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By Email: comments@osc.gov.on.ca

The Secretary
Ontario Securities Commission
20 Queen Street West
Toronto, Ontario M5H 3S8

Dear Sir or Madame:

Re: Request for Comments re: Introduction of Proposed Prospectus Amendments and Proposed Reports of Exempt Distribution in Ontario

I would like to start by commending the OSC for the considerable work done and thought given in drafting these new exemptions. I have spent the past 25 years of my career dedicated to helping small businesses (SME's) flourish through access to fairly priced capital as a private equity and VC investor, an investment banker, a senior banker, as a CEO of a technology company and a director of a number of public and private companies. I can say with a high degree of certainty that SME's are where innovation happens, where job growth happens, and they provide the best leverage in increasing our tax base. However, the junior capital markets remain among the most challenged in our country and I believe the proposed amendments are a significant move forward in addressing some of these challenges.

Waverley Corporate Financial Services Ltd. is a boutique exempt market dealer registered in the provinces of Ontario, Quebec, British Columbia, and Alberta. Our mandate is to provide a best practices compliance and technology platform for our dealing representatives and to promote pan-Canadian financing for junior issuers, in sectors that reflect the economic base of the Canadian economy.

I will not be providing comments on the FFBA Exemption or the Existing Security Holder Exemption. For areas where I have not commented on for the Equity Crowdfunding and OM Exemptions, you may assume my concurrence with your position.

Offering Memorandum Exemption

1. *Restrictions on Investment Funds*

The Commission states that the primary reason for excluding these assets: "The exclusion of investment funds is consistent with the objective of facilitating capital raising for start-ups and SMEs."

Another complimentary objective should be to allow a broader range of alternative assets and asset classes be made available to investors that have to date been prohibited due to the Accredited Investor Exemption. There are many excellent investment vehicles, be they real estate funds, hedge funds, or mortgage funds that could provide suitable risk/reward balances to investors. Prohibiting the marketing of these products by OM, simply because they are structured as funds does not seem to be in any party's interest. No one is obviously hurt or protected by allowing this change.

2. *Registrants that are related (i.e., affiliates or in the same corporate structure) to an issuer will be prohibited from participating in an OM distribution.*

It almost seems that the Commission has only now realized that there are conflicts of interest with investment dealers. The truth is that all investment dealers, whether IIROC or EMD, are conflicted on every single trade we make. We act for the issuer and the seller, and we only get paid on success. This is a clear conflict.

Despite the inherent conflict in our business, dealers must manage a balance between the issuer, investor and their own self-interest. If the dealer is not successful in doing so then their career will be predictably short. Whether or not an issuer is related or not changes very little of the conflicts we must manage every day. Following are a few points to bolster the point that related party products should have access to this exemption:

- Banks, insurance companies, and mutual fund companies sell related products every day to retail investors. There is a clear precedent in the industry;
- Dealing representatives are driven by simple economics, higher commissions tend to get their attention and sales focus. By allowing issuers to take advantage of their own networks to raise capital, commission can be considerably lower or even zero. This is clearly in the investors' and the company's best interest.
- In addition to the low commission advantage addressed above, by having the issuer as a registrant, the trades will pass the same scrutiny for KYC and suitability as through any other dealer. The company will always be

free to do a non-brokered private placement where these investor protections are lost.

3. *We have sought specific comment on the role that unregistered finders play in assisting businesses to identify potential investors and whether including such a prohibition would be appropriate or would unduly restrict capital raising activity for start-ups and SMEs.*

It has been my experience that non-registered finders can play a pivotal role in connecting suitable investors with issuers. I believe this activity should be allowed to continue and encouraged with the following caveats:

- As the registrant, it is our duty to ensure that we are paying commissions or finder's fees to entities that are legally entitled to accept such fees. It is difficult to assess when a particular referral agent has crossed the line and is 'in the business' of trading securities. Compounding the difficulty in this regard is there are no firm rules on how many referrals a year an agent may make before he/she is 'in the business'. Some guidance from the Commission in this regard would be most helpful.
- Also if referral agents are found to be 'in the business' it would be comforting (for those of us whose sole focus every day is to be compliant) to know that OSC enforcement is taking a proactive approach to advise these entities of the need to be registered or taking more aggressive action.

4. *Investors -- investment limits*

The CSA has spent many years and put considerable thought into the current regulatory regime. We have proficiency standards, capital requirements, reporting obligations, and face corporate and personal liability for acting against the publics' interest in our capacity as investment dealers. Part of the regime is requiring dealers to make suitability assessments even though as EMDs we are not discretionary managers, do not have access to detailed portfolio information for our clients, and in many instances will only ever do one trade with a given client.

An investor's income level is only one small component of making a suitability assessment. There are many other factors to consider and putting investment limits in place provides no further benefit to any interested party. <u>An investment is either suitable or it is not</u>. The amount of an investment in any particular security is a decision made by the investor with the guidance and ultimate blessing from the dealer. Limiting amounts simply puts unnecessary restrictions on investors from achieving a stated portfolio balance.

In short, the Commission either trusts the regime it has built and trusts the dealers to act accordingly with suitability assessments or it doesn't. If it does trust the regime then there is simply no need for limits. If it does not trust the regime, then we have much larger issues we should be addressing.

