



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

Attn: John Stevenson

Sent via Email: jstevenson@osc.gov.on.ca

RE: OSC Staff Consultation Paper 45-710

Dear Sirs,

The Ontario Securities Commission released Consultation Paper 45-710 seeking comment regarding “crowdfunding” and the Offering Memorandum (“OM”) exemption. Accilent Capital Management Inc. (“Accilent”) is registered as portfolio manager, exempt market dealer, commodity trading manager and investment fund manager in Ontario and as exempt market dealer in British Columbia, Alberta, Saskatchewan and Manitoba. Our primary regulator is the OSC. We operate as a “product manufacturer” meaning that we create and manage investment funds which are primarily distributed via OM through other exempt market dealers. In addition, we also have 5 Dealing Representatives registered with us who distribute our funds as well as the funds of other product manufacturers. We wish to offer our perspective on “crowdfunding” and the OM exemption.

Should an Offering Memorandum (OM) exemption be adopted in Ontario? If so, why?

In our view, yes. It is our strong belief that adopting an OM exemption for Ontario will foster an investment regime which will benefit the economy, investors and issuers. In the current regulatory and market structure in Ontario, the prospectus market is essentially closed to any issuer that does not wish to raise a minimum of \$25mm on one issue and/or a minimum of \$100mm per year through a prospectus offering. Due to economies of scale, issues smaller than these are uneconomic for both the dealers and the issuers. Even if a promising company or portfolio manager could make the case for a \$25mm prospectus issue, the capital markets are effectively closed to “new names” as dealers generally prefer to stick with the tried and true participants who have been there for many years. Also, the financial cost and reputational risk for a failed raise in the prospectus market are so great that it serves to deter companies from even trying, or at the very least, they wait far longer than they may want to in order to ensure success. I don't believe that this situation is the result of any planned action or mission taken on by the



larger participants in capital markets but, rather, it is the end result of individuals “playing it safe” in order to maintain their employment in difficult and unpredictable financial markets. Whatever the intent, the result is, that it does effectively lock out anyone, save the current roster of players regardless of the merit of a new issuer.

The alternative source of capital for these issuers who are newer, have smaller capital needs and/or are niche players in money management, is to use the Accredited Investor (AI) or \$150,000 exemptions. Considering the onerous AI requirements, we find that the universe of potential investors is limited to roughly 2% of the population. Sadly, the result is to effectively choke off the fuel for further growth at a crucial phase in their development. So, companies face a catch 22, as they are unable to cross the chasm to become the kind of issuers that the prospectus markets require them to be in order to participate.

The AI exemption also discriminates against issuers that are not operating within the major population centres of the Province, because it is there that the greatest number of AI qualifying investors reside. Issuers from outside these cities are at a distinct disadvantage because they are unknown or lesser known and are less likely to possess the network of contacts necessary to find capital from Accredited Investors. The result is that solid enterprises that happen to be long distances from large urban centres are saddled with an even more difficult task when trying to source capital. Creating an OM exemption will help ease some of the disparities between regions by helping these companies access capital which is available locally from suitable investors who, because they don't earn “Toronto” salaries, would not otherwise be considered accredited.

Our final point in favour of creating an OM exemption is the democratization of information through the internet. This is not often discussed, but it is undeniable that an average investor's ability to conduct fast, thorough, and inexpensive due diligence on their own has taken a quantum leap in recent years. For example, a simple first step that we take when conducting due diligence on any investment or person, is to go to the appropriate regulator's web site and see if their name pops up in any capacity. This is just one small example of something that is available today, that was far more difficult to do just five years ago, particularly for the individual investor regardless of their level of sophistication. The ability of everyone to verify the resume and backgrounds of individuals involved in a company or a fund and their associates; to access research on technological developments; to go to Google earth and actually see if a piece of development property is truly across the street from a destination mall as the issuer claims; have all increased exponentially even in just the last few years. The cost of this information has conversely collapsed to near zero. Investors with an OM in hand and prescribed disclosures can now independently verify the people, facts, investment thesis, technological terms and concepts, all in less time than most people spend updating their Facebook page. Twenty years ago, to do the same thing, an investor would have to engage lawyers, accountants and other professionals at great expense and much higher level of personal effort and expertise. That is why we believe that an OM today offers a level of investor protection that could



not have been achieved even a short time ago and that information technology continues to put more knowledge and power into investors hands.

