

PRIVATE CAPITAL MARKETS

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The Offering Memorandum FINALLY Arrived in Ontario.
*Celebrating the PCMA's successful advocacy and
new opportunities that lay ahead!*



Are you compliant?

Choosing the right registered plans partner.

By Neil Carnell

The exempt or private securities market in Canada is flourishing. Estimates put the amount of capital flow facilitated by the Canadian private markets each year at more than \$100 billion and growing.¹ The Ontario Securities Commission (OSC) recently published its *Corporate Finance Branch 2014-2015 Annual Report*, which stated that “in 2013, non-investment fund issuers raised approximately \$45 billion through prospectus-exempt distributions in Ontario.” The report also noted that, “non-investment fund issuers raised capital through approximately 27,000 purchases made by Ontario residents in 2013.”²

Growth and Regulation in the Private Securities Market

More organizations are diversifying by investing in private equity with the hope of increasing their returns. The Ontario Teachers’ Pension Plan had private equity investments totalling \$21.0 billion at the close of 2014, compared to \$14.8 billion the same time the previous year.³ OMERS, the Ontario Municipal Employees Retirement System, one of Canada’s largest pension plans, reported in 2015 that its private investments returned 9.5% (net).⁴

The growth in the private market is attracting attention – both from investors and from regulators. The “know-your-client” (KYC) and “know-your-product” (KYP) rules have introduced requirements for transparency and accountability in the market. Beginning in 2016, exempt market dealers (EMDs)

and advisors will now also need to meet the requirements of the Client Relationship Model - Phase 2 (CRM2) amendments to NI 31-103. These amendments will require them to provide more reporting to their clients, including: an annual report on charges and compensation paid to their dealer or advisor as well as an annual investment performance report that includes reporting on the deposits into and withdrawals from the account, changes in value of the account and the percentage returns from the previous year.⁵

Further changes were introduced in the Ontario market in the fall 2015 when the OSC published the OM exemption and crowdfunding regime in final form. The result is Ontario investors will have more options in the coming years, and EMDs and vendors must navigate these additional layers of complexity.

Next Steps for Issuers, EMDs and DRs

With new regulation being introduced each year, the time now required to ensure that issuers and trades are ‘suitable’ for a client accounts, that the clients meet the prospectus exemption requirements and that appropriate asset diversification is achieved, is most likely the largest time commitment faced by EMDs and their dealing representatives.

EMDs are devoting ever-increasing time and focus to ensuring that KYC and KYP requirements are met, as well as to supporting subscription and

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regulatory documentation. However, when considering which trustee to partner with to assist customers who want to hold exempt market securities in an RRSP or other registered plan, it is also imperative that EMDs undertake the appropriate due diligence, including to ensure that their registered plan trustee has the required licences for the jurisdictions in which it offers its services and that it meets the requirements of the *Income Tax Act*.

Although an additional compliance requirement is the last thing that any firm is looking to add to their 'to-do' list, a quick review of current or proposed service partners may be well worth the effort. Choosing the right registered plans trustee will set you up for success in the future and help safeguard your clients and your company from unnecessary regulatory risks.

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Notes

1. Vijay Jog, "The Exempt Market in Canada: Empirics, Observations and Recommendations," March 2015. University of Calgary, The School of Public Policy, SPP Research Papers, Volume 8, Issue 10. <http://ssrn.com/abstract=2577373>
2. Ontario Securities Commission, "OSC Staff Notice 51-725 Corporate Finance Branch 2014-2015 Annual Report," July 2015, http://www.osc.gov.on.ca/documents/en/Securities-Category5/sn_20150714_51-725_cf-rpt-2015.pdf
3. "Partnering with TPC." - Ontario Teachers' Pension Plan. <http://www.otpp.com/investments/asset-groups/teachers-private-capital/partnering-with-tpc>
4. Reuters, "OMERS Net Assets Top \$72 Billion in 2014, With 10% Return," February 2015, <http://www.reuters.com/article/2015/02/27/idUSnCCNfRWb0+ec+MKW20150227>
5. Ontario Securities Commission, "Cost disclosure, performance reporting and client statements," February 2014, https://www.osc.gov.on.ca/en/Dealers_crm2-faq-planning-tips.htm

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