

CHANGES IN CANADIAN SECURITIES LAWS PROVIDE GREATER PROTECTION TO INVESTORS IN THE PRIVATE MARKETS

BRIAN KOSCAK, PRESIDENT AND GENERAL COUNSEL AND DARVIN ZURFLUH, CHIEF EXECUTIVE OFFICER



The Compass is Pinnacle's newsletter that seeks to provide insight and discuss recent developments in the private markets for our investors. On behalf of the Executive Team and the Dealing Representatives, we thank you for your interest in Pinnacle.

In April 2016, certain Canadian securities regulators changed the way capital is raised in the private markets involving the offering memorandum prospectus exemption (the **OM Exemption**) to provide greater protection to investors in the private markets. The offering document provided to investors under the OM Exemption is called an offering memorandum. **(OM)**

Prospectus requirement

As Pinnacle investors know, in the absence of a prospectus (which is the offering document provided to investors in, for example, an initial public offering), a company can only raise

money under an exemption from the prospectus requirement.

One of these prospectus exemptions is the OM Exemption. This is the most common prospectus exemption used by Pinnacle Wealth Brokers Inc. (**Pinnacle**) to raise capital for companies under Canadian securities law (in addition to the accredited investor exemption).

OM Exemption – Greater Investor Protection Measures

The OM Exemption was changed in certain provinces of Canada to provide greater protection to investors as discussed below.

1. Requirement to provide investors with audited annual financial statements and notice of use of proceeds

Applicable Provinces: Alberta, New Brunswick, Nova Scotia, Ontario, Quebec and Saskatchewan

Impact on investors: Companies using the OM Exemption must include audited annual financial statement with their offering memorandum only while their offering was in distribution. Post distribution, however, there was no legal requirement to provide investors with audited annual financial statements.

Exempt market dealers, such as Pinnacle, often had difficulty obtaining audited and/or unaudited financial statements from companies after we no longer sold the product. However, investors wanted and deserved an update on how their investment was doing.

Pinnacle is extremely pleased that this change was made by the Canadian securities regulators in certain provinces since such companies are now legally required on a go-forward basis to make such audited financial statements available to investors.

In addition, companies are now required to provide a disclosure form that accompanies the annual audited financial statements that describes how the money raised under the OM Exemption was used (i.e., a use of proceeds report). A new prescribed form has been introduced for the purposes of this disclosure.

Pinnacle is pleased that Brian Koscak, Pinnacle's President and General Counsel, was an advocate of such a change as a member of the Ontario Securities Commission's Exempt Market Advisory Committee (the **Committee**) which was organized in the fall of 2012. The Committee was instrumental in making the OM Exemption available in Ontario in January 2016 (although it was available in all other Canadian jurisdictions for years).

2. Notice of specified events report

Applicable Provinces: New Brunswick, Nova Scotia and Ontario

Impact on investors: Companies in New Brunswick, Nova Scotia and Ontario are now required to provide investors with notice of specified events, within 10 days of the event occurring, consisting of:

- a discontinuation of the issuer's business;
- a change in the issuer's industry; or
- a change of control of the issuer.

This change provides investors with more information about a company if certain changes occur. This measure protects investors by providing more continuous disclosure about a company and its operations or discontinuance thereof.

3. Statutory liability for OM marketing materials

Applicable Provinces: Alberta, New Brunswick, Nova Scotia, Ontario, Quebec and Saskatchewan

Impact on investors: The jurisdictions now require that all company marketing materials must be incorporated by reference into the offering memorandum to provide investors with the same rights of action in respect of all disclosure made under the OM Exemption in the event of a misrepresentation.

Before this change, companies often prepared marketing materials with no input from legal counsel. Accordingly, a company's marketing materials may not have necessarily reflected what was in the offering memorandum that was given to investors. Problems arose when investors claimed they principally relied on the marketing materials for their investment decision that may have been different than the offering memorandum. Legally, issues arose as to what weight or liability a court or securities commission would impose on these marketing materials.

Accordingly, imposing statutory liability against an issuer for a misrepresentation in any OM marketing materials creates the same liability an issuer has with its offering memorandum. Generally, we understand a company's legal counsel will now review and sign-off on any issuer created OM marketing materials just as they now do with the issuer's offering memorandum. This is good news for investors.

4. Imposition of investor investment limits in any 12-month period

Applicable Provinces: Alberta, New Brunswick, Nova Scotia, Ontario, Quebec and Saskatchewan

Impact on investors: Prior to this change, there were no limits or caps on the amount an eligible investor could invest under the OM Exemption. Non-eligible investors were limited to a maximum of \$10,000.

With the recent changes to the OM Exemption, securities regulators in the provinces have now imposed an investment limit on investors who are individuals (other than those that qualify as accredited investors) to limit the risks associated with an investment in securities acquired under the OM Exemption. Such investment limits do not apply to corporations or trusts that have been established for bona fide purposes and not for purposes of trying to avoid any investment limit.

