Ontario Securities Commission Consultation
Consideration for New Capital Raising Prospectus Exemptions
Paper 45-710

Comments submitted by the Ottawa Community Loan Fund

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With respect to the request for comments on OSC Staff Consultation Paper 45-710, the Ottawa Community Loan Fund (OCLF) is pleased to provide you with our comments in the form of answers to the questions raised in the aforementioned paper.

Based in Ottawa, the Ottawa Community Loan Fund (OCLF) is one of Canada`s leading micro-finance organizations. Focused on arranging debt financing for start-up companies in Ottawa since 2000, OCLF works closely with its partner financial institutions in arranging loans of up to $45,000 to those starting up commercial businesses and bankable social enterprises. OCLF`s mission is to provide accessible financing to fuel innovation, expand opportunities and improve lives**.**

Throughout its history, OCLF has also worked collaboratively to further the community economic development capacity of Ottawa and has contributed its knowledge and leadership at the national and provincial levels.

Established in 2000 as a not-for-profit organization, OCLF`s mandate is to fill a social financing gap in the Ottawa area. Working either on its own or with its lending partners Alterna Finance and the Canadian Youth Business Foundation (CYBF), OCLF provides loans to individuals establishing new businesses or social enterprises, and who are not typically eligible for traditional finance. OCLF also works closely with a variety of Ottawa settlement agencies to provide training loans for internationally trained professionals to obtain their Canadian accreditation, training in their field or micro-loans to establish new businesses. Many of OCLF`s customers have been able to leverage CYBF financing with financing from the Canadian Business Development Bank.

As a not-for-profit organization, OCLF has received its funding from a variety of sources including the City of Ottawa, the Province of Ontario, the United Way Ottawa, Community Foundation of Ottawa, Government of Canada, various private foundations and individuals and internally generated funds.

OCLF considers applicants that other lenders will not. This includes applicants who have encountered credit difficulties in the past or have not yet established a credit history. That being said, applicants must meet minimal credit standards confirmed by a credit check. Business loan applicants must submit a detailed business plan, including two years of monthly cash flow projections which needs to be reviewed and approved by OCLF`s volunteer loan review committee. This committee is composed of volunteers with significant work experience in lending, financial analysis, accounting, marketing, etc., as well as a number of entrepreneurs.

Over the years, OCLF has supported a variety of businesses in such sectors as fashion, food services, personal care and cleaning services, property services, high tech, etc. Having made over 200 loans since inception to businesses and to individuals to cover the costs of professional accreditation, OCLF has made a significant social impact by supporting immigrants and youth and projects that have had a positive impact on the environment and urban renewal. .

While arranging financing for traditional entrepreneurs and to support training needs will continue to form the core of OCLF`s business, OCLF is increasingly looking for opportunities to help facilitate creative financing solutions for social enterprises and affordable housing. While OCLF has traditionally received grant funding from various agencies and foundations, OCLF is working closely with United Way Ottawa to investigate opportunities for raising capital pools primarily focused on providing funds for social enterprises and affordable housing.

Whether providing funding for social enterprises, affordable housing or more traditional forms of for-profit businesses, OCLF is continually reviewing more effective and innovative ways of raising capital that can be used for small enterprises.

There is significant interest in Ontario in providing funds for these types of businesses and that interested investors are aware of the high risks associated with such investing but consider this an opportunity to make what they consider to be either ethical or socially impactful investing. While there are excellent opportunities to invest in socially responsible companies through a variety of mutual funds, ETFs or direct investment, most these investments are limited to only being able to invest in large or medium-sized publicly traded companies. When it comes to being able to invest in start-up or small social enterprises, investors have few if any options unless they are closely associated with the company and can benefit from existing securities exemptions. The security exchange requirements, however, required to raise funds for such small and medium size social enterprises can be both very onerous for organizations such as OCLF and the underlying organizations that would ultimately benefit from the funding. Adding very significant costs and time, the current requirements for reporting and requirements imposed on those raising funds make it highly impractical to raise money for such types of activities. Current reporting requirements by the Ontario Securities Commission also make it impractical to use new forms of fundraising such as crowdfunding.

Balanced, however, with these barriers in being able to access capital markets, is of course the need to: i) properly disclose the risks associated with such investments; ii) ensure that investors don`t get in over their heads; and iii) ensure that borrowers and financial intermediaries are operating in an ethical, transparent and honest manner.

