March 8, 2013

VIA E-MAIL – JSTEVENSON@OSC.GOV.ON.CA

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

Re: OSC Staff Consultation Paper 45-710

This letter is submitted in response to OSC Staff Consultation Paper 45-710 *Considerations for New Capital Raising Prospectus Exemptions* (the "**Consultation Paper**").

Gowling Lafleur Henderson LLP is a national law firm, with experience as counsel to issuers, investors and registrants. This letter has been prepared by certain members of the Corporate Finance and M&A Practice Group of Gowlings, but may not reflect the views of each of the group's members or the firm as a whole. We address only certain of the consultation questions in this letter.

Terms used and not otherwise defined in this letter have the meanings given to them in the Consultation Paper.

Guiding Principles

Access to Capital – We support the need for investor protection. However, given adequate safeguards, we encourage the adoption of prospectus exemptions which facilitate capital raising and enhance the efficiency of the capital markets.

Harmonization – We encourage the harmonization of prospectus exemptions across Canada. With respect to those exemptions which are not available in Ontario but are available in the other Canadian jurisdictions, we urge the OSC to adopt the exemptions, in the absence of demonstrated abuse. With respect to new exemptions which may be adopted in Ontario pursuant to this consultation process, we urge the OSC to coordinate with the regulators in the other Canadian jurisdictions with a view to making the exemptions available across Canada.

Gowling Lafleur Henderson LLP · Lawyers · Patent and Trade-mark Agents
1 First Canadian Place · 100 King Street West · Suite 1600 · Toronto · Ontario · M5X 1G5 · Canada T 416-862-7525 F 416-862-7661 gowlings.com

Responses to Consultation Questions

Consultation Paper s. 2.2B – Prospectus exemptions based on relationships with the issuer

Should the OSC consider re-introducing the closely held issuer exemption in addition, or as an alternative, to the private issuer exemption? If yes, should the conditions be changed?

We believe that there are many small issuers which would benefit from the addition of an exemption which facilitates the raising of early stage seed capital. In our experience, issuers seeking initial capital in small amounts are often presented with potential non-retail investors who do not fit within any existing exemption categories. Even if a new crowdfunding exemption is introduced, it may not be appropriate for use by such issuers (e.g., if the issuer does not want to take on the burdens of administering a large securityholder base). We believe that the OSC should consider re-introducing the closely held issuer exemption in addition to the private issuer exemption, but in a modified form which is designed to meet the needs of such early stage issuers. As an example, such an exemption could permit an issuer to raise up to $1,000,000 from up to 40 investors, and otherwise follow the previous closely held issuer exemption. As an alternative, a much more limited exemption could be considered, which would be capped at $100,000 from up to 10 investors. We expect that further discussion would be required to determine the appropriate parameters for the exemption, and whether investor protection measures should be imposed (e.g., requiring the delivery of a risk acknowledgment, or restricting the investment to $25,000 per investor). We think that business groups involved with these types of small issuers (universities, business incubators and accelerators and family business centres) would be a valuable resource for determining how best to tailor the exemption to meet the needs of these issuers.

Consultation Paper s. 5.2 – Exploration of crowdfunding

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

We believe a crowdfunding exemption would be useful for issuers (and particularly SMEs) in raising capital. It enables participation by retail investors. Crowdfunding is a progressive model, which is in line with how many SMEs (particularly in the innovation sector) operate. We also note that the benefits of crowdfunding may go beyond raising capital, since crowdfunding has the potential to engage an issuer's securityholder base in a manner which may drive interest in the issuer's products and services (in addition to its securities).

Have we recognized the potential benefits of this exemption for investors?

Yes.

What would motivate an investor to make an investment through crowdfunding?

An investor may be motivated by a number of factors, including the following:

- a desire to get in on the ground floor of a high-growth company;
- a desire to support the business and/or management of an issuer in ways other than being a customer, supplier, promoter or marketer; or

- an interest in a specific issuer and/or members of its management team to which the investor was exposed through a direct relationship or through other means (such as media, social networking or internet research).

Can investor protection concerns associated with crowdfunding be addressed and, if so, how?

We recognize the particular investor protection concerns that are associated with crowdfunding, especially as they relate to retail investors. However, we believe that the investor protection concerns are adequately addressed by the investor protection measures (including the role of the funding portal) outlined in the Consultation Paper, commencing at page 29.

What measures, if any, would be the most effective at reducing the risk of potential abuse and fraud?

We believe that the following measures outlined in the Consultation Paper would be the most effective at reducing the risk of potential abuse and fraud:

- the investment limits described on page 29 of the Consultation Paper;
- the risk acknowledgment requirements described on page 29 of the Consultation Paper;
- the registration requirements applicable to the funding portal described on page 30 of the Consultation Paper (subject to our comments on registration below); and
- the "gatekeeper" role of the funding portal described on page 54 of the Consultation Paper.

