



June 16, 2014

Robert Day
Senior Specialist, Business Planning
Ontario Securities Commission
20 Queen Street West
Suite 2200, Box 55
Toronto, Ontario M5H 3S8

Dear Mr. Day,

I am writing on behalf of the Ottawa Community Loan Fund (OCLF) with respect to the current call for comments on the proposed Crowdfunding Prospectus Exemption.

Based in Ottawa, the Ottawa Community Loan Fund (OCLF) is one of Canada's leading not-for-profit 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. Working either on its own or with its lending partners Alterna Savings and the Futurpreneur (formerly known as 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 receives funding from all three levels of government and from United Way Ottawa and the Community Foundation of Ottawa. 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. Increasingly OCLF is looking to work with social enterprises both from the not-for-profit and for profit sector. Given our perspective as being an impact lender and working with organizations that are primarily interested in debt support rather than equity support is reflected in our review of the proposed Crowdfunding Exemption.

We are very pleased to see that the Ontario Securities Commission (OSC) is advancing the use of equity crowdfunding in Ontario and elsewhere in Canada in conjunction with several of its sister provincial regulators. OCLF has taken a keen interest in crowdfunding given its potential to help small business, including social enterprises, raise money and as such, we provided a detailed submission in March 2013 when you were seeking comments on crowdfunding at that time.



In regards to the proposed Crowdfunding Prospectus Exemption, we have a few comments and concerns that we would like to raise at this time as the OSC considers the final wording of the National Instrument 45-108 associated with crowdfunding. In particular, we would like to note the following:

- 1) **Equity Crowdfunding** – We are pleased that the exemption is referred to as the Crowdfunding Exemption and not the Equity Crowdfunding Exemption. As a debt lender we have been concerned that the reference to “Equity Crowdfunding” makes it uncertain as to whether this type of crowdfunding also includes debt instruments. As we often work with social enterprises and non-profit organizations we are aware that these types of organizations are often not looking to raise equity through crowdfunding but may be interested in raising debt. It is often ambiguous as to whether debt is considered as a form of allowable financing under Equity Crowdfunding. We would therefore urge you, as this exemption proceeds, to refer to it either generically (as done to date) or perhaps call it “capital crowdfunding” instead of equity crowdfunding so that issuers don’t mistakenly believe that it can only be used to raise equity. Similarly, in any promotional information provided by OSC it should explicitly indicate that that this exemption can be used to raise both debt and equity. Recently our organization was in contact with the Saskatchewan government seeking clarity as to whether their Equity Crowdfunding program included debt financing. It in fact took several phone calls and some research by a Saskatchewan government official before they could confirm that it included debt instruments. While it might be clear in NI 45-108 that the exemption includes debt, the average organization seeking to raise funding through crowdfunding is not going to read through a National Instrument. As noted, even government officials in Saskatchewan who were responsible for administering the program were not sure when initially approached.

- 2) **NI45-108, Part 2 Crowdfunding Prospectus Exemption, Section 8 (3)** – Under this clause it indicates that the crowdfunding exemption cannot be used for investment funds. As a microfinance institution that provides small loans (typically \$5000 to \$45,000) to start-up entrepreneurs and social enterprises we are concerned that this language is too vague and could restrict the ability of an organization such as ours to use crowdfunding to raise capital for on-lending. If the purpose of the Crowdfunding exemption is to make it easier for small and medium companies to raise equity and debt and for non-accredited individuals to invest in such enterprises, this limitation on investment funds could be counterproductive.

The clients that we see are primarily looking for debt financing. They may rather deal with one lender such as OCLF rather than several small lenders through a crowdfunding campaign. They value the role that OCLF plays in working with them in developing their business plan and reviewing and approving their loan application. Having to go to the crowd for a number of small loans would not be as effective for them and could be more costly to administer. Small investors may be more comfortable, particularly when investing in debt instruments, to provide



funding to a lending organization that can use the funds to support a variety of projects. As returns on debt are never as lucrative as successful equity investments, the role of the intermediary is much more critical.

It is not clear as whether the prohibition against investment funds was really designed to prevent an organization such as OCLF from raising money for on-lending or whether this is merely an unintended consequence arising from unclear language regarding what is meant by an investment fund. If it is the former, we would ask you to reconsider this prohibition. For the reasons stated above crowdfunding should be allowed for organization such as ours if the funds are being used for on-lending or to support the purchase of new equity issues directly from small and medium sized enterprises (as opposed to purchasing equity on the secondary market). If it is the latter case of ambiguous language, we would ask you to reword the prohibition so that cannot be potentially be worded too broadly so as to prohibit an on-lending organization such as ours. Such a lack of clarity may mean that an organization such as OCLF seeking to raise money under NI45-108 may have to engage costly corporate lawyers for an interpretation of what should be a more straightforward clause.