It is our position that an OM exemption will create a very necessary intermediate level of capital raising in Ontario that does not undermine investor protections but will create stronger companies, better diversified investment portfolios and foster economic growth and innovation.

Should there be any monetary limits on (the OM) exemption?

We do not believe monetary limits are useful with this exemption, as the framework of regulation provided by NI 31-103 provides the mechanism to regulate the activities which would occur under this exemption by mandating registration and education, know your product, know your client and requiring a suitability review. The mandated involvement of a registrant to provide a suitability review of all investments should be sufficient to ensure a reasoned level of investment is made.

Adding monetary restrictions would just introduce distortions to the market rendering the exemption less useful to the issuers which need to use it and increase the cost of capital even further. The contemplated restrictions in the consultation paper of \$2,500 per individual investment per issuer and \$1.5mm annual raise limit per issuer are so low as to render the exemption practically useless but for a very small segment of issuers at a very particular stage of their growth. These issuers would need to have a lot of spare time on their hands because raising capital \$2,500 at a time would take up a great deal of it. The practical matter of raising capital using a prospectus exemption requires that EMDs conduct due diligence on these issuers and that DRs need to invest the time in educating themselves on the product by satisfying the know your product mandate of NI 31-103, this is a costly process from both dealer and issuer. Writing a deal in the exempt market is costly because in order to close a deal, paperwork has to be signed and cheques must be written. This paperwork has to be delivered to the EMD and then again to the issuer. As a result, this means a lot of courier fees to the dealer and issuer just to get paperwork completed. All this is in addition to the Dealing Representative's time and effort educating the client. A \$2,500.00 limit on investment size means that the Dealing Representatives and EMDs could not expect to be able to make a reasonable return utilizing an OM exemption in this format and this would mean that very little capital could be accessed. From the issuer's perspective, we don't think that an OM exemption should be allowed, unless a registrant is involved in the sales process. To illustrate, consider the situation of a small company whose CEO wants to raise \$1.5mm and is not going to engage an EMD to do it but will instead distribute herself. The company is in Timmins, she doesn't know many people making \$200,000 a year or have \$1mm in liquid financial assets, so she decides to use the OM exemption. In order to raise \$1.5mm at \$2,500.00 per person she has to have 600 investors (considering the total



population of Timmins is 43,000, this is no small feat). Further, this would mean explaining her company and its prospects at least 600 times, distributing 600 OMs and sets of subscription documents and getting them all back correctly signed and completed. She would then also have 600 more people to report results to thus, increasing her ongoing reporting costs and investor relations budget. All this, while remembering that she does have a company to run at the end of the day. This seems unlikely to be a practical method of raising capital. As impractical as this would be for an individual company, it is equally impractical for an EMD.

If there should be monetary limits on the OM exemption, should they be in addition to any limits imposed under any “crowdfunding” exemption?

We do not believe there should be any monetary limit to this exemption. Limits for “crowdfunding” should be set, because of the lower standards being contemplated in regulating this type of activity exposes investors to greater risk.

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, as this will help ensure that investors have the information they need. We find the disclosure prescribed in 45-106F2 and the Companion Policy 45-106CP to be sufficient.

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

The investment advice of a registered Dealing Representative is very important to assist investors in considering investments that match the investor’s needs. It is also integral to the execution of KYP, KYC and suitability review that regulators have embraced NI 31-103 in order to protect investor interests. The industry has been transformed since 2009 and is embracing those concepts and regulations for the betterment of investors and everyone in the industry. To remove this requirement would, in our opinion, be a step backward in regulation.

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

We believe a sophistication based exemption would not provide any additional benefit to an OM exemption which does not have monetary restrictions. A sophisticated investor exemption in the



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absence of an OM exemption would create a micro market of favoured investors, which would then have unintended consequences to the KYC and suitability processes.

Conclusion

Accilent believes that adopting an OM exemption in Ontario combined with prescribed minimum disclosure and the advice and guidance of a registered dealing representative will offer investors access to quality investments. This, in turn will enhance client's ability to diversify their portfolios, create an intermediate sized source of funding for growing companies, and foster better economic growth and development that is more regionally diversified within Ontario.

Regards,

Dan Pembleton, MBA, CFA
President & Portfolio Manager
Accilent Capital Management Inc.