March 8, 2013

SENT VIA EMAIL

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

Attention: John Stevenson, Secretary

Dear Sirs:

RE: OSC STAFF CONSULTATION PAPER 45-710

We refer to the OSC Staff Consultation Paper 45-710 – Considerations for New Capital Raising Prospectus Exemptions dated December 14, 2012 ("**OSC 45-710**"), wherein the Ontario Securities Commission (the "**OSC**") has sought comments from stakeholders with respect to the OSC's proposals for fostering capital raising by start-ups and small and medium sized enterprises without compromising investor protection.

We commend the OSC for undertaking its review and thank you for affording industry participants, such as our firm, the opportunity to comment. We have decided to focus our comments on three specific concept ideas proposed by OSC 45-710, namely, (i) the creation of an exemption that would allow for distributions of securities to "sophisticated" investors who do not qualify as accredited investors, (ii) crowdfunding involving the distribution of a security and (iii) the creation of an offering memorandum exemption in Ontario.

Exploration of a Prospectus Exemption based on Investment Knowledge

The OSC's objectives in undertaking the policy review include enhancing the exempt market's role in raising capital for business and, in particular, small and medium sized enterprises ("**SMEs**") and providing retail investors with greater access to investment opportunities without compromising investor protection. We support these objectives and champion initiatives to increase access to the capital markets in a fair and efficient manner that protects investors from unfair, improper or fraudulent practices. We are concerned, however, that the creation of an exemption which allows for distributions of securities to "sophisticated" investors based on such investors' relevant work experience and/or educational qualifications will not result in a notable increase in the ability of non-accredited investors to access capital markets and ultimately will not result in SMEs having greater access to capital.

We expect that the number of individuals who hold a Chartered Financial Analyst designation, Chartered Investment Manager designation or Master in Business Administration degree from an accredited university is relatively small when compared to the population as a whole. Further, we expect that the proportion of those individuals who do hold such designations and who do not otherwise already qualify as accredited investors would also be small. The proposed exemption also fails to consider other educational and/or work experience that may equally contribute to an individual's ability to assess the relative merits of an investment decision. As a result, we do not believe that the exemption, as currently contemplated, meets the OSC's objectives of enhancing the exempt market's role in raising capital for SMEs nor in providing retail investors with increased access to investment opportunities.

Crowdfunding

Our firm has acquired a reputation as one of the country's top legal advisors to growth-oriented technology companies, from start-up to exit, with a particular expertise in venture capital. We have seen firsthand that Ontario start-ups are suffering from an acute lack of capital, particularly in comparison to their peers and competitors in the United States. We believe that a growing part of this gap is attributable to the inefficient – even antiquated - processes for raising capital currently relied upon by most Ontario SMEs. It takes most SMEs many months of in-person meetings and "pitches" of prospective angels and other funding sources before they are able to secure any level of seed capital. Often, communities of prospective investors are simply not accessible either because they fall outside the founder's network of contacts or are geographically remote.

In the United States, start-ups in the innovation sector are increasingly securing capital through the use of on-line platforms such as AngelList. These platforms are an effective means of connecting companies with angel investors, and are also "mined" by VCs seeking their next investment. Many participants in the Ontario start-up ecosystem find it puzzling that operating this type of platform is an activity that may require registration. Portals such as AngelList are not providing advice to investors or "intermediating" transactions in any meaningful sense. Basically, they are providing a communication tool to enable companies to connect with prospective investors. While we see a benefit to requiring these platforms to register in an appropriate restricted category, based on activities performed we do not see a policy rationale for requiring platform operators to engage in know-your-client, know-your-product or suitability exercises, particularly if only accredited investors can invest through the platform. These exercises would increase transaction costs to an untenable level, and add little in the way of investor protection, as securities of start-ups should not be understood as conventional investment products. What would be beneficial is requiring on-line platforms to provide a standard-form risk acknowledgment to investors, which would clearly and unambiguously articulate the risks of investing in start-ups including (1) the strong likelihood of the complete loss of the investment and (2) lack of liquidity.

We do not think that the use of the Internet or social media to facilitate investments in start-ups materially increases risk for investors compared to existing methods of securing capital. Most Canadians are Internet-savvy and able to detect "scam" websites, and the existence of scams can be successfully managed, as it has been in banking and ecommerce. Moreover, with the widespread adoption of social media, the era of being able to maintain anonymity or escape accountability for activities carried out over the Internet is long over. Once fundraising is taken on-line, a history of

hyped investments and subsequent business failures will be captured, preserved forever, and visible to future prospective investors, employers, lenders and business partners.

From a regulatory enforcement standpoint, on-line platforms also promise to enhance ease of enforcement in the exempt market, particularly if: (1) materials provided to investors are required to be archived by portals; (2) portals are required to give securities regulators investor-level access to company information posted on-line; (3) portals are required to verify the identity of, and perform background checks on, the management of the companies they profile; and (4) portals are required to use their technology platform to facilitate on-line reporting of trades. Properly leveraged, portals could greatly improve the level of information about the exempt market that is currently available to regulators and policy makers.

