FRIEDMAN & ASSOCIATES
Barristers & Solicitors

William Friedman, B.A., B.C.L., L.L.B
Direct Line: (416) 496-3340
Direct Fax: (416) 497-3809
E-mail: wf@legalpro.ca

BY E-MAIL: *jstevenson@osc.gov.on.ca*

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Ontario Securities Commission
20 Queen Street West
19th floor, Box 55
Toronto, ON M5H 3S8

Attn: John Stevenson, Secretary

Re: OSC Staff Consultation Paper 45-710

We are writing to you in response to your solicitation for comments regarding OSC Staff Consultation Paper 45-710 – *Considerations for New Capital Raising Prospectus Exemptions.*

Our firm's practice is broad, and comprises, amongst other things the provision of legal advice and the preparation/review of documentation for participants in Ontario capital markets, with a primary focus on start-ups and medium-sized enterprises ("**SMEs**"). Our clients include local, Canadian and international investors, issuers and other participants (including EMDs) in the exempt-market space. As such, we have first-hand experience in dealing with the myriad of Canadian securities legislation, and in particular, National Instrument 31-103 – *Registration Requirements and Exemptions* ("**NI 31-103**") and National Instrument 45-106 – *Prospectus and Registration Exemptions* ("**NI 45-106**").

First, let us state that we support the initiative to broaden the capital prospectus exemptions in Ontario, and agree that investor protection is a critical aspect to consider when implementing such exemptions. We believe that greater prospectus exemptions based on an investment knowledge and sophistication are warranted, that mandating e-filing of Form 45-106F1 is an administratively-efficient idea and, subject to our comments that follow, that crowdfunding can play an important role and should be permissible in Ontario.

However, we are dismayed at, and the focus of our letter is on, the OSC's continued failure to consider the adoption in Ontario of the OM exemption in its current format in section 2.9 of NI 45-106. In our view, the application of the crowdfunding exemption terms and conditions to the OM exemption renders such exemption somewhat (and unnecessarily) duplicative and most importantly, of no practical use to a vast majority of the players in the exempt market space. On top increasing the disharmony of rules applicable to a private placement by way of offering memorandum in the provinces and territories of Canada, we do not believe that the implementation of the proposed OM exemption fulfills one of the OSC's mandates to "foster fair and efficient capital markets".

In particular:

- For issuers, a limit of $1.5 million on the amount of capital they can raise to in a 12-month period, and limit each investor's investment to $2,500, seems arbitrary and to make (more often than not) the prospect of raising capital through an offering memorandum impractical. While we advocate that there be no limit as currently found in section 2.9 of NI 45-106, the OSC's proposed limit is not nearly significant enough to absorb the up-front costs generally associated with the preparation (and updating, if necessary) of an offering memorandum, nor to cover the costs of closing the transactions. The situation is made worse by the fact that an issuer would have to sell its securities to 600 different investors in order to get to the $1.5 maximum, which does not provide for optimal efficiency. The administrative time and cost of reaching and reporting to that many investors, for what is a relatively *de minimis* amount of capital, will dissuade rather than persuade an issuer to seek capital from Ontario investors. In our experience, most of our issuer clients would not even bother to avail themselves of the proposed exemption as their minimum investment threshold is already in excess of $2,500. In other words, it would not be worth chasing an investor for only $2,500, which would thereby mean that the exemption would do little to nothing in order to broaden the capital prospectus exemptions in Ontario to such issuers.
- For investors, a limit of $2,500 per investment and a $10,000 annual cap again seems arbitrary and very restrictive (especially in light of comment above regarding self-imposed minimum investments by issuers). Such "overprotection", in our view, will also dissuade rather than persuade an investor to seek out exempt market investments as, for most investors in that space, such a *de minimis* investment is not worth the expenditure. For non-accredited investors, such a limitation would ostensibly mean they have two investment thresholds:

    - Up to $2,500 pursuant to the OM exemption; or
    - $150,00 or more pursuant to the minimum investment exemption in section 2.10 of NI 45-106.

  Furthermore, they must invest in four different companies if they wanted to put $10,000 into exempt-market investments in any given year. The fact that an investor can open up a self-directed trading account with unlimited funds and purchase (with no advice from a registrant) $10,000 (or a lot more) worth of a TSX-V listed penny stock issuer (whose public disclosure is often wanting and/or seriously deficient), but cannot purchase more than $2,500 worth of privately placed securities (even with an offering memorandum prepared in compliance with the current Form 45-106 F2 or F3 and the involvement of a licensed EMD) is, in our view, difficult, if not impossible, to reconcile from a policy perspective.

In our view, the adoption of section 2.9 of NI 45-106 in Ontario is the best solution to quickly and efficiently ensure greater access to the exempt market for issuers and investors alike.

- Firstly, it brings in line the rules across Canada which greatly reduces the compliance costs to issuers, who may be able to pass such savings on to investors. One of the greatest frustrations

for our clients (both buyers and sellers) is the fact that there are so many different rules that apply in Ontario vs. the rest of Canada, and that they cannot access the market or products in Ontario in the same other Canadians can in their province or territory. While a national securities regulator and regime would be optimal, it is unlikely. Therefore, harmonization of the rules so as to "level the playing field" is, in our view, the best alternative.

- Secondly, it provides investors across Canada with a simple to read document that is actually comprehendible while still providing them with many of the same rights afforded by a prospectus. While offering memorandum's are not reviewed by the OSC, we think there suitable protections in place (such as KYP under NI-103 which will ensure a vetting of the offering memorandum by one or more licensed EMDs and the self-policing that stems from the granting of rights of action for misrepresentation), to ensure the protection of the investors. We strongly believe that investors, with input from their EMD, should be free to make up their own mind on the appropriate level of investment they want to make and risk they are willing to tolerate. This should not be dictated by the OSC and the proposed "one size fits all policy" caters only to the smallest, and perceived inexperienced, investor while telling an Ontario "Eligible Investor" that they are not sophisticated enough to make their own decisions and should not be allowed to invest in products available to an Alberta "Eligible Investor". This is unduly limiting and would seem to steer Ontario investors solely to publicly-traded investments (which many clients already hold, but want to diversify away from for many reasons including volatility and brokerage costs).
- Thirdly, SME's that we advise often want to raise capital in Toronto but do not because of the lack of the OM exemption. They recognize that there is a tremendous untapped market in this city alone for issuers if they were entitled to utilize section 2.9 of NI 45-106. Having a broader range of investment products and opportunities available to Toronto/Ontario residents, in our view, is a good thing.

In summary, we pleased that the OSC is desirous of adopting alternative methods for raising capital in Ontario. We view this as a positive development and beneficial to all participants in the exempt market. However, we believe the proposed limitations on the OM exemption barely moves the needle in terms of real progress and unnecessarily introduces a new regime that is unlikely to be of any practical benefit to our clients. We urge you to reconsider your conceptual idea and, for he reasons enumerated above, permit the issuance of securities in Ontario under the current section 2.9 of NI 45-106. To us, that is the most sensible and practical thing to do.

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Thank you for the opportunity to present our views. Should you wish to discuss this submission, please do not hesitate to contact the undersigned.

Yours very truly,

Friedman & Associates

William Friedman per MTS

Per: William Friedman

Cc: *National Exempt Market Association (info@nemaonline.ca)*