



PRIVATE CAPITAL MARKETS ASSOCIATION  
OF CANADA

THE NATIONAL VOICE OF EXEMPT MARKET DEALERS, ISSUERS AND INDUSTRY PROFESSIONALS

# PRIVATE CAPITAL MARKETS

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# PCMA - OUR PURPOSE

1. Ensuring Canadian investors have access to diverse private market investment options.
2. Focus on building the industry infrastructure our dealers, issuers and industry professionals need.
3. Strengthening the private capital markets to ensure robust capital raising opportunities across Canada.
4. Strong and effective national voice for the private capital markets industry.



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# PCMA ADVOCACY

We engage on key securities regulations in two primary areas:

- NI 31-103 - Registration and Compliance issues for EMD's
- NI 45-106 - Prospectus exemptions and product / trade rules for issuers, dealers and investors

We put forward reasonable and substantive regulatory options and we address the underlying public policy issues (e.g. fair and efficient markets, investor protection, economic growth, etc.)

PCMA regulatory submissions are available at: [www.pcmacanada.com](http://www.pcmacanada.com)  
(see "Advocacy" tab)



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# PCMA ADVOCACY – SPEAKING UP

Comment letters on key regulatory changes / proposals:

- Requirement to file exempt trade documents on SEDAR - August 31, 2015
- Ontario's proposed Offering Memorandum, Crowdfunding, Existing Security Holder and new F1 Trade Reports proposals - June 30, 2014
- Proposed changes to the Offering Memorandum in Alberta, Quebec and Saskatchewan - June 30, 2014
- Crowdfunding and Start-Up exemption proposals in Quebec, Saskatchewan, New Brunswick, Manitoba, Nova Scotia and Ontario - June 30, 2014
- Response to the Start-Up Crowdfunding proposals in BC - June 18, 2014
- Accredited Investor and Minimum Amount Exemptions - June 10, 2014



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## PCMA ADVOCACY – SPEAKING UP

Comment letters on key regulatory changes / proposals (cont'd):

- Restrictions on EMDs in prospectus offerings, experience requirements for CCO's, and prospectus amendment changes - March 5, 2014
- Proposed exemption for existing TSX-V issuers - January 20, 2014
- Offering Memorandum and other key OSC priorities - June 3, 2013
- Proposes new approach to prospectus exemptions - March 8, 2013
- B.C. changes impacting Mortgage Investment Entities - February 27, 2013
- CSA Consultation on a Statutory Best Interest Duty - February 22, 2013
- Mandating OBSI for EMDs - February 15, 2013



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# PCMA – CONTINUING TO GROW

1. **Regional Chapters** – Vancouver and Calgary to focus on regional issues and and new opportunities for local networking among private market professionals. An important source of activity, guidance and contribution to the grassroots leadership of the national association.
2. **Private Lending Professionals Network** - focus on the real estate and mortgage investment sector and opportunities of private lenders.
3. **Dealer and Advisor Network** – focus on areas of common practice and opportunities for networking and industry collaboration.
4. **Compliance Professionals Network** – sharing best practices, monitor regulatory developments and elevate the standards of a professional class of compliance officer across the private markets.



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# STRATEGIC PRIORITIES - 2015/2016

## 1. Professional Practice Standards

- Coherent vision of what professional best practices should be
- Setting out best practices, rather than waiting to be subject to the standards regulators end up setting for us
- Demonstrate high standards of ethical conduct and regulatory compliance and remedy the areas of weakness of the past
- PCMA has revamped the IFSE Exempt Market Products Course for EMD Dealing Representatives and EMD Chief Compliance Officers
- Investors should be confident that the quality of advice, the transparency of the products and the integrity of private capital professionals



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# STRATEGIC PRIORITIES - 2015/2016

## 2. Data and Metrics on the Private Capital Markets:

- Clear need for better data on private market activity
- Difficult to confront negative media or regulatory messages about the private markets in an information vacuum about the private market.
- Advocacy is most effective when supported by solid and clear facts
- The PCMA is underway with a potentially transformative project aimed at dramatically increasing the level of information on the deals, products, industries and activity of the private markets





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# PCMA PRIORITIES FOR 2015/2016

## 3. Capital Raising & the Offering Memorandum

- The battle to bring the Offering Memorandum to in Ontario appears to have been won
- The fight to preserve the Accredited Investor Exemption is now over with only minor changes being made
- Fall 2015 – expected announcement of the final form of the OM and crowdfunding in Ontario and other jurisdictions



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# CURRENT ADVOCACY ISSUES

**New F1 report of trade** (45-106F1 – comments close October 13, 2015)

- New details about the issuer
- Identities of the directors, officers, control persons and promoters
- exemptions relied on, both on an aggregate and per investor basis
- Compensation paid to registrants, connected persons, insiders and employees of the issuer or the investment fund manager
- investment fund issuers must disclose the size of the fund, the general category of the fund and net proceeds to the fund.



