



July 6, 2016

VIA EMAIL (comment@ccmr-ocrmc.ca)

To: The Co-operative Capital Markets Regulatory System Participating Jurisdictions

Dear Sirs/Mesdames:

Re: Comments on the Revised Consultation Draft of the Capital Markets Stability Act

The Private Capital Markets Association (the “PCMA”) is pleased to provide our comments in connection with the revised draft *Capital Markets Stability Act* (the “CMSA”) as set out below.

Who is the PCMA?

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

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

- assisting its hundreds of dealer and issuer member firms and individuals to understand and implement their regulatory responsibilities;
- providing high-quality and in-depth educational opportunities to 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, 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.

Who are Exempt Market Dealers?

EMDs are fully registered dealers who engage in the business of trading in 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**”) and it applies in every jurisdiction across Canada.

EMDs must satisfy substantially the same “Know-Your-Client” (“**KYC**”), “Know-Your-Product” (“**KYP**”) and trade suitability obligations as other registered dealers who are registered investment dealers and members of the Investment Industry Regulatory Organization of Canada (“**IIROC**”) and mutual fund dealers and members of the Mutual Fund Dealers Association of Canada (“**MFDA**”). NI 31-103 sets out a comprehensive dealer regulatory framework (substantially the same for all categories of dealer), which requires EMDs to satisfy a number of regulatory obligations including:

- educational proficiency;
- capital and solvency standards;
- insurance;
- audited financial statements;
- KYC, KYP and trade suitability;
- compliance policies and procedures;
- books and records;
- trade confirmations and client statements;
- relationship disclosure, including disclosure of conflicts of interest and referral arrangements;
- complaint handling;
- internal dispute resolution procedures, and external dispute resolution for clients through the Ombudsman for Banking Services and Investments;
- cost, product and account fees disclosure;
- 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.

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 investors who purchase exempt securities pursuant to an offering memorandum or another available prospectus exemption.

EMDs provide many valuable services to small and medium 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.

General Comments Regarding the Cooperative Capital Markets System

The PCMA is committed to ensuring that Canada's capital markets remain strong and competitive. The PCMA has long been concerned about Canada's fragmented regulatory system and has strongly advocated for a high level of regulatory harmonization within the current system. While not perfect, the current system does provide jurisdictions the required flexibility to respond to local regulatory needs and challenges.

The PCMA is generally supportive of a cooperative capital markets system provided it results in a robust yet balanced regulatory framework for capital markets participants. In addition, it should have the flexibility, as with the current system, to reflect regional differences, needs, opportunities and requirements to ensure that Canada's capital markets remain strong and competitive. Continued regulatory disharmony will cause unnecessary complexity for market participants, erect significant barriers to capital raising and increase the burden on issuers through a higher cost of capital.

During its history, the PCMA has supported and even led the charge in terms of bringing regulation to the exempt market. During the development of NI 31-103, our message to the regulators was the exempt market needs regulation to bring credibility and to rid the market of those who seek to undermine the integrity of Canada's capital markets. At the same time, the PCMA has stressed regulators need to better understand the exempt market.

We continue to be concerned that there is a lack of specific understanding and experience with certain securities regulators in respect of the exempt market resulting in regional differences in regulation. For example, until recently, Ontario was the only jurisdiction in Canada that did not have a form of offering memorandum ("OM") exemption. As a result, over 96% of Ontario investors (*i.e.*, those that did not qualify for the accredited investor exemption) were prohibited from investing in exempt securities. Like institutional and high net worth investors, such as endowment funds and pension funds, retail investors should have access to alternative investment options to the public markets, which experience great volatility as a result of economic conditions and global events.

