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June 3, 2013

VIA E-MAIL

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

Attention: Robert Day
Senior Specialist, Business Planning and Performance Reporting
rday@osc.gov.on.ca

Dear OSC Staff:

Re: Ontario Securities Commission Notice 11-768 – Statement of Priorities (the Statement of Priorities)

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 April 4, 2012 in connection with the OSC's 2013-2014 Statement of Priorities.

WHO IS THE EMDA?

The EMDA is a not-for-profit association founded in 2002 to be 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/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;

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- 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.

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 which 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.

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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, or eligible investors who are qualified to purchase exempt securities pursuant to an offering memorandum.

EMDs provide many valuable services to small and medium size enterprises, 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.

EMDA COMMENTS ON THE STATEMENT OF PRIORITIES Capital Formation

Ontario's #1 Priority Should be Adopting the Offering Memorandum Exemption

We support the OSC's focus on addressing the funding gap/prospectus exemption gap in Ontario by considering new capital raising exemptions. Part of the OSC's mandate is to promote fair and efficient capital markets and the current economic climate makes such proposals a critical priority for capital markets participants.

The EMDA has consistently communicated in our many discussions with OSC Staff and our comment letters, that Ontario's number one priority in raising new capital is to adopt a form of offering memorandum (**OM**) prospectus exemption as set out in s. 2.9 of National Instrument 45-106 (the **OM Exemption**). Ontario is the only jurisdiction in Canada that does not have a form of OM Exemption. The EMDA believe the absence of an OM Exemption in Ontario has significantly limited business expansion, slowed our economy and job growth and prevented investors from participating in great investment opportunities the exempt market.

The OSC's report in new capital raising exemptions stated, among other things, that less than 4% of the Ontario population qualify as accredited investors. Therefore, 96% of Ontario residents are being denied access to the exempt market. Adopting a form of OM Exemption would solve this problem. Although harmonization is a goal of all securities regulation, especially having 13 securities regulators in Canada, we believe it is more important that Ontario adopt a form of OM Exemption, similar to that adopted by Alberta, but also require a dealer to participate in such distributions and publicly post OMs. The EMDA believes nationalization is more important than harmonization and attempts to achieve harmonization would regrettably delay this important capital raising tool for Ontario.

The EMDA believes the introduction of an OM Exemption will "move the needle" on capital raising and benefit investors and issuers. The EMDA is concerned that no reference was made in the Statement of Priorities about the OM Exemption where only Crowdfunding was specifically mentioned. The OSC should be reminded that the OM Exemption regime has already been adopted and implemented across Canada. It has a track record that can be analyzed and improved upon, and is not a new but untested prospectus exemption like Crowdfunding.

Selling Securities on the Internet

The EMDA supports equity Crowdfunding, however, we believe the OSC's focus should also be more broadly cast towards selling securities on the internet and updating its approaches and policies in relation thereto. Crowdfunding is subset of selling securities on the internet and exempt market dealers need additional guidance from regulators on how to manage the regulatory objectives when using the internet, including social media, to sell securities to the public.

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Suitability Focus

The EMDA believes the OSC needs to provide more guidance on suitability especially in light of the OSC’s findings in its suitability sweep involving select higher risk EMDs. We believe the OSC needs to work with and enhance EMDs understanding of what is expected from regulators. For example, neither the CSA nor the SROs have provided meaningful guidance on how suitability is expected to be conducted as opposed to simply defining what they believe to be a “suitable” investment. The EMDA is open to working with the OSC on preparing and delivering improved guidance on the methods and process of assessing suitability of investments for the exempt market and its investors.

Best Interest Duty Should be Replaced with a Focus on Selling Proprietary Products

The EMDA does not believe the OSC should continue with its review of the best interest standard for EMDs. A fiduciary standard is incompatible for many EMD business models and their investors and it is an inefficient use of scarce OSC resources. Alternatively, the EMDA believes the OSC should consider providing enhanced guidance on how EMDs can sell proprietary products and the various issues and concerns related to that business model. This subject matter review may lead to the conclusion that EMDs have differing duties to investors than other capital market participants, or perhaps should have, when selling proprietary products. This should be a priority of the OSC as it will address significant conflicts of interest matters.

Regardless of whether the OSC focuses on a best interest duty or selling proprietary products, it must work with dealers and advisers - not just investors and SROs as stated in priority #2. The slow adoption of CRM is partly a reflection of a top-down regulatory approach and we encourage the OSC to avoid that approach in the future. These issues significantly impact industry and the OSC should understand the impact from those directly regulated and impacted by any new regulation and take a more bottom-up approach.

Database of OSC Registrants

Many investors and capital market participants regularly complain that there is no user-friendly searchable database where they can easily locate a dealer and/or advisor by name, firm, city, municipal address and other data metrics. The EMDA believes this should be a priority for the OSC since it would assist all capital markets participants. The current list of registrants and individuals is helpful but not necessarily useful for investors, for example, wanting the names of all dealing representatives and firms in a particular city. Once the OSC has created such a database that is widely accepted and useful to capital market participants plans can be made to integrate it with the National Registration Database.

* * *

We thank you for the opportunity to provide you with our comments on the Statement of Priorities and welcome any opportunity for further dialogue on this matter.

Yours very truly,

The Exempt Markets Dealers Association of Canada

<i>“Brian Koscak”</i> <i>Chair</i>	<i>“David Gilkes”</i> <i>Vice Chair</i>	<i>“Geoffrey Ritchie”</i> <i>Executive Director</i>
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