As well, small to mid-size social enterprises and not-for-profit organizations often lack the in-house expertise to raise money under current exemptions or even under many of the proposed exemptions being considered in the OSC paper. It is for this reason that not-for-profit organizations such as OCLF are very interested in being able to act as financial intermediaries to arrange pooled funding that can be on-lent to a number of social enterprises. It is not clear that the OSC`s consultation paper is sufficiently focused on the potential need for not-for-profit financial intermediaries (or their affiliated companies) to raise pooled funding for social enterprises and not-for-profit companies nor does it appear that the consultation paper addresses the exemptions that such financial intermediaries would require in order to be viable. OCLF has been advised by a not-for-profit organization that recently raised pooled funding. This organization estimated that the cost of putting together their prospectus and getting OSC approval was approximately $500,000 (much of this work was done on a pro-bono basis). Not only is this level of costs prohibitive to a SME trying to raise money directly, but this level of costs and other existing dealer requirements are going to limit if not prohibit the ability of most not-for profit financial intermediaries from raising funds through capital pools for social enterprises and not-for-profit organizations if an exemption is not made for such financial intermediaries seeking to develop such capital pools.

It is in light of these current activities that we are pursuing, that we are pleased to have an opportunity to provide our response to OSC`s questionnaire.

For further information, please contact Michael Oster, president OCLF.

Responses by OCLF to Questions Raised by OSC in Consultation Paper 45-710

Page 12 – Issuer Exemptions

1. **Is the 50 security holder limit under the private issuer exemption too restrictive? If so, what limit would be appropriate? Please explain.**

   OCLF considers 50 security holders to be too limited. This limit is defined on the basis of the relationship with the private issuer. As such, the limitation should be based on each case subject to the number of people that can meet the definition of private issuer security holders. In some cases this may be less than 50 but in other cases it could be higher than 50. This exemption should also be applied to not-for-profit social enterprises that may not benefit from the existing benevolent exemption.

2. **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?**

   The "closely held issuer exemption" is different in nature than the "`private issuer exemption" in that no specific relationship between the issuer and investor is required for the closely held issuer exemption. This exemption would be useful to re-establish, particularly in light of the potential for crowdfunding. If this exemption is allowed, it should not be as a substitute for the private issuer exemption but in addition to it. This exemption should also be applied to not-for-profit social enterprises that may not benefit from the existing benevolent exemption.

3. **Should the OSC consider adopting a family exemption that allows for securities to be issued to an unlimited number of family members of the directors, executive officers or control persons of the issuer or its affiliates? Please explain.**

   If this exemption has worked successfully in other provinces, then it should be considered for Ontario. There, however, needs to be sufficient protection that investments made are based on independent assessment, are within one`s financial means and that risks are understood by the investor. As such, the following conditions should apply:

   a. No investment can be made by one family member for another family member under a power of attorney
   b. No investment can be made by a family member for another family member who is under 18 years of age.

c. Similar to the condition in Saskatchewan, the investor should sign a risk acknowledgement form.
d. Investors should have to declare that a loss on this investment would not significantly affect their financial situation, unless that investor is an accredited investor.

4. Are there other changes that should be made to the current Ontario exemptions referred to above?

There could be some consideration given to those parties that are captured in the definition of the private issuer exemption. This could include other key stakeholders in the entity raising funds. This can include key clients, key suppliers, key investors or donors to the organization, members (in the case of a co-operative), etc.

As well, as noted in the introduction of our submission, the OSC Consultation Paper does not address the need for exemptions for financial intermediaries that could be in a position to raise funds for other SMEs, particularly social enterprises. Often SMEs and social enterprises do not have the financial depth to raise funds directly, even with the proposed exemptions and need to rely on financial intermediaries. In particular, social enterprises and not-for-profit companies, including those focused on affordable housing, may not want to work with or be able to afford typical existing and expensive for-profit dealers.

Instead, increasingly not-for-profit financial organizations such as OCLF are being established and sought out by social enterprises and not-for-profit organizations to help them raise funds. In particular, through its discussions with providers of affordable seniors housing, OCLF has become aware of the compelling case that community-based affordable housing can have on health costs. Given limited funds that such housing providers have, the cost of using traditional brokers, with full accreditation under National Instrument 31-103, can be prohibitive for such organizations. If affordable housing providers are to be able to move beyond just raising charitable contributions, they need to have an affordable alternative for raising funds and hence are looking at not-for-profit financial intermediaries such as OCLF.