Further, some PCMA members have voiced strong concerns regarding the influence the current OSC ethos may have on the CCMR. The observation of these members has been that the OSC is increasingly driving a mandate of "investor protection" at the expense of fair and efficient capital markets through a "top-down" regulatory approach rather than a "bottom-up" approach (which would facilitate an understanding as to the impact from those directly regulated and impacted by any new regulation). Query had the CCMR been in place at an earlier date whether Ontario's previous position regarding the OM exemption would have prevented this important capital

raising tool from other participating jurisdictions and prevented retail investors in those jurisdictions from participating in desirable investment opportunities in the exempt market.

While the OSC publishes initiatives for comment, there is a sense amongst certain members that this is merely an exercise in formality. These members believe the OSC will proceed with its initiatives without due consideration to regulatory burden on capital markets participants, the position of regulators in other Canadian jurisdictions, and the impact on investors in Ontario not being afforded the same opportunities as investors in other jurisdictions. The concern is the investor protection issue perceived by the OSC to warrant further specific intervention is not identified, and the consequences of that intervention, intended or otherwise, are not fully considered and addressed. Additionally, the PCMA believes that investor protection also includes investors educating and empowering themselves about their investments instead of putting the entire onus on registrants. This is unbalanced and in need of a larger discussion with investor protection groups since risk capital is about risk and reward and registrants should not be seen as guarantors of investment results.

The PCMA is also concerned with respect to how the Authority will interact with regulators in non-participating jurisdictions. The strong opposition of the provinces of Alberta and Quebec to a national regulator causes us to be concerned with respect to the level of regulatory harmonization and cooperation between the participating and non-participating jurisdictions. Further, while there will be two sub-groups of securities regulators within Canada (the CCMRA and the regulatory authorities of the non-participating jurisdictions), there will be more than two regulatory authorities. The non-participating jurisdictions will be separate, individual regulatory authorities which will increase the potential for regulatory arbitrage, and its potential to exacerbate inconsistencies between participating and non-participating jurisdictions. This possibility must be taken into consideration.

The potential to create an even more fractured system of securities regulation within Canada and with greater inefficiencies is very real and must be considered.

General Comments Regarding the Revised Draft Capital Markets Stability Act

The PCMA generally supports the objectives of the revised draft CMSA in addressing capital markets-related systemic risk and enhancing measures to strengthen enforcement and provides the following comments of note.

We support the narrowing of the definition of systemic risk in the revised draft CMSA and, in particular, we welcome the addition of a materiality threshold.

With respect to requests made by the Chief Regulator regarding records and information as set out in section 10, we welcome the addition of factors that must be considered by the Chief Regulator, including the extent to which it is practicable to obtain the records and information from another source. However, we disagree that the language “in a timely manner” should apply

as it relates to other Canadian securities regulatory authorities. A capital markets participant should not be required to provide such records and information if it may be obtained from a Canadian securities regulatory authority but where the Chief Regulator is of the view that he/she may receive it in a more timely manner from the capital markets participant rather than the particular Canadian securities regulatory authority. If the records and information may be obtained from a Canadian securities regulatory authority, then that is where they should be sought, rather than imposing this burden on the capital markets participant. It should be noted that each regulator expects the timely delivery of information/document requests from registrants as part of their general oversight of a registrant, however, there needs to be greater information sharing and transparency amongst the regulators, including the Chief Regulator, on previously submitted information/documents to regulators than currently exists.

With respect to urgent orders, the PCMA strongly agrees with and welcomes the removal of the power of the Authority to prevent a person from “doing anything else” in section 24(2)(a).

The PCMA further supports enhanced measures to strengthen enforcement, again with the goal of ridding Canada’s capital markets of those who seek to undermine their integrity. At the same time, the PCMA wishes to ensure that there are clear procedural protections for market participants.

The PCMA wishes to ensure that the CCMR continue to remain consultative with capital markets participants and in particular, private capital markets participants, who play an important and unique role in Canada’s capital markets and are essential to business growth and economic development across Canada.

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We thank you for considering our submissions and we would be pleased to respond to any questions or meet with you to discuss our comments.

Yours truly,

“Doug Bedard”

PCMA Chair

“Georgina Blanas”

PCMA Executive Director