs, in raising capital?**
- **Are there sufficient investor protections built into this exemption?**

Questions on the specific terms of the concept idea

- **Should we require an investor to satisfy both a relevant work experience condition and an educational qualification condition or would one suffice?**
- **How should we define the relevant work experience criteria?**
- **What educational qualifications should be met? Should we broaden the relevant educational qualifications?**
- **Are there other proxies for sophistication that we should consider?**

EMDA Comments

We support the general intention of broadening certain exemptions to ensure additional qualified investors have access to the exempt market and to assist issuers with a broader pool of potential investors. However, it is unlikely that this proposed exemption will make a meaningful difference to issuers raising capital and it would have a minimal effect. While we would support further educational and work experience based exemptions which would bolster the current exemption available for individual registrants, we recommend the OSC focus its efforts on a new OM exemption which will do much more for investors and issuers than further tinkering with narrow exemption categories.

If Ontario had in place both an OM exemption and an AI exemption and combined that with the family, friends, and business associates exemption, nearly all key exemption areas would be covered and many of these other narrow exemptions would be unnecessary. A robust exemption regime centred around these three exemptions could offer a unique opportunity to simplify the myriad of approximately 40 exemptions under NI 45-106. While further narrow exemptions may offer some modest benefit and demonstrate some positive movement, they are not the bold and decisive action that Ontario needs to open its exempt market for the benefit of issuers, investors and the economy.

SECTION 6.3 - EXPLORATION OF A PROSPECTUS EXEMPTION BASED ON REGISTRANT ADVICE

Consultation Questions, p. 38

- **Should we consider a new prospectus exemption that is based on advice provided by a registrant?**
If so:
- **Do you agree with limiting this exemption to a situation where the registrant has a fiduciary duty to act in the best interests of the client?**
- **Do you agree that this type of exemption should be limited to certain types of registrants (e.g., investment dealers) or should this exemption be available for another type of registrant (e.g., an EMD)?**
- **Should this type of exemption be available for registrants that sell securities of “related issuers” or “connected issuers” (which would raise conflict of interest concerns, as explained in National Instrument 33-105 *Underwriting Conflicts* and Part 13 of NI 31-103)? If so, would this be consistent with the registrant being subject to a fiduciary duty to the client?**

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- **Would exempting the issuer from a disclosure obligation have implications for a registrant’s ability to conduct a meaningful KYP and suitability review?**
- **Do you agree that a registrant should be required to have an ongoing relationship with the client?**
- **Should there be any restrictions on the type of security that could be purchased? For example, should this exemption be available for purchases of securities of investment funds and/or complex products (including securitized products and derivatives)?**
- **Should the existing managed account exemption described above be expanded in Ontario to permit purchases of securities of investment funds?**

EMDA Comments

Managed Account Exemption

We support expanding the managed account exemption in this manner and thereby removing the Ontario-only restriction relating to investment funds from the definition of ‘accredited investor’ in s.1.1 of NI 45-106. This restriction causes unnecessary concern for portfolio managers in Ontario and no longer serves any apparent public policy purpose. We commend the OSC for tabling this proposal to eliminate the investment funds restriction and thereby expand the managed account exemption to align with other jurisdictions. We believe this is the only element of this revised exemption that should be implemented.

Prospectus Exemption based on Registrant Advice

While we generally support broadening exemption categories, we do not support the suggestion that investment dealers with a managed account designation from IIROC are equivalent with a portfolio manager offering fully managed accounts to clients. While both are able to offer a managed account to clients it is not reasonably supported by the industry that key areas such as proficiency are equivalent between IIROC dealers and portfolio managers.

We are troubled by certain assertions under the heading “*Concerns with extending exemption to EMDs*” which appear unsupported and unexplained. We agree that EMDs are not equivalent to a portfolio manager in several ways (including in their proficiency), however, the suggestion that significant distinctions exist between standards applicable to EMDs and investment dealers is not supportable. While investment dealers are subject to more prescriptive rules under IIROC, it does not necessarily follow that EMDs are less compliant with core regulatory obligations of KYC, KYP and suitability as applicable to all dealers under NI 31-103. While we acknowledge the need for some EMDs to improve in certain compliance areas, we must highlight that compliance reports from IIROC note substantially the same compliance deficiencies in investment dealers. As the OSC is only experienced in overseeing EMDs and not investment dealers (or mutual fund dealers), we recommend the OSC avoid such comparisons between EMDs and investment dealers without providing detailed evidence to support such assertions.