5. *Disclosure -- ongoing information available to investors – reporting of a material change to investors within 10 days*

I am a huge proponent of disclosure and I think the Commission's recommendations in this section are appropriate. My only point is that a 10 day notice for a change, for instance consisting of an addition of a board member, is a bit onerous for a private company. Public security holders require this sort of disclosure in order to make trading decisions that are not available to the holders of private securities. In addition, many of the material changes listed will be driven by the CBA or OBA.

Crowdfunding Prospectus Exemption

1. *Issuer Qualifications – Real Estate Issuers*

While the Commission may have had challenging experiences in the past it seems arbitrary that any one sector of the economy or asset class would be excluded from this exemption. Why not exclude biotech where millions have been lost by investors over the past two decades. The focus should be on ensuring we have capable portal operators, underwriting deals in a responsible fashion, and ensuring compliance within the system. Arbitrarily banning sectors of the Canadian economy seems to be misplaced.

   a. *Investment funds cannot use the exemption.*

   My comments here are similar to the ban under the OM exemption. I believe our efforts should be ensuring the compliance regime is effective rather than arbitrarily denying investor participation in an issue simply because of how it is structured. Again I think a parallel goal of this noble effort should be to open up as many alternative investments as possible to the non-accredited sub-sector of the investment population (which is the overwhelming majority).

2. *Distribution details -- length of time an offering can remain open - A Crowdfunding offering cannot remain open for more than 90 days.*

This simply does not appear to be a reasonable period of time to complete a private equity offering. I have been involved in the capital markets for 25 years, have managed over 80 successful private and public offerings, and have never completed one in less than 90 days. I don't believe it's a reasonable period to even raise the minimum amount. Simply put, these issues take time.

3. *EMDs and other registrant categories will not be permitted to distribute securities in reliance on the proposed new Crowdfunding exemption.*

Of all the restrictions accompanying the proposed new prospectus exemptions this, in my opinion, is the most flawed and potentially the most detrimental.

I am in 100% concurrence that portals need to be registered. The Restricted Dealer category for new entrants to the market seems to be a reasonable approach. Prohibiting existing registrants from utilizing this exemption may structure this fine initiative to fail before it has a chance to succeed.

By definition, the Commission has announced to the market that if you are a current registrant, understand the regulations, have built a company with a compliance-first culture, and have been ably reporting to the CSA for a period time then "**There is no place for you in equity Crowdfunding".**
This restriction will also ensure that any market participants are inexperienced and currently unregistered. Presumably new entrants will have no corporate finance expertise (or they would already be registered in some capacity). Who will be screening issuers? Who will be conducting due diligence? What good can possibly come from this restriction?

The Commission has provided no guidance in its Introduction of Proposed Prospectus Exemptions, so one can only guess the rationale. I did hear a senior member of the OSC speak at a conference recently and he stated that one of the Commission's concerns was that existing registrants would use the Crowdfunding Exemption to avoid their suitability duties. Let me spend some time on this assertion.

Each of the proposed, and all of the existing prospectus amendments, is independent. They have their own rules, regulations, and standards that must be complied with and these are unique to each exemption. How does the assertion that a registrant could use the Crowdfunding Exemption to avoid suitability responsibilities differ from the assertion that a registrant is avoiding filing an Offering Memorandum in the appropriate form by relying on the Accredited Investor Exemption? It is simply not a credible argument.

To make sure this point is clear, I would like to provide a real world example of what would be involved if a registrant truly wanted to avoid suitability responsibilities by utilizing the Crowdfunding Exemption. First, the registrant would have to build a web portal sophisticated enough to manage a private equity financing completely online. Waverley is associated with the only two portals in North America that currently have this capability and we were intimately involved in the sites' architecture. This is not a trivial undertaking. It required

significant time, money and knowledge of the securities business to achieve success.

Now that the site is built, it is of no value as no one knows it exists. The registrant would then need to spend further time and money promoting the site to ensure there are enough viewers hitting the site (that are also investors), to complete any anticipated financing. Then, and only then, could the registrant proceed with the financing, capped at $1.5M, and successfully avoid their suitability duties.

It is simply not feasible that any rational market participant would engage in such a process with the sole objective being to avoid having to do suitability assessments.

Another negative of this prohibition is increased costs to issuers (and investors) should an issuer choose to combine the Crowdfunding Exemption with another exemption to increase the distribution of an offering. The Commission has endorsed this approach in the request for comments, but has created a structure whereby the issuer will be required to engage multiple dealers to utilize multiple exemptions. This increases issue costs materially, which the investor bears.

Barring market participants that have proficiency and experience from utilizing this exemption and making it available only to those new to the industry is in my opinion a recipe for failure. It will lead to poor deal screening, poor due diligence, and poor compliance adherence.

An Alternative Proposal

1. New entrants to the market may register as Restricted Dealers exactly as proposed.
2. Existing registrants would be allowed to use the Crowdfunding Exemption subject to increased capital standards to be determined by the Commission. I suggest doubling the requirement to $100,000.

With this proposal the first entrants to the market will be experienced investment bankers, better able to screen suitable investments, practiced in due diligence, and familiar with operating in a culture of compliance. It will give the initiative a chance to succeed and be a showcase for other provinces and countries.

There is no downside to this proposal.

I would again like to commend the CSA and the OSC in particular for the industry-leading initiative that these proposals represent.

Yours truly,

WAVERLEY CORPORATE FINANCIAL SERVICES LTD.

Don McDonald, President