- 3) **Section 23 Annual Financial Statements** – While the requirements as laid out for annual financial statements are appropriate for incorporated companies, they may be onerous for non-incorporated companies raising debt financing under the crowdfunding exemption. The bulk of the start-up companies with which we work are unincorporated. As well, many of the companies we support are retail businesses such as restaurants which should easily exceed the \$150,000 level in expenditures even within their first year. While any company seeking equity under this exemption will have to be incorporated, start-up companies seeking debt will not always be incorporated. The requirement for financial statements is also more critical for equity investors as equity holders have no way to know the status of their investment other than seeing regular financial statements. Debt holders will know if everything is acceptable on an ongoing basis through the receipt of regularly scheduled payments of principle and interest. We request that your reconsider the annual financial statement requirement to better reflect the different needs of equity and debt providers. We would furthermore note, however, is lending organizations such as OCLF are able to borrow under the proposed crowdfunding exemption, we would be in a position to provide annual audited financial statements as would most similar organizations.
- 4) **Start-up Crowdfunding Exemption** – We note that Quebec, Saskatchewan, New Brunswick, Nova Scotia and Manitoba which are all considering a crowdfunding exemption are also considering a Start-up Crowdfunding Exemption, with Saskatchewan appearing to have it already in place. We question as to why Ontario is also not prepared to consider this additional exemption. As Canada's leading province and most active jurisdiction for raising capitalities,



this seems to be a curious omission. This Start-up Crowdfunding exemption with its lower limits (\$300,000 vs. \$1.5 million), lower contribution limits (\$1,500 vs. \$2,500) and lower reporting standards is much friendlier to small and medium sized businesses, particularly start-up organizations. As well, the Start-Up Crowdfunding exemption does not require the portal to be licensed. This means an established lender such as OCLF could set up an equity portal without having to be licensed by the OSC. This would make it much easier for our client base, allow us to provide a greater range of services to our clients and allow us to provide funding directly to our clients without having to do it through an “investment fund” approach which may or may not be allowed. With five other provinces putting in place this exemption, it is our belief that Ontario should also allow for this exemption. We had indicated in our submission of March 2013 that there should be allowances for portals that seek to raise money for social enterprises and other entities seeking debt financing. This Start-up Crowdfunding exemption would allow for this flexibility.

As Canada’s leading province, Ontario should be taking the lead on this innovative approach to raising capital rather than letting much smaller provinces take the lead. If OSC is concerned about the risks associated with Start-up Crowdfunding, it could introduce it on a 2-5 year trial period to see how it works and whether the risks are acceptable and whether investors feel properly protected. Investments made through this exemption can require investors to sign clear standardized waivers stating that they understand the risks associated with this type of investment and that they are able to withstand a loss of their investment.

As noted above, we are very pleased with the progress that Ontario is making in adopting capital crowdfunding. We believe that the proposed Crowdfunding Exemption goes far in improving the environment for crowdfunding in our province but we do believe that it can be made better for companies seeking to raise capital, for organizations such as OCLF who would like to raise capital for on-lending and potentially operate a portal while maintaining a transparent and safe environment for investors. Given the fluid nature of capital and the ability for firms to move based on their financing requirements we also believe that maximum harmonization of provincial regulations should be pursued.

To summarize, we would propose the following recommendations to the proposed Crowdfunding Exemption:

- 1) Either clarify or modify if necessary the exemption for investment funds to allow for organizations such as OCLF to raise money for crowdfunding that will be on-lent to small and medium size enterprises or directly invested in such companies.



- 2) Lessen the financial reporting requirements for companies (particularly those that our unincorporated) that are strictly raising debt financing through crowdfunding as long as there is no equity conversion option.
- 3) Include the Start-up Crowdfunding exemption as is currently approved or being considered in Saskatchewan, Manitoba, Quebec, New Brunswick and Nova Scotia, including the lower threshold requirement for portals that use this exemption.
- 4) Ensure that any promotional or press material issued with respect to crowdfunding be clear with respect to the fact that it allows for both equity and debt issuances. The term equity crowdfunding as a catch-all phrase should be avoided as this can be misleading. Capital crowdfunding would be a better term if one is required.

If you have any questions on the recommendations that we have made above or require further information, please do not hesitate to contact us.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Lorne Cutler', is positioned below the text 'Yours sincerely,'.

Lorne Cutler
Social Finance Consultant
Ottawa Community Loan Fund