The investment limits will apply to all securities acquired under the OM Exemption as follows:

- in the case of a **non-eligible investor** that is an individual, the acquisition cost of all securities acquired by the purchaser under the OM Exemption in the **preceding 12 months cannot exceed \$10,000**;
- in the case of an **eligible investor** that is an individual,
 - the acquisition cost of all securities acquired by the purchaser under the OM Exemption **in the preceding 12 months cannot exceed \$30,000**; or
 - receives advice from a portfolio manager, investment dealer or exempt market dealer that the investment above \$30,000 is suitable, the acquisition cost of all securities acquired by the purchaser under the OM Exemption **in the preceding 12 months cannot exceed \$100,000**.

This change has a mixed reaction among investors. Some do not care since they will not

exceed the investment limit in any 12-month period, however, others do not like government dictating how much they can invest into the private markets.

5. New schedules to the risk acknowledgment form

Applicable Provinces: Alberta, New Brunswick, Nova Scotia, Ontario, Quebec and Saskatchewan

Impact on investors: Investors who invest under the OM Exemption typically have to complete and sign a risk acknowledgment form (Form 45-106F4 Risk Acknowledgement). This Form highlights for investors the key risks associated with investing in securities acquired under the OM Exemption). The Form remains, however, the securities regulators in the above jurisdictions have added two new schedules that must be completed by each investor who is an individual in conjunction with the risk acknowledgement form.

One schedule asks investors to confirm their status, as an eligible investor, non-eligible investor, accredited investor or an investor who would qualify to purchase securities under the family, friends and business associates exemption. The other schedule requires confirmation that the investor is within the investment limits, where applicable. Investors that are not individuals do not have to complete these new schedules.

Final Thoughts

As you can see, the private markets just got better with these new investor protection measures and we look forward to providing you with more information on a go-forward basis about your private market investments. For more information, just ask your Pinnacle Dealing Representative.

Brian Koscak, President and General Counsel
brian@pinnaclewealth.ca

Darvin Zurfluh, Chief Executive Officer
darvin@pinnaclewealth.ca

RECENT SUCCESS STORIES



Maple Leaf Funds - Group of Companies

Maple Leaf Short Duration Flow-Through offers investors a well diversified portfolio of resource stocks that is managed by Jim Huang, one of Canada's top performing flow-through fund managers. Maple Leaf is committed to providing investors with up to a 100% tax deduction, accelerated liquidity, and the opportunity to convert income into capital gains on an annual basis.

Recent Success

"Maple Leaf enjoyed great success in 2015 due to a rebound of approximately 50% in the price of oil, a 25% increase of the price of gold and other commodity prices showing signs of moving higher. Jim Huang, Maple Leaf's Portfolio Manager, emphasized smaller gold mines in the portfolio given the steep discounts that they were trading at, as well as the fact that precious metals had been one of the first commodities to enter into a bear market. Jim recognized that the sector had restructured and was poised to benefit from at least a cyclical recovery. This has paid off in performance generated by these picks.

The Maple Leaf Short Duration 2015-III Flow-Through Limited Partnership had a rollover value at liquidity of **\$29.17** on an original \$25.00 original unit cost."

Positive Returns in a Challenged Resource Market

"Contrarian investors take a risk when buying during severe market corrections. Maple Leaf's track record also is an indication that the biggest money is made in the most challenging times."

For every \$100.00 invested a client received a rollover value of \$116.71 + \$45.12 (AB tax savings) = **\$161.83**

FUND	ROLLED NAV	BC AFTER-TAX RETURN ON 'AT RISK' CAPITAL (at 45.8% MTR)	AB AFTER-TAX RETURN ON 'AT RISK' CAPITAL (at 40.3% MTR)	ONT AFTER-TAX RETURN ON 'AT RISK' CAPITAL (at 49.5% MTR)
MLSD2015-III FT LP Offering Memorandum	*\$29.17	81.53%	**69.86%	**90.89%

* Per unit based on an original issue price of \$25 per unit.

** After-tax returns calculated as at July 20th, 2016 is the after-tax return after capital gains tax has been paid on divestiture and is based on at-risk capital. At-risk capital is after tax savings from tax credits, CEE, CDE and other deductions.

Tax savings are calculated by multiplying the total estimated income tax deductions for each year by the assumed marginal tax rate for that year. After-Tax Returns are at the highest Marginal Tax Rate for Investor in the Provinces of BC & Alberta in 2015.

Offering closed on December 17, 2015 and capital was fully invested prior to December 31, 2015. Jim Huang, T.I.P. Wealth Manager Inc. was engaged as Portfolio Manager.

This return was achieved in a period of 8 months for investors.

Please refer to the Rolled Fund Performance Summary found at www.MapleLeafFunds.ca for complete details and important disclaimers.

For more information regarding Maple Leaf Funds, its recent successes and its current offerings, please contact your Pinnacle Dealing Representative.

Pinnacle Wealth Brokers is registered as an Exempt Market Dealer, with registration in the provinces of AB, BC, SK, MB, ON, QB, NS, NB, and NL. Pinnacle provides private investment opportunities to qualifying Canadians through a network of trained, registered representatives throughout the country. This information does not constitute for sale or purchase of securities. This is not an offering of securities. Offerings are made pursuant to an offering memorandum and only available to qualified investors in jurisdictions of Canada who meet certain eligibility or minimum purchase requirements. The risks of investing are outlined and detailed in the applicable offering memorandum and you must review the offering memorandum in detail prior to investing. Investments are not guaranteed or insured and the value.