We also believe that the reputation of a funding portal, as it develops over time, will serve to reduce risk.

Are there concerns with retail investors making investments that are illiquid with very limited options for monetizing their investments?

Given the limitations on investments, and the risk disclosure statement aimed at ensuring that retail investors understand the risks of their investment, we do not think that there are concerns with retail investors making investments in illiquid stocks. With respect to the illiquidity of their investment, we think it is appropriate that crowdfunding investors would be treated the same as other exempt market investors.

Are there concerns with SMEs that are not reporting issuers having a large number of security holders?

It will be up to each issuer to determine whether it is able to administer its securityholder base and communicate with its securityholders in accordance with corporate and securities laws. With respect to the cost of administering a large securityholder base, we note that the market adapted to the introduction of capital pool companies, with transfer agents offering differential rates until such time as the relevant issuer completes its qualifying transaction.

If we determine that crowdfunding may be appropriate for our market, should we consider introducing it on a trial or limited basis? For example, should we consider introducing it for a particular industry sector, for a limited time period or through a specified portal?

We do not think that there is any compelling reason to introduce the crowdfunding exemption on a trial or limited basis. Persons who may otherwise be interested in establishing a funding portal may not wish to invest the requisite time and money if the future of the exemption is uncertain. The exemption may always be adjusted at a later date, if issues which are not raised in the consultation process come to light.

Issuer restrictions

Should there be a limit on the amount of capital that can be raised under this exemption? If so, what should the limit be?

Yes, there should be a limit on the amount of capital that can be raised under the crowdfunding exemption. Given the costs and infrastructure involved, a $2,000,000 limit in a 12-month period may be more realistic than a $1,500,000 limit. Since the true costs involved with using the exemption will probably not be known or quantifiable until the exemption is put into place, any limit should be revisited and reviewed after implementation.

Should issuers be required to spend the proceeds raised in Canada?

No, issuers should not be required to spend the proceeds raised in Canada. There is no requirement to spend the proceeds raised under other exemptions in Canada. Although we agree that only Canadian issuers should be able to qualify for the exemption, the board of each issuer should determine how the proceeds should be used in accordance with the fiduciary duties of its directors.

Investor protection measures

Should there be limits on the amount that an investor can invest under this exemption? If so, what should the limits be?

We think that the investment limits proposed in the Consultation Paper ($2,500 per investor per investment, and $10,000 per investor per year) are appropriate.

What information should be provided to investors at the time of sale as a condition of this exemption? Should that information be certified and by whom?

A streamlined information statement delivered at the time of distribution, containing the information outlined in the Consultation Paper and certified as contemplated by the Consultation Paper, is appropriate. Please see our comment below on when audited financial statements should be required.

Should issuers that rely on this exemption be required to provide ongoing disclosure to investors? If so, what form should this disclosure take?

There should be no requirement to provide ongoing disclosure to investors (beyond the current requirements imposed by corporate and securities laws). Resale restrictions are already designed to

ensure that there is sufficient disclosure available in the marketplace before securities become freely tradeable, to allow a subsequent purchaser to make an informed investment decision.

Should the issuer be required to provide audited financial statements to investors at the time of the sale or on an ongoing basis? Is the proposed threshold of $500,000 for requiring audited financial statements (in the case of a non-reporting issuer) appropriate?

Given the costs of audits, we think that audited financial statements (in the case of non-reporting issuers) should not be required if the proceeds of distribution are at or below $1,000,000 (as opposed to $500,000). We do not believe that any requirements relating to financial statements should be imposed on issuers on an ongoing basis, beyond requirements already imposed by corporate and securities laws.

Should rights and protections, such as anti-dilution protection, tag-along rights and pre-emptive rights, be provided to shareholders?

Rights and protections should not be required as a matter of course. It should be up to each issuer to decide if these minority protections should be offered to enhance the marketability of the offering, after considering all relevant factors (such as the issuer's existing constating documents and shareholder agreements, and the issuer's future plans for distributions of securities). We note that the types of rights and protections and their scope are often the subject of intense negotiation and may vary widely by industry. Therefore, a "one size fits all" package of rights and protections imposed through regulation may be problematic.

Funding portals and other registrants

Should we allow investments through a funding portal (similar to the funding portals contemplated by the crowdfunding exemption in the JOBS Act)? If so:

- *What obligations should a funding portal have?*

  Yes, investments through a funding portal should be allowed. We agree with the OSC's concept of imposing a "gatekeeper" function on the funding portal, as outlined on page 54 of the Consultation Paper. However, we believe the "gatekeeper" function should be very limited in scope (e.g., limited to performing the background and securities enforcement regulatory history checks, as specifically described in the Consultation Paper).

