



SLOANE CAPITAL CORP.

June 18, 2014

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The Secretary
Ontario Securities Commission
20 Queen Street West
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Toronto, Ontario M5H 3S8

Re: CSA Proposed Amendments Relating to the Offering Memorandum [Exemption](#)

Dear Madams:

I am writing to comment on the proposed amendments to NI 45-106, in particular the proposed annual investment limits for non-accredited investors.

I have read some exceptional letters that you have received addressing the Proposed Amendments to NI 45-106. I am writing this letter with the intent to simply highlight some of the main points.

By way of background I have been registered with the Ontario Securities Commission since 1975. After working as an advisor at several IDA firms I held the positions of both President and Designated Compliance Officer at my own Limited Market Dealer that I registered in 1990, then at my own Securities Dealer, next at a Mutual Fund Dealer and now I am President and Chief Compliance Officer at my own Exempt Market Dealer. I have witnessed the changes and improvements by the regulators each decade.

When it came to the Exempt Markets I have worked under the Sophisticated Investor Rules and later the current Accredited Investor (AI) rules in Ontario. Although I was born in Toronto and still live in Toronto I made a business decision to conduct almost all of my business in Alberta and British Columbia as there was minimal "Retail" Exempt Market business in Ontario since less than 2% of the population qualify as an AI. In Western Canada, assuming the investment was a suitable one, anyone over the legal age currently has the choice to participate in the Exempt Market. Their money – Their choice.

As we know Ontario is the only Province that does not permit the OM Exemption. For the last few years there have been serious discussions held on allowing the OM Exemption in Ontario. These discussions were carried on by the Regulators, Securities Lawyers, Industry Participants and many other well-educated professionals and well-intended individuals. Ontario has come to the point where the OM Exemption will be launched in early 2015.

There is no argument from anyone that the OM Exemption will help to solve the serious problem of providing funding for small and medium size businesses, funding that has dried up over the last decade. The OM Exemption in Ontario is a major step forward. I applaud the Regulators for moving the OM Exemption forward. There is one serious flaw that was added at the 11th hour. The proposal of “The Cap” set arbitrarily at \$30,000 per 12 month period for anyone who does not meet the definition of an AI. As damaging as that is to rolling out a true OM Exemption in Ontario, the Proposal of a \$30,000 cap in the rest of Canada where the OM Exemption already exists, and where the Registrants in those Provinces have spent years and significant financial and human resources to train their Dealing Representatives and Compliance Departments to work within those regulations, the implementation of a \$30,000 cap will destroy, yes destroy, all of the advances made in the Exempt Markets.

I majored in Economics at University. History has proven that “Artificial” caps do not work. Period. There is no argument that will refute that. Enough said.

Moving on to the evolution of investing in the Exempt Markets for non-Accredited Investors in Ontario. For Non-Accredited Investors in Ontario who do want to participate in the Exempt Market there is currently the Minimum Investment (MI) Exemption. The MI Exemption means that if you do not earn sufficient income to qualify as an AI (or meet the net financial or net worth thresholds) the only way that an Investor could participate in the Exempt Market was to invest a “Minimum” of \$150,000 in one investment at one time. Most of us recognize that many of the MI trades were unsuitable and should never have taken place. My question is why is anyone thinking of replacing a minimum of \$150,000 with a maximum of \$30,000 for those who do not meet the definition of an AI?

The Proposal for an OM Exemption in Ontario was as perfect as it could be, and both the industry and investors were looking forward to that progressive decision until the suggestion of a \$30,000 cap was added.

Imagine a young male or female taking driving lessons. They study and practice and over approximately 20 months they graduate from their G1 to G2 and finally become a Licensed Driver. Imagine however, they are then told that they will only be provided with \$10 of gas per month. Now imagine that same person at 45 years old and being told that they can only invest \$30,000 per 12 month period because they only earn \$160,000 annually.

Investor Protection. Prior to the implementation of NI 31-103 (September 28th, 2010) and without the regulations it brought in there were a small percentage of poorly structured exempt investments. There were some people in the industry who did take advantage of the lack of regulations to raise hundreds of millions of dollars. Under the old regulations (pre-September 28th, 2010) there were hundreds of millions of dollars that evaporated. Without question NI 31-103 solved the problems that existed prior to its implementation. In the last 4 years since the implementation of NI 31-103 there have not been any blow-ups of hundreds of millions of dollars – thank goodness. In the mainstream retail Exempt Offerings there was one cease trade order that was removed after 14 months. After the Regulators investigated,

the Offering came back and is available for sale. One Hundred percent of the expected distributions were successfully made during the cease trade. The Investment did what it was set up to do. Investors are all happy. One other investment that is currently being worked through is offside approximately \$8.4 Million. Investors are waiting to see how much of the \$8.4 Million will be recovered. The point I am trying to make is in 4 years \$8.4 Million is a far cry from hundreds of millions. The point I am trying to make is that NI 31-103 already fixed the problem. Thanks to all of the Regulators who worked diligently for years to create NI 31-103.

Thanks to NI 31-103 there are so many checks and balances that did not exist prior to its implementation. For the most part Issuers of Exempt investments have to have their Offerings approved and sold through Exempt Market Dealers (EMD's). EMD's are responsible to have a proper Due Diligence process prior to allowing their Dealing Representatives (DR's) market any Offering. EMD's have Know Your Product training. DR's complete KYC's with their clients to determine, among other things, the Suitability of an investment for each specific client. The Chief Compliance Officer at each EMD must approve the investment prior to the investment being made. Diversification is key when assisting clients. Let's not forget that DR's must pass the Canadian Securities Course or Exempt Market Products Course prior to even speaking with a client.

NI 31-103 has already solved the problems that occurred prior to September 28, 2010. Please consider the years of research and discussion that went into the creation of NI 31-103 in order to solve the problems of pre-September 28th, 2010 versus an unnecessary, artificial, arbitrary cap of \$30,000 which is a poor attempt to solve a problem that was already solved.

As a veteran of the Exempt Markets I am imploring the Regulators to allow the Registrants to do their jobs professionally. These same Registrants passed the exams that the Regulators demanded of them. The EMD's have set up Compliance Departments to meet or exceed the expectations of the Regulators. Please do not set artificial rules for Investors. It is absolutely Not Suitable for most Non-Accredited Investors to be limited to a cap of \$30,000 per 12 month period. After years of training Registrants of the significance of KYC, KYP and Suitability, the implementation of an Artificial Cap of \$30,000 will destroy any chance of successfully achieving the 3 former cornerstones of the Exempt Market - to the utter detriment of the Investor. So instead of achieving investor protection, a cap will achieve investor destruction through lack of diversification and higher costs to make up for the losses suffered by Issuers and EMD's.

In summary, as an EMD registered in 8 Canadian Provinces, I am respectfully requesting that the Regulators rethink including any cap in any Province where the trade is made by a duly-registered DR and EMD. Please allow NI 31-103 to continue to work effectively.

Thank you for the opportunity to comment on NI 45-106. I am confident that, in the end, the Regulators will recognize what is needed to be done to properly assist Investors, Issuers and Registrants alike.

This submission is being made on my own behalf.

If you would like further elaboration on my comments, please feel free to contact me at sfreedman@sloanecap.com.

Regards,

Sloane Capital Corp.

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President & CCO

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