OSC`s consultation paper does not address the need for such not-for-profit financial intermediaries to have relieve from the current prospectus reporting requirements. While not-for-profit financial companies may have the capability to assist in raising funds they do not have the financial resources nor do their staff necessary to meet the requirements under National Instrument 31-103 for registrants. If the OSC is truly going to make it easier for SMEs (including social enterprises and not-for-profits) to raise funds, then there needs

to be similar exemptions for financial intermediaries that are helping small and not-for-profit organizations raise funds. These exemptions should cover not only when funds are being raised for a specific project but when pooled funds are being created that are planned to support several projects.

Page 28 – Consideration for Crowdfunding, Part 1

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

   For the terms of these answers, the focus of our response is with respect to Equity Securities model of crowdfunding.

   While there has been limited global experience to date in crowdfunding, this does not preclude that this type of capital raising could be an extremely useful tool for small businesses, including social enterprises. Increasingly, people are using the internet and social media to gather information, including financial, and make decisions that affect their daily lives, including their investments. Small businesses have traditionally had limited opportunity to raise funds as they are not known beyond their immediate business footprint and their family and friends. In an increasingly global and interconnected marketplace, SMEs are selling their products beyond their home base and even beyond Canada. There is no reason that they should not be able to raise capital in a similar manner. The cost of raising capital in more traditional manners would typically be beyond the financial and technical ability of a SME unless they were eligible for an existing OSC exemption. Even the traditional exemptions for private issuers or a potential exemption for family and friends may not provide sufficient scope to raise money. Since the 2008 recession, it has become more difficult for skilled immigrants to find jobs in their fields in Canada. Increasingly immigrants have considered establishing small businesses in the absence of permanent well-paid employment. While this entrepreneurship actually offers great potential for Canada`s economic future, immigrants can have a hard time raising funds under traditional exemptions, particularly if their family and friends have limited financial resources. Having the option of raising money through crowdfunding would be a useful tool for SMEs, particularly those that would have trouble raising money from other sources.

   As well, increasingly, young people are following alternative business models when establishing new companies. In many cases, companies are now being established as social enterprises whereby a key social mission or modus operandi is part of daily operations in addition to the typical requirement of being profitable. While for-profit social enterprises are treated no differently in Ontario than regular for-profit companies for tax purposes (and are established under the same Corporations Act), social

enterprises may have additional difficulties in raising money as traditional investors may not understand the social enterprise side of the business and may be concerned if profits are not being maximized in a corporate mission to achieve a social good. It may be equally if not more difficult for not-for-profit social enterprises to raise capital.

Crowdfunding offers a low cost way of reaching a larger potential investor base. With many companies now being followed through social media, crowdfunding can be offered through the same methods. Therefore, should crowdfunding exemptions be allowed, SME`s including social enterprises and immigrant-owned companies would potentially have access to a much higher number of potential investors.

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

The OSC paper has recognized many of the benefits of crowdfunding but has focused more on the risks. As noted in Question 1 above of this section, crowdfunding may prove particularly attractive for those types of SMES that could be severely limited in their ability to raise funds through more traditional methods.

It is not necessarily critical that OSC recognize all the benefits of crowdfunding when deciding whether to approve this type of financing. OSC`s focus should be to develop a workable structure for allowing companies to raise funds through this method of financing while providing a sufficient level of protection for investors. It is up to each issuer to determine if crowdfunding is the appropriate tool for them.

Not all SME`s may be comfortable raising money through crowdfunding or directly from individual investors. As such, there should also be provision made for capital pools being able to raise money through crowdfunding. Such pools would raise funds which would then be on-lent or invested in SMEs. This would also allow organizations that provide financing, such as OCLF to be able to raise funds though this exemption.

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

The following might be factors in motivating an investor to make an investment through crowdfunding:

- Comfort in investing through the internet and being able to research the company, product, market, competition, etc.
- Comfort that the company and portal are legitimate
- Desire to invest in a low-cost, low-hassle manner
- Potential for equity levels of returns that are not normally available for small investors

- Opportunity to have a personal relationship with a business in which they have an investment which normal stock market investing does not allow for
- Desire to provide funding for a company seeking to achieve a social good while earning a potential return

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

In order to consider protecting an investor against risk, it is first necessary to determine what risks a crowdfunding investor would face. With crowdfunding, an investor would face investment/business risk as well as the risk of fraud. Not only would these risks have to be addressed in different ways but there is the question as to what role the OSC should be taking in addressing risk.

