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The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
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. The proposed CSA contribution limits for exempt market investors under the OM exemption would be a step backwards from the NI 31-103 regime that was implemented just 3 years ago.

A collaborative, industry-wide approach to seek solutions from all Exempt Market participants and their regulators to generate policies and solutions to reduce fraud and investor losses would be much more beneficial.

Here are my observations to support my opinion.

Investor Protection Mechanisms are already in place:

- Registered Dealing Representative, supervised by a registered Exempt Market Dealer, placing any limits on how much can be invested undermines the very principals of KYC, KYP, and suitability obligations which are “cornerstones of (the CSA’s) investor protection regime” put in place under NI 31-103.
- If client and DR agree on a “suitable” transaction, then the trade goes to a regulatory approved Chief Compliance Officer (CCO) to ensure they agree with the suitability of the trade.

Diversification Issues:

- The proposed annual contribution limits will not allow for proper diversification for many clients.
- Lack of evidence regarding ‘investor complaints’:

- The ASC has failed to truly quantify this statement by providing a breakdown of the underlying data for their vague statement which is the basis for their argument to “limit the risks associated with an investment by a retail investor in illiquid securities”
- There is no evidence that the post NI 31-103 exempt market, including the existing OM exemption parameters are not working.

Annual contribution room not practical:

- What happens when an existing “retail” exempt market investor has a successful exit where the proceeds exceed \$30,000? How will this contribution room be managed?
- Who would track and take action when investors have exceeded their annual contribution limits?
- Regulators will force investors back into the public markets they fled to the exempt market from when they are trading at an all-time high.

Increases costs and risks:

- The OM Exemption, which is generally used by Exempt Market Dealers and their Dealing Representatives is “designed to facilitate early stage and small business financing” yet the costs associated with the current EMD regulatory regime, coupled with regulators attitudes that losses are unacceptable make funding riskier small business very problematic in its current form.
- Adding arbitrary contribution limits would reduce financing for new enterprises as;
 - Eligible investors wanting to take “suitable” SME investment risks would be capped at investing \$30,000 per annum.
 - Those that do not qualify for Eligible Investor status wanting to take these “suitable” SME investment risks would be capped at investing \$10,000 per annum.
 - Many Dealing Representatives, particularly those who are long term client focused, would leave the industry due to having their ability to earn a living “capped”.
 - EMDs would have additional costs of dual (conflicting) compliance regimes of suitability on one hand and contribution limits on the other.
 - EMDs would be less willing to undertake fundraising efforts for enterprises that have a risk of undercapitalization as their ability to raise funds would be inhibited.

Is the Change within the Securities Commission’s scope of Powers?

- The policy may not withstand a court challenge. It is unclear whether the securities regulators have the authority to dictate caps on the amount of funds investors are able to put into a particular asset type. Such a policy may in fact be unconstitutional, as it takes away investor rights.

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 [REDACTED] and or curtis.scoville@pinnaclwealth.ca

Regards,

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