



Open Letter to Jack Mintz of the University of Calgary

By James E. A. Turner

December 9, 2014

Dear Professor Mintz,

I read with interest your recent paper, "Muddling Up the Market: New Exempt-Market Regulations May Do More Harm than Good to the Integrity of Markets". You posed several important questions about the "optimal" regulation of the exempt market and suggested that in implementing proposals to facilitate raising capital in Ontario's exempt market we were "shooting in the dark" and doing harm to our markets. You also suggested we should delay taking any action in this area until we have better information.

Informed Rule Proposals

Corporate issuers, market intermediaries and their respective advisers told us that current exempt market rules should be enhanced to facilitate capital-raising for small- and medium-sized enterprises (SMEs). Following significant stakeholder consultation, we proposed new prospectus exemptions, including an offering memorandum (OM) exemption, which generally align with the rules in other provinces. Our proposals would help Ontario businesses raise capital more effectively and at a lower cost without compromising protections for investors.

More investors would be able to participate directly in supporting local enterprises while issuers and businesses that sell exempt market securities would have ample opportunity to signal that they are high-quality firms through voluntarily providing more information and granting more rights to investors. Our proposals align with the needs of SMEs to access capital and with investor demands for greater choice in investment opportunities. Our proposals are measured, informed and incremental.

Good policy-making naturally embraces dialogue, debate and analysis to reach a desired outcome in the best interests of investors and our capital markets. We took this approach in developing our proposed rules, including:

- The commissioning of third-party research to gain insight into retail investors' views on investing in SMEs;
- Creating an OSC advisory committee, made up of volunteers from industry, the securities bar, academia and investor advocates, that provided valuable input on exempt market reform;
- Hosting five public town halls; and
- Holding 46 targeted stakeholder consultations, including meetings with investor advocates, crowdfunding associations, TMX Group advisory committees, self-regulatory organizations, foreign regulators and academics.

Since publishing the proposals for comment on March 20, 2014, we have received more than 800 comment letters that are informing any amendments. With respect, we disagree with your assessment that we are “shooting in the dark” given the extensive consultations that support our proposals.

OSC Initiative includes Information Objective

We strive to base our policy-making on relevant data and information. While we can always benefit from more data, we already have a considerable amount of information about the exempt market and intend to gather more data. Throughout the policy development process, we have advanced a broader understanding of the Ontario market through stakeholder

meetings, investor research, market data (see Appendix C of OSC Notice 45-712) and other activities. Our proposals include two new forms of report of exempt distribution (one for investment funds and one for all other issuers) which are intended to provide us with better, more structured data. Such data are necessary to support a risk-based compliance program and to inform future policy initiatives. Until more structured data regarding exempt market activity are available, we believe an incremental approach to broadening access is appropriate.

Balancing Access and Protection

Many investors told us they would be interested in having more access to the exempt market but also cautioned that expanded access should be accompanied by appropriate protections. We agree. The OSC has identified compliance problems in the activities of some exempt market dealers. In addition, the suitability obligation of exempt market registrants can be insufficient, particularly if conflicts of interest occur. We are addressing both of these matters as a separate matter of our policy-making. Investor concerns and compliance problems were among the issues we took into account in developing our proposals.

We're trying to mitigate, wherever possible, the risk of misconduct associated with increasing access to the exempt market by non-accredited investors. While some of our stakeholders would prefer that we completely throw open the exempt market, we are taking a more balanced approach that includes important investor protections. Any conditions applicable to our proposed exemptions are intended to provide such protections to investors.

The OSC always, first and foremost, adheres to its investor protection mandate, which does not distinguish between public and exempt markets. There is no doubt that investors have fewer protections in exempt market transactions, which is why we propose to mitigate that risk by imposing some limitations on investor access. Substantially opening up the exempt market to a



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wider group of investors made it necessary to develop additional safeguards. It is important that we take a measured approach to the implementation of our policy proposals.

In advancing these proposed prospectus exemptions we are responding to input from market participants that Ontario's exempt market regime can be enhanced to facilitate more efficient capital-raising. We agree that additional research on the exempt market is necessary but delaying a response until after further study is conducted, as you suggest, would hamper the ability of Ontario issuers to raise capital. Delaying our exempt market initiative would prejudice Ontario issuers and leave them unable to raise capital on a basis similar to that available to issuers in other provinces.

Our goal is to evolve the regulatory regime to enhance capital formation while maintaining strong protections for investors. Our desired outcome is clear and we are moving forward by taking an informed and measured policy approach. Implementing these proposals will enhance, not harm, Ontario's capital markets. The OSC's exempt market policy proposals will help make Ontario's economy stronger because they were developed with the collaboration of people who invest and work in that market.

Regards,



James E. A. Turner
Vice-Chair
Ontario Securities Commission

The views expressed in this open letter are those of the author, James Turner, and do not necessarily represent the views of the OSC. The Commission continues to consider the proposed exempt market policy initiative mentioned above.



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