It is OCLF`s view that the key role of OSC is to address and minimize the risk of fraud and misrepresentation. This can be done by requiring that all portals and all companies utilizing such a portal for crowdfunding be registered with OSC. For portal companies, OSC registration requirements would focus on the authenticity of the organization raising funds and that the organization was legitimate. As the goal of OSC in allowing for crowdfunding is to increase opportunities for SMEs to raise money at minimal cost, portal companies should not have to meet the normal requirements for dealers.

SMEs raising money through crowdfunding should also have to register with OSC to help establish their validity. Information provided to OSC would include ownership structure, capital structure, abbreviated business plan, and financial statements. The nature of the financial statements (audited vs. Non-audited) would depend on the size and age of the company. As this information would have to be provided to investors (see answers below), it should not introduce too onerous of a condition upon SMEs.

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

The measures noted in Question 4 above would help to reduce the risk of potential fraud. In addition to the above, the OSC would keep a list of approved Portals on its website and a list of companies that had and were raising funds through crowdfunding and the portal that they had used. Investors would be able to look up potential offerings under the OSC website which would help ensure their legitimacy. Any company that raised money through crowdfunding (and not eligible under other exemptions) or a portal that assisted in such fundraising that was not registered with OSC could be subject to fines.

The OSC could also have some campaign to educate the investing public regarding the need to check if the issuer was properly registered. Such an education campaign may, however, be very expensive and not very effective as it would have to reach numerous small investors who would not normally be in touch in the OSC and who may realize that all potential issuers and portals had to be registered.

With respect to investment risk, the investor should bear much of the responsibility unless the issuer has committed fraud in their documentation and/or projections that it has provided in its offering memorandum. There would have to be suitable disclaimers made by the issuers and the portal to protect them against lawsuits, however. As many of the investors are going to be small and unsophisticated, there is a need for the investor to understand that they are entering into a high risk investment. That being said, investors should ultimately acknowledge that they are entering into such an investment at their own risk. The role of the OSC is, however, to ensure that the risks are properly laid out to the investor. This does mean that the issuer has to provide an exhaustive list of all risks but that the investor should acknowledge, in writing, that it understands the high level of risks associated with investing in a SME. OSC can set the minimum amount of information that must be provided to the investor in order to maximize the investor`s understanding of the investment.

The prospectus for a company raising money using crowdfunding, however, must be far less detailed than that required for normal fundraising activities. The model for the prospectus should be that of the Short Form Prospectus (Form 44-101F1) but with significant modifications to lessen the reporting requirements. The minimum of information that should be included is: i) 1-3 years of previous year`s financial statements (depending on age of company); ii) business plan of company; iii) expected use of funds; iv) information on principal owners and managers of company; iv) a detailed statement of various applicable business risks associate with the company and the industry.

Similarly, if there is a firm helping to prepare the Prospectus, including potentially providing the Portal, the requirements of the individual preparing the prospectus should not be as stringent as normal Dealer requirements. Simply having a Bachelor of Commerce, an MBA or relevant banking/investing business experience should be sufficient rather than the more specific professional designations and work experience that is typically required for dealers.

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

By their very nature, investments in private companies are far less liquid than those in publicly traded companies. Investments in SMEs through crowdfunding will be no

different. Any crowdfunding prospectus would have to clearly indicate the illiquidity of the investment (under the risk section) and that it is likely that no return on equity will likely be realized except for the proposed exit strategy as outlined in the prospectus. If the investment is an equity investment, the issuer will have to outline their strategy for issuing dividends and buying out the minority (crowdfunding) investors including the timelines and terms for such a buyout, if any. For bond holders, the issuer will have to outline their strategy for making interest payments and redemption of the bond, including early redemption or conversion policies. It may be possible to establish a way for crowdfunding investors to buy and sell their investments amongst themselves on a periodic basis.

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

   SMEs raising money under crowdfunding should have to provide a minimum amount of information as outlined in question 5 above. If a SME is not able to put together a minimum amount of information in order to raise funds, they are probably not going to be a good credit risk or a well run company. While reporting requirements should be less than the Short Form Prospectus, requiring some level of reporting will help to provide investors. OSC should require that some minimal level of information is provided to potential investors under crowdfunding. If OSC considers it appropriate, SMEs may have to provide OSC with their plans for maintaining a large shareholder or security base, including communications plans and records maintenance.