As discussed above, as a policy matter, the OSC should make it easier for SMEs to use the Internet and social media tools to raise capital. Whether on-line crowdfunding should be extended to non-accredited investors is a separate issue. We believe that there is a role for crowdfunding by non-accredited investors, subject to reasonable monetary limits to reduce financial exposure. However, we also are alive to concerns about crowdfunded companies having unduly large numbers of shareholders. It will be easier to avoid this outcome if accredited investors can invest through crowdfunding portals without limiting the size of their investment, giving the company a "lead investor" and lessening the need to raise capital from large numbers of small investors. In principle, we should avoid importing the American "integration doctrine" into Ontario (i.e., concurrent offerings should be permitted over portals under different prospectus exemptions without the offerings being integrated).

We do not agree with *ad hominen* arguments against crowdfunding to the effect that proponents have personal interests in running portals. Rather, we expect that the most successful portals will be operated by non-profits, educational institutions, economic development agencies (particularly those with incubators and accelerators) and chambers of commerce, and that these organizations will not necessarily seek dealer-type compensation.

OM Prospectus Exemptions

In general, our view is that adopting an OM exemption in Ontario would have a beneficial impact on SMEs across the country, and its impact ought to be considered holistically, on a national basis, as opposed to limiting the assessment to its impact in Ontario. In specific reply to the consultation questions:

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

  We believe that an OM exemption should be adopted in Ontario. We believe that the opportunity that such an exemption provides to SMEs to raise capital from a wider range of investors will have a positive impact on that important part of the Canadian economy. As it stands now, SMEs in Ontario are at a disadvantage to issuers in other provinces, and retail investors in Ontario are at a disadvantage to retail investors in other provinces. Any concerns over investor protection can be addressed within the 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?*

We do not believe that monetary limits on offering size should be imposed; however, if they are imposed, they ought to reflect a reasonable level of investment. As noted in the discussion paper, between 2002 and 2006, the median size of SME offerings made by prospectus was $6 million. There are myriad reasons why these issuers would have chosen to raise capital by prospectus rather than through an exempt offering. We would suggest, based on our experience, that one reason is that there are few practical methods for an SME to raise stage 2 capital in Ontario. The current exemption regime in Ontario does not provide a reasonable alternative to angel investors – the vast majority of whom will not be interested in small deals. There is a gap in the market – issuers in Canada need to be able to access retail capital on a reasonable basis in order to grow into companies where a prospectus offering may become appropriate from a cost standpoint. The current regime forces issuer who cannot raise angel money into seeking out debt at burdensome rates or expending significant dollars on prospectus offerings, where a material percentage of capital raised is directed at the brokerage, legal, accounting and regulatory costs of the offering, which are relatively constant regardless of deal size but with a disproportionate impact on SMEs. We submit that a $1.5 million annual cap is entirely impractical, as is the proposed $2,500 individual cap. In effect, this forces a SME with limited resources to seek investment from 600 investors in order to raise $1.5 million. We expect that a regime such as proposed would not be used.

In our view, it would be appropriate for the exemption to require a minimum offering amount in order to meet the issuer's stated business plan. This provides a degree of assurance that if the offering is not successful, funds will be returned. Perhaps requiring an escrow agent is an appropriate safeguard to consider.

Similarly, it may be appropriate to require that the maximum offering be related to a stated business plan and use of proceeds section. We would also suggest that the gap between the minimum and maximum offering could be limited in some way which forces the issuer to be reasonable, i.e., the maximum can only be a certain percentage more than the minimum.

As to investor limits, we believe that it is inappropriate for the OSC to impose a $2,500 cap on an investor's involvement in an issuer. The premise of the OM exemption is that investors are given sufficient information to determine for themselves the appropriate level of investment. We believe that the Alberta limit of $10,000 is reasonable, and is a sufficiently large enough amount to cause investors to read the OM and understand the investment. We also believe that a personal limit of $10,000 is inappropriate. We frankly do not believe that the OSC should be imposing its own financial planning concepts on the Canadian public. We also query how the OSC proposes to verify each retail investor's compliance with these limits, or how it proposes an issuer do any meaningful due diligence on an investor's compliance with the limits.

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

  We believe that the provision in the Alberta regime that allows an investment to be made based on advice from an eligibility advisor is appropriate and should be considered.

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

  We believe that the current form of offering memorandum (45-106F2) is reasonable and provides an appropriate level of disclosure, with the caveat that audited financial statements provide no value if the issuer has no meaningful history of operations.

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

  We do not believe that is necessary, and would simply serve to increase costs to the issuer. We would also suggest that it is not likely that investment dealers (or exempt market dealers) will be interested in $1.5 million offerings.

The opinions in this comment letter reflect the views of the authors below, and not necessarily the view of all partners of Fraser Milner Casgrain LLP.

Yours truly,

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By:

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