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# EXEMPTIONS OVERHAUL

1. **Existing security holders** - effective February 11, 2015.
2. **Family, friends & business associates** - effective May 5, 2015.
3. **Accredited Investor & Minimum Amount** - effective May 5, 2015
  - Minimum Amount exemption restricted no non-individuals
  - AI exemption is amended to require a new risk acknowledgment form
  - Family trusts established of an AI now eligible as an AI
  - Ontario finally allows fully managed accounts to purchase investment fund securities as an AI



# EXEMPTIONS OVERHAUL

## 4. OM exemption coming to Ontario (in 2016?)

- no limit on the amount of capital an issuer can raise,
- investment limits for investors (per 12 month period):
  - \$10,000 for non-eligible investor
  - \$30,000 for eligible investor
  - \$100,000 for eligible investor that receives suitability advice from a PM, investment dealer or EMD
  - risk acknowledgement form signed by investors
  - ongoing disclosure, including audited F/S, annual notice regarding the use of the money raised and notice of significant events.



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# EXEMPTIONS OVERHAUL

## 5. Crowdfunding (coming in 2016)

- limit of \$1.5 million on amount an issuer group can raise
- all investments be made through a funding portal that is registered
- \$2,500 limit per investment for non AI investors and \$10,000 aggregate in a calendar year
- higher investment limits for accredited investors and no investment limits for permitted clients
- risk acknowledgement form signed by investors
- ongoing disclosure including annual financial statements, annual notice regarding the use of the money raised and notice of significant events.



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# CHALLENGES AHEAD

## Related Dealers / Issuers Concerns

- CSA continues to express “significant concerns with EMDs that trade in, or recommend, the products of related and/or connected issuers”
- Related compliance deficiencies include a) misappropriation of investor funds, b) concealment of poor financial condition of related and/or connected issuer, c) sale of unsuitable, high-risk investments to investors; and d) high investment concentration in related party products.
- BUT - Proprietary/related distribution of financial products historically exists through all retail segments of financial services industries - this is an industry issue not an EMD issue



# CHALLENGES AHEAD

## Investment Funds to be excluded from OM exemption

- OSC proposing to exclude investments funds from using the OM exemption
- Common “funds” who could not use the OM Exemption:
  - retail mutual funds
  - flow-through LP’s (most structured as non-redeemable investment funds)
- Common “funds” who could (most likely) use the OM Exemption (depending on their legal structure)
  - private equity funds
  - venture capital funds
  - mortgage investment entities



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# CHALLENGES AHEAD

## Suitability Still a Concern for Regulators

CSA continues to reinforce that:

*“Assessing suitability is more than a mechanical fact-finding or “tick the box” exercise. It requires meaningful dialogue with the client to obtain a solid understanding of the client’s investment needs and objectives, and to explain how a proposed investment strategy is suitable for the client in light of the client’s investment needs and objectives.”*

....





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## ... THE TEMPTATION TO TINKER

### Prescribing Suitability by Regulators... examples

- 10% security concentration limits being increasingly enforced
- Setting rules (“Guidance”) around suitability levels in portfolio allocation and concentration limits, investor limits on specific exemptions, etc.
  - Are Commission staff acting like portfolio managers? Does this regulatory creep suggest a lack of faith in the enforceability of Suitability obligations?
- Continued debate of a Best Interest Standard - strongly advocated by FAIR Canada and CSA Investor Panels, etc.



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# CHALLENGES AHEAD

## Understanding Risk in Private Capital

- Risk and Liquidity - regulators and commentators use 'high risk' investments labels for all private securities usually based on disclosure and liquidity arguments.
- Do Commissions sufficiently understand risk in private non-public market securities?
- Is the absence of private market data and performance results allowing this 'high-risk' label to drive key regulatory decisions?



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