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CHANGING HOW CANADA MARKETS ITS PUBLIC OFFERINGS

The Canadian Forum for Financial Markets (CFFiM)/Forum Canadien des Marchés Financiers (FCMFi) is dedicated to moving forward proposals to demonstrably grow healthy, competitive financial markets in Canada for the greater good. We are a mission-first, values-driven, purposeful, and reform-minded organization committed to Canada's broader economic interests.

We offer constructive analysis, as a solutions partner, to stimulate capital raising, regulatory modernization and inclusive growth for the national economic competitiveness needed to meet the next decade's challenges.

Canada needs more room to market its public offerings. The key areas of the Canadian marketing rules that would benefit from amendment are:

(1) Pre-Marketing Exemptions:

Testing the Waters Exemption

- a. Expand the testing the waters exemption to allow confidential solicitations of interest for all types of prospectus offerings.
- b. Remove certain restrictions in the testing the waters exemption.

Bought Deals

- c. Allow reduction in number and price of securities to be purchased.

(2) Marketing Requirements

- a) Modify the 'all information' disclosure requirement.
- b) Expand exceptions beyond comparables.
- c) Expand permitted content of standard term sheet.
- d) Expressly Exempt bona fide offshore marketing activities.
- e) Expressly Except general disclosure of material changes or material facts.

- f) Amend exception for cross-border roadshows.

With respect to Pre-marketing Exemptions:

“Testing the waters” encourages capital formation and increases investor opportunities.

Current Canadian rules do not have the same flexibility as US rules.

Current Canadian rules have the effect of limiting “soft sounding” efforts for offerings off an existing shelf prospectus. Soft sounding benefits investors and issuers by helping with better pricing and timing. It helps issuers evaluate markets conditions and demand quietly to improve the price stability and efficiency of the offer, while avoiding repetitive regulatory filings. It is a low pressure, consultative, educational approach within the flexible, staged capital raising process afforded by a shelf prospectus.

In addition, bought deals should be further accommodated as they bring speed and risk reduction to capital raising and are seen as an advantage to Canada’s capital markets.

With respect to Marketing Requirements:

A series of suggested modifications to marketing requirements are provided.

They include recommended changes to road show requirements for cross-border offerings. The requirement that the underwriters have “a reasonable expectation” that an offering will be sold “primarily” in the US is too vague to be useful and may be too high a threshold. It is often impractical for underwriters to estimate approximately how much of a cross- border offering will be "sold" in or outside of Canada at the time at which a determination must be made as to the availability of the cross-border exemption. Rather they may verify that they have a “bona fide intention” to sell the offering primarily outside of Canada.

Our detailed recommendations are found [here](#).