



July 6, 2015

Kevin Redden
Director, Corporate Finance
Nova Scotia Securities Commission
Suite 400, Duke Tower 5251 Duke Street
Halifax, Nova Scotia B3J 1P3

Dear Mr. Redden,

Re: Nova Scotia Proposed Amendments Relating to the Offering Memorandum (“OM”) Exemption: Notice No. 45-716

On behalf of the Canadian Mortgage Brokers Association (CMBA), I would like to make submissions on proposed amendments to NI 45-106.

By way of background, CMBA is an inter-jurisdictional umbrella association consisting of provincial mortgage broker associations in Canada, including the Mortgage Brokers Association of Atlantic Canada. Many of our members fund private mortgages through mortgage investment corporations (MICs). In addition, we also represent MICs and other private mortgage lenders.

The NCSC Proposal

The rationale for the NSSC proposal is that “Harmonized offering memorandum rules will benefit Nova Scotia issuers by increasing the number of jurisdictions where an offering can be made to raise capital without materially increasing their compliance burden and costs. Harmonized offering memorandum rules will benefit Nova Scotia investors by enabling them to participate in a greater number of offerings from other jurisdictions. If Nova Scotia did not harmonize with the other jurisdictions many issuers may not extend their offering to Nova Scotia investors as it would also increase the compliance burden and costs to comply with the Nova Scotia regime. While these changes may impose new conditions on the use of the offering memorandum exemption in Nova Scotia the resulting harmonization will decrease the complexity and likely increase its use in the Canadian exempt market.”

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The problem with this rationale is that it amounts to harmonization for harmonization's sake without an analyses of whether the proposed changes are good policy decisions which benefit the public interest. It amounts to imposing change just because others have imposed those changes elsewhere. Changes which impose bureaucratic hurdles and red tape on industry should never be imposed unless there is a demonstrated need which furthers public protection. The jurisdiction of British Columbia, which has the most experience out of any of the provinces with the OM exemption, has NOT participated in the proposal to place investor cap restrictions on the OM exemption with Alberta, Saskatchewan, Ontario, New Brunswick and Quebec. Regulators should always strive for "right touch regulation", which protects the public from harm with the least level of government burden on industry. Has the NSSC explored the British Columbia OM model and its success in achieving consumer protection without the intrusive restrictions contained in the NSSC proposal? If the NSSC has not done so, we would urge them to review BC's OM model prior to opting for a significantly more restrictive OM regime.

In addition, the rationale appears to be seriously flawed. Investors will follow the path of least restriction and ease of access into investments. Imposing restrictions on Nova Scotia investors, which are equal to those in the 5 other provinces, is likely to cause those investors to consider investments in all 6 provinces as opposed to only those in Nova Scotia, thereby reducing the amount of capital flowing to Nova Scotia exempt investments. Capital will leak out of Nova Scotia with no incentive to draw in capital from other provinces. It is folly to think that imposing restrictions in one province to match those in other provinces will stimulate investor enticement. Implementation of the proposal could result in a sudden and dramatic demise of MICs and other investment vehicles in Nova Scotia. Whereas, maintaining the current OM exemption without new restrictions would keep current investors contributing funds to MICs and other investments, and may even convince investors from the other 5 provinces to consider those less restrictive exempt investments in Nova Scotia. Clearly investor restrictions will strangle current Nova Scotia investment entities without any upside and will challenge an already struggling economy in Nova Scotia.

There are two specific elements of the proposal which cause concern to our industry members in Nova Scotia: the \$30,000 annual investor cap for eligible investors and the \$100,000 investor cap for eligible investors who utilize the services of an exempt marker dealer, IIROC dealer or portfolio manager. We have the following issues with these two elements of the proposal.

Failure to Reduce Fraud

It is not entirely clear what the specific goals are of the OM investor caps. Are the goals to save investors from the folly of investing too much of their hard earned money in the exempt markets, or is it an effort to limit the harm to investors from investor frauds, such as ponzi schemes or sham investment entities? As you may be aware, government

regulation is usually ineffective at reducing fraud, as fraudsters never intend to comply with rules, particularly ones that would limit the funds they can misappropriate. Creating more rules or more restrictive rules will not change this unfortunate reality. Tackling investor fraud will likely require a collaborative effort between criminal justice systems, government regulators and the industry.

Failing to Empower Consumers

The governing principal behind the exempt market is that investors can choose to take on risk after receiving product suitability advice from registered exempt market dealers (EMD). This is why they sign a risk acknowledgement form. In addition, investors can read an OM which contains details of the investment, which is often more detailed than a prospectus. The OM contains protections for investors, including the right to sue directors for misrepresentation and the right of rescission. Taking away investor choice by placing investor limits on OM exempt investments treats investors like children who cannot manage their own money and renders current investor protections redundant. We believe that consumers should ultimately be responsible for looking after their own interests and taking responsibility for their own choices. The goal of government should be to ensure that consumers are empowered to make informed, careful investment decisions. Providing consumers with relevant knowledge, product suitability advice and various OM remedies provides more powerful consumer protection than imposing a system of paternalistic regulation over them.

Enforcement Challenges

Annual investor caps appear to be cumbersome to administer. It is not entirely clear how the investor's limits will be tracked? What if investors are not honest in making investment declarations? Who takes action against the investor in this circumstance?

Impact on the Mortgage Investment Corporations and Consumers in Nova Scotia

Most MICs rely on the OM exemption to raise mortgage funds. MICs contribute millions of dollars' worth of mortgage principal to borrowers in Nova Scotia. Without MICs it would not be possible for many Nova Scotia residents to afford to own their own homes, and many businesses could not acquire the necessary capital for growth and development. The impact of the loss of MICs of in Nova Scotia would be profound and would include:

- The loss of employment from mortgage industry members and support staff who would no longer be arranging and administrating mortgages – also the loss of construction related employment from developers and builders who would not be able to finance new projects;
- The loss of safe and reliable investment opportunities for investors;

- The removal of private mortgage lenders from the marketplace, which will make it more challenging for borrowers to find available mortgage capital but also push private lending underground where there is no regulation; and
- Higher borrowing costs and less access to mortgage capital will lead to an increase in foreclosure rates and borrower defaults.

Creating investor caps on OM investments in Nova Scotia will not benefit Nova Scotia in any way: not investors, not industry, and not the economy. OM investor caps will instead cripple the economy, hamper investors and place road blocks in front of OM reliant industries, such as MICs. The NSSC proposal makes no sense. We urge the NSSC to maintain the current OM investment rules and not to implement the proposal.

Regards,

A handwritten signature in black ink, appearing to read 'S. Gale', is positioned above the printed name.

Samantha Gale
CMBA Executive Director