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February 17, 2013

Mr. John Stevenson
Secretary, Ontario Securities Commission
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Attn: John Stevenson

Sent via Email: jstevenson@osc.gov.on.ca

RE: OSC Staff Consultation Paper 45-710

I am writing as a private citizen who has been involved in the capital markets in Ontario for over 25 years in a number of capacities, including employment with the OSC, acting as the CCO of a mutual fund dealer, Vice President Legal and Regulatory Affairs for an IDA member, a mutual fund company and a mutual fund dealer and a lawyer in private practice with two national law firms.

My initial concern relates to whether the process of determining recommendations with regard to an OM exemption from prospectus requirements in Ontario is a matter should rest with Staff of the OSC or better rests with the Minister of Finance's staff. As the balancing of the interests of investors with those of entities wishing to obtain funding via the capital markets has broad public policy implications, one might have expected that the Ministry of Finance would take the lead.

As Staff are arguably more aware of, and sensitive to, the failures that occur in the capital markets than its successes, the protection of investors could be seen as paramount with the increasing the ability of entities to raise capital effectively and efficiently a secondary concern. Traditional sources of debt financing for small and medium sized enterprises have regularly been criticized for failing to do so adequately and may limit access further in light of increased regulatory capital requirements (ie. Basel III). SMEs will need to have greater and easier access to other sources of capital to fund their growth, and with their growth the growth the economy. Overall growth in the economy and the accompanying growth in the tax base and decline in certain social welfare expenditures (from increased employment,

sales taxes, decline in welfare claims, etc.) is a concern of the Provincial Government and consideration of the OM exemption must be part of its consideration of how best to meet the many competing interests. While any OM exemption proposed by the OSC must be approved by the Minister as part of the adoption process, I would suggest that the limited choice of approve or not approve does not give the Minister, the Cabinet and the Legislature by extension, satisfactory input into the process. While I have no expectation that this comment will change the process with regard to consideration of an OM exemption, I am hopeful that it may trigger a consideration of the issue in the near future. Promotion of growth in the economy, increased employment and an increased tax base is fundamentally linked to the ability to raise and access capital and therefore is a matter of public policy beyond the mandate of the OSC.

Should an Offering Memorandum (OM) exemption be adopted in Ontario? If so, why?

Given that registered dealers and their dealing representatives are subject to effectively identical requirements in terms of KYC, know your product, suitability, CRM disclosures and other obligations with respect to dealing with potential investors, there is reasonable assurance that the adoption of an OM exemption which requires the intermediation of a dealer, that the interests of investors will be suitably protected.

Should there be any monetary limits on (the OM) exemption?

This question can be read in two ways; with regard to a limit on the amount that can be raised and the amount that any individual can invest.

The answer to both is in the negative.

First, the decision of whether to raise capital by way of an OM or a prospectus should rest with the issuer and not be subject to any limit which by its very nature would be arbitrary.

Second, a competent adult should be free to invest as little or as much as he or she likes given the overriding obligations of dealers and dealing representatives with regard to suitability, KYC and know your product. A competent adult is not subject to any limitation, other than personal finances, in investing in other assets, such as real estate, gold, diamonds, or baseball cards or pursuing any sort of legal activity that has potential for significant reward and considerable risk (e.g. buying a franchise, starting a business, gambling, or buying lottery tickets), and no rational argument can be made as to why there should be any distinction with regard to securities, particularly when a registered dealer is involved in the transaction.

If there should be monetary limits on the OM exemption, should they be in addition to any limits imposed under any crowdfunding exemption?

This question is premature. Absent some sort of description of what a crowdfunding exemption would entail it is difficult, absent any context, to support any linking of monetary limits. Further, if investors relying on the OM exemption are being provided with a reasonable level of disclosure, why should an issuer be limited in the amount it can raise in aggregate through crowdfunding and reliance on the OM exemption?

Should there be mandatory disclosure required in an OM? If so, what level of disclosure should be required?

Yes. A uniform level of disclosure should be imposed at a level below that of prospectus requirements.

Should we require registrant involvement as a condition of (the OM) exemption? If so, what category of registration should be required?

To ensure an appropriate level of investor protection a registered investment dealer, exempt market dealer or portfolio manager should be involved. See the response to the first question above for reasons.

Would a sophistication based exemption be useful for issuers, particularly SMEs, in raising capital?

No comment.

What educational qualifications should be met? Should we broaden the relevant educational qualifications?

No comment.

Should Staff wish to discuss any of the foregoing, I can be contacted at richardaustin@rogers.com.

Regards,

“Richard E. Austin”

c.c. Honourable C. Sousa, Minister of Finance