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Delivered by email

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Attn: John Stevenson

RE: OSC Staff Consultation Paper 45-710 – Considerations for New Capital Raising Prospectus Exemptions

We appreciate the opportunity to comment on OSC Staff Consultation Paper 45-710. We have provided comments on the consultation questions of importance to us, and where we have particular views.

Trinity Compliance Partners is a boutique regulatory compliance consulting and support services firm that assists registered dealers, portfolio managers and investment fund managers with compliance related matters. Our principals are former Accountants of the Compliance and Registrant Regulation Branch of the OSC.

We are commenting from the perspective of consultants to registrants, small business owners, and individual investors.

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

Yes, we believe that an OM exemption should be adopted in Ontario. The OM exemption can benefit both companies and investors as it provides businesses with a more cost effective way of raising capital, and individuals with greater investment choices.

The introduction of an OM exemption in Ontario will also result in a more harmonized exempt market regime across the country. With the appropriate measures, we think the OSC's dual mandate of investor protection and fostering fair and efficient capital markets can be achieved.

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

Yes, we believe there should be monetary limits on the OM exemption, and that such limits are necessary to help protect investors. However, we do not think the limits on the OM exemption should be in addition to any limits imposed on any crowdfunding exemption, and we also do not think that the investment size limits under these exemptions should necessarily be the same.

Although we understand the rationale of imposing a smaller dollar investment limit of $2,500 for a particular distribution, and a limit of $10,000 in total under this exemption per calendar year, we believe that these amounts are too restrictive and not practical for companies. For example, assuming each investor invested the maximum $2,500 in a particular issuer, in order for a company to raise the total maximum proceeds of $1,500,000, it would need 600 investors in a 12-month period, which translates on average to finding 50 new investors per month. A $2,500 limit may not make it feasible for an issuer to raise funds using the OM exemption, and may also lessen the appeal of the investment opportunity for many investors. Moreover, where there is a registrant involved, for example in situations where a firm is in the business of trading or advising, a limit of $2,500 may result in a registrant not appropriately servicing clients, including not collecting sufficient KYC information or conducting adequate suitability, due to the volume of transactions and higher costs vs. benefit associated with each distribution.

We think that further consideration should be given to a limit based on an individual investor's particular circumstances, such as a concentration limit based on a percentage (%) of the investor's investible assets. Given the current proposal whereby there is no requirement for a registrant to be involved, we believe that an investor should be required to provide proof of investible assets, or at a minimum, self-certify that the investment concentration limit is not exceeded.

With respect to the overall limit of raising no more than $1,500,000 in a 12-month period, we are supportive of the concept of a total maximum dollar limit, or dollar limit per year, but think that the limit should be raised to accommodate the differing capital requirements of companies and in order to make it more cost effective and efficient to raise capital under this exemption.

Should a purchaser be required to receive investment advice from an adviser in order to rely on this exemption?

We do not think it should be a requirement that a purchaser receive investment advice from an adviser in order to rely on this exemption, as requiring the involvement of an adviser will increase the costs associated with reliance on this exemption. A requirement to obtain investment advice from an adviser may make it impractical and inefficient for an issuer to raise funds and prevent smaller issuers from accessing the exempt market through this avenue. However, we think that consideration should be given to a requirement that investors be provided with disclosure statement encouraging the investor to obtain professional investment advice before accepting the offer to purchase.

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

Yes, we believe there should be mandatory disclosure required in an OM. In order to help protect investors and ensure there is an appropriate basis for investment decisions, a minimum level of required disclosure is needed.

Although we support the level of disclosure being suggested in the proposed information statement, we think that firms should be permitted to provide an OM using the prescribed form under National Instrument 45-106 (Form 45-106F2), if they so choose. The flexibility to allow firms to provide OM disclosure as proposed in the information statement *or* based on Form 45-106F2 will allow firms that raise capital in other jurisdictions using an OM based on Form 45-106F2 to also use this OM for Ontario distributions.

