



March 1, 2019

The Secretary
Ontario Securities Commission
20 Queen Street West
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Dear Sirs/Mesdames:

Re: OSC Staff Notice 11-784 Burden Reduction and PCMA Suggestions to Reduce Regulatory Burden

The Private Capital Markets Association of Canada (**PCMA**) is pleased to provide our suggestions relating to OSC Staff Notice 11-784 Burden Reduction, as set out below.

About the PCMA

The PCMA is a not-for-profit association founded in 2002 as the national voice of the exempt market dealers (“**exempt market dealers**”), issuers and industry professionals in the private capital markets across Canada.

The PCMA plays a critical role in the private capital markets by:

- assisting hundreds of dealer and issuer member firms and individual dealing representatives to understand and implement their regulatory responsibilities;
- providing high-quality and in-depth educational opportunities to the private capital markets professionals;
- encouraging the highest standards of business conduct amongst its membership across Canada;
- increasing public and industry awareness of private capital markets in Canada;
- being the voice of the private capital markets to securities regulators, government agencies and other industry associations and public 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 PCMA is available on our website at www.pcmacanada.com.

The Unique Business Model of Exempt Market Dealers

The private capital markets are unique and distinct in many ways from the public capital markets but they are just as vital and important. PCMA members vary in size, industry specialization and geographic scope. Some are issuers. Some may represent a significant number of issuers at a time. Exempt market dealers are transaction based. Clients typically seek to access private capital market investments through an exempt market dealer. A ‘one-size fits’ all approach taken in many rules fails to recognize these differences resulting in excess regulatory burden on exempt market dealers and their clients.

General Comments

The PCMA supports the OSC and Ministry of Finance initiative to establish a Burden Reduction Task Force. In particular, we appreciate the recognition that regulatory burden applies to registrants as well as issuers and that disharmony of regulations is identified as a burden to market participants. Regulatory burden has a cost that is ultimately paid by investors and so any effort to reduce regulatory burden ultimately benefits investors.

The PCMA recognizes that the OSC can only change its own rules and practices but that it will work with the CSA where a collaborative response is needed. Similarly, while the OSC does not have the ability to change Self Regulatory Organization rules and practices, it has influence with the other regulators. In the case of IIROC, the OSC is its principal regulator, and approves IIROC rules.

Consultation questions

We have grouped our suggestions under the consultation questions. In some cases, our suggestions will apply to more than one question and we cross reference where appropriate. We also offer some commentary on some negative or unintended effects of certain practices and rules.

1. Are there operational or procedural changes that would make market participants’ day-to-day interaction with the OSC easier or less costly?

Late filing fees

Late filing fees are costly for market participants and there is a belief that there should be a materiality filter especially when it comes to outside business activities. PCMA members have experienced late filing fees for the discontinuance of an outside business activity (**OBA**) where that activity was an idle holding company. We believe there are two unintended consequences of this practice. Firstly, some dealing representatives have left the industry where they do not wish to pay a \$5,000 per year fine for omitting to file a notice for activities such as, participating in a volunteer organization. Secondly, some market participants have not filed information where the

OSC is the principle regulator as they know there will be a large late filing fee. This does not happen in jurisdictions that do not levy late filing fees.

Materiality and timelines

While we recognize the issue of filings related to the registration forms is a CSA matter, we suggest the OSC raise the issue of materiality and timelines with the CSA. In particular, we recommend that some changes should only be done annually. For example, OBAs relating to volunteer and recreational activities where a registrant is not on the board or hold a treasury type position.

Service standards

OSC service standards can be found on the OSC website after some labourious searching. We would suggest that the service standards should be linked with the various services. The OSC should publish its record of meeting its service standards. Many of our members have provided the PCMA with anecdotal evidence of the service standards not being met.

Certain service standards have a financial impact on registrants such as the time to review an application for registration. Every day that an application sits with the OSC costs the registrant in terms of lost income and opportunity costs. Delays in reviewing applications for registration is seen by potential registrants as a lack of understanding or appreciation for their livelihood.