SECTION 7.2 - ELECTRONIC FILING

Consultation Question, p. 40

- **Are there any concerns with mandating use of the E-form?**

No, we are not concerned with mandating the use of the E-form and we support the OSC’s proposal and its intention of increasing the accessibility of exempt market data. We note that the EMDA recommended that electronic filing be mandated and further study of the content of the filings be considered in our response to the CSA Consultation Paper 45-401 in February 2012.

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SECTION 7.3 – ADDITIONAL INFORMATION REQUIRED

Consultation Questions, p. 41

- **Are there any concerns with requiring this additional information in the report? Please explain.**
- **Are there other types of information that we should require in the report?**
- **Should we require more frequent reporting for investment funds? If not, why not?**

We support enhancing the information required in the 45-106F1 as we recommended in our comments on CSA Consultation Paper 45-401 in February 2012. We support the additional information as proposed and only note in relation to investment fund information that consideration should be made to avoiding duplication of information that may be available through other regulatory disclosure mechanisms.

* * *

The above comments are respectfully submitted by the Board of Directors of the Exempt Market Dealers Association of Canada on behalf of its membership.

We thank you for the opportunity to provide you with our comments and welcome any opportunity for further dialogue on these issues.

Yours very truly,

Exempt Markets Dealers Association of Canada

“Brian Koscak”
Chair

“David Gilkes”
Vice Chair

“Geoffrey Ritchie”
Executive Director

Your Industry Voice Coast to Coast

First Canadian Place, 100 King Street West, Suite 5700, Toronto, ON M5X 1C7
1.877.363.3632 • info@emdacanada.com • www.emdacanada.com

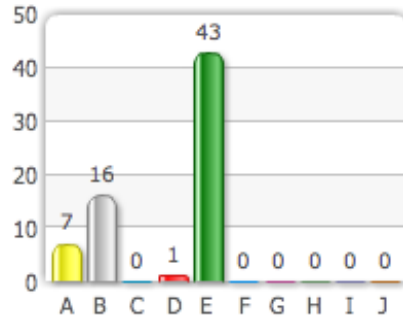
SCHEDULE A

EMDA Survey Results: New Capital Raising Prospectus Exemptions



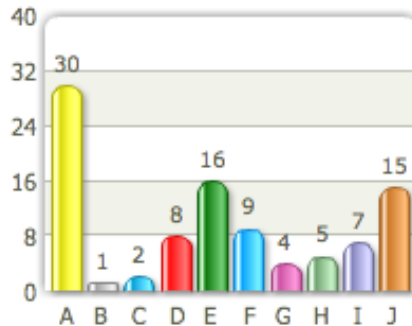
1. Please indicate in what province you reside in:

- A. BC – 10%
- B. AB – 24%
- C. SK
- D. MB – 2%
- E. ON – 64%
- F. PQ
- G. NB
- H. PEI
- I. NS
- J. NFLD



2. Please select a stakeholder category that best represents your survey responses. Select one or more, if applicable.

- A. Exempt market dealer – 45%
- B. Mutual fund dealer – 2%
- C. Investment dealer – 3%
- D. Portfolio manager – 12%
- E. Issuer – 24%
- F. Accredited investor - 14%
- G. Non-Accredited Investor (public) – 6%
- H. Potential Crowdfunding portal – 8%
- I. Potential Crowdfunding service provider – 10%
- J. Other – 24%

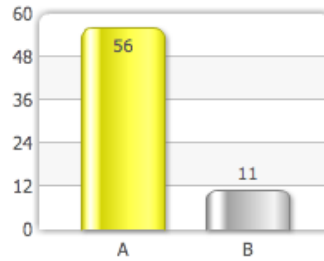


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QUESTIONS BASED ON A RELATIONSHIP WITH THE ISSUER

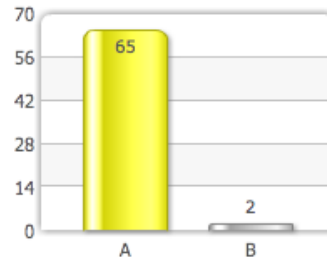
3. Should the OSC consider re-introducing the closely-held issuer exemption?

- A. Yes – 84%
- B. No – 16%



4. Should the OSC consider adopting a family, friends and business associates exemption as set out in s. 2.5 of National Instrument 45-106? This exemption is presently unavailable in Ontario.