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

Given a minimum required level of disclosure in the OM, investment size limit constraints, and a maximum dollar amount of proceeds that can be raised, we do not think that registrant involvement should be required as a condition of the OM exemption. However, where a registrant is involved, we think consideration should be given to allowing more flexibility in terms of any individual investment size limit constraints since the registrant would have an obligation to collect sufficient KYC information, assess suitability, and conduct adequate KYP. That is, where a registrant is involved, we think a greater investment size limit should apply.

Would a sophistication based exemption be useful for issuers, particularly SMEs, in raising capital? What educational qualifications should be met? Should we broaden the relevant educational qualifications?

We address this question from the view of an investor that does not qualify under any prospectus exemption currently available (i.e. accredited investor, minimum amount) but has the necessary tools (i.e. education, experience) to make an informed and educated decision.

We believe that a prospectus exemption based on investor sophistication will provide greater investment opportunities for investors. Currently, an investor who does not qualify under any available prospectus exemption is generally limited to investments in reporting issuers (e.g. publically listed securities, mutual funds). While we appreciate the protections a prospectus provides, we also believe there are a group of investors (i.e. sophisticated investors) that do not need the protections afforded by a prospectus, and desire alternative investment opportunities for the benefits of diversification and the potential for higher risk adjusted returns.

The current concept to qualify investors as "sophisticated", which is conditional upon meeting relevant work and educational requirements, appears overly restrictive, and in some cases may not be a good proxy for sophistication. Allow us to explain by presenting various scenarios:

1. An Accountant with a Chartered Accountant (CA) designation or a Legal Counsel in the Compliance and Registrant Regulation Branch of the OSC with several years of regulatory compliance experience, which includes reviewing disclosure documents and financial information for various prospectus exempt offerings.
2. An individual with no professional designation but with extensive experience in securities analysis (e.g. equity research associates), or an individual with extensive business experience that is considered an industry expert and who possesses a strong business acumen.
3. An MBA in marketing who works for an investment fund manager in their marketing department for just over a year.

Under the current concept proposal, individuals that fall into scenarios 1 and 2 would not qualify as sophisticated investors as a result of not meeting the relevant educational requirements. In contrast, an individual in scenario 3 would likely qualify as a sophisticated investor by having an MBA and meeting the minimal work experience requirement. The above scenarios highlight the limitations of the current proposal.

We believe there should be a greater emphasis placed on relevant work experience, which could be a better proxy to measure sophistication. For example, where an individual has a relevant professional designation that is not currently prescribed in the proposed concept, and has several years of relevant experience, such as the case in scenario 1, we believe these individuals should qualify as sophisticated investors. Further, in certain circumstances, we think individuals who do not possess a professional designation but have extensive experience in securities analysis or individuals that are considered industry experts and who possess strong business acumen through extensive work experience (e.g. senior officer of a company) should also qualify as sophisticated investors. As a result, in addition to the current qualification method requiring relevant educational and work experience, we believe the OSC should consider a qualification method based solely on extensive relevant work experience. We appreciate that there are obvious challenges to this qualification method as it may be difficult to define rules and parameters that are understandable, enforceable, practical, and limit the potential for abuse. However, we think that some of these concerns can be addressed through a self-certification or a reference letter (e.g. peer to peer review) requirement.

Further, we believe that the current educational requirements are overly restrictive, and consideration should be given to including other professional designations. In particular, being CAs ourselves, we think the current proposal should be expanded to include this designation. CAs undergo a rigorous globally recognized examination process that includes testing an individual's ability to assess a company's financial statements, including its viability and the risks associated with its business, which we think are important skills in assessing investment opportunities. That being said, we also believe that the OSC should consider other professions or designations, such as securities lawyers and chartered alternative investment analysts.

Thank you for considering our comments.

Sincerely,

Andrew Rhee, CA
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Trinity Compliance Partners Inc.

Dave Santiago, CA, CFA, CFE
Director
Trinity Compliance Partners Inc.