

March 8, 2013

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

Attn: John Stevenson, Secretary

Re:
OSC Exempt Market Review
OSC Staff Consultation Paper 45-710
Considerations For New Capital raising Prospectus Exemptions

Introductory Comments:

I would firstly like to say that this consultation is welcome and prudent as possible change and modification to the existing regulations is likely necessary for effective and efficient access to capital for SMEs. Although I believe certain change is required for a well functioning Canadian capital markets, I also recognize the continued need for maintaining the integrity of the capital markets and the protection of investors in general.

My background involves the capital markets, primarily on the investment banking side. I have I held all main registration as a partner, director, officer and branch manager. I recently completed the EMD and OPD courses and am now focused on the Exempt Capital Markets. The reason I am focused in the Exempt Capital Markets is that they have become very important to an efficient and effective economy, as private equity has grown significantly.

My focus is not in the crowdfunding area but I do have some reasonable insight into this area and some connection with certain people that are very knowledgeable in the area. I do not rule out that with further definition in the crowdfunding area we might be more involved. My reason for commenting on this Paper is that certain topics are referenced that in my opinion apply beyond just the crowdfunding discussion.

I am also in the process of a PhD with a thesis that involves the changing demographics and your observation in a couple places in the Paper on the importance of that consideration cannot be understated.

Comments:

The following comments are primarily directed at the reference to Funding Portals in the referenced Paper:

- Crowdfunding Funding Portals;
- Funding Portals Compensation; and
- General Portals.

Since I am submitting comments, a secondary area of comment related to this Paper is concerned with two areas:

- Maximum crowdfunding limit and requirements
- EMD Qualifications Registration;
- Considerations For Prospectus Exemptions Based On Sophistication And Advice; and
- Fees related to the Exempt Market.

Crowdfunding Funding Portals:

The meaning of Crowdfunding as stated in the Paper:

Section E (page 14)

[Meaning of crowdfunding](#)

Crowdfunding is a method of funding a project or venture through small amounts of money raised from a large number of people over the internet **via an internet portal intermediary**.

Section

Section 5.1 (page 26)

One of the key differences between the two exemptions is that the crowdfunding exemption contemplates investing through an online funding portal, whereas distributions under the OM exemption historically have been made through more traditional investment channels.

I would firstly like to submit that the internet is being used more and more in the capital markets as an effective and efficient means to communicate and deliver information for investors and to assist in facilitating the completion of transactions. This is naturally the way for the future and should not be stifled but encouraged with prudent and reasonable oversight.

Section 5.2 (page 28 and 30)

There are three parties that would be involved in a distribution under the crowdfunding model: the issuer, the investor and the funding portal.

[Registration of funding portal](#)

All investments under this exemption must be made through a registered funding portal.

[Implications for registration regime](#)

We note that no registrant, other than the funding portal, will be required to be involved in a crowdfunding distribution.

These statements suggest that no Registrant is required in the process other than some registration for the portal that seems undefined at this point.

Section E
(Page 15)

Crowdfunding under the JOBS Act
Intermediaries

Crowdfunding offerings must be conducted through an intermediary that is registered with the SEC as a broker or funding portal (defined as any person acting as an intermediary in a transaction involving the offer or sale of securities for the account of others pursuant to the exemption that meets certain conditions) and with any applicable self-regulatory organization (SRO).

I believe the intention is that this space cannot be completely unregulated and I agree. However, the discussion in Section 5 addresses the anticipated situation whereby the only parties involved in a crowdfunding transaction are the issuer, the investor and the funding portal; no registrant broker/dealer or EMD. In that case, I would take the position that some registration for the Portal may be required however modified to address their role.

Under the Jobs act it states that what is required is that offerings be conducted through an intermediary registered as a “broker or funding portal”.

This is an important distinction.

In regards to regulation, the regulatory bodies are focused on having some registrant involved in the trade. Where no registered broker/dealer is involved then the portal should possibly have some registration and responsibility. However, where the portal simply serves the function of extending the efficiencies and effectiveness of the internet and a registered broker/dealer is responsible for the actual trade, then I do not think that further registration is required for the portal. That will simply add another layer of administration and cost and stifle the use of the Internet for its effectiveness and efficiency.

The key submission I make in this regard is that if the ultimate trade takes place with a registrant where required then the regulatory bodies have accomplished their mandate. The registrants will have their responsibilities clearly set out as far whether that be by way of a portal or more conventional means. With crowdfunding, the requirements for KYP, KYC and Suitability may be unrealistic for the size of transactions but a lesser amount of due diligence seems reasonable as mentioned in the Paper.

I do not think the concept of “furtherance of a trade” should be extended to portals in these circumstances where a Registrant is involved in the trade.