- *Should funding portals be exempt from certain registration requirements? If so, what requirements should they be exempted from?*

  We generally agree with the OSC's concept of requiring registration in the appropriate category depending on the funding portal's activities, and providing relief from certain requirements (such as those relating to working capital, audited financial statements, insurance and proficiency) after considering a portal's proposed business model. However, we believe that an additional category of registration should be created, designed to apply to a funding portal which acts as a passive interface between issuers and investors. Although we think that such a funding portal should still be required to perform the "gatekeeper" function, we believe that it should face minimal regulatory hurdles. Rather than requiring such a funding portal to apply for registration as an exempt market dealer and then seek exemptions, we believe that the funding portal should be able to apply for registration in a

category which better reflects the role which it will play. For example, a portal which acts as a passive interface should not be required to satisfy the "know your client" or "know your product" obligations of other registrants.

Should a registrant other than the funding portal be involved in this type of distribution? If so, what category of registrant? Should additional obligations be imposed on the registrant?

The exemption should not require a registrant other than the funding portal to be involved in the distribution, but a registered dealer should be permitted to assist issuers in raising funds through the crowdfunding exemption and to charge fees for so doing.

Consultation Paper s. 5.3 – Exploration of an OM prospectus exemption

Should an OM exemption be adopted in Ontario? If so, why?

We support the adoption of the OM exemption in Ontario for the following reasons.

- Harmonize capital raising exemptions among all jurisdictions in Canada – Ontario is the only jurisdiction that does not offer the OM exemption.

- Increase access to capital for SMEs – Ontario is Canada's largest capital market, but issuers have only been able to access a very limited portion of the market because, often, the only capital raising exemptions available under NI 45-106 are the accredited investor and $150,000 minimum investment exemptions. Only an extremely small percentage of the overall investing public qualify to be able to rely on these exemptions.

- Increase access to investment products for prospective purchasers – Currently, many residents of Ontario are not exposed to a large and diverse group of investment products that are sold through the exempt market (because such offerings are made only to accredited investors or pursuant to the $150,000 minimum investment exemption).

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

No, there should not be any monetary limits. There are currently no monetary limits under the OM exemption in any other jurisdiction in Canada. As part of the goal of harmonizing securities laws nationally, the OM exemption in Ontario should be equivalent. If monetary limits were imposed, there would be a risk that issuers would not use the exemption, due to the cost of preparing an OM.

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

No, the involvement of an adviser should not be required. The intent behind the OM exemption is that purchasers receive a comprehensive disclosure document describing the issuer, its business, management, risk factors and characteristics of the investment. The OM document is intended to provide all the required disclosure in sufficient detail for a prospective purchaser to make an informed investment decision. The other Canadian jurisdictions do not require the involvement of an adviser in order to rely on the OM exemption (except to the extent required for an investor to qualify as an "eligible investor" under the Alberta model).

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

Yes, there should be mandatory disclosure required in an OM. The level of disclosure required should be as currently set forth under the OM forms in NI 45-106.

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

No, the involvement of a registrant should not be required. Please see our comment respecting the involvement of an adviser.

Consultation Paper s. 7.3 – Additional information required

Are there any concerns with requiring this additional information in the report? Please explain.

We note that while the Form 45-106F1 filing is confidential it could be accessed via a request made under the *Freedom of Information and Protection of Privacy Act*. Therefore, expanding the form's reporting or filing requirements for non-reporting issuers should be approached with care. For example, non-investment fund issuers incorporated in Ontario or corporations that are extra-provincially licensed in Ontario are already subject to the *Corporations Information Act*. Under that statute, a corporation's full legal name, date of incorporation and names of its directors and officers (including addresses for service) are already a matter of public record. However, there is no requirement for a corporation to report on the identity of its "parent" under that statute. Inserting any requirement in the Form 45-106F1 to identify a majority or controlling shareholder may result in unintended consequences, such as deterring a large investment in a smaller issuer by an investor (or investment fund) that wishes to keep its investment confidential for business purposes. In addition, relisting all or some of the information in an expanded form that is already on the public record (e.g., an issuer's directors and officers) could be viewed as overly duplicative and burdensome for smaller issuers with limited resources.

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If you have any questions concerning these comments, please contact any one of the contributors to this letter, Jason Saltzman (jason.saltzman@gowlings.com), Paul Fornazzari (paul.fornazzari@gowlings.com), Bryce Kraeker (bryce.kraeker@gowlings.com), Eugene Chen (eugene.chen@gowlings.com) and Lorie Wheeler (lorie.wheeler@gowlings.com), or Kathleen Ritchie, Leader, Corporate Finance and M&A Practice Group (kathleen.ritchie@gowlings.com).

Sincerely,

Gowling Lafleur Henderson LLP