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28 April 2014

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Alberta Securities Commission
Autorité des marchés financiers
Financial and Consumer Affairs Authority of Saskatchewan

Ladies & Gentlemen:

Offering Memorandum Exemption - March 20, 2014 Request for Comments

We support the concept "The OM Exemption is an exemption designed to facilitate early stage and small business financing." on page one of the *March 20, 2014 Request of Comments*.

Your questions: Our response to your questions supports early stage and small business financing. Our answers to your 16 questions appear on pages 2 to 5 of this letter. You may find our answers to questions 1, 2, 5a, 11 & 16 of interest.

Harmonization: We believe local economic development policy has priority over interprovincial *harmonization* when considering the relative merits of the different approaches to the OM Exemption. *Harmonization* is one of several factors to consider. Other factors include cost to issuers, cost to regulate, economic development, investor protection, resale liquidity etc.

Currently there is relative OM Exemption *harmonization* within Canada. There are seven jurisdictions with the $10,000 OM Exemption; five with the Offering Memorandum without the $10,000 OM Exemption and one without an Offering Memorandum. The proposed Ontario Offering Memorandum would bring *harmonization* closer.

OM Exemption & Crowdfunding: The existing OM Exemption is ideal for the sale of Crowdfunding shares. Any proposed changes to the OM Exemption should maintain the existing flexible uses of the Offering Memorandum. See our comments about the audit blanket orders in question 16 on page 5.

About Us: Russell Martel was a member and governor of the Alberta Stock Exchange. This letter is the opinion of Martel and e-Exchange Enterprises Ltd., a company of which Martel is president.

e-Exchange has developed a real time 24x7 exchange ideal for trading junior resources stocks, foreign currency and other fungibles. Investors and brokers trade directly with one another on an integrated exchange with cash (T+0) settlement and free quotes in real time. See our websites: e-Exchange.com or eCrowdex.com

Yours sincerely,

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Response to Questions on Proposed Amendments
Our answers are in blue and numbered A1., A2...

1. Under the current framework in Alberta, Québec and Saskatchewan, both individual and non-individual investors are subject to the $10,000 annual investment limit if they do not meet the definition of an eligible investor. Should non-individual investors, such as companies, be subject to the $10,000 limit if they do not qualify as an eligible investor? Please explain.

A1. Corporations should be exempt from the proposed $10,000 annual OM limit because directors & officers of a corporation are subject to the "duty of care" provision in their respective corporations act (see ABCA section 122 *Duty of care of directors and officers* for example). An individual has no similar "duty of care" obligation for one's own money.

2. Are there circumstances where it would be suitable for an individual eligible investor who is not an accredited investor and not eligible to invest under the FFBA exemption to invest more than $30,000 per year under the OM Exemption? If so, please describe them.

A2. Yes, a "knowledgeable investor" or "industry expert", such as a geologist or customer familiar with a company's industry yet without any direct or indirect relation to the company are possible non-accredited investor purchasers of more than $30,000 per year under the OM Exemption.

A "knowledgeable investor" precedent is found in subsection 45-106(1.1)(e), the definition of Accredited Investor, which states:
(e) an individual registered or formerly registered under the securities legislation of a jurisdiction of Canada as a representative of a person referred to in paragraph (d).

3. Given the costs associated with doing so, how likely is it that an individual would create a corporation or other entity to circumvent the $30,000 cap?

A3. Highly likely, about $250 and an online application will create a CBCA company within 48 hours.

4. Investors who do not qualify as eligible investors based on net income or net assets can qualify as eligible investors on the basis of advice from a registered investment dealer. In what circumstances do investors actually seek and receive advice from a registered investment dealer? Does this introduce any complications or difficulties?

A4. Investors may ask a broker about what securities they should sell to purchase a private placement from a third party. Brokers and other employees of registered dealers rarely give favourable advice for investments that they are not recommending themselves. There are several reasons:
(a) to avoid offending the registered dealer's written or implied policy;
(b) to avoid the liability of giving advice;
(c) to avoid the reduction of the size of any brokerage account.

5. The eligible investor definition includes persons that have a net income of $75,000 and persons that have net assets of $400,000. These income and asset thresholds currently apply equally to individual and non-individual investors, such as companies.
a. Should the $75,000 income threshold only apply to individuals? If so, please explain.

A5a. Yes, the $75,000 income threshold should apply only to individuals. Corporations at any time in their life cycle may have assets and cash flow but little or no income. For example a small listed exploration company may purchase a private placements in conjunction with the option of a mineral property. Junior industrial companies are often in a similar situation with cash but no income.

b. Should the net asset amount exclude the value of the principal residence for individual investors? If so, should the $400,000 net asset threshold be lowered as a result?

A5b. Eligible investors should continue to include the asset the value of their principal residence to determine their status as eligible investors. Corporations include the value of their real estate determine their net worth.

c. Should pensions be included in the net asset test under the OM Exemption?

A5c. Pensions should be included in the net asset test under the OM Exemption. Although grants are not pensions, corporations include grants in their net asset test.

6. The FCAA would appreciate feedback on whether lawyers and public accountants should continue to be considered "eligibility advisers" in Saskatchewan for purposes of the OM Exemption? Please provide the basis for your opinion.