The OSC should also provide a service standard for providing Reports from Compliance Field Reviews. Some PCMA members have experienced delays of 12 months in receiving the exit letter. Although there is an exit interview identifying some deficiencies, waiting months and months for a report leads to a registrant assuming things are fine. The lack of timeliness of the report often results in a registrant spending time in responding to issues that have been resolved or were changed months ago. We believe requiring OSC service standards for compliance reviews would allow a better understanding of timing.

Electronic document filing

The OSC should consider expanding the electronic portal to allow registrants to file documents requested by the OSC for compliance reviews and sweeps. This would allow a more secure and efficient method of providing documents requested by OSC staff.

Registrant relationship model

The OSC may want to consider implementing a relationship model whereby registered firms have a dedicated OSC staff member that is assigned as a resource for the registrant. Among other things, the staff member can help coordinate reviews including those from other jurisdictions. This model already exists in other jurisdictions and is used by IIROC.

2. Are there ways in which we can provide greater certainty regarding regulatory requirements or outcomes to market participants?

Definition of significant deficiency

Defining “significant deficiency” in the context of compliance reviews would provide registrants with some certainty. While the PCMA advocates a materiality filter, when nine of ten

deficiencies are deemed a significant deficiency, it is hard to determine how the term is being applied by OSC staff.

Publishing registration exemptions

Exemptions from proficiency are granted in registration applications on a regular basis but these decisions are not publicly available. Publishing the types of proficiency exemptions that have been granted would be helpful.

Consistency

PCMA members have reported recent conflicts between an OSC staff notice and a registrant outreach presentation on whether coaching recreational sport teams is an OBA that needs to be reported.

PCMA members raise concerns about consistency in compliance field reviews where it appears different examiners have different standards. As a result, a practice which was previously reviewed and accepted is now is labelled a deficiency or significant deficiency. This leads to uncertainty and could have cost implications. Having an OSC relationship contact staff member as noted under the response to question 1, may help reduce inconsistencies registrants experience and improve regulatory outcomes.

Reconstituting the OSC's Exempt Market Advisory Committee

We found the Exempt Market Advisory Committee was helpful and useful to both industry and the OSC. We note the Alberta Securities Commission also established an Exempt Market Dealer Advisory Committee and it has been operating for a number of years.

A significant amount of capital is raised by EMDs across Canada and it is a unique registration category. The OSC and CSA members are interested in increasing compliance and achieving desired regulatory outcomes in relation to the exempt market. We recommend the OSC reconstitute EMAC as a means to achieve these objectives. The Registrant Advisory Committee is too broad to adequately address the unique issues in the private capital markets.

3. Are there forms and filings that issuers, registrants or other market participants are required to submit that should be streamlined or required less frequently?

Annual filing for certain changes

An annual filing for Form 45-106F1 – *Report of Exempt Distribution* for all types of exempt securities should be considered. The CSA currently allows investment funds distributed under prospectus exemptions to file annually but all other exempt distributions have to be filed within 10 calendar days and depending on the jurisdiction of distribution, this may need to be filed three different ways. This is costly and time consuming. We understand that this would be a CSA effort and not solely the OSC.

NIL filings

NIL filings for anti-money laundering and terrorist financing forms should be eliminated or reduced to an annual filing. We realize this is a Ministry of Finance requirement.

4. Are there particular filings with the OSC that are unnecessary or unduly burdensome?

We have noted some of these burdensome filings in questions 1 and 3 above, and believe that a materiality filter would be useful.

Report of exempt distribution

The Form 45-106F1 is highly burdensome as noted under question 3 and made more so as it does not cross reference the exemption definitions in the *Ontario Securities Act*. We have members that have had many calls to resolve these issues with the OSC.

Opening audited financial statements

Requiring audited financial statements for issuers that have just started to raise capital (such as private equity funds) and offer securities under the Offering Memorandum Exemption, section 2.9 of NI 45-106, is unduly burdensome from both a time and cost perspective. For issuers that have just commenced operations and are starting to raise capital, the cost of preparing and auditing essentially seed capital does not provide any protection or benefit to potential investors and adds costs the issuer which ultimately affects investors returns. We recommend the OSC in conjunction with the other CSA members consider not requiring audited financial statements if an issuer has been in existence for less than a fiscal year.