8. **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?**

   If crowdfunding is introduced on a trial basis, it should be done strictly based on a time period, not by industry or a particular portal. If the trial is limited to an industry or a portal, the results may not be conclusive if the particular industry or companies within that industry fare poorly or the specified portal does not do well or acts fraudulently. By particularly requiring that business be done through a particular portal, OSC is unfairly limiting business competition and will not help to foster excellence or innovation amongst portals. Excellence can only be achieved through competition. Even if the trial period is successful and open competition for portals is subsequently allowed, the originally approved trial portal(s) would have a tremendous unfair advantage over new entrants. It is not up to the OSC to pick winners and losers in crowdfunding or amongst portal providers.

If a trial period is desired, it should be solely based on time. In that way, there is a level playing field for all companies, industrial sectors and portal providers in Ontario.

Page 31 – Consideration for Crowdfunding, Part 2

Issuer restrictions

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

   An exemption of $1.5 million appears reasonable, particularly as the US JOBS limit is $1.0 million per a 12 month period. That being said, there may be circumstances in which a higher limit could be warranted. In particular, higher limits could be appropriate if the issuer is able to provide security for non-convertible or convertible debt issues. Often this money may be required to purchase fixed assets, including land and buildings. While, the issuer may be able to obtain mortgage financing, issuers may require down payment or start-up financing to commence with a project. Various social enterprises are interested in supporting not-for-profit housing. Raising initial funding for affordable housing projects can be very difficult. If an issuer was able to provide a mortgage (even if subordinated to bank financing) to support funds raised through crowdfunding, then the issuer should be able to borrow more than $1.5 million using crowdfunding. A limit of $2 to $5 million should be sufficient for these types of projects.

   As well, there should be a higher limit when money is being raised as part of a capital pool for on-lending or investing in other businesses. The limit in these cases could be between $2 to $5 million with the requirement that no specific deal funded from the capital pool can be greater in maximum value that a SME can raise under the proposed crowdfunding exemption.

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

   There should be no such restrictions on how these funds are spent. Businesses, including social enterprises need to insure that they are able to source their inputs at the lowest price based on required quality, delivery, etc. By imposing Canadian content criteria on how the funds are raised, OSC would be putting companies raising money through crowdfunding at an unfair, uncompetitive advantage. This type of restriction is not imposed with any other type of fundraising. If a company thinks that buying Canadian will help it raise funds, then it can make that business decision and note it in their offering documents it if thinks it will help it raise more or lower cost money. If such restrictions put an issuer at a competitive disadvantage, this could also decrease the likelihood that the investor will be repaid. Such restrictions may also go against

Canada`s commitment under its free trade agreements or the World Trade Organization.

Investor protection measures

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

   The dollar limits being suggested by OSC of $2,500 per deal and $10,000 per calendar year are far more restrictive than that under the US JOBS act. The U.S. limits are $2,000 per year for those with income or net worth under $100,000 or 10% of income or net assets for those with income or net worth over $100,000 with no limits on overall purchases by this level of investor. Small business needs in Canada particularly amongst start-up companies are no different than those in the U.S. It is only as companies start to grow, that financing needs in the U.S. may be greater given the larger size of their market.

   It is recommended that OSC adopt a structure more similar to that approved in the U.S. where the investment limit is based on the financial situation of the investor. The lower the allowed limit, the more people a company using crowdfunding would have to attract as investors. Given the trade-off between protecting investors and easing the requirements for raising funds, a more appropriate lower limit should be $15,000 but as noted, should be higher for higher income earners.

2. **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?**

   In Question 5, under the first set of questions dealing with crowdfunding, OCLF has outlined a number of details of which the issuer should report. These included: 1-3 years of financial statements (depending on age of company); a business plan for the company; planned use of funds; details on the principal owners and managers of company; and a synopsis of the various applicable business risks associate with the company and the industry. The type of financial statements required should be based on the size of the company and the amount of funds being raised. As well, the issuer company must be an incorporated entity to protect the investor against the personal liability of the owners.

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

   Issuers should be required to provide annual financial statements to their investors. If a company cannot provide annual statements within a reasonable time frame, they are

not likely to be safe investments for the public. Crowdfunding investors are looking for a more convenient way to invest and a way to invest directly in companies that interest them. They are not looking to invest in companies that can`t meet basic levels of transparency.

