

May 29, 2012

Mr. Robert Day  
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Ontario Securities Commission  
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Email: rday@osc.gov.on.ca

Cc: The Honourable Dwight Duncan  
Minister of Finance  
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Dear Sirs and Mesdames:

**Re: Request for Comments Regarding Notice 11-766 Statement of Priorities**

Please accept this letter as a response to your request for comments and specific advice regarding the proposed objectives for the fiscal year ending March 31, 2013. We would like to thank you for taking the time to read our letter and all other submitted letters. We appreciate the Ontario Securities Commission (the "OSC") taking the time to consult with members of the industry. The following letter expresses the view of the writers and does not represent the views of the firm of Miller Thomson LLP. Other lawyers within the firm may provide their own opinion to the OSC which may differ from the letter below.

This letter will discuss two of the regulatory goals you have highlighted:

1. Consider and consult on alternate capital raising exemptions in Ontario in addition to the Accredited Investor and \$150,000 exemptions
2. Help investors get the necessary information to enable them to make better investment decisions by applying high standards of disclosure through robust prospectus and continuous disclosure reviews."

Both of these regulatory goals can be addressed by implementing the "Offering Memorandum exemption" in Ontario, as the Western jurisdictions have already done. As members of the legal profession who facilitate transactions through exempt markets across the country, we regularly witness the negative impact on Ontario's economy due to a lack of an Offering Memorandum exemption.

Without this exemption, it is our opinion that Canada's largest capital market has severely hampered. Small businesses (issuers) and Exempt Market Dealers can only raise crucial capital from approximately two percent (2%) of Ontario's population. This percentage may become an even smaller number if the Canadian Securities Administrators increase the thresholds to qualify as an "Accredited Investor" or increases the "Minimum Amount" exemption.

Recent macro-economic forces have drastically reduced various individuals' and groups' availability of funds and willingness to invest. This change in investment patterns has furthered narrowed the accessibility of funds for entrepreneurs within that two percent (2%). In fact, some of our clients have been unable to secure traditional loans from institutional lenders which are critical to expand their operations. As such, business growth is significantly hampered. Such financing would also provide a viable business model for exempt market dealers in Ontario, as has been the case in various other Canadian markets.

Furthermore, precluding investors from utilizing this exemption narrows their investment options only to those provided by banks or large institutional investors. Such restrictions reduce the ability of investors to diversify their assets. Lack of diversity in investment portfolios render investors vulnerable to market conditions and concentrate their exposure to various market and investment risks. For example, in order to invest in attractive opportunities, some investors subscribe more money than is prudent for their personal circumstances. They may use their RRSP's, RRIF's, RESP's, TFSA's or even borrow against the equity in their primary residence to reach the \$150,000 threshold required to utilize the Minimum Amount exemption. Moreover, investors under the same exemption make investment decisions based off of minimal information. However, with an Offering Memorandum exemption, regulatory authorities can require higher standards of disclosure that ensure investors make informed investment decisions based on "full, true, and plain" disclosure.

There has been some suggestion that changing the income and asset thresholds for other exemptions, such as the "Accredited Investor" and "Minimum Amount" exemptions would be more beneficial than instating the Offering Memorandum exemption. We believe that such a change would significantly diminish the exempt market in Ontario, unless the Offering Memorandum exemption was adopted. Moreover, in our opinion, no amount of money necessarily equates to investor "sophistication". Rather, focusing on ensuring meaningful standards of disclosure would be more beneficial in facilitating fair and efficient use of the capital markets.

Having professional experience in this field provides us with insight on how to ensure investors have access to the necessary information to enable them to make better investment decisions. The writers both practice private equity-raising, primarily representing issuers, through the exempt market industry. Given that we have drafted 100+ Offering Memorandums, we are very familiar with the large amount of time and complexity involved in drafting such disclosure documents. These are not simple documents and can take weeks or even months to complete. Notwithstanding the forgoing, an Offering Memorandum in the current regulated form is much more direct regarding the actual investment than a prospectus. A prospectus is long, cumbersome and overwhelming – an average investor will likely be unable or unwilling to make the commitment to read the entire document. An Offering Memorandum, on the other hand, will more likely be read in its entirety due to its succinctness.

It is our opinion that the hyper-regulated and isolating atmosphere in Ontario must change at a time when the necessity of acquiring capital is inversely proportional to its availability. The Offering Memorandum exemption would allow businesses to prosper by having efficient and broad financing options available; it would allow individuals to protect and enhance their financial well-being. Business and investors throughout Western Canada are already benefitting in the ways outlined above. As mentioned previously, the writers have drafted 100+ Offering Memorandums and only a very small number of the issuers (3 or 4) were unable to payback the investors' initial investment and interest. This is a far better track record than many of the public companies over the last four years. As such, we strongly believe that being a public company or issuing equity, by way of prospectus, does not necessarily ensure success.



At a minimum, the final published Statement of Priorities should include a detailed list of capital raising exemptions under consideration. However, we strongly believe that the adoption of the Offering Memorandum exemption should be a priority for the fiscal year, if the protection and prosperity of the capital markets are genuine goals for policymakers.

Thank you again for taking the time to read our letter and allowing us to voice our opinions in making these important decisions. Should you have any questions or concerns, please free to contact either one of the writers below.

Yours very truly,

MILLER THOMSON LLP

MILLER THOMSON LLP

Per: *“Greg P. Shannon”*

Per: *“Darren M. Smits”*

Greg P. Shannon, Q.C.

Darren M. Smits

