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SENT BY E-MAIL

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Ms. Margo Paul, H.B.A., LL.B.
Director
Corporate Finance Branch
Ontario Securities Commission
20 Queen Street West
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Dear Margo:

Following up on our brief conversation after the Small Business Committee meeting, I thought I would just set out the thoughts I had regarding the offering memorandum issue.

As you know, "offering memorandum" is defined in Rule 14-501. The definition is broad and only excludes current information about an issuer for the benefit of a prospective purchaser familiar with the issuer through prior investment or business contacts.

Private financings for public as well as private companies are quite common, especially in the Canadian context where the majority of our public issuers are on the smaller side. In these type of financings, the private investor often has access to full due diligence and, as well, is the recipient of much written documentation, which might include things like a business plan. Because of the broad definition of offering memorandum, the delivery of this information begs the question whether a particular document, such as a business plan, is or is not an offering memorandum. Out of an abundance of caution, most issuers would be generally advised that such document would constitute an offering memorandum and, therefore must not contain a misrepresentation (and therefore must not omit any necessary material fact). Caution would dictate that the issuer and its advisors would look to prospectus form requirements for a checklist of matters that should be included in the offering memorandum and, before you know it, a significant amount of extra work, (with legal and financial cost) has been generated when, in fact, the information in the offering memorandum is all information that the investor would be uncovering itself through its due diligence process.

I am suggesting that there be another exception to the definition of offering memorandum for written materials that are delivered to a certain category of sophisticated investors who acknowledge that (i) they have satisfactory access to the records and assets of an investee for due diligence purposes; (ii) they do not require that written materials being delivered to them should constitute an offering memorandum; and (iii) the materials being delivered to them will not constitute an offering memorandum and will therefore not give rise to the statutory liability that attaches to an offering memorandum.

Yours truly,

Richard S. Sutin

RSS/rp

Enclosure