



May 29, 2012

Robert Day
Manager, Business Planning
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8

Sent via Email: rday@osc.gov.on.ca
Cc: The Honourable Dwight Duncan
Minister of Finance
financecommunications.fin@ontario.ca

Dear Sir:

Re: OSC Statement of Priorities For Financial Year Ending March 31, 2013
Recommendation to Consider Adoption of Offering Memorandum Exemption

These thoughts are tendered in response to your request for feedback on your proposed objectives and initiatives for the coming year.

We assist issuers and investors across Canada in connection with capital formations that are exempted from the prospectus and registrant requirements under the applicable securities laws. Although we practice law solely in the province of British Columbia, our clients regularly seek investors in Alberta and Ontario, and to a lesser extent in other provinces and territories of Canada. We have also assisted Ontario issuers with distributions in British Columbia.

Earlier this year we provided our comments to the CSA regarding the Canadian capital markets as they affect small, start-up and early stage issuers. At that time we expressed our concerns that the proposals to further restrict the size of the accredited investor and \$150,000 investor exemptions would move Canada in the opposite direction to what was happening in the USA. Since the end of February, our concerns are playing out with the subsequent enactment of the JOBS Act.

Aspects of these concerns about the threats to the Canadian capital markets for our clients are summarized below.

We work with many issuer clients at different stages in their life cycle – from enterprise formation through to investor exit. We also assist in financial and strategic disposition transactions, as well as family, seed, angel and venture round investments – sometimes for the issuer and sometimes for the investors.

Every year our clients spawn many new businesses – as well as traditional financial service, real estate based, aquaculture, marine, forestry and customary business sectors, the IT, knowledge based and high-tech sectors are very active. In these latter sectors there is a tension between retaining the enterprise,

economic benefits, employment and spin-off opportunities within Canada and the pull of out-of-country migration most usually to the USA. It is not unusual for us to address with our clients at the enterprise formation stage whether their capital raising should take place in Canada or in the USA. For those with scalable expectations it is almost certain that there will be later rounds of investment – super angels or venture capital – which will bring almost irresistible pressure to relocate to the United States.

This means that our issuer clients and their investors consider the impact of the rules for capital formation not only in Canada but also in the USA. We are concerned that the enactment of the JOBS Act and recent SEC decisions not to increase the threshold for net worth for American accredited investors and to exclude only the principal residence from an investor's qualifying asset base, are increasing the pressure on these innovators to migrate even earlier in the enterprise's life cycle. When we combine these new developments with the recent Canadian legislative changes to restrict investment of funds in registered retirement savings plans our concerns about new enterprise formation in Canada become even greater.

As we act for investors who qualify under the Offering Memorandum, MA and AI Exemptions we are also aware of their issues, which include:

- (a) that the compliance costs imposed on issuers regulated under securities laws compared to those on unregulated investments (primarily investment real estate) represents erosion in the effective use of invested capital;
- (b) that the public market place has not provided their return on investment expectations;
- (c) the wish for portfolio diversification into the same alternative investments as are available to institutional investors; and
- (d) the opportunity to make greater returns by investing outside of Canada – including into vehicles that migrate for access to larger capital pools.

It is in this context that we join in the discussion of the recommendation for Ontario to expand this part of the capital market by adopting the Offering Memorandum Exemption as an additional tool for investors and to provide investment opportunities for investors. It seems anomalous that a vehicle that has proved effective in the rest of Canada is not on offer to investors in Ontario who do not meet either the accredited investor or minimum amount thresholds. Certainly Ontario issuers who wish to raise funds elsewhere in Canada are making offering memorandum distributions.

In the result we recommend that the Ontario Securities Commission adopt the Offering Memorandum Exemption in NI 45-106 so as to would allow Ontario residents to participate in this sector of the exempt market. In the circumstances of encouraging business formation and employment expansion we encourage you to make adoption of this exemption a priority in the coming year.

Yours truly,

REED POPE LLP


R. Keith Reed
rkreed@reedpopel.ca
* Law Corporation