I believe that that the SEC has acknowledged such distinction in a few cases. Circleup is a “portal” however, they are not required to be registered as any trades

take place through a registered broker/dealer.

There should be perhaps a two-prong approach to possible registration for portals; one in which there are no registered broker/dealers and one which has registered broker/dealers involved in the ultimate trade.

I believe this is contemplated on Page 30.

We would consider exempting funding portals from specific dealer or adviser registration requirements, after considering the particular features of the portal's proposed business model and our continuing review of crowdfunding developments in other jurisdictions.

Funding Portals Compensation

The current discussion seems to limit or not sufficiently define how funding portals will generate revenue. Developing such portals can be costly and considering the onus that may be placed on a portal under the contemplation of this Paper, some consideration must be addressed to this area other wise the lack of definition will stifle development.

Portals in General

The other submission I would like to extend in this regard is that “portals” are naturally becoming prominent simply to take advantage of the efficiency and effectiveness. This is not just in the crowdfunding space and I would suggest that the regulatory bodies recognize that portals are used and will be used more in the exempt market and the public markets and hopefully any contemplation of portals does recognize this use beyond crowdfunding. The Internet or “portals” are an extension of the capital markets often in conjunction with registrants.

Where “portals” operate in conjunction with Registrants then I suggest that registration of the portal is not necessary as the actual trade takes place with the Registrant and all necessary KYP, KYC and Suitability is being completed.

Whether it be in the normal course of the exempt market, public market or in contemplation of crowdfunding it is proving difficult to operate or plan as the definitions and potential regulations are not clear. I encourage the regulatory bodies to maintain a regulatory framework that continues through consultation to define what is the best interest of investors, market integrity and protection and our capital markets. Other than clear infractions of clearly stated regulations I encourage the regulatory bodies to work with the capital markets to further define what is needed while not circumventing or stifling those with good intentions.

I am sure that those entities attempting to operate in a professional compliant manner are open to further define their business as required by the yet fully

undefined areas of their business. I would encourage that further definition and modification be done with consultation and recognize those simply trying to operate in a yet somewhat undefined area.

Maximum crowdfunding limit and requirements

I was asked by an association focused on crowdfunding to provide my thoughts on the maximum amount to be raised by an issuer. The problem with a \$500,000 limit is that a void will continue to exist for SMEs. I suggested that consideration be given to a maximum \$2 million provided that issuer provide NTR (Notice To Reader) financials. I believe that this has been submitted to the ASC under their request for comments.

EMD Qualifications Registration

I do agree with the limitations of those simply fulfilling the EMD requirements. As I mentioned, I have completed all of the mandatory registration for full market access in the past and in my opinion the requirements for an EMD registration does not necessarily indicate a high level of capital markets sophistication required.

There most definitely is a shift to the exempt market and some individuals entering that market have a significant amount of other experience and past registration that may have expired or not currently recognized such as that stated on page 35:

- Relevant educational qualification. The investor must have earned or received one of the following:
- a Chartered Financial Analyst designation (CFA Charter),
- a Chartered Investment Manager designation (CIM designation), or
- a Master in Business Administration degree (MBA) from an accredited university.

I would suggest consideration to two levels of EMD:

Those that have simply completed the current EMD requirements: and

Those that have other past registration or other recognized qualifications.

Considerations For Prospectus Exemptions Based On Sophistication And Advice

(Page 37)

[Concerns with extending exemption to EMDs](#)

EMDs would not be permitted to provide advice under this exemption.

Related to the topic above I would suggest that EMDs that also have other qualifications as stated above, have authorization to advise.

Fees related to the Exempt Market

This area seems very unclear and not congruent to the fully regulated market. This is not specially related to crowdfunding but simply the exempt market. In the fully regulated market broker/dealers have the ability to compensate employees and others based on completion of a transaction. Investment bankers have traditionally received fees or bonuses that are tied to the completion of assignments, which are often tied to the completion of a financing.

Current EMD regulations seems to suggest that fees tied to the success of an offering cannot be paid to other than those that are registered. In general, it seems that the view on the exempt market is that it is made up of people that operate below the traditional fully regulated environment. That is no doubt the case in some respects however, the exempt market, the private equity market also involves professionals many that operate in both environments or have moved over to the exempt market. In the case of the exempt capital market that operates professionally there are many people that contribute to structuring, due diligence other professional services and to require those people to registered is onerous in my opinion and not helpful to facilitating this market nor accomplishes any further protection for the investing public.

In addition, many firms that operate in the exempt market cannot afford outright fees but can only compensate their people on a basis that is tied to success. It is my opinion that fees to non-registered firms (including portals) and people where the actual trades take place through a Registrant.

I trust you find my commentary helpful and I am available to make further clarification on these points or provide any other helpful input.

Regards,

Neal Gledhil, MBA