

March 8, 2013

BY E-MAIL

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

Re: Ontario Securities Commission Consultation Paper 45-710 – *Considerations for New Capital Raising Prospectus Exemptions* dated December 14, 2012

We are writing to you in response to the request of the Ontario Securities Commission (the "OSC") for comments in respect of Consultation Paper 45-710 – *Considerations for New Capital Raising Prospectus Exemptions* dated December 14, 2012 (the "Consultation Paper"). We appreciate the opportunity provided by the OSC to provide comments on this initiative.

We are supportive of the OSC's efforts to expand the prospectus exemptions available to facilitate capital raising by small and medium sized enterprises. It is vital to the continued success of Ontario capital markets that financing be available early stage enterprises in ways that minimize costs and regulatory burden on issuers. However, we believe that the crowdfunding and offering memorandum exemptions as contemplated by the Consultation Paper (the "Exemptions") are not appropriate as they lack sufficient investor protection mechanisms and have the potential to be used to exploit the most vulnerable investors. While we are mindful of the need to make capital accessible to smaller issuers, we do not believe that this deviation from Ontario's traditional approach to securities regulation is in the best interests of the Ontario capital markets or investors. We are also concerned that the exempt market data gathering initiative set out in the Consultation Paper may have a chilling effect on Ontario investor's access to certain international offerings.

Crowdfunding and Offering Memorandum Exemptions

We are concerned that the Exemptions do not correctly balance securities regulation's dual mandate of fostering a fair and efficient market and protection of investors. While encouraging capital formation is a laudable goal of regulators, underlying both of the Exemptions is the premise that it is appropriate to relax traditional investor protections for investments of small

amounts. We do not think this approach is appropriate or advisable in the Ontario capital markets, particularly where the nature of the investment is, on balance, likely to be riskier than typical equity investments due to the early stage of the business and the limited liquidity of the securities.

The Exemptions, as outlined in the Consultation Paper, require that investors be provided very limited disclosure about the issuer, the issuance and, in respect of the proposed offering memorandum exemption, the registrant (if one is involved in the offering). Similar to prospectus offerings, the Exemptions require that the disclosure must be certified by management of the issuer. While the scope of the disclosure required under the Exemptions is not yet settled, it is not necessarily the limited disclosure that is the inherent problem with the Exemptions. In fact, such limited disclosure might be appropriate in exemptions for issuers that are already subject to the continuous disclosure regime. Rather, the problem lies with the limited size of the offering to any particular investor. Where an investor does not have more than a limited investment at risk, the certification and any right of action that is available to an investor for misrepresentation in a disclosure document are rendered valueless. Legal costs for any action will dwarf potential recovery. Investors would be dependent on a regulatory enforcement action being commenced (by an enforcement branch with limited resources) that yielded compensation for investors' losses.

Our concern regarding the Exemptions is heightened as there are few, if any, other meaningful protections being provided to investors. For instance, the Exemptions, as set out in the Consultation Paper, do not appear to contemplate a diligence function that would be typically undertaken by underwriters or agents in an offering under a prospectus. Given the limited size of the offerings, it is unlikely that a diligence tradition will arise independently, as it has in many brokered private placements under the accredited investor or substantial purchase prospectus exemptions. Investors under the Exemptions will have no opportunity to assess the reality underlying the disclosure provided, and given the limited size of the offerings, are unlikely to have leverage to force an issuer to permit an appropriate review.

Finally, it does not appear that there will necessarily be any registrant involvement (at least in respect of the proposed crowdfunding exemption). While the individual investment limits under the Exemptions are modest in amount compared to the funds permitted to be raised, they may not be modest relative to what the investor can afford to lose. Further, we are concerned that, given the risky nature, many investments may still be inappropriate for investors that are least able to bear the risk of loss. We do not think requiring a risk acknowledgement statement assists investor protection in this regard. Vulnerable investors should not be able to acquire securities on this basis without independent advice of a registrant that has an obligation to assess the investor's circumstances. If the Exemptions are adopted, the potential for abuse of those investors that can least afford to lose their investment is enormous and that the magnitude of the potential loss it is limited to \$10,000 per year provides only limited comfort.

Data Gathering Initiative

We applaud the OSC for its initiative to acquire information regarding the exempt market. Knowledge of the relative size and characteristics of the various segments of the exempt market is essential for a regulator to make appropriate determinations regarding regulation. However, we think that imposing additional filing or informational burdens on issuers should be assessed in light of the goals of obtaining such information. In this regard, the Consultation Paper is limited to capital raising for small and medium sized enterprises. Accordingly, we suggest that any additional information and filing requirements be tailored to this segment of the exempt market as we are concerned that imposing greater filing and informational burdens may have a chilling effect on certain offerings. For instance, international issuers and foreign registered dealers may be hesitant to extend global offerings to Ontario investors where information gathering is required beyond global standards. If such additional information is required, these offerings may not be extended in Ontario and, as a result, investors may have their investment choices limited without any commensurate benefit.

If you have any questions regarding the foregoing, please do not hesitate to contact the undersigned at 416.863.5537.

Yours very truly,

(signed) Robert S. Murphy