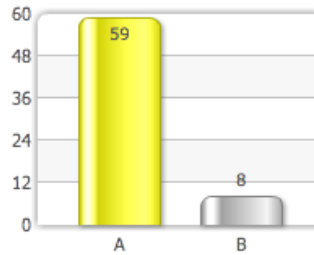
- A. Yes – 97%
- B. No – 3%



QUESTIONS ON A PROPOSED CROWDFUNDING EXEMPTION

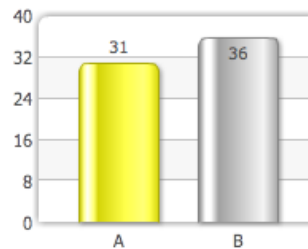
5. Should Canada adopt a Crowdfunding exemption under applicable securities laws?

- A. Yes – 88%
- B. No – 12%



6. Should a Crowdfunding exemption be approved on a trial or limited basis at first?

- A. Yes – 46%
- B. No – 54%

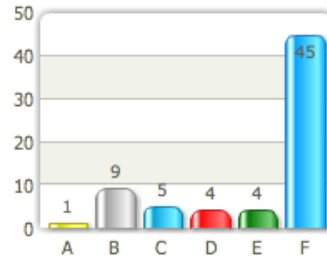


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Investor Protection Questions

7. Should investors be limited on the amount of capital they can invest in any 12-month period (i.e., annual investment limit)? If yes, what is the maximum amount of capital an investor should be able to invest in any 12-month period?

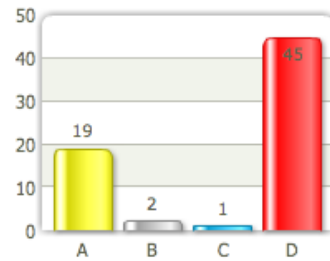
- A. \$0 - \$2,000 – 2%
- B. \$2,001 - \$5,000 – 13%
- C. \$5,001 - \$10,000 – 7%
- D. \$10,001 - \$15,000 – 6%
- E. \$15,001 or more – 6%



F. No, investors should not be limited on the amount of capital they can invest in any 12 month period. – 67%

8. Should investors be limited on the amount of their annual investment capital they can invest in any one Crowdfunding issuer in any 12-month period?

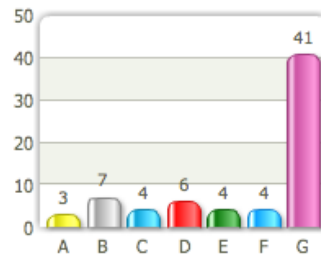
- A. Yes, up to 25% – 28%
- B. Yes, up to 50% – 3%
- C. Yes, up to 75% – 2%
- D. No, investors should not be limited to a certain percentage per any one Crowdfunding issuer. – 67%



Issuer Questions

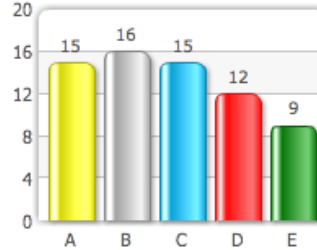
9. What is the aggregate amount of capital that an issuer should be able to raise in any 12-month period?

- A. \$0 - \$500,000 – 4%
- B. \$500,001 - \$1,000,000 – 10%
- C. \$1,000,001 - \$1,500,000 – 6%
- D. \$1,500,001 - \$2,000,000 – 9%
- E. \$2,000,001 - \$2,500,000 – 6%
- F. \$2,500,001 - \$3,000,000 – 6%
- G. No limit – 61%



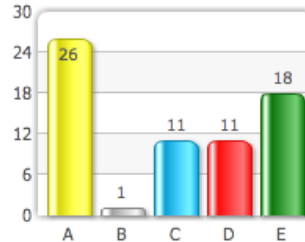
10. **Should issuers who raise capital in Canada be required to spend the proceeds of the capital raised in Canada?**

- A. Strongly Disagree – 22%
- B. Disagree – 24%
- D. Agree – 18%
- E. Strongly Agree – 13%



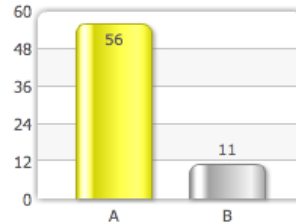
11. **Should Crowdfunding securities be free-trading securities after a period of time? If yes, when should they be eligible for secondary market trading?**

- A. After 12 months – 39%
- B. After 18 months – 2%
- C. After 24 months – 16%
- D. After 36 months – 16%
- E. No, Crowdfunding securities should not be free-trading securities after a period of time. – 27%