4. **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?**

   An issuer should always have to provide statements prepared by an independent accountant unless the company is not yet in operation. $500,000 in required funding seems reasonable as the threshold for audited statements being required. For lower amounts, unaudited financial statements prepared by independent accountants should be adequate.

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

   OCLF is primarily focused on debt financing and as such, has no comments on this question.

Funding portals and other registrants

1. **Should we allow investments through a funding portal (similar to the funding portals contemplated by the crowdfunding exemption in the JOBS Act)? If so:**
   a. **What obligations should a funding portal have?**
   b. **Should funding portals be exempt from certain registration requirements? If so, what requirements should they be exempted from?**

   The whole basis for crowdfunding is that it allows a wide range of people to use the internet to make investment choices. As such, funding portals should be allowed. Given the small amounts of money that would be raised both in aggregate and from individual investors, traditional brokers are unlikely to be interested in this business or would have such high costs that crowdfunding would not be viable. As well, given the limited financial disclosure associated with crowdfunding, traditional brokers may feel uncomfortable in selling these investments as brokers will often make recommendations. As such, there must be opportunities for new organizations to establish portals.

   Funding portals should not have to register as dealers nor should the operator of a funding portal have to have the usual dealer qualifications. That being said, a funding

portal should be able to demonstrate that it has the financial skills and knowledge to operate a portal and understand the companies raising funds through the portal. This means that the portal have someone associated with it who has a financial education (B.Com, MBA) or experience in banking, accounting or brokerage services.

Current dealer requirements often include the requirement that the dealer have their CFA designation and a significant amount of work experience. It would be unrealistic and very expensive for a portal operator to have this type of expertise or be able to pay for this type of expertise.

All funding portals should, however, have to register with OSC. Registration will include boilerplate information on the portal, ownership of the portal, investment focus of the portal and expertise/experience/background on key employees and owners. The funding portal would have to produce annual financial statements. If the portal is operated by a not-for-profit organization, it must be in good standing with the Canada Revenue Agency.

2. **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?**

   If a registrant other than a funding portal is involved in this type of distribution it should have to provide the same level of disclosure to OSC as a funding portal. There should also be some disclosure to investors if another such registrant is involved in this type of fundraising. Opening up greater funding opportunities to SMEs may require registrants who are not following a crowdfunding portal model to raise funds.

PAGE 33 – Offering Memorandum Exemption

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

   There should be an OM exemption for crowdfunding. That being said, while there should be an exemption from having to issue either an Offering Memorandum or a Short Form Memorandum, there should still be a certain amount of financial disclosure as indicated above in our previous responses.

2. **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?**

   Given that specific dollar limits will be established for the amount of money that can be raised for crowdfunding or other types of raising capital for SMEs, the OM requirements established for crowdfunding will also be attached to a specific dollar limit. These OM requirements should also be in place for similar amounts of money raised through

methods other than crowdfunding, subject to such OM requirements not being in conflict with other the reporting requirements for other existing exemptions. Given that purpose of this review is for OSC to consider new fundraising requirements for SME`s crowdfunding is just one method by which SMEs may raise capital.

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

   A purchaser should not be required to receive investment advice from an adviser under the OM exemption for several reasons. The OM exemption is being considered to allow SMEs greater access to raising capital from small investors. Given the risks associated with such investing and the small size of the proposed investments, the cost of seeking investment advice could eat up any potential profit that the investor might see. If an investment is limited to $2,500 as suggested by OSC, the cost of independent investment advice could cost several hundreds of dollars, if not more. For example, if funding was being raised by way of a bond issue paying 5% p.a., a $500 advice fee could easily eat up 4 years of interest return.

   Many investment advisors focus on simple products such as mutual funds and ETFs for small investors. A smaller subset of advisors would advise on specific stocks that are well established in the market and even fewer advisors advise on IPOs. Advisors are likely to be far less familiar with SME companies particularly when the level of disclosure will be very limited in comparison to normal OM requirements. As such, an investment advisor will likely add little to crowdfunding or other methods of raising capital for SMEs and would likely eat up most potential profit that a small investor is likely to realize.

   Purchasers should be required to sign a statement indicating that they understand the risks associated with the investment, that their investment does not exceed the limits established by OSC and that the investor can sustain the loss of this particular investment. The two-day cooling off period recommended by OSC should be put in place but consideration should be given to a five-day (business days) cooling off period to better protect small investors.

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

   OCLF has noted in several questions above our thoughts with respect as to what information should be disclosed to investors under crowdfunding or other methods of raising funds for SMEs.