A6. It is worthwhile to continue the status of "eligibility advisers" in Saskatchewan for purposes of the OM Exemption considering the reluctance of brokers to provide advice for investments about which they are not familiar. (see A4 above)

7. How common is it for an issuer that relies on the OM Exemption to make annual financial statements available to security holders?
a. How is this done? Are they delivered?
b. Are those financial statements typically audited?
c. If the financial statements are not typically audited, is there an auditor involved and, if so, what standard of engagement is typically applied?
d. Do issuers that prepared financial statements in accordance with IFRS for inclusion in their OMs typically continue to prepare financial statements in accordance with IFRS or do they transition to generally accepted accounting principles for private enterprises (ASPE)?
e. Is it common for security holders to request annual financial statements? Do they request audited financial statements?
f. What do you estimate as the annual cost of preparing the proposed audited annual financial statements?
g. Do you anticipate that issuers will mail annual financial statements to security holders or place them on a website?
h. What do you estimate as the cost of making annual financial statements available to security holders?

A7. Start-up companies that intend to access the public company marketplace, grants or offer tax incentives provide annual and interim financial statements.

The size of the start-up usually determines the choice between accountant review or audited statements; with larger start-ups often providing audited opening statements. It is easy to spend $15,000 plus for an audit of a small company. The cost of changing from IFRS to ASPE is a disincentive to change.

The cost of delivering the annual report is about $2 a shareholder and the cost of delivery by email to each shareholder is minimal.

8. Under the Proposed Amendments, issuers relying on the OM Exemption would be required to deliver annual financial statements until the issuer either becomes a reporting issuer or ceases to carry on business. Are there other situations when it would be appropriate to no longer require ongoing annual financial statements for such issuers? If so, please describe them.

A8. Yes, if a company which relied on the OM Exemption becomes a wholly-owned subsidiary of another company, there is no need to deliver financial statements to Sedar or securities regulators because the company has only one shareholder.

9. How do issuers relying on the OM Exemption typically communicate with their security holders? Do they maintain websites?

A9. Small OM users often call their shareholders regularly in addition to email. Most small businesses maintain website for product and general information and a few heading to the public market place may publish financial statements.

10. Should issuers be permitted to cease providing annual financial statements to their security holders after proceeds of a distribution are fully spent? If so, is there a period of time after which it is reasonable to assume that the proceeds of a distribution under the OM Exemption will have been fully spent?

A10. Issuers relying on the OM Exemption should deliver to shareholders annual financial statements until the issuer ceases to carry on business. Most if not all corporation acts and income tax acts require financial statements.

11. Should non-individual investors (e.g., companies or trusts) be required to sign a risk acknowledgment form? Please explain.

A11. Corporations and other non-individual investors should be exempt from the requirement to sign a risk acknowledgment form. Investors who use corporations or trusts are usually knowledgeable.

The information on the risk acknowledgment form is useful to analyze the purchasers of OMs and this may justify retaining the risk acknowledgment form for all investors.

12. Should “permitted clients”, as defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Obligations* be required to sign a risk acknowledgement form? Please explain.

A12. see answer A11 above.

13. Should non-redeemable investment funds continue to be permitted to use the OM Exemption?

A13. If the objectives of the OM Exemption is to facilitate small business development, then non-redeemable investment funds should not be permitted to use the OM Exemption. Liquidity is a factor that many investors fail to consider when buying private placements of any type. *Redeemable* is a form of liquidity.

We believe liquidity is a factor that legislators and securities regulators should consider when designing rules. Ontario's proposed *indefinite hold* for non-reporting Clowdfunding issuers is counterproductive.

14. Are there certain types of issuers that should be excluded from using the OM Exemption?

A14. Yes, if the objectives of the OM Exemption is to facilitate early stage and small business development, then mortgage and passive investment funds should not be permitted to use the OM Exemption. The OM is ideal for financing technology startups, exploration companies and new ideas that are difficult to finance through conventional means.

15. Should issuers that are related to registrants that are involved in the sale of the issuer's securities under the OM Exemption be permitted to continue using the OM Exemption?

A15. Yes, registrants should be permitted to continue using the OM Exemption provided that they disclose the conflicts they have with related issuers. Registrants should disclose their conflicts in both the front page of the OM circular and in the *risk acknowledgement form*.

16. Currently, most CSA jurisdictions that have an OM Exemption have adopted local blanket orders that permit an issuer to raise up to $500,000 under the OM Exemption without having to include audited financial statements in the OM. Further, the blanket orders permit the financial statements to be prepared in accordance with ASPE rather than IFRS.

(a) Should these blanket orders be continued or revoked? Please provide the basis for your answer.

(b) If you believe the blanket orders should be continued, should the same threshold amount be used in determining which issuers are subject to an ongoing annual financial statement requirement or an audit requirement? Please provide the basis for your answer.

A16. Yes the blanket orders should continue; the audited financial statement exemption for companies raising $500,000 or less is very useful for startups and other small companies. Many small companies often start with more ideas than assets. An audit of the opening assets may cost as much as the company's assets and would provide minimal information.

If the Commission is concerned about the audits of companies using the OM Exemption, we suggest that entities without audits be allowed to use an OM to raise money more than $500,000 that is held in trust until completion of an audit.

For example:
(i) Startup prepares OM without audit to raise $800,000;
(ii) Startup raises $500,000 which is held in trust pending audit.
(iii) Audit completed and distributed to shareholders who can exercise their right of rescission if necessary.
(iv) Startup receives initial $500,000 and continues to raise all or part of the balance of $800,000.

We suggest that the OM offering without an audit could be increased to $2-million when the proceeds are held in trust pending an audit.

For additional information about A1 to A16, contact Russell Martel 540-464-5333 or russellmartel@gmail.com.