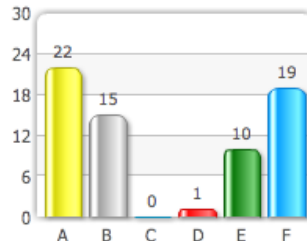
12. **Should an issuer be allowed to raise capital under the proposed Crowdfunding prospectus exemption and, at the same time, under any other prospectus exemptions under Canadian securities law?**

- A. Yes - 84%
- B. No - 16%



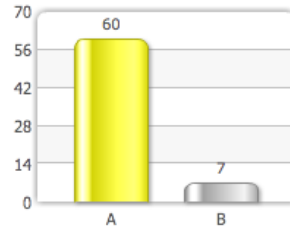
13. **Should an issuer always be required to provide audited financial statements in connection with any Crowdfunding offering? If yes, please select an appropriate threshold where audited financial statements should be required?**

- A. \$500,000 or more – 33%
- B. \$1,000,000 or more – 22%
- C. \$1,500,000 or more – 0%
- D. \$2,000,000 or more – 2%
- E. \$2,500,000 or more – 15%
- F. No, issuer should not be always required to provide audited financial statements in connection with any Crowdfunding offering. – 28%



14. **Should issuers be required to provide ongoing disclosure to investors after a Crowdfunding offering is completed?**

- A. Yes – 90%
- B. No – 10%

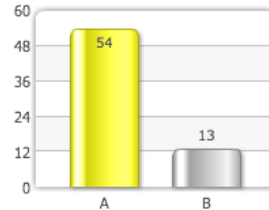


QUESTIONS ON A PROPOSED CROWDFUNDING EXEMPTION

Portal Questions

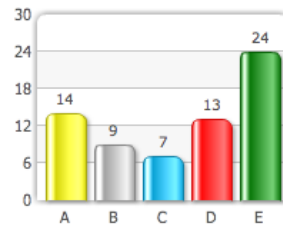
15. **Should Canadian securities regulators allow investments through a portal (i.e., selling securities through the internet) whether through a Crowdfunding exemption or other prospectus exemption under applicable securities laws?**

- A. Yes – 81%
- B. No – 19%



16. **A portal should be required to certify (and incur liability if it is wrong) that to the best of its knowledge, information and belief, there are no misrepresentations in any document or information posted by an issuer on the portal’s website in connection with an offering by an issuer including, but not limited to: (a) any statement in any offering document; and (b) any oral statement in any video posted on the portal’s website in connection with the offering.**

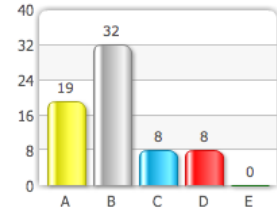
- A. Strongly Disagree - 21%
- B. Disagree – 13%
- C. Undecided – 10%
- D. Agree – 19%
- E. Strongly Agree – 36%



QUESTIONS ON THE OFFERING MEMORANDUM PROSPECTUS EXEMPTION

17. Should Ontario adopt a form of OM exemption? Please tick the appropriate box below.

A. Yes, as adopted by British Columbia and certain other Canadian jurisdictions that require, among other things, a prescribed OM and investor risk acknowledgement form for any amount of investment by the public (see s. 2.9(1) of NI 45-106). – 28%



B. Yes, as adopted by Alberta and certain other Canadian jurisdictions that require, among other things, a prescribed OM and investor risk acknowledgement form for any investment by the public up to \$10,000. Investments greater than \$10,000 can only be made by ‘eligible investors’. (see s. 2.9(2) of NI 45-106). – 48%

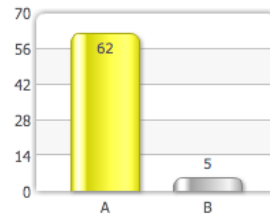
C. Yes, as proposed by the OSC in its Crowdfunding/OM exemption where the only difference is that there is no portal and registrant involvement (assuming there is no requirement to register) under the OM exemption. – 12%

D. Undecided – 12%

E. No, Ontario should not adopt a form of OM exemption

18. Should the Canadian securities regulators adopt a nationalized and harmonized OM exemption (the same across all Canadian jurisdictions)?

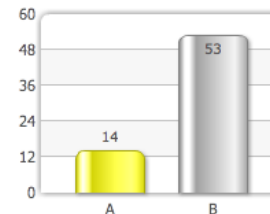
A. Yes – 93%



B. No – 7%

19. Should there be any monetary limits on this exemption (e.g., aggregate annual investment limit on investors or issuers)?