5. Is there information that the OSC provides to market participants that could be provided more efficiently?

Consultation prior to publishing draft rules

We suggest the OSC and CSA hold consultations before putting rules out for comment. We note that the Exempt Market Advisory Committee (if re-established) and the Registrant Advisory Committee could be used as sources of market participant input. We believe obtaining input from market participants before creating a new rule could result in rules that better reflect industry practice and may be less expensive to implement which ultimately benefits investors.

Cost benefit analysis

Similarly, the Exempt Market Advisory Committee (if re-established) and the Registrant Advisory Committee could be a source of quantitative information for undertaking a cost benefit analysis of proposed rules or amendments. As the OSC and CSA have the dual mandate of fostering efficient capital markets and protecting investors, it is important that the regulators examine the quantitative impacts to registrants as well as the qualitative impacts to investors resulting from changes in regulation.

Registration exemptions

As noted under question 2, a list of proficiency exemptions granted would be useful for market participants.

Access to National Instruments

We suggest the OSC website have the most current version of the law on top, followed by the various notices of changes. This is also the practice of the British Columbia Securities Commission. One can also easily view past law or changes in the law, but for many market

participants, just having an easy and direct way to view the current law would be greatly appreciated and helpful.

6. Are there requirements under OSC rules that are inconsistent with the rules of other jurisdictions and that could be harmonized?

Late filing fees

The OSC is one of the few jurisdictions that imposes late filing fees for OBAs. As noted above, this can have adverse consequences on investors and registered dealing representatives.

Ontario Securities Act and national instruments

The replacement of many sections of National Instruments with sections of the *Ontario Securities Act* is confusing at best. However, when OSC staff are also confused, they can provide information that is contradictory to the National Instrument and then it is burdensome. The OSC should follow the harmonized National Instruments rather than the odd patchwork created through the *Ontario Securities Act* applying in some instances and the National instruments in others.

7. Are there specific requirements that no longer serve a valid purpose?

IIROC rules relating to exempt market dealer ownership

The OSC approves the rules and regulations of IIROC. During the time of Limited Market Dealer registration there was concern with regulatory arbitrage between Investment Dealers and Limited Market Dealers due to the lesser regulatory requirements for Limited Market Dealers. For this reason, IIROC implemented rules and regulations prohibiting IIROC members or their parent firms or any affiliated person from owning a Limited Market Dealer and later an Exempt Market Dealer.

The implementation of NI 31-103 brought about national, robust regulation for Exempt Market Dealers. The Exempt Market Dealer registration and compliance regime has the same requirements as Investment Dealers and Mutual Fund Dealers with the exception of the SRO membership. However, IIROC continues to have rules about cross-ownership which is not required given that the Exempt Market Dealer category has now been effectively regulated for 10 years. This is no longer needed and it is burdensome. Firms that wholly-own or are related to an Investment Dealer and want to register an Exempt Market Dealer are prohibited from doing so or face an additional layer of regulatory review from an SRO than does not regulate Exempt Market Dealers. The PCMA is aware of cases where firms have been told to obtain registration in additional (and unnecessary) categories of registration for IIROC to accept the Exempt Market Dealer registration. This requirement is anti-competitive and serves no regulatory purpose.

Part-time Chief Compliance Officers

The OSC and CSA have not accepted the possibility of part-time Chief Compliance Officers. We recommend that this position be reconsidered by the OSC and CSA. There are a number of business models where daily supervision is not required. For example, Exempt Market Dealers that are also issuers and only raise capital infrequently or a small private equity manager. The dearth of CCOs is making it necessary to have some type of ability to have a part time CCO who

is assisted by other compliance or operating staff. The OSC and CSA can look to the IIROC model which allows for Chief Financial Officers to service more than one registrant.

Closing Remarks

The PCMA would like to thank to the CSA for their efforts in drafting the consultation questions and for soliciting feedback from various stakeholders.

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We thank you for considering our submissions and we look forward to participating in the round table consultation on March 27, 2019. Please advise further.

Yours truly,

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