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

Registrants should be required to register with OSC. The category should include organizations seeking to raise funds for SMEs and small social enterprises. While many of these registrants will seek to raise funds through a portal, not all such organizations will seek funds through the internet. The category of this registrant should be based on the type of organizations for which capital if being raised and the dollar amounts of capital raising, not the technique for raising capital. The type of information and qualifications that the registrant should have has been discussed under previous questions.

Page 36

General questions – Investment Knowledge Exemptions

1. **Would this exemption be useful for issuers, particularly SMEs, in raising capital?**

   This exemption could be of use for issuers, depending on the conditions for its application. While the proposal suggests limiting the exemption to people working in the investment sector or who have some academic training in finance, these conditions may be too restrictive. Many people consider themselves reasonably sophisticated investors who have discount self-directed RRSP or margin accounts. These people are allowed to trade for their own account without the benefit of professional advice or review of their level of sophistication as an investor. While IPOs are traditionally offered with a prospectus, there is no need for such information to be provided for investments on the secondary market. In this case, investors are free to do as much or as little due diligence as they think appropriate. As well, while someone may not have significant financial experience, they may have significant experience in the actual sector in which the investment is going to occur. This is similar to the Standards of Disclosure for Mineral Projects. While it may be difficult for OSC to police people`s knowledge of a particular industry, OSC can address this by having the buyer sign a waiver indicating they that are comfortable with their level of knowledge of the industry in which they are considering investing.

   As noted above, OCLF is particularly interested in finding new avenues of support for social enterprises. People who are investing in social enterprises may feel comfortable investing in this type of sector and assuming the additional risks in order to be able to do good (in their consideration). If the amount that can be raised under this exemption is limited to a certain dollar amount as being proposed in the crowdfunding exemption, investors will be protected from catastrophic loss.

2. **Are there sufficient investor protections built into this exemption?**

OSC needs to balance the need for investor protection versus the ability of investors to make their own investment decisions. The more the OSC seeks to protect investors, the more that they limit the freedom of investors to make investment decisions. Given the smaller amounts of money that would be raised by SMEs, OSC`s focus should be on the need for disclosure of risks and prevention of fraud rather than requiring the full requirements of even a Short-Form prospectus. As such, consideration of an exemption based on investor`s knowledge should focus on the needs of SMEs while ensuring small investors are not taken undue advantage of.

Questions on the specific terms of the concept idea

1. **Should we require an investor to satisfy both a relevant work experience condition and an educational qualification condition or would one suffice?**

   Both conditions should not be required particularly if this exemption is being considered to facilitate the raising of funds by SMEs. Banks and investment firms often indicate that they are seeking to have employees with varying skills and educational backgrounds. A bank or investment firm may hire a non-commerce graduate for a banking or investment position. These people might have the work experience but might not have the educational qualifications. Given the variance in the quality of financial advice provided by hat investment advisors, there may be individuals who meet both the educational and work experience but might not be qualified to make advice on investing in high risk SMEs. As such it would be arbitrary to require both conditions be met and may not result in a more sophisticated base of potential investors. As we have observed from recent investment frauds in North America, greed may be the greatest driver for investors to make poor investment decisions. Given the type of returns that a SME is likely to return, greed would not be a primary driver for someone to invest in them.

2. **How should we define the relevant work experience criteria?**

   The relevant work experience should be as broad as possible. It should cover both work in the financial sector or work in the particular sector in which the investor is making their investment. Work experience in the financial sector should also include accounting and banking in addition to the investment industry. In both of these industries, people are required to know how to read financial statements. Work in actual industrial sectors should be as broad as possible. For those considering investing in social enterprises, work in the charitable sector if directly applicable might also be considered for the exemption.

   When utilizing this exemption, an issuer should require its investors to indicate on signed release as to the type of work experience they have and to confirm that they are

comfortable that their work experience allows them to be sufficiently comfortable in making the particular investment.

3. **What educational qualifications should be met? Should we broaden the relevant educational qualifications?**

   A bachelor of commerce or accounting degree should also be included in the educational criteria. As well, training in the specific industry in which the investment is being made should be considered as acceptable, even in the absence of a financial related degree. For example, someone who has studied forestry may be able to make an informed decision on whether to invest in forestry related projects. If the exemption for qualified individuals for mining projects has worked successfully then other people working in other industrial areas should not be denied similar treatment for projects in their area of expertise. As noted above, the onus would be on the investor to declare that they meet the criteria for being exempt on the basis of investor knowledge.