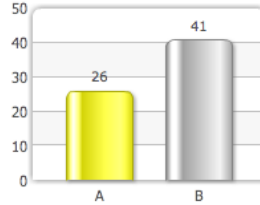
A. Yes – 21%



B. No – 79%

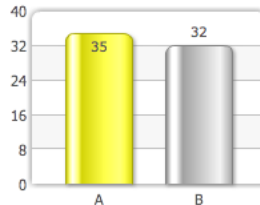
20. Should there be any restrictions on the type of security that could be purchased? For example, should this exemption be available for purchases of securities of investment funds, limited partnership interests or complex products (including securitized products and derivatives)?

- A. Yes – 39%
- B. No – 61%



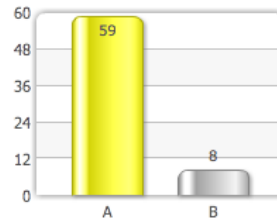
21. Should a purchaser be required to receive investment advice from an EMD or other investment advisor in order to rely on this exemption?

- A. Yes – 52%
- B. No – 48%



22. Should OMs be publicly posted as a condition of the OM exemption (e.g., on an issuer’s website or on a central website (i.e., SEDAR-like database)?

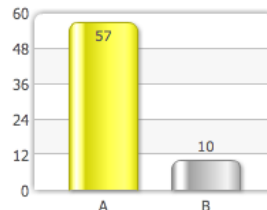
- A. Yes – 88%
- B. No – 12%



Certain CSA members have adopted exemption orders providing relief from the requirement to obtain an audit on financial statements and other financial information and the requirement for financial statements to be prepared using Canadian GAAP applicable to publicly accountable enterprises (IFRS) in connection with the OM exemption under s. 2.9 of National Instrument 45-106 (the OM exemption order). It is suggested that this is a form of Crowdfunding exemption for Canada. The question below relates to these changes.

23. Should there be a nationalized and harmonized Crowdfunding framework in Canada?

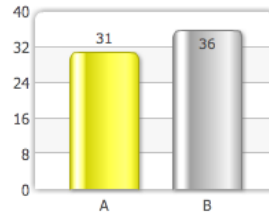
- A. Yes – 85%
- B. No – 15%



24. **Should a proposed Crowdfunding framework in Canada be based on the Ontario concept proposal?**

A. Yes – 46%

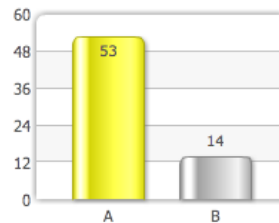
B. No – 54%



25. **Should a proposed Crowdfunding framework in Canada be based on the OM exemption and reduced disclosure requirements (i.e. Form 45-106F2) to the existing OM exemption under s. 2.9 of National Instrument 45-106?**

A. Yes – 79%

B. No – 21%

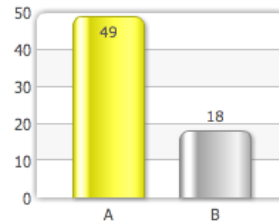


QUESTIONS ON PROSPECTUS EXEMPTION BASED ON ADVICE FROM A REGISTRANT

26. **Should the OSC consider a new prospectus exemption based on advice provided by a registrant?**

A. Yes – 73%

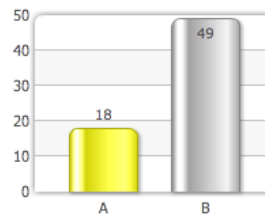
B. No – 27%



27. **Should EMDs (including its dealing representatives) be excluded from providing advice under this exemption as currently contemplated?**

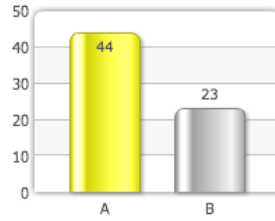
A. Yes – 27%

B. No – 73%



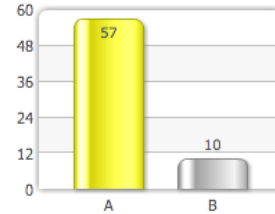
28. Do you believe this proposed prospectus exemption will be widely used?

- A. Yes – 66%
- B. No – 34%



29. Should the existing managed account exemption be expanded in Ontario to permit purchase of securities of investment funds?

- A. Yes – 85%
- B. No – 15%



QUESTION ON SOPHISTICATED INVESTOR PROSPECTUS EXEMPTION

30. Do you believe this exemption would be materially useful for issuers in raising capital?

- A. Yes - 73%
- B. No - 27%