4. **Are there other proxies for sophistication that we should consider?**

   Investor experience may be a suitable proxy for sophistication, particularly if the investor has had a discount self-directed investment account in which they have made the bulk of their investment decisions.

Page 38 – Registrant Advice

1. **Should we consider a new prospectus exemption that is based on advice provided by a registrant? If so:**

   a. **Do you agree with limiting this exemption to a situation where the registrant has a fiduciary duty to act in the best interests of the client?**

      Yes. OCLF, however, does not have sufficient knowledge of the investment dealer industry to offer detailed comments on this proposed exemption.

   b. **Do you agree that this type of exemption should be limited to certain types of registrants (e.g., investment dealers) or should this exemption be available for another type of registrant (e.g., an EMD)?**

      OCLF does not have sufficient knowledge of the investment dealer industry to offer its comments on this proposed exemption.

c. **Should this type of exemption be available for registrants that sell securities of "related issuers" or "connected issuers" (which would raise conflict of interest concerns, as explained in National Instrument 33-105 *Underwriting Conflicts* and Part 13 of NI 31-103)? If so, would this be consistent with the registrant being subject to a fiduciary duty to the client?**

OSC should seek to minimize any opportunity for conflict of interest under this proposed exemption.

d. **Would exempting the issuer from a disclosure obligation have implications for a registrant's ability to conduct a meaningful KYP and suitability review?**

The issuer should still have to provide a minimum level of documentation so that the registrant can provide some advice to their client. OCLF`s suggested level of disclosure is noted in several earlier questions.

e. **Do you agree that a registrant should be required to have an ongoing relationship with the client?**

Yes. In this way the registrant will have some understanding of the client's level of risk tolerance and the long term goals of the investor. For example, if a client needs funds without a short time frame, investing in somewhat illiquid SMEs would not be an appropriate investment decision unless the investor has other source so income. As suggested in the previous questions, investors who manage their own investments should be considered for an exemption under the suggested Investment Knowledge Exemption. Similarly, someone who invests with an investment advisor could be exempted under this proposed exemption.

f. **Should there be any restrictions on the type of security that could be purchased? For example, should this exemption be available for purchases of securities of investment funds and/or complex products (including securitized products and derivatives)?**

Since the purpose of this exemption is to enhance the ability of SMEs to raise funds, maintaining this exemption for simple products may be sufficient. The borrower risk will be high enough without adding the additional risk of a complex product.

2. **Should the existing managed account exemption described above be expanded in Ontario to permit purchases of securities of investment funds?**

This should be considered. The focus of the OSC consultation paper is mainly with respect to companies raising money for their own purposes. There is little input being sought in this paper for the issues faced respect to raising funds for an investment fund focused on SME lending. Given that some SME`s may require far less than $1.5 million, it may be more effective for an organization to raise money for capital pools that can then be used to finance multiple borrowers, including social enterprises. The ability to raise investment funds with limited reporting and registration requirements will make it much easier to raise capital pools for these types of borrowers.

Page 40 – Electronic Filing Requirements

1. **Are there any concerns with mandating use of the E-form?**

   Use of an E-form is acceptable. The E-form should be designed in a way so that it doesn`t repeat information that is already being provided elsewhere, however.

Page 41 – Additional Information Requirements

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

   The information being proposed should be acceptable.

3. **Are there other types of information that we should require in the report?**

   OCLF has commented on the type of information that should be provided to the investor elsewhere in this paper.

4. **Should we require more frequent reporting for investment funds? If not, why not?**

   Investment funds should not have to report more than semi-annually, particularly as these are funds being raised for SMEs and as such, the investment funds are likely to be quite small in size.

Page 42 – Other Exemptions that could be Considered

1. Are there prospectus exemptions, in addition to the concept ideas discussed in this paper that we should consider? Please elaborate.

   OCLF is satisfied with the exemptions being considered in this paper. OCLF notes, however, that these exemptions should also be available for charitable or not-for-profit organization seeking to raise debt financing. As well, any exemptions being considered

for funds, should also apply to funds that are established to lend to charitable and not-for-profit organizations, including social enterprises. Such exemptions, in addition to the benevolent exemption, should make it easier for not-for-profits to raise money. With the Canadian government increasingly looking at Social Impact Bonds, not-for-profit organizations could be increasingly seeking money from the